

# *Update*

## E-voting becomes mandatory for all listed companies

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## Update

Effective 1<sup>st</sup> October 2012, e-voting becomes mandatory for all such resolutions for which postal ballots are prescribed as per the Companies Act or other relevant regulations.

SEBI has brought about this significant change by amending the Listing Agreement, vide a notification of 13<sup>th</sup> July 2012. A new clause 35A has been inserted in the listing agreement which provides that in case of all resolutions that are transacted using postal ballots, e-voting shall be mandatorily used. Postal ballots are currently required in terms of section 192A of the Companies Act. There are several other regulations also that mandatorily require resolutions to be passed by postal ballots – ICDR Regulations, Takeover Code, etc.

It is notable that the Postal Ballot Rules already include electronic voting as one of the modes of postal ballots – hence, effectively, an e-voting is also a form of postal ballot in terms of section 192A.

### What is e-voting:

E-voting will be carried out under technological platforms to be provided by agencies that meet the requirements of the Standardization Testing and Quality Certification (STQC) Directorate. Ministry of Corporate Affairs has vide circular dated December 27, 2011 has clarified the requirements for e-voting. Currently, both the Depositories - Central Depository Services (India) Limited and National Securities Depository Limited - are providing e-voting platform.

Under e-voting, shareholders receive the ballots electronically, and vote from their own computer screens after logging into a secure system using the unique ids.

### Why e-voting:

As compared to postal ballots, electronic voting is tremendously cost-effective, and environment friendly. Consider the cost of postal ballot – on an estimated basis, the cost per shareholder works out to nothing less than Rs 50, taking into account the cost of printing, stamping, despatching, return mailing, certification, and

### Links:

Full text of the SEBI circular:

[http://www.sebi.gov.in/cms/sebi\\_data/attach.htm?1342160813649.pdf](http://www.sebi.gov.in/cms/sebi_data/attach.htm?1342160813649.pdf)

Several of Vinod Kothari and Company's articles on the Corporate laws, meetings, shareholder resolutions, etc:

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administrative cost. Compared to this, the cost of e-voting may be in fraction of the above number.

Cost to companies apart, electronic voting is hugely environment-friendly, as we are not wasting tons of paper which ultimately ends up in letter boxes that no one cares to open. Large part of the postal ballots are either never read, or never returned. This colossal waste of earth's resources would be saved with e-voting.

### What does the circular do?

E-voting was optional already; the SEBI amendment above makes e-voting as a mandatory option in case of all resolutions being routed through postal ballots effective 1<sup>st</sup> October 2012. In case of shareholders who do not have access to e-voting, they will still continue to receive postal ballots.

### Quick observations

- **Is e-voting the same as video conferencing:** Not at all. Video-conferencing is still a physical meeting of the shareholders, though at remote locations. In case of e-voting there is no physical meeting at all.
- **How do we count quorum in case of e-voting:** Technically, it may be argued that postal ballot is a way of seeking shareholders' assent without any meeting. However, the concept of "meeting" as envisaged in age-old laws has undergone a massive change. Shareholder assent can be obtained by postal ballot – which would be deemed to be a resolution passed in a shareholders' meeting. The number of shareholders participating in an e-vote will be counted as number of members present – hence, the requirement of quorum will be read as number of members voting.
- **Can proxies e-vote:** The very concept of a proxy is a person participating in a meeting instead of a member personally. In view of the author, the concept of proxy voting does not apply at all in case of e-voting, particularly because the shareholder may well vote from where he is. However, holders of power of attorney will qualify as members' representatives. In addition, as long as a member is logging in using the assigned unique id, the member may be taken as voting personally.
- **Can a member split votes for and against:** It is perfectly possible for a member to split his votes for and against a resolution. A member may do so both in physical voting and in postal voting.
- **Will a scrutineer be required:** Assuming all votes are electronic only, will a scrutineer still be required? In the opinion of the author, a scrutineer will still be required.

Lots of questions may continue to arise over time as the e-voting system gets learned.