

Divergent practices - appointment of scrutinisers

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The Companies Act, 2013, (the Act) requires that every company which has listed its equity shares on a recognised stock exchange and every company having not less than one thousand members shall provide to its members the facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.



After conclusion of the voting process at the general meeting, the scrutiner will unblock the votes cast through remote e-voting in the presence of at least two witnesses not in the employment of the company.

The scrutiner has to scrutinise the voting cast at the general meeting and remote e-voting process in a fair and transparent manner. He has to make, not later than three days of conclusion of the meeting, a consolidated scrutiner's report of the total votes cast in favour or against, if any, to the chairman or a person authorised by him in writing who shall countersign the same. However, LODR (Listing Obligations and Disclosure Requirements) stipulates that the company has to submit information of the voting results to stock exchanges within 48 hours from the conclusion of the general meeting.

Who can be appointed as the scrutiner?

➤ The Board of directors has the authority to appoint one or more scrutinisers, 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, to scrutinise the voting and remote e-voting process in a fair and transparent manner.

➤ It is very clear that the scrutiner has to be an individual and he has to give his consent for consideration of appointment as scrutiner.

➤ The scrutiniser so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the electronic voting system.

Cooling-off period for the appointment of scrutiniser

In accordance with the provisions of Act, an individual who is being considered for appointment of independent director, if he had some association with the company or its promoters, holding, subsidiary company, there is a cooling-off period for his appointment as independent director. Similarly, an independent director, on completion of his two terms as independent director, has to wait for some period for his next time appointment. A statutory auditor also, has to be on wait list for some period on completion of his two terms of appointment for further appointment. There is no such concept of cooling period for appointment of a scrutiniser and any professional on cessation of his employment can easily be considered for appointment of scrutiniser without any cooling period.

Related party

The Board can appoint any practising professional to act as scrutiniser and there is no bar if he is related to any of the directors, promoters, or key managerial personnel. However, the company has to comply with the relevant provisions relating to related party transactions, if it applies.

Divergent practices for appointment of scrutinisers

Companies or banks to which the provisions of appointment of scrutiniser apply follow divergent practices. The following are the practices prevailing in the appointment of scrutinisers for conducting e-voting process and other voting system.

- Companies appoint a single chartered accountant in practice, cost accountant in practice, or company secretary in practice or an advocate in the individual capacity as a scrutiniser to e-voting and ballot/ poll process.

➤ At the same time, some other companies/ banks appoint firms of practising chartered accountants, cost accountants or company secretaries, which is not a correct practice; they need to desist from appointing firm as a scrutiniser. However, such companies/ banks can appoint the partner/ proprietor of such firms as scrutiniser.

➤ Another practice of good governance is that a few companies consider appointment of two practitioners at the same time, such that one shall act as scrutiniser failing the other.

It would be a good corporate practice, and to avoid unexpected circumstances or non-availability of one practitioner, it is advisable to appoint two practitioners as a scrutiniser one failing other, so that other may take the charge for conducting e-voting and ballot/ poll process at the general meeting and provide consolidated report required by the company for the declaration of voting results.

Another divergent practice by the practising professional is providing the membership number of the respective Institute instead of providing his certificate of practice number. The Act requires the appointment of a practising professional and, therefore, it is very important to provide the certificate of practice number.

Conclusion

Companies/ banks and the practising professionals follow divergent practices in the appointment of scrutiniser for conducting poll and e-voting process. The suggestion for appointment of two practising professionals would be an advantageous position for the companies and in case of non-availability of one professional, the other can act as scrutiniser without any inconvenience for conducting the poll and e-voting process at the general meeting. The professionals are also advised to provide both their respective Institute membership number as well as certificate of practice number.

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21 Manner in Which the Chairman of Meeting Shall Get the Poll Process Scrutinised and Report Thereon.-

- (1) The Chairman of a meeting shall ensure that-
 - (a) The Scrutinizers are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies.
 - (b) The Scrutinizers are provided with all the documents received by the Company pursuant to sections 105, 112 and section 113.
 - (c) The Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio and the Polling paper shall be in [Form No. MGT.12](#).
 - (d) The Scrutinizers shall keep a record of the polling papers received in response to poll, by initialing it.
 - (e) The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies.
 - (f) The Scrutinizers shall open the Polling box in the presence of two persons as witnesses after the voting process is over.
 - (g) In case of ambiguity about the validity of a proxy, the Scrutinizers shall decide the validity in consultation with the Chairman.
 - (h) The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded.
 - (i) The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman.
 - (j) Where voting is conducted by electronic means under the provisions of [section 108](#) and rules made thereunder, the company shall provide all the necessary support, technical and otherwise, to the Scrutinizers in orderly conduct of the voting and counting the result thereof.
 - (k) The Scrutinizers' report shall state total votes cast, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.
 - (l) The Scrutinizers shall submit the Report to the Chairman who shall counter-sign the same.
 - (m) The Chairman shall declare the result of Voting on poll. The result may either be announced by him or a person authorized by him in writing.
- (2) The scrutineers appointed for the poll, shall submit a report to the Chairman of the meeting in [Form No. MGT.13](#) and the report shall be signed by the scrutineer and, in case there is more than one scrutineer by all the scrutineer, and the same shall be submitted by them to the Chairman of the meeting within seven days from the date the poll is taken.