

INFOLEX

NEWSALERT

March 2015

Yet Another Step towards Shareholder Protection

In order to keep pace with today's digitalization and technological advancement, the MCA has introduced some significant changes to the rules relating to voting by electronic means to facilitate more flexible and transparent conduct of general meetings in listed companies and companies not having less than one thousand members. As notified earlier by amendment, these rules applied to companies and their meetings since January 1, 2015. The MCA has now curiously clarified that these rules shall apply prospectively only to meetings conducted after the notification of these new set of amendments. Further, the facilities with respect to electronic voting shall not apply to small medium enterprises specified in Chapter XB and XC of the Securities Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2009. This is probably because it is intent of the MCA, that these facilities be restricted to only to large companies operating with a large number of members.

The companies now have to include a "cut-off date" which has been defined as a date (which shall not earlier than 7 days before a general meeting) as on which persons who shall be eligible to vote by electronic means shall be determined. This shall be notified in the advertisement and further it shall be represented that only such persons who are members of the company as per the register of members on cut-off date shall avail the facilities provided.

Further, the concept of "remote e-voting" has been introduced to facilitate casting of votes by electronic voting system from a place other than the venue of the meeting. It will now be possible for members to participate in the voting process without being physically present at the meeting. The amendment rules further clarify that the persons who elected to vote by the remote e-voting method will still be allowed to attend the meeting but understandably not allowed to vote again if they have already cast their votes. The advertisement will specify the details of time period during which the members may opt to exercise their voting power through remote e-voting. The facility for such e-voting was earlier available for not more than 3 days prior to the general meeting. Now this has been extended for a period not less than 3 days and further shall continue to remain open till 5 pm of the preceding day of the general meeting.

In order to ensure transparency of proceedings and to reduce the chances of any unfair conduct the scrutinizers of the meeting, appointed to scrutinize the results of the voting process, are required to commence the counting process immediately after the conclusion of the general meeting and immediately thereafter undertake the unblocking of votes cast through e-voting. Prior to the amendment rules the scrutinizer could undertake this process within 3 days of the general meeting. Further, it has been specifically clarified that the votes cast by the members shall remain a secret and shall not in any manner be revealed to the scrutinizer, chairman or any other person. In order to ensure that there is no double voting, immediately after the e-voting period and prior to the commencement of the general meeting, the scrutinizer shall keep access to names and other details of members who have cast their vote through remote e-voting.

Additionally, the company is now required to ensure that immediately after the results of the voting process is declared by the chairman, the results and the report should be made available on the website of the company. Prior to the amendment the results were to be announced on the website within 2 days of the general meeting. If the equity shares of the company are listed on a recognized stock exchange there is now a requirement to simultaneously share such results and report with the stock exchange as well. Further, the rules mandate that no resolution that is proposed to be considered by voting through electronic means may be withdrawn.

IndusLaw Quick View:

By reducing time gap between conduct of proceedings, counting process and declaration of results; by ensuring secrecy of the voting process; by introducing the possibility of remote e-voting, the company is now compelled to put in place a fair and apparent mechanism of voting and make the process easily accessible and thus, increasingly participatory.

** Authors - Avimukt Dar, Priyanka Chandrasekhar, Kriti Bhatia*

Disclaimer

This alert, and all the material it contains, is for information purposes only. Nothing contained herein is, purports to be, or is intended as legal advice. The Firm makes no representations or warranties, express or implied, of any manner whatsoever in connection with this alert. No recipient of this alert should construe receipt, or this alert, as an attempt to solicit business in any manner whatsoever.