

Advantages of e- voting to company

- Reduction in paperwork of the company: As the voting process involves the electronic gadgets, it helps to eliminate the use of paper. This involves sending of notices and ballot papers and receiving the said ballot votes
- Reduction in administration cost : Administrative costs of postal voting will be reduced as there will be no need for verification of signatures and counting of ballot votes. Company will save the cost of human resource which is paid in the form of salary to its employees. Also, cost associated with storing of physical ballot papers will be saved.
- Faster and Transparent process : In electronic voting, process is faster, transparent and cost efficient. It facilitates electronic voting on resolutions of companies in a fair and transparent manner for all classes of security/stakeholders.
- Accurate counting : The counting of votes in e-Voting is done through electronic means. The results are very accurate and there are no chances of error. In physical counting the chances of occurring of any error is very high.
- Instantaneous Results : The time taken by the electronic machines in counting of votes is very less and results are declared almost instantaneously.
- Increase shareholder participation : In shareholder meetings, the participation of shareholders increases as they can vote from their home or office.
- Eliminate postal and other natural delays : E-voting eliminates the postal and other natural delays as the notices and ballot papers are sent by the company through emails and other electronic means.

(ii) Advantages of E-Voting to Shareholders

- The e-Voting system is a secured system wherein shareholders can cast their votes in respect of resolutions placed by Issuers for voting by postal ballot/general meetings.
- Voting can be done for different companies at the same time
- There will be increased transparency.

Minutes of proceedings

(1) Every company shall cause minutes of the proceedings of every general meeting of any class of shareholders or creditors, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in such manner as may be prescribed and kept within thirty days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered.

(2) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.

(3) All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.

(4) In the case of a meeting of the Board of Directors or of a committee of the Board, the minutes shall also contain—

(a) the names of the directors present at the meeting; and

(b) in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.

(5) There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting,—

(a) is or could reasonably be regarded as defamatory of any person; or

(b) is irrelevant or immaterial to the proceedings; or

(c) is detrimental to the interests of the company.

(6) If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

Resolutions

Ordinary Resolution [Section 114(1)] : It is a resolution of which notice required under the Companies Act has been duly given and which is passed with a simple majority of the members present either in person or through proxies. Simple majority means that the votes cast in favor of the resolution exceed the votes against the resolution. It may be passed either by a show of hands or electronically or on a poll. An ordinary resolution is passed for the ordinary business transacted at the Annual General Meeting e.g.

- Consideration of financial statements and the reports of the Board of Directors and auditors;
- The declaration of dividends;
- The appointment of directors in place of those retiring; and
- The appointment of auditors and fixation of their remuneration.

Special Resolution [Section 114(2)] : A special resolution is one which is required in transacting special business and it is required to be passed by a three fourth majority. Section 114 (2) of the Companies Act provides that a resolution shall be special resolution when:

- The intention to propose it as a special resolution has been duly specified in the notice calling the general meeting;
- The notice required under the Companies Ad, has been duly given of the general meeting; and
- The votes cast in favor of the resolution (whether by a show of hands, or electronically or by a poll) by the members present, in person or by proxy or by postal ballot are not less than 3 times the votes cast against the resolution by the members.

Special resolution is needed for the purposes such as :

- Change in the Objects Clause of Memorandum of Association.
- Change in Memorandum of Association as regards 'Registered Office' of a company from one State to another.'
- Alteration of the Articles of Association.
- Reduction of share capital.
- Making variation in terms of contract mentioned in prospectus.
- Changing shareholders' rights.
- Increasing maximum number of directors beyond 15 directors.
- Removal of an auditor
- Buy-back of shares.

Resolution requiring special notice [Section 115] : It is not an independent class of resolution. Rather, it is a kind of ordinary resolution with the difference that the mover has to give a 14 days' prior notice of the intention to move such a resolution. The company, on receipt of such a notice, will give a notice of the resolution to the members at least 7 days before the meeting in the same manner in which notice for meeting is given.

Special notice of the intention to move such resolution shall be given to the company by members holding minimum 1% of the total voting power or holding shares on which an aggregate of not less 5 lakhs has been paid up on the date of the notice.

Special notice is required by the Act in the following cases :

1. For appointing an auditor other than the retiring auditor or for a resolution providing that an auditor retiring shall not be re-appointed except where the retiring auditor has completed a consecutive tenure of 5 years.
2. For removal of a director before the expiry of his term or for appointment of a director in place of the director so removed.

