

e-Voting : Evolution, Benefits, Issues and Challenges



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Introduction

Passing of appropriate resolutions by companies is an integral part of corporate functioning and increased shareholder participation is the cornerstone of good Corporate Governance. In India, so far, although Companies Act has enabled passing of resolutions by postal ballot so that a large number of shareholders can vote on

important resolutions to be passed by companies, it is being observed that in reality, very few shareholders actually vote on such resolutions by postal ballot.

The concept of obtaining the consent of the Members of a company (shareholders) by voting by Postal Ballot was introduced in the Companies Act, 1956 by the Companies (Amendment) Act, 2000, by inserting a new section 192A in the Act. In terms of the aforesaid Section 192A, every listed public company should, in the case of such items of business as are declared by the Central Government to be conducted only by Postal Ballot, and may, in respect of any other item of business as may be decided by the Board, obtain the approval of its Members to the Ordinary or Special Resolution.

Postal Ballot is a unique provision which gives shareholders the right to vote on important items of business of a corporate body without actually attending its general meetings. It provides an opportunity to shareholders residing in far-flung area to take part in the decision making process. It is a further step to encourage corporate democracy and to promote good corporate governance. The Companies (Passing of the Resolution by Postal Ballot) Rules, 2001, has defined the "Postal Ballot" as "voting by shareholders by postal or electronic mode instead of voting personally by presenting for transacting businesses in a general meeting of the company". Thus, electronic mode of voting is permitted since the inception of Postal Ballot Rules 2001 but was not used as there was no such facility available.

Due to the large number of shareholders and wide spread geographical locations; postal ballots have received a limited response so far. One of the challenges before the Company Law authorities was how to increase the participation of shareholders in postal ballots. A more convenient means for exercising the voting rights was required. Although electronic mode was permitted

for Postal Ballot since its inception in 2001, it was not available to shareholders as the appropriate mechanism for electronic voting was not prescribed therein. The Central Government has vide notification dated May 30, 2011 issued new set of rules for passing of resolution by Postal Ballot which states that notice should mention the following:

- Whether voting would be through postal ballot or by electronic mode; and
- In case of electronic mode, the process and manner for such voting provided by the Agency approved by the Ministry of Corporate Affairs (MCA) i.e. NSDL and CDSL.

In view of this, it was felt that the option of electronic voting (e-Voting) should be made available to shareholders to cast their votes in respect of resolutions of companies.

Evolution of e-Voting in India:

e-Voting is voting through an electronic system where shareholders can cast their votes on resolutions of companies requiring voting through Postal Ballot as per extant rules and regulations without having the necessity of sending their votes through post. It is a process for recording votes by the members/shareholders using a computer based machine to display an electronic ballot and to record the vote and also the number of votes polled in favour or against such that the entire voting gets registered and counted in an electronic registry in a Centralized Server.

Recently, just about year ago, MCA has taken a Green Initiative in the Corporate Governance by allowing paperless compliances by the Companies. MCA also authorised National Securities Depository Limited (NSDL) as one of the agencies for setting up an electronic platform to facilitate shareholders to cast their vote in electronic form.

NSDL is the first and the largest securities depository in India established in 1996 which handles more than 80% of the securities held and settled in dematerialised form in India through its nationwide network of electronic system infrastructure. The solutions developed and implemented by NSDL are projects of national importance which involved use of modern information and communication tools, business process re-engineering, policy changes, strengthening administrative & legal infrastructure and facilitating change management. NSDL has achieved and delivered path-breaking success in the area of automation of large and complicated processes by use of niche technologies, management experience and creation of a large network of service centers. These service centers are in form of Depository

Participants' branches and Facilitation Centers spread across length & breadth of the country.

NSDL's core competence is its ability to conceive, design, implement, manage and maintain large databases that can bring in transactional efficiency for common good. NSDL has also successfully set-up secure technology hub for managing these databases. Using innovative and flexible technology systems, NSDL works to support the investors and brokers in the capital market of the country. NSDL aims at ensuring the safety and soundness of Indian marketplaces by developing settlement solutions that increase efficiency, minimize risk and reduce costs. At NSDL, we play a quiet but central role in developing products and services that will continue to nurture the growing needs of the financial services industry. Thus, setting up an electronic voting system was also one such initiative to facilitate shareholders to cast their votes in electronic form through internet.

Internet is increasingly becoming an important medium for dissemination of information and conducting business. Enabling transactions through Internet has become essential as a means to provide better flexibility and convenience to shareholders and further increasing efficiency of decision making in the capital market. Safety of transactions is however, a very crucial issue in internet based solutions. This assumes further significance in case of electronic voting. Another feature of electronic voting is that it is time critical. The lapse or failure in casting a vote in time may lead to loss of vote for the company. Hence, an internet application for electronic voting necessarily demands an elaborate and robust infrastructure that ensures efficient execution, secured record keeping and timely delivery of the voting information. Considering these factors, NSDL has developed its e-Voting system and it has received the Website Quality Certificate from the Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communications & IT, Government of India. The home page of the e-Voting system of NSDL was launched on January 25, 2012.

Salient features of the e-Voting System of NSDL:

The salient features of the e-Voting system developed by NSDL and certified by STQC Directorate are as under:

- The e-Voting system of NSDL is a secured system wherein shareholders can cast their votes in respect of resolutions placed by Issuers for voting by postal ballot.
- In respect of the shareholders whose email addresses are available with the Issuers/ Registrar & Transfer (R & T) Agents, the user ID and password are e-mailed to the shareholders in an encrypted manner. In respect of shareholders whose email addresses are not available, the user ID and password are delivered by the Issuers/R & T Agents at the address

of the shareholders available with the Issuers/R & T Agents.

