

The Companies (Passing of the Resolution by Postal Ballot) Rules, 2001

Note:- The principal rules were published in the Gazette of India vide number G.S.R. 337 (E) dated 10.5.2001.

G.S.R. 337(E). – In exercise of the powers conferred by section 192A read with clauses (a) and (b) of

sub-section (1) of section 642 of the Companies Act, 1956 (1 of 1956) the Government hereby makes the following rules, namely:-

1. Short title and Commencement:-

- (1) These rules may be called the Companies (passing of the resolution by postal ballot) Rules, 2001.
- (2) They shall come into force on the date of their publication in the official gazette.

2. Definitions:-

In these rules unless the context otherwise requires -

- (a) “Act” means the Companies Act, 1956 (1 of 1956);
- (b) “Postal Ballot” includes voting by share holders by postal or electronic mode instead of voting personally by presenting for transacting businesses in a general meeting of the company,
- (c) “Requisite majority” with regard to Special Resolution means votes cast in favour of the business is three times more than the votes cast against, with regard to ordinary resolution, votes cast in favour is more than the votes cast against.

*“2A. Method for sending notice,-

(a) The company may issue notices either,-

- (i) under Registered Post Acknowledgement Due; or
- (ii) under certificate of posting; and

(b) with an advertisement published in a leading English Newspaper and in one vernacular Newspaper circulating in the State in which the registered office of the company is situated, about having despatched the ballot papers.”

3. Applications:-

These Rules shall be applicable to listed companies and in case of resolutions relating to such businesses as are specified under rule 4.

4. List of businesses in which the resolutions shall be passed through Postal Ballot.

- (a) alteration in the Object Clause of Memorandum;
- (b) alteration of Articles of Associations in relation to insertion of provisions defining private company;
- (c) buy-back of own shares by the company under sub-section (1) of section 77A;

- (d) issue of shares with differential voting rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 86;
- (e) change in place of Registered Office outside local limits of any city, town or village as specified in sub-section (2) of section 146;
- (f) sale of whole or substantially the whole of undertaking of a company as specified under sub-clause (a) of sub-section (1) of section 293;
- (g) giving loans or extending guarantee or providing security in excess of the limit prescribed under sub-section (1) of section 372A;
- (h) * election of a director under proviso to sub-section (1) of section 252 of the Act” ;
- (i) * deleted w.e.f. 11/10/2001
- (j) variation in the rights attached to a class of shares or debentures or other securities as specified under section 106.

5. Procedure to be followed for conducting business through Postal Ballot:-

- (a) The company may make a note below the notice of General Meeting for understanding of members that the transaction(s) at Sl. No. requires consent of shareholders through postal ballot;
- (b) The board of directors shall appoint one scrutinizer, who is not in employment of the company, may be a retired judge or any person of repute who, in the opinion of the board can conduct the postal ballot voting process in a fair and transparent manner;
- (c) * The scrutinizer shall submit his report as soon as possible after the last date of receipt of Postal Ballots.”;
- (d) The scrutinizer will be willing to be appointed and he is available at the Registered Office of the company for the purpose of ascertaining the requisite majority;
- (e) The scrutinizer shall maintain a register to record the consent or otherwise received, including electronic media, mentioning the particulars of name, address, folio number, number of shares, nominal value of shares, whether the shares have voting, differential voting or non-voting rights and the Scrutinizer shall also maintain record for postal ballot which are received in defaced or mutilated form. The Postal Ballot and all other papers relating to postal ballot will be under the safe custody of the Scrutinizer till the Chairman considers, approves and sign the minutes of the meeting. Thereafter, the Scrutinizer shall return the ballot papers and other related papers/register to the company so as to preserve such ballot papers and other related papers/register safely till the resolution is given effect to;
- (f) * The consent or otherwise received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received.”