Resolutions passed at adjourned meeting

Where a resolution is passed at an adjourned meeting of—

(a) a company; or

(b) the holders of any class of shares in a company; or

(c) the Board of Directors of a company,

the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Resolutions which require registration with the Registrar of companies (sec 117)

Following resolutions must be registered with the Registrar within 30 days of their passing :

1. Special resolution
2. Resolutions which have been agreed to by all the members of a co but which, in the absence of such an agreement, would have to be passed as special resolutions
3. Any resolution of the board of directors of company
4. Resolutions which have been approved by all the members of a class of shareholders but which would have otherwise required to be passed by a particular majority and all resolutions which bind all the members of a class of shareholders though not agreed to by all those members;
5. Resolutions passed by a company conferring power under sec 139 upon its directors:
 - a) To sell or dispose of the whole or any part of the company's undertaking; or
 - b) To borrow money beyond the limits of the paid up capital and free reserves of the co
6. Resolutions requiring the co to be wound up voluntarily.

The Depository System

Limitations of holding securities in physical form

- High cost involved by way of postal charges, stamp duty, cost on paper work
- Delay in settlements
- Risk of bad delivery
- Risk of theft

Depository System

Depository system is a system wherein the securities of investors are held in the electronic form with the depository at the request of the investors and transfer of securities takes place by means of book entries on the ledger of the depository. The system is also referred as the 'scrip less trading system' as the system dispenses with the securities and its movement in the physical form.

The depository system provides for the establishment of depositories to curb the irregularities in the capital market and protect the interests of the investors. The system facilitates an orderly conduct of the financial markets through the free transferability of securities with speed, accuracy and transparency.

Main Features of “Depository System” are:

1. Securities in Dematerialised Form:

Depository system provides for maintenance of ownership record of the securities of the investor in a book entry form. The system immobilizes physical securities so that there is no physical certificate in existence. The securities are dematerialized to be held only as electronic records maintained with the depository.

2. Fungibility:

In the depository system, the securities dematerialized are not identified by distinctive numbers or certificate numbers as in the physical environment. Thus, all securities in the same class are identical and interchangeable. For example, all equity shares in the class of fully paid up shares are interchangeable.

3. Parties Involved:

In a depository system, the parties involved are:

- (i) the depository;
- (ii) the depository participant (DP);
- (iii) the beneficial owner; and
- (iv) the issuer.

The depository renders service connected with the recording of ownership of securities in its record. A depository functions through depository participants who are the agent of the depository through whom the investors avail of the depository service.

In the depository system, the ownership of securities dematerialized, is bifurcated between Registered Owner and Beneficial Owner. For the securities dematerialized, depository is the Registered Owner in the books of the issuer (i.e. company); the investor of securities who has availed the services of the depository is the Beneficial Owner.

A depository is deemed to be registered owner (of the securities) for the purposes of effecting transfer of ownership of the securities on behalf of the beneficial owner.

However, the depository does not have any voting rights or any other rights in respect of the securities which are under depository's custody. The beneficial owner is entitled to all the rights and benefits and subjected to all the liabilities in respect of his securities held by a depository.

4. Free Transferability of Shares:

Transfer of securities held in dematerialized form takes place freely through electronic book-entry system. The system dispenses with the transfer deed and other procedural requirements with respect to transfer of securities.

5. No Stamp Duty:

No stamp duty for transfer of securities in the electronic form is payable. In case of transfer of physical shares, stamp duty of 0.5 percent is payable on the market value of shares transferred.

6. No Risk:

All risks associated with physical certificates such as delays, loss in transit, theft, bad deliveries, etc. are eliminated in the depository system.

Functioning of Depository System

1. The system envisages setting up of one or more depositories to hold securities of investors in the electronic form.
2. The depository functions through its agents, who are called Depository Participants (DP).

3. The **investor**, who wants to avail the services of the Depository, has to open a beneficiary account with the Depository through a DP. The account known as the “Demat” account can be opened with more than one DP also.

4 After opening the demat account, the investor is required to dematerialize the securities held by him in the physical form. To dematerialize the securities, the investor has to fill the Dematerialisation Request Form (DRF) and submit the same to the DP along with the security certificate.

The DP through the Depository will intimate the company/issuer and surrender the security certificate. The process known as ‘dematerialisation’ takes about 30 days.

5. The issuer/company on receipt of the intimation shall cancel the security certificate and substitute the name of the Depository as the registered owner of the security.

6. The Depository on being intimated by the company/issuer enters the name of the investor in its record as the beneficial owner of the security.

7. Whenever any rights, bonus or dividend is announced by a company for its particular security, the Depository would furnish all the details of the investors having electronic holdings of that security on the record date. The disbursement of the rights, dividends etc are, thus done by the company based on the information provided.

8. In case of sale of the security under this mode, the investor/transferor (the client) has to intimate the DP through issuing a Delivery Instruction Slip (DIS) duly signed and containing the details of the security transaction.