- In respect of shareholders having depository accounts, the same log-in credentials can be used by the shareholders for voting in respect of all the resolutions of the companies which have entered into an agreement with NSDL for availing the services of the e-Voting system and where they are the shareholders as of the cut-off date (*record date*). Thus, the e-Voting platform of NSDL helps the shareholders to conveniently participate in voting through postal ballot process for all companies where they are shareholders and which have availed the services of e-Voting system of NSDL.
- Shareholders also have the facility to reset their password.

Thus, shareholders who have registered for e-Voting can just click and exercise their voting rights. They can cast their votes on the last minute of the cut off day through e-Voting, which they can't do in a physical postal ballot. Before the e-Voting system accepts one's electronically cast votes, the system verifies that the person is indeed registered as the holder of the securities for which the votes are cast. The e-Voting System of NSDL facilitates voting from all shareholders i.e., shareholders holding shares in physical and demat mode with Depositories, as on the record date. e-Voting system brings flexibility, convenience and ease of operation for the shareholders to cast their votes through internet. e-Voting also eases the job of the Scrutinizer who collates the votes downloaded from e-Voting system and votes received through other means to declare the final results for the resolutions placed for voting by the Issuer.

Benefits of e-Voting System:

The benefits of e-Voting system can be summarized as under:

- Substantial reduction in administration cost viz. ;
 - ✓ Postal correspondence;
 - ✓ Verification of signatures;
 - ✓ Counting of votes; &
 - ✓ Storing of physical ballot papers.
- Accuracy in counting of votes;
- Elimination of postal ballots getting lost in-transit;
- Elimination of postal and other natural delays which cause hindrance to postal ballot;
- Sufficient time available to shareholders to vote till the end of voting cycle;
- Increases shareholders' participation in crucial corporate actions;
- e-mail (s)/SMS can be sent to shareholders for reminding them to cast their votes;
- Facilitates electronic voting on resolution of companies in a fair and transparent manner;
- Improves corporate governance standards due to increased participation by shareholders.

e-Voting system in India vis-à-vis other Asian countries

Pursuant to the e-Voting system of NSDL being launched on January 25, 2012, the usage of e-Voting system has shown a steady growth with registration of certain companies who have availed the facility of NSDL e-Voting system namely Tata Metaliks Limited, Hindustan Petroleum Corporation Limited, Indag Rubber Limited, Bajaj Hindusthan Limited, Dhunseri Petrochemicals and Tea Limited, Info Edge (India) Limited, Usha Martin Education & Solutions Limited, Zandu Realty Limited and DLF Limited. In order to encourage companies to provide the facility of e-Voting to their shareholders, NSDL has decided not to levy any fee on companies for availing the e-Voting facility of NSDL till September 30, 2012.

e-Voting is also available to shareholders in three other Asian countries viz; Japan, Korea and Taiwan, apart from India. In Japan, e-Voting system commenced in the year 2006. Since then, more than 400 companies have already been registered for providing the facility of e-Voting to their shareholders. In Korea, e-Voting commenced in the year 2010 and more than 50 companies have adopted this facility to let their shareholders cast their votes. It is not a mandatory requirement for companies in Japan and Korea to offer the facility of e-Voting. In Taiwan, e-Voting is operational since 2009 but only a few companies have provided the facility to their shareholders. So far, in Taiwan, it has not been a mandatory requirement for companies to offer the facility of e-Voting. However this year, Taiwan will implement a new regulation that listed Issuers with a paid-up capital of TWD 10 Billion & above and having more than 10,000 shareholders have to adopt e-Voting. Seeing the experience of e-Voting in these Asian countries, it is evident that there is lot of scope for e-Voting system in India in the times to come.

Issues and Challenges for e-Voting System:

Some companies are not very forthcoming in providing the facility of e-Voting to their shareholders and are waiting for e-Voting to be made mandatory by authorities. e-Voting can become popular only when a large number of companies opt for e-Voting.

Another important challenge for the success of e-Voting is how to increase the participation from the shareholders fraternity as it is so far being seen that postal ballots have received very limited response from shareholders. It is observed that on an average only about 2-3 % of the shareholders actually vote for the resolutions to be passed by postal ballot. It is observed that even institutional investors such as mutual funds do not participate in voting on resolutions of companies. Thus, increasing awareness amongst shareholders by companies, investor associations etc. is of prime importance.

Another hindrance in the e-Voting process is reach of internet in India and changing the mindsets of people who still prefer conventional paper mode of voting i.e. through postal ballot as they are not very conversant in using internet technology.

Conclusion

Hon'ble Finance Minister, Shri Pranab Mukherjee has announced in his Budget Speech on March 16, 2012 that for providing opportunities for wider shareholder participation in important decisions of the companies through electronic voting facilities, the existing process for shareholder voting would be made mandatory initially for top listed companies. Once this is made mandatory, e-Voting will be more widely used by companies and more and more shareholders are likely to participate in the process of decision making. e-Voting is a win-win system for both small investors and companies. It is eco-friendly and cost-effective for companies. In my opinion, participation of retail investors in deciding on various resolutions of companies can be significantly increased through e-Voting platform