General Circular No. 20/2014

No. 1/34/2013-CL-V
Government of India
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,
Dr R.P. Road, New Delhi
Dated 17th June, 2014

To

All Regional Directors,
All Registrars of Companies,
All Stakeholders.

Subject: Clarification with regard to voting through electronic means – reg.

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Sir,

Section 108 of the Companies Act, 2013 read with rule 20 of the Companies (Management and Administration) Rules, 2014 deal with the exercise of right to vote by members by electronic means (e-means). The provisions seek to ensure wider shareholders participation in the decision making process in companies. Corporates and other stakeholders while appreciating the new approach have drawn attention to some practical difficulties in respect of general meetings to be held in the next few months.

2. The suggestions received from the stakeholders have been examined. It is noticed that compliance with procedural requirements, engagement of Depository Agencies and the need for clarity on matter like demand for poll/ postal ballot etc will take some more time. Accordingly, it has been decided not to treat the relevant provisions as mandatory till 31st December, 2014. The relevant notification in this regard is being issued separately.

3. To provide clarity and ensure uniformity in the e-voting procedure, clarifications on certain issues raised by the stakeholders are provided in the Annexure to this circular for guidance of all concerned.

This issues with the approval of the competent authority.

Yours faithfully

(KMS Narayanan)
Assistant Director
23387263

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1. e-Governance Section and Web Contents Officer to place this circular on the Ministry's website

2. Guard File

Annexure

Clarifications on issues associated with e-voting procedure

(i) *Show of hands not to be allowed in case of e-voting*:- In view of clear provisions of section 107, voting by show of hands would not be allowable in cases where rule 20 of Companies (Management and Administration) Rules, 2014 is applicable.

(ii) *Participation in the general meeting after voting by e-means*:- It is clarified that a person who has voted through e-voting mechanism in accordance with rule 20 shall not be debarred from participation in the general meeting physically. But he shall not be able to vote in the meeting again, and his earlier vote (cast through e-means) shall be treated as final.

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(iii) *Applicability of rule 20 for matters specified under rule 22(16)*:- Stakeholders have asked whether matters specified under rule 22(16) (transactions of certain items only through postal ballot) can be considered in a general meeting where e-voting facility is available. It has been examined and it is stated that in view of clear provisions of section 110(1)(a) read with such rule 22(16) it would be necessary to transact items specified in rule 22(16) only through postal ballot and not at the general meeting.

(iv) Relevance of provisions relating to demand for poll:- In case of companies having share capital, voting through e-means takes into account 'Proportion principle' [i.e. 'one share – one vote'] unlike 'one person – one vote' principle under 'show of hands'. This alongwith provisions of section 107 make it clear that in case of companies which are covered under section 108 read with rule 20 of Companies (Management and Administration) Rules, the provisions relating to demand for poll would not be relevant.

(v) Permissibility of voting by postal ballot under rule 20.- Stakeholders have sought a clarification that in cases (covered under rule 20) where a shareholder who is not able to participate in the general meeting personally and who is also not exercising voting through e-means whether such a person shall have the option to vote through postal ballot. The matter has been examined and it is felt that keeping in view the provisions of the Act such an option would not be available.

(vi) Manner of voting in case of shareholders present in the meeting:- Stakeholders have sought clarity about manner of voting for shareholders (of a company covered under rule 20) who are present in the general meeting. It is hereby clarified that since voting through e-means would be on the basis of proportion of share in the paid-up capital or 'one-share one-vote', the Chairperson of the meeting shall regulate the meeting accordingly.

(vii) *Applying rule 20 voluntarily:-* Stakeholders have referred to words 'A company which opts to' appearing in rule 20(3) and have raised a query whether rule 20 is applicable to companies not covered in rule 20(1). It is clarified that rule 20(3) is being amended to align it with rule 20(1). Regarding voluntary application of rule 20, it is clarified that in case a company not mandated under rule 20(1) opts or decided to give its shareholders the e-voting facility, in such a case, the whole of procedure specified in rule 20 shall be applicable to such a company. This is necessary so that any piece-meal application does not prejudice the interest of shareholders.

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