

An Analysis on the "Postal Ballot & Voting through Electronic Mode"

navneet k. arora & co.
COMPANY SECRETARIES

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Proprietor 's Profile at a Glance

Navneet K. Arora & Co., Company Secretaries

BASIC DETAILS

- ✂ Name of the Proprietor – **CS Navneet Arora**
- ✂ Year of Passing of ICSI Final Examination – **June 1990**
- ✂ Date of becoming Associate Member of ICSI (ACS - 8421) – **3rd March 1992**
- ✂ Date of becoming Fellow Member of ICSI (FCS - 3214) – **21st July 1997**
- ✂ Date of holding Certificate of Practice (CP - 3005) – **20th November 1998**
- ✂ Experience (No. of Years) – **25 Years (15 Years in Practice)**



EDUCATIONAL QUALIFICATION:

- ✂ Master of Commerce.
- ✂ Fellow Member of The Institute of Company Secretaries of India
- ✂ Post Graduate Diploma in Financial Management

PROFESSIONAL ASSOCIATION / RECOGNITION / MEMBERSHIP OF CONFEDERATION BODIES:

- ✂ Member - **All India Management Association New Delhi (AIMA).**
- ✂ Professional Member - **PHD Chamber of Commerce and Industries, New Delhi.**
- ✂ Appointed as **Peer Reviewer** by ICSI to conduct peer review of Practicing Member of ICSI.
- ✂ ICSI Certified participant of **National Workshop on Diligence Report for Banks.**
- ✂ **Convener South Delhi Study Group of NIRC of the ICSI** -2011, 2012, 2013 & 2014. Also Past Governing Body Member of Kanpur Chapter of NIRC of the ICSI & Past Member of various Professional Development Committee of NIRC of the ICSI.
- ✂ Regular Participant, Speaker of Seminars / Workshop on the Professional Development Program of various Professional Management Institutes including Institute of Company Secretaries of India (ICSI), Asia Pacific Institute of Management (AIM), National Foundation for Corporate Governance (NFCG) etc.

Overview of the Postal Ballot

- Members of the Company in the general meeting of the Company have a right to cast their vote either by show of hands or through Ballot.
- Postal Ballot generally means Shareholder's have right to participate in the meeting without their physical presence in the meeting and to cast their vote for or against the passing of particular resolution by sending their Postal Ballot.
- In Postal Ballot, company post a ballot to all the shareholders of the company and request to send back with their vote in favour or against the passing of the resolution in particular matter within the stipulated period.
- **Section 108 and 110 of the Company Act, 2013 and Companies (Management and Administration) Rules, 2014 govern the law and procedure regarding the Postal Ballot and Voting through electronic means.**

Postal Ballot - Basic Law as per Companies Act 2013

- **Extract of the Section 110 of the Companies Act, 2013 as under:-**

- Notwithstanding anything contained in this Act, a company :-

(a) shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot, AND

(b) may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot,

in such manner as may be prescribed, instead of transacting such business at a general meeting.

Procedure to be followed for conducting business through postal ballot

- **Relevant Rules / Procedure prescribed in the Companies (Management and Administration) Rules, 2014 as under :-**
 - Where a company is required or decides to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons there for and requesting them to send their assent or dissent in writing on a postal ballot because **postal ballot means voting by post or through electronic means** within a period of thirty days from the date of dispatch of the notice.
 - The notice shall be sent either :-
 - (a) by Registered Post or speed post OR
 - (b) through electronic means like registered e-mail id OR
 - (c) through courier servicefor facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days.
 - The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner.
 - If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot including voting by electronic means, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

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- Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer and after the receipt of assent or dissent of the shareholder in writing on a postal ballot, no person shall deface or destroy the ballot paper or declare the identity of the shareholder.
- The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof.
- The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the ballot papers and other related papers or register to the company who shall preserve such ballot papers and other related papers or register safely
- The assent or dissent received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received.
- The results shall be declared by placing it, along with the scrutinizer's report, on the website of the company.
- The resolution shall be deemed to be passed on the date of at a meeting convened in that behalf.

Matter to be Transacted only by postal ballot

- **Matters to be transacted only by way of Postal ballot in accordance with Companies (Management and Administration) Rules, 2014 as under:-**
 - Pursuant to clause (a) of sub-section (1) of section 110, the following items of business shall be transacted only by means of voting through a postal ballot :-
 - (i) Alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum.
 - (ii) Alteration of articles of association in relation to insertion or removal of provisions which, under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company.
 - (iii) Change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12.
 - (vi) Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of section 13.

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(v) Issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 43.

(vi) Variation in the rights attached to a class of shares or debentures or other securities as specified under section 48.

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(viii) election of a director under section 151 of the Act.

(xi) Sale of the whole or substantially the whole of an undertaking of a company as specified under sub-clause (a) of sub-section (1) of section 180 AND

(x) Giving loans or extending guarantee or providing security in excess of the limit specified under sub-section (3) of section 186.

Provided that One Person Company and other companies having members up to two hundred are not required to transact any business through postal ballot.

Voting through electronic means

- **Relevant Rules / Procedure prescribed in the Companies (Management and Administration) Rules, 2014 as under:-**

Every listed company

OR

A Company having not less than one thousand shareholders

shall provide to its members **facility to exercise their right to vote** at general meetings by way of **electronic means**

- A member may exercise his right to vote at any general meeting by electronic means and company may pass any resolution by electronic voting system in accordance with the provisions of this rule.

Procedure

- **Relevant Rules / Procedure prescribed in the Companies (Management and Administration) Rules, 2014 as under:-**
 - A Company which opts to provide the facility to its members to exercise their votes at any general meeting by electronic voting system shall follow the follow these Steps :-
 - (i) The notices of the meeting shall be sent to all the members, auditors of the company, or directors either :-
 - (a) by registered post or speed post OR
 - (b) through electronic means like registered e-mail id
 - (c) through courier service
 - (ii) The notice shall also be placed on the website of the company, if any and of the agency forthwith after it is sent to the members
 - (iii) The notice of the meeting shall clearly mention that the business may be transacted through electronic voting system and the company is providing facility for voting by electronic means and clearly indicate the process and manner for voting by electronic means and the time schedule including the time period during which the votes may be cast and shall also provide the login ID and create a facility for generating password and for keeping security and casting of vote in a secure manner.

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(iv) The e-voting shall remain open for not less than one day and not more than three days, Provided that in all such cases, such voting period shall be completed three days prior to the date of the general meeting.

(v) During the e-voting period, shareholders of the company, holding shares either in physical form or in dematerialized form, as on the record date, may cast their vote electronically.

- At the end of the voting period, the portal where votes are cast shall forthwith be blocked.
- The Board of directors shall appoint one scrutinizer, who may be chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an advocate, but not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the e-voting process in a fair and transparent manner.
- the results declared along with the scrutinizer's report shall be placed on the website of the company and on the website of the agency within two days of passing of the resolution at the relevant general meeting of members.
- subject to receipt of sufficient votes, the resolution shall be deemed to be passed on the date of the relevant general meeting of members.

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Thanking you

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