In case of purchase, the client will send the intimation to the DP giving details of the security purchased. The Depository on receiving the information through the DP will register the transfer of securities in the name of the transferee in its record.

9. DP will also make book entries in the account of the investor to record sale/purchase of securities.

10. DP is required to send statement of accounts to the clients at regular intervals, and update the account after each transaction.

11. The client/ investor has to pay charges to the Depository and the DP for availing the services.

Dematerialisation

Dematerialisation is a process through which physical securities such as share certificates and other documents are converted into electronic format and held in a Demat Account. A depository is responsible for holding the securities of a shareholder in electronic form.

The process of dematerialisation is as follows:

1. Investor submits the DRF and physical certificates to the DP
2. DP enters the demat request in its system to be sent to the depository
3. DP dispatches the physical certificates along with the DRF to the company
4. Depository records the request in the system and forwards to the agent
5. Agent after the verification confirm to DP the dematerialisation of concerned securities
6. Depository credits the dematerialized securities to the D mat account of investor

7. Depository intimates the DP electronically
8. The DP issues a statement of account to the client

Rematerialisation

Rematerialisation is the process by which a client can get his electronic holdings converted into physical certificates. The client has to submit the **rematerialisation** request to the DP with whom he has an account.

At present there are two depositories in India:

- (a) National Securities Depository Ltd. (NSDL), and
- (b) Central Depository Services (India) Ltd. (CDSL).

National Securities Depository Limited which commenced operations during November 1996 was promoted by IDBI, UTI and National Stock Exchange (NSE). Central Depository Services (India) Limited commenced operations during February 1999. It was promoted by Mumbai Stock Exchange in association with Bank of Baroda, Bank of India, State Bank of India and HDFC Bank.

Advantages of depository system

Benefits to Investors:

- i. It eliminates bad deliveries;
- ii. It computes the settlement cycle very fast;
- iii. It makes immediate transfer and registration of securities;
- iv. It eliminates all risks associated with physical certificate;
- v. It also provides nomination facility to the investors;

vi. It reduces trading cost;

vii. Since it is paperless trading, no share certificate and deed etc. are required.

Benefits to the Company:

(a) It reduces the risk of loss of securities and, at the same time, reduces the fraudulent activities;

(b) It avoids the checking of shares, deeds and various papers,

(e) No share certificate is issued as the securities are divisible;

(d) It reduces the various costs which require secretarial help;

(e) It supplies better communication facilities

(f) Easy availability of data and information (i.e. issue of bonus share, right share, dividend declaration, etc.) are available which helps the shareholder to take decisions.

The Depository Act, 1996

The Depositories Act, 1996 provides for regulation of depositories in securities and for matters connected thereto.

Meaning of depository

A depository is a facility such as a building, office, or warehouse in which something is deposited for storage or safeguarding. It can refer to an organization, bank, or institution that holds securities and assists in the trading of securities.

RIGHTS AND OBLIGATIONS OF DEPOSITORIES, PARTICIPANTS, ISSUERS AND BENEFICIAL OWNERS

1. Agreement between depository and participant.

(1) A depository shall enter into an agreement with one or more participants as its agent.

(2) Every agreement under sub-section (1) shall be in such form as may be specified by the bye-laws.

2. Services of depository. Any person, through a participant, may enter into an agreement, in such form as may be specified by the bye-laws, with any depository for availing its services

3. Surrender of certificate of security.

(1) Any person who has entered into an agreement under section 5 shall surrender the certificate of security, for which he seeks to avail the services of a depository, to the issuer in such manner as may be specified by the regulations.

(2) The issuer, on receipt of certificate of security under sub-section (1), shall cancel the certificate of security and substitute in its records the name of the depository as a registered owner in respect of that security and inform the depository accordingly.

(3) A depository shall, on receipt of information under sub-section (2), enter the name of the person referred to in sub-section (1) in its records, as the beneficial owner.

4.Registration of transfer of securities with depository.

(1) Every depository shall, on receipt of intimation from a participant, register the transfer of security in the name of the transferee.

(2) If a beneficial owner or a transferee of any security seeks to have custody of such security, the depository shall inform the issuer accordingly.

5. Options to receive security certificate or hold securities with depository.

Every person subscribing to securities offered by an issuer shall have the option either to receive the security certificates or hold securities with a depository.

Where a person opts to hold a security with a depository, the issuer shall intimate such depository the details of allotment of the security, and on receipt of such information the depository shall enter in its records the name of the allottee as the beneficial owner of that security

6. Securities in depositories to be in fungible form.

All securities held by a depository shall be dematerialised and shall be in fungible form.

7. Rights of depositories and beneficial owner

1. the depository as a registered owner shall not have any voting rights or any other rights in respect of securities held by it.

2.The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository.

