

Article

FAQs on electronic voting in general meetings



Vinod Kothari

vinod@vinodkothari.com

Vinod Kothari & Company
7th May, 2014

Check at:

<http://india-financing.com/staff-publications.html>
for more write ups.

Copyright:

This write up is the property of Vinod Kothari & Company and no part of it can be copied, reproduced or distributed in any manner.

Disclaimer:

This write up is intended to initiate academic debate on a pertinent question. It is not intended to be a professional advice and should not be relied upon for real life facts.



Article

The answers below are based on our research of international e-voting practices, discussions with several leading companies, and our own attempt to harmonise the e-voting process with that of voting in the general meeting. We are developing our understanding further, and in case there are further thoughts, we may revise this article going forward.

1. Is e-voting applicable for AGM of 2014?

Yes.

2. Is e-voting applicable to all listed companies?

Yes.

3. Is e-voting applicable to unlisted companies too?

Yes, if the number of shareholders is 1000 or more. Several private companies may also have large number of employee shareholders. So the provision is applicable to all such companies.

4. Is e-voting prevalent in other countries too?

European Union, by regulation, has mandated member States to permit remote voting (which mostly means e-voting or postal voting) for all shareholders who are unable to attend physically. Several US states also permit it. Korea, Malaysia, Australia etc. also permit it. Hence, it is a concept very well prevalent in lots of countries of the world.

5. Is the concept of voting before the meeting, as provided by the Indian rules, common internationally?

Yes. EU regulations permit remote voting either before the meeting or after the meeting. In our research, it comes out that most large European companies offer e-voting before the meeting.

6. Is e-voting in lieu of voting at the meeting, or a member may attend physically as well?

The right to attend, speak, confront directors, and vote at the meeting is a fundamental right attached to holding of shares. Directors are the appointees of shareholders – they cannot take away the shareholders' right to attend and speak at the meeting. E-voting is merely to expand the available options to a



Article

shareholder, and not limit the same. Indian law also talks about an electronic voting “facility”. A facility cannot be a limitation – hence, the right to attend and vote at a meeting cannot be taken away.

7. Can a shareholder vote electronically and also attend the meeting?

In our view, it is quite fair to say that a shareholder who opts to vote electronically loses his right to attend the meeting. It is noted that world-over, e-voting was allowed as an option to those shareholders who cannot attend personally. Hence, a shareholder may either vote at the meeting or vote electronically. Having voted electronically, there is no reason for him to want to come to the meeting. Or, if it was practical for him to come to the meeting, there is no reason for him to vote electronically. So e-voting and attending the meeting may be offered as mutually exclusive options.

8. How does the company control the attendance of those persons who have voted electronically?

Most companies have attendance slips for shareholders. It may be fair to require the shareholders, wanting to attend the meeting personally, to return a duplicate copy of the attendance slip in advance. If the company gets the slips in advance, it may check the same to rule out those members who have voted already electronically.

9. Does the company have to allow postal voting facility to those who are receiving electronic mail?

Our reading of Rules as well as the revised Clause 35B of the Listing Agreement is that postal voting is available only in case of a postal ballot. Companies are not mandated to provide postal voting facility to shareholders for a general meeting. The part of Para 35B (ii) which provides for shareholders having postal voting option is applicable to a postal ballot, and not to general meetings. In case of general meetings, companies are required to provide only 2 options – option to vote electronically, and option to attend the meeting in person or proxy.

Having said this, larger participation in meetings is only the sign of a healthy stakeholder relationship. So, if companies are desirous of offering postal voting as well, that only does better shareholder service.



Article

10. Having offered postal voting, how does a company carry out voting at the meeting?

The most convenient and practical way for voting at meetings is show of hands. If the company goes for a poll, then the voting becomes very cumbersome and time-taking. Hence, unless a poll is demanded, or ordered by the Chairman himself, voting may happen by show of hands.

11. Is a show of hands compatible with electronic voting, where voting is by number of shares?

With a little bit of gap-filling in the regulatory language, it is very easily possible to synthesize electronic voting with show of hands. "Show of hands" is essentially shareholder count, rather than shares-count. In electronic voting, it is convenient as well as common to count the number of shares, as well as the number of shareholders, voting for or against a particular motion.

Hence, unless a poll is demanded, the Chairman may add the head-count or hand-count to the results of electronic vote and declare the result of voting.

Note that the show of hands voting is always based on a subjective assessment of the Chairman. It is not practical to actually count the number of hands going up at any large meeting. Hence, the Chairman takes a view based on the weight of the hands going up for and against. Likewise, he would have already had the results of the electronic vote, by head count as well as votes count. In case he has any doubt as to the clarity of the sense of the meeting, he may always prefer a poll. If the sense of the meeting and electronic voting is clear enough, he may declare the results of the voting.

