

-----Original Message-----

From: David M Webb

Sent: Tuesday, April 29, 2008 10:11 PM

To: Richard Williams

Cc: Paul Chow; Brian Ho; Charles Grieve; Daisy Lai; Sally Yu

Subject: Poll Voting survey

Dear Richard,

Please treat this as an additional submission to the Listing Committee.

I attach the results of the opinion poll on Webb-site.com on whether poll voting should be mandatory. Any person was free to participate, and a valid e-mail address was required to receive a voting PIN, deterring multiple-voting. The results can also be retrieved at this link:

<http://webb-site.com/vote/result.asp?p=24>

The results shows that an overwhelming 95.6% of 364 respondents say poll voting should be mandatory for all shareholder meetings.

I also attach the article "Poll Position" dated 3-Apr-08, which forms part of my submission and may be reproduced. It can also be found at this link:

<http://webb-site.com/articles/pollposition.htm>

Regards

David

David M Webb

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Poll results: Poll voting

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Current time:	10:00:09 22-May-2008
Closing time:	18:00:00 28-Apr-2008
Time remaining:	Poll closed

Introduction

The Stock Exchange of HK has proposed mandatory poll voting (1-share-1-vote) in shareholder meetings, ending the ancient show-of-hands system. See our article [Poll Position](#) for details.

Questions

1. Should poll voting be required in all shareholder meetings?

Answer	Responses	Share
Yes	348	95.6%
No	16	4.4%
Total	364	100.0%

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We need your help! SEHK has proposed requiring all votes to be conducted by poll (1-share-1-vote), ending the ancient show-of-hands system. We strongly support this move to greater transparency and accountability. Take our opinion poll and tell us what you think. Meanwhile, we urge custodians to tick the CCASS box to demand polls in all meetings.

Poll Position **3rd April 2008**

[Take our Poll Poll](#)

Five years ago, *Webb-site.com* launched [Project Poll](#), using a quirk of company law to force all blue-chip companies (the 33 companies which were then Hang Seng Index members) to conduct poll voting (1-share-1-vote). Funded by your editor David Webb, Project Poll used 10 shares of each company, split into 5 names (3 companies he established, plus himself and his wife) to demand a poll, as any 5 members of a HK-incorporated company (or 3 in Bermuda) can do.

Project Poll continues to this day, and has been successful in requiring blue-chip companies to conduct polls. Many large companies now make a policy of it, declaring in their filings that they always conduct polls, in the interests of good governance. This saves us from having to go to shareholder meetings to force them to. We now have transparency over the level of support or opposition to each proposed resolution. Even if there is a controlling or majority shareholder who wins the vote, this allows us all to measure the votes of outside shareholders and apply pressure for reforms.

However, *Webb-site.com* cannot possibly cover over 1200 listed companies' meetings. So for the vast majority of companies by number, voting continues by the ancient "show of hands" system, which excludes proxy votes and gives 1 vote per shareholder physically present in the meeting. The result is low transparency, bad governance, and a disenfranchisement of the public shareholdings. A poll is only required (since 31-Mar-04) on certain resolutions in which a conflicted shareholder must abstain, including connected transactions with that party or its associates.

The central depository for public shares

Almost all of the public shareholdings (including institutional and individual investors) are held through the central depository shareholder, HSCC Nominees Ltd (**HKSCCN**), owned by Hong Kong Securities Clearing Co Ltd (**HKSCC**), a subsidiary of Hong Kong Exchanges and Clearing Ltd (**HKEx**, 0388). The stock is there because HKSCC operates the Central Clearing and Automated Settlement System (**CCASS**) through which all trades are settled, so shares must be in the depository before they can be traded. CCASS holds the stock on behalf of banks, brokers, custodians and investor participants.

CCASS sends a person to the meeting, who votes with one hand, for or against, based on the majority of the voting instructions it receives.