8. Register of beneficial owner

Every depository shall maintain a register and an index of beneficial owners in the manner provided in sections 150, 151 and 152 of the Companies Act, 1956 (1 of 1956).

9. Pledge or hypothecation of securities held in a depository.

A beneficial owner may with the previous approval of the depository, create a pledge or hypothecation in respect of a security owned by him through a depository. Every beneficial owner shall give intimation of such pledge to the depository and such depository shall thereupon make entries in its records accordingly.

10. Furnishing of information and records by depository and issuer

Every depository is required to furnish to the issuer information about the transfer of securities in the name of beneficial owners at such intervals and in such manner as may be specified by the by-laws.

11. Option to opt out in respect of any security

If a beneficial owner seeks to opt out of a depository in respect of any security, he shall inform the depository accordingly who will make appropriate entries in its records and shall inform the issuer.

12. Depositories to indemnify loss in certain cases

The depository shall have to indemnify any loss caused to the beneficial owner due to its negligence or of the participant.

13. Systems and procedures

Every depository shall have systems and procedures which will enable it to coordinate with the issuer or its agent, and the participants, to reconcile the records of ownership of securities with the issuer or its agent, as the case may be, and with participants, on daily basis.

14. Internal monitoring, review and evaluation of systems and controls

Every depository shall have adequate mechanisms for the purposes of reviewing, monitoring and evaluating the depository's controls, systems, procedures and safeguards.

15. External monitoring, review and evaluation of systems and controls

Every depository shall cause an inspection of its controls, systems, procedures and safeguards to be carried out annually and forward a copy of the report to the SEBI.

ENQUIRY AND INSPECTION

Power of Board to call for information and enquiry. (1) The Board, on being satisfied that it is necessary in the public interest or in the interest of investors so to do, may, by order in writing, - (a) call upon any issuer, depository, participant or beneficial owner to furnish in writing such information relating to the securities held in a depository as it may require; or (b) authorise any person to make an enquiry or inspection in relation to the affairs of the issuer, beneficial owner, depository or participant, who shall submit a report of such enquiry or inspection to it within such period as may be specified in the order. (2) Every director, manager, partner, secretary, officer or employee of the depository or issuer or the participant or

beneficial owner shall on demand produce before the person making the enquiry or inspection all information or such records and other documents in his custody having a bearing on the subject matter of such enquiry or inspection.

Penalty

Sections 19, 20 and 21 of the Depositories Act prescribe penalty for contravention of provisions of the Act.

1. Penalty for failure to furnish information, return, etc (Sec. 19A):

Any person, who is required under this Act or any rules or regulations or bye-laws of the Act to furnish any information, document, books, returns or report to the Board, fails to furnish the same within the time specified there for or to maintain books of accounts or records shall be liable to a penalty of Rs. 1 lakh for each day during which such failure continues or Rs. 1 crore, whichever is less.

2. Penalty for failure to enter into an agreement (Sec. 19B):

If a depository or participant or any issuer or its agent or any person, who is registered as an intermediary with the SEBI and is required under this Act or any rules or regulations made there under, to enter into an agreement, fails to enter into such agreement, such depository or participant or issuer or its agent or intermediary shall be liable to a penalty of Rs. 1 lakh for each day during which such failure continues or Rs. 1 crore, whichever is less for every such failure.

3. Penalty for failure to redress investors' grievances (Sec. 19C).

If any depository or participant or any issuer or its agent after having been called upon by the Board in writing, to redress the grievances of the investors, fails to redress such grievances within the time specified by the Board, such depository or participant or issuer or its agents or intermediary shall be liable to a penalty of Rs. 1

lakh for each day during which such failure continues or Rs. 1 crore, whichever is less.

4. Penalty for delay in dematerialisation or issue of certificate of securities:

(Sec. 19D). If any issuer or its agent or any person, who is registered as an intermediary, fails to dematerialise or issue the certificate of securities on opting out of a depository by the investors, within the time specified under this Act or regulations or bye-laws, such issuer or its agent or intermediary shall be liable to a penalty of Rs. 1 lakh for each day during which such failure continues or Rs. 1 crore, whichever is less.

5. Penalty for failure to comply with directions issued by the SEBI (Sec. 19F):

If any person fails to comply with the directions issued by the Board under section 19, within the time specified by it, he shall be liable to a penalty of Rs. 1 lakh for each day during which such failure continues or Rs. 1 crore, whichever is less.

6. Penalty for contravention of the Act (Sec. 20):

Whosoever contravenes or attempts to contravene or abets the contravention of the provisions of this Act or any regulations or bye-laws made there under shall be punishable with imprisonment for a term which may extend to 5 years, or with fine which may extend to Rs. 25 crore, or with both.

7. Offences by companies (Sec. 21):

Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the

company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Further, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.