

113

PROCEDURE FOR PASSING OF RESOLUTION BY VOTING THROUGH ELECTRONIC MEANS

{Section 108 of the Act read with Rule 20 of the Companies
(Management and Administration) Rules, 2014}

Synopsis

113.1 Procedure with major check points 2006
Appendix 113.1 Clarification with regard to voting through electronic means 2013

Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 108, 114 and 118
The Companies (Management and Administration) Rules, 2014	Rule 20
The Companies (Meetings of Board and its Powers) Rules, 2014	Rule 13
Secretarial Standard-2	Clause 8

113.1 PROCEDURE WITH MAJOR CHECK POINTS

S. No.	Procedure
1.	Note that resolution in any general meeting can be passed through e-voting also in prescribed class of companies, so matter related to convening of general meeting shall also be followed and all sections and rules applicable on convening of any general meeting shall be applicable along with procedure for passing of resolution through electronic means.
2.	<p>The provisions relating to voting through electronic means shall be applicable on the following class of companies-</p> <ul style="list-style-type: none">- company which has listed its equity shares on a recognised stock exchange, and- company having not less than 1000 (one thousand) members <p>Note that a Nidhi, or an enterprise or institutional investor referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 is not required to provide the facility to vote by electronic means:</p> <p>“Nidhi” means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies {Rule 20(1) of the Companies (Management and Administration) Rules, 2014}.</p>

S. No.	Procedure
3.	<p>Few terms used in this procedure are given below-</p> <p>Agency means the National Securities Depository Limited, the Central Depository Services (India) Limited or any other entity approved by the Ministry of Corporate Affairs subject to the condition that the National Securities Depository Limited, the Central Depository Services (India) Limited or such other entity has obtained a certificate from the Standardisation Testing and Quality Certification Directorate, Department of Information Technology, Ministry of Communications and Information Technology, Government of India.</p> <p>Cut-off date means a date not earlier than seven days before the date of general meeting for determining the eligibility to vote by electronic means or in the general meeting.</p> <p>Cyber security means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorized access, use, disclosures, disruption, modification or destruction</p> <p>Electronic voting system means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, in such a manner that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralised server with adequate cyber security.</p> <p>Remote e-voting means the facility of casting votes by a member using an electronic voting system from a place other than venue of a general meeting.</p> <p>Secured system means computer hardware, software, and procedure that -</p> <ul style="list-style-type: none"> (a) are reasonably secure from unauthorized access and misuse; (b) provide a reasonable level of reliability and correct operation; (c) are reasonably suited to performing the intended functions; and (d) adhere to generally accepted security procedures. <p>Voting by electronic means includes "remote e-voting" and voting at the general meeting through an electronic voting system which may be the same as used for remote e-voting.</p>
4.	<p>Ensure that the company shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means and a company may voluntarily opt the facility of passing of resolution through electronic means.</p>
5.	<p>Arrange e-voting service providing agency and make a draft agreement to be entered into with such agency after appointment by board in its meeting.</p>
6.	<p>Comply with the provisions, rules and the clauses of the secretarial standards in respect of the calling and convening of general meeting.</p>
7.	<p>Search a person who can act as a scrutiniser who may be a Chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an Advocate, or any other person who is not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinise the voting and remote e-voting process in a fair and transparent manner and obtain his consent in writing for the same <i>{Rule 20(4)(x) of the Companies (Management and Administration) Rules, 2014 read with clause 8 of Secretarial Standard-2}</i></p>

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> • Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe-1 (INC-11) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014). • Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of newly incorporated company, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act). • A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with company provisions of government company and regulations in COA 2012 about COA 2012). • A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act) <ul style="list-style-type: none"> - shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies. - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public companies.
2.	In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).
3.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form 208-2 (Part 2 of the Companies Appointment and Qualification of Directors) Rule, 2014.
4.	Forms in electronic in writing, on or before appointment, from the appointed director as Form 208-2 regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 17 of the Companies Appointment and Qualification of <u>Directors</u>) Rule, 2014.
5.	The particulars of first directors to be integrated with Form SPICe-1 (INC-11) at the time of incorporation of company.

For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at www.bharatlaws.com

[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)