



The Companies Act 2013

Enlightening Nation

E-newsletter

AUGUST, 2015

About the E-newsletter

Dear Users,

Thecompaniesact2013.com imports yet another innovation for all the valuable users in the form of e-newsletter. This is the first issue of the **August month** comprising contemporary articles, latest notifications, circulars & orders.

The notion is to render all the updates about Company law of the current month in a compiled format and serve a better pavement for easy accessibility to the users.



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CONCEPT OF SCRUTINIZER



WHO IS SCRUTINIZER?

Scrutinizer means an examiner, inspector or an investigator who observe carefully the whole process of Voting on behalf of Company in an Independent manner. A scrutinizer is an individual who monitors the entire process of E-Voting.

The term Scrutinizer will be governed by following provisions of The Companies Act, 2013:-

- i. **Section 108:-** Voting through E-means read with Rule 20 of the Companies (Management and Administration), Rules, 2014.
- ii. **Section 109:-** Demand for Poll read with Rule 21 of the Companies (Management and Administration), Rules, 2014
- iii. **Section 110:-** Voting through Postal ballot read with Rule 22 of the Companies (Management and Administration), Rules, 2014



WHO CAN BE A SCRUTINIZER

?

Scrutinizer can be:

- (a) Chartered Accountant in practice, or
- (b) Cost Accountant in practice, or
- (c) Company Secretary in practice or
- (d) an Advocate, or

(e) 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 scrutinize the voting and remote e-voting process in a fair and transparent manner.

SPECIFIED COMPANIES REQUIRING APPOINTMENT OF SCRUTINIZER:

In case of E-voting

- a) Every company other than a company referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 having its equity shares listed on a recognized stock exchange **or**
- b) Company having not less than one thousand members, shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at general meetings by electronic means.

In case of Poll

Not any specified company, as the poll may be ordered by chairman. Further, for the companies where e-voting is mandatory , the Chairman with the assistance of scrutinizers allow voting by use of ballot or polling paper or by using an electronic voting system for all those members who are present at the general meeting but have not cast their votes by availing the remote e-voting facility.

In case of Postal Ballot

Every company **other than One Person Company and other companies** having members' up to **two hundred**.

NEED OF SCRUTINIZER

Appointment of Scrutinizer is obligatory on part of the specified companies, if it is going to get approval of members through Electronic means, Poll or Postal Ballot. Provisions of Companies (Management and Administration) Rules, 2014 mandates statutory duty on Board of Directors to appoint one or more Person as Scrutinizer if company is required or decided to get its member's consent through voting by Electronic Means, Poll or Postal Ballot.



FUNCTIONS OF THE SCRUTINIZER IN CASE OF:

A. E-VOTING [Rule 20 of the Companies (Management and Administration) Rules, 2014].

- a. For the purpose of ensuring that members who have cast their votes through remote e-voting do not vote again at the general meeting ,the scrutinizers shall have access, after the closure of period for remote e-voting and before the start of general meeting, to details relating to members, such as their

- i. Names,
 - ii. Folios,
 - iii. Number of shares held and**
 - iv. Such other information that the scrutinizers may require, who have cast votes through remote e-voting but not the manner in which they have cast their votes.
- b. The scrutinizer within a period of not exceeding three working days from the date of conclusion of e-voting period, unblock the votes in the presence of at least two witnesses not in the employment of the company and make a scrutinizer's report (Not a prescribed format) of the votes cast in favour or against, if any.
- c. The scrutinizers so appointed may take assistance of a person who is not in employment of the company and who is well-versed.
- d. The scrutinizers shall maintain a register either manually or electronically to record the assent or dissent received, mentioning
 - i. The particulars of name,
 - ii. Address,
 - iii. Folio number or
 - iv. Client ID of the members,
 - v. Number of shares held by them,
 - vi. Nominal value of such shares and
 - vii. Whether the shares have differential voting rights;
- e. The register and all other papers relating to voting by electronic means shall remain in the safe custody of the scrutinizers until the Chairman considers, approves and signs the minutes and thereafter, the scrutinizers shall hand over the register and other related papers to the company.

B. POLL [Rule 21 of the Companies (Management and Administration) Rules, 2014]

- a. The Scrutinizers shall arrange for Polling papers (Form No.MGT-12) and distribute them to the members.
- b. The Scrutinizers shall keep a record of the polling papers received in response to poll, by initialing it.
- c. The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies.
- d. The Scrutinizers shall open the Polling box in the presence of two persons as witnesses after the voting process is over.
- e. In case of ambiguity about the validity of a proxy, the Scrutinizers shall decide the validity in consultation with the Chairman.
- f. The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded.