Consultation proposals

Now, five years later, the Stock Exchange of Hong Kong Ltd (**SEHK**), another HKEx subsidiary which makes the Listing Rules, is proposing in a [consultation paper](#) (para 12.37 on page 74) **mandatory poll voting for all shareholder meetings**. We strongly support that. It is the only fair way to count

shareholder votes. If it passes, then we can discontinue Project Poll and shareholders will never again have to worry that their votes will not be counted.

Unfortunately, the dark hand of vested interests is still at work. The consultation paper contains two other options, which (whether taken separately or together) are neither effective nor fair for the reasons given below.

The first alternative (para 12.39) is that poll voting would only be required in annual general meetings, but not in other general meetings. If we did that, then companies would take anything on which they wished to avoid a poll out of the AGM agenda and put it in a separate general meeting, which could easily be held straight after the AGM, in the same room. The AGM would only handle matters required by company law or by constitutional documents, such as approving accounts, electing directors and reappointing auditors. Then, and throughout the rest of the year, important matters, such as the issue of shares, share option scheme approvals and renewals, major acquisitions and disposals, amendments to articles of association and so on would be decided in non-AGMs by a show of hands.

The proposal makes an artificial distinction between AGMs and non-AGMs and is completely ineffective. If anything is important enough to require shareholders' approval, then the votes should be properly counted.

The second alternative (para 12.41) is to keep the show of hands system, but to require announcement (through SEHK) of the proxy instructions received. A form of proxy can appoint a person to vote in favour, vote against, abstain, or vote at his discretion. There are several problems with this proposal:

- Obviously if a proxy has discretion, then the only way to know how they would have voted is to actually conduct a poll. So the proposal boils down to announcing how some proxies would have voted if there had been a poll.
- Proxies are just one component of a meeting. There are also individual shareholders and corporate representatives attending the meeting. Also, if a shareholder files a proxy form but then attends the meeting, then his proxy becomes invalid and it would not be fair to include his proxy in the tally. A person attending the meeting might change his mind during the meeting based on the discussion of the agenda items. The only way to know how he would have voted his shares is to actually conduct the poll.
- Most importantly, nearly all the public votes are represented by HKSCCN, which attends as a corporate representative, not by proxy (except when meetings occur outside HK). Para 12.43(a) makes clear:

"CCASS will arrange for one or more persons to attend the meeting as corporate representatives of [HKSCCN]...this does not involve the appointment of proxies" (emphasis added)

- So that means that any announcement of proxy instructions would exclude nearly every public vote, since HKSCCN would represent them in the meeting, not by proxy. Of course, CCASS could take a backward step, and set a 3-day cut-off so that it could file a proxy form before the deadline of 48 hours before the meeting. But this would shorten the voting period for beneficial owners, and if they wanted HKSCCN to attend the meeting and try to demand a poll, then CCASS could not do that without voiding its proxy.

Institutions and custodians - tick that box!

While we are waiting for SEHK to make poll voting mandatory, a **WARNING for institutions**. On the CCASS entry system used by your custodians, there is a tick-box named "demand poll" which allows the custodian to instruct CCASS (through HKSCCN) to demand a poll on any resolution. The box is cleared by default. Under company law, if CCASS has (in total) instructions to demand a poll in respect of 10% of the issued shares, then it will be successful in that demand. If not, then it depends on whether sufficient other shareholders at the meeting also demand a poll.

It is evident from the dearth of polls that the vast majority of institutions are unaware of this tick-box, and custodians have not made them aware of it. Consequently, they routinely give instructions to HKSCC on how to vote their shares, but in effect say "don't count my votes". As an HKEx director, David Webb has urged HKSCC in the past to make the box ticked by default, because it is a nonsense to assume that customers would not want their votes to be counted. HKSCC has declined to do so.

So we appeal to all institutions, wake up and be counted - make sure your custodian ticks the box to "demand a poll" on all resolutions. Otherwise, you are not really voting.

[Take our Poll Poll](#)

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