Let us take an illustrative example here:

E-voting (exact)				Voting at the meeting				Comments	Result
For		Against		For		Against			
No. of shareholders	No. of shares	No. of shareholders	No. of shares	Show of hands (apprx.)	Poll (exact)	Show of hands (apprx.)	Poll (exact)		
1000	100000	100	10000	500	NA	50	NA	Results of both are clear and decisive	Passed
1000	100000	100	10000	50	NA	500	NA	The excess of number of shareholders voting for, over those voting against, in e-vote is 900. This is exceeding the total number of	Passed



Article

								shareholders voting at the meeting. Hence, even if all shareholders at the meeting opposed the resolution by show of hands, it would have still been carried.	
100	100000	1000	10000	500	NA	50	NA	By head count test on e-vote, the resolution is getting lost. Hence the chairman must order a poll	Order a poll
100	100000	1000	10000	500	50000	50	10000	After counting the results of e-vote and the poll, the total number of shareholding strength for the resolution exceeds the total number of shareholding strength against.	Passed by poll
100	100000	1000	10000	500	10000	50	50000	After counting the results of e-vote and the poll, the total number of shareholding strength for the resolution exceeds the total number of shareholding strength against.	Passed by poll

12. Section 107 (1) rules out show of hands in case of electronic voting. How does the above opinion match with the law?

Section 107 (1) only states the most obvious. There is no question, literally, of a “show of hands” in electronic voting. However, the section is not ruling out shareholder-count in case of electronic voting.

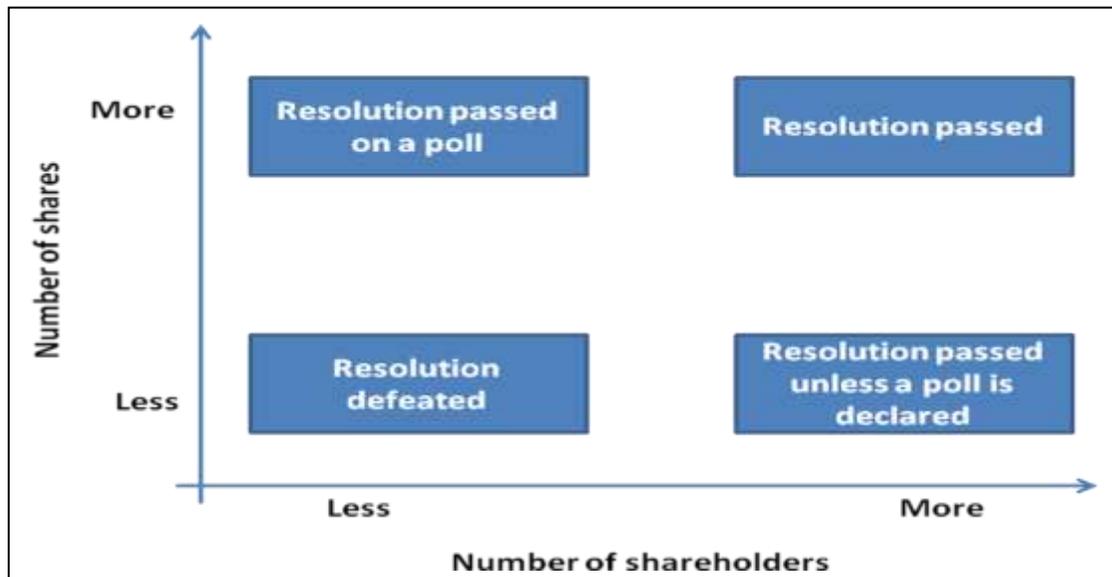
Shareholder count is the most convenient way of combining the voting at the meeting with electronic meeting. We cannot interpret the section so as to make corporate meetings chaotic and cumbersome. The whole section is to expand democratic process at meetings – chaotic process does not augment the purpose of the law at all.



Article

13. What is the inter-relation between voting by poll and voting by show of hands?

The inter-relation between voting by poll and voting by show of hands has been graphically represented below:



14. Assuming a large shareholder voted against a resolution on an electronic vote, his strength will be counted only One on a show of hands. Is it not doing injustice to the concept of voting?

Not at all. In any show of hands, there is no discrimination as between shareholders – one member has one vote, irrespective of his holdings. Same is the case at the first stage of voting, that is, shareholder count. If a large shareholder was serious about having his say at the meeting, it was quite possible for him to either attend personally or by proxy, where he could have demanded a poll.

15. Can a member voting electronically demand a poll?

No. EU regulations require companies to allow interaction with members before a meeting – say, by a blog or likewise. However, members voting remotely cannot have the same powers as members voting in a meeting. Hence, poll cannot be demanded by a member voting electronically.

16. Can a proxy vote electronically?



FAQs on electronic voting in General Meetings

Article

Question does not arise. Proxies are only intended to vote on a poll.

17. Can a corporate representative vote electronically?

Yes.

18. Can a power of attorney holder vote electronically?

Yes. User IDs and passwords are sent to the members' mail id. So anyone who has access to the same may vote.

19. What is special about the notice of the annual general meeting where e-voting is to be allowed?

The e-voting procedure, generation of usernames, passwords, etc. have to be sent to all members. In addition, there has to be an appointment of a scrutiniser.



Article

Read Articles on:

FAQs on the appointment of Independent Directors at [http://india-financing.com/images/Articles/FAQ_appointment of IDs.pdf](http://india-financing.com/images/Articles/FAQ_appointment_of_IDs.pdf)

Is the process of section 160 applicable to appointment of Independent Directors at <http://india-financing.com/images/Articles/Is the process of section 160 applicable to appointment of Independent Directors.pdf>

Read our other Company Law articles on:

<https://india-financing.com/component/content/article/281.html>