- g. The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman.
- h. The Scrutinizer in his report state total votes cast, valid votes, votes in favor and against the resolution including the details of invalid polling papers and votes comprised therein.
- i. The scrutinizers appointed for the poll, shall submit a report to the Chairman of the meeting in Form No. MGT.13 signed by the scrutinizer/s within seven days from the date the poll is taken.

C. POSTAL BALLOT [Rule 22 of the Companies (Management and Administration) Rules, 2014]

- a. 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;
- b. The scrutinizer shall maintain a register either manually or electronically to record assent or dissent received, mentioning the particulars of:
 - i. Name,
 - ii. Address,
 - iii. Folio number or client ID of the shareholder,
 - iv. Number of shares held by them,
 - v. Nominal value of such shares,
 - vi. Whether the shares have differential voting rights, if any,
 - vii. Details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid.)
- c. Scrutinizer shall contain the postal ballot and all other papers relating to postal ballot including voting by electronic means, under his safe custody 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.



PROCEDURE FOR APPOINTMENT OF SCRUTINIZER:

The board of directors can appoint any other person(s) who is not in employment of the company to scrutinize the voting process who may be CA/ CS / Cost Accountant in practice/an advocate /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 scrutinize the voting and remote e-voting process in a fair and transparent manner. Further, the board can appoint one or more scrutinizers by following below mentioned procedure:-

- a. Obtain Consent from such person for his appointment as Scrutinizer in company.
- b. Issue not less than 7 days prior notice and agenda of Board meeting, or a shorter notice in case of urgency, in writing to every director of the company at their address registered with the company and convene a Board Meeting [Section 173(3), also follow the procedure prescribed for issuing and signing of notice of Board Meeting] to decide and appoint Scrutinizer.
- c. Prepare and circulate draft minutes within 15 days from the date of the conclusion of the Board Meeting, by hand/speed post/registered post/courier/e-mail to all the Directors for their comments. Also follow the procedure prescribed for preparing, circulation, signing and compiling of Board Minutes.(Secretarial Standards -1)



CONCLUSION

On the whole electronic voting replaces the Postal ballot process and saves time and cost of the company .It also helps the shareholders to cast their vote from anywhere and at anytime. In the e-voting process, role of scrutinizer will go under paradigm shift as there will be no physical collecting and counting of ballot papers, verification of signatures and rejection of invalid votes, if any .The main responsibility is on the part of scrutinizer who should take care of the e-voting process.



NOTIFICATION

A. G.S.R. (E) COMPANIES (MANAGEMENT AND ADMINISTRATION) AMENDMENT RULES, 2015.

Dated 28/08/2015

(In exercise of the powers conferred under sub-section (1) of section 88, sub-section (4) of section 88, sub-section (1) of section 89, sub-section (2) of section 89, subsection (6) of section 89, sub-section (1) of section 91, sub-section (2) of section 92, subsection (3) of section 92, section 93, sub-section (1) of section 94, sub-section (4) of section 100, sections 101, 102, 105, 108, sub-section (5) of section 109, Sections 110, 112, 113 sub section.(2) of section 114, section 115, sub-section (1) of section 117, sub-section (1) of section 118, sub-section (2) of section 119, section 120 and sub-section (1) of section 121 and sub-section (3) of section 186, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the

following rules further to amend the Companies (Management and Administration) Rules, 2014, namely:-

1. Short title and commencement-

- These rules may be called the Companies (Management and Administration) Amendment Rules, 2015.
- They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Management and Administration) Rules, 2014,-

- In rule 23, in sub-rule (1) for the words "not more than five lakh rupees", the words 'not less than five lakh rupees' shall be substituted.
- For Form No. MGT-7 new E-form MGT-7 has been substituted

IMPACT OF ABOVE MENTIONED NOTIFICATION

- ✓ For the purpose of complying with Section 115 of the Companies Act, 2013, read with Rule 23(1)(Special Notice), for the words "not more than five lakh rupees", the **words not less than five lakh rupees' shall be substituted.**

AND

- ✓ For the purpose of filing Annual Return under the provisions of Section 92 of the Companies Act, 2013, **the contents of Form No. MGT-7 has been revised and substituted with new form MGT-7 in E-Form format.**

Note: E-version of **Form MGT – 7** is yet to be released for the purpose of filing Annual Return under the provisions of Section 92 of the Companies Act, 2013.



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In Association with:

Arms & Associates, LLP

Practicing Company Secretaries

24 ka 1 jyoti Nagar, Jaipur

Ph.No. 0141-3263017, 3111777

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