



7 June 2005

To: Members of the Hong Kong Institute of CPAs
All other interested parties

Exposure Draft Proposed Practice Note “Acting as scrutineer at a general meeting of a listed issuer”

Comments to be received by 8 July 2005

*Issued by the Council,
Hong Kong Institute of Certified Public Accountants*

The Hong Kong Institute of Certified Public Accountants' Council (Council) has issued for consultation an Exposure Draft of proposed Practice Note – *Acting as scrutineer at a general meeting of a listed issuer*.

Council invites comments on the Exposure Draft from any interested party and would like to hear from both those who do agree and those who do not agree with the proposals contained in the Exposure Draft. Comments should be supported by specific reasoning and should preferably be submitted in written form.

The Exposure Draft is available at:

www.hkicpa.org.hk/professionaltechnical/assurance/exposedraft/scrutineer.pdf.

Comments are requested to be received by **8 July 2005** and may be sent by mail, fax or e-mail to:

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Comments will be acknowledged and may be made available for public review unless otherwise requested by the contributor.

7 June 2005
Exposure Draft

Response Due Date
8 July 2005

Draft Practice Note

Acting as scrutineer at a general meeting of a listed issuer



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

ACTING AS SCRUTINEER AT A GENERAL MEETING OF A LISTED ISSUER

(Response Due Date 8 July 2005)

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This Exposure Draft may be filed in the “Exposure Drafts, Invitations to Comment” section of Volume III of the Institute’s Members’ Handbook.

A copy of the Exposure Draft can also be found on the Institute’s website at:
www.hkicpa.org.hk/professionaltechnical/assurance/exposedraft/scrutineer.pdf.

EXPOSURE DRAFT
PROPOSED PRACTICE NOTE
ACTING AS SCRUTINEER
AT A GENERAL MEETING OF A LISTED ISSUER

INTRODUCTION AND PURPOSE

1. The purpose of this Practice Note, which has been prepared in consultation with The Stock Exchange of Hong Kong Limited (SEHK) and the Securities & Futures Commission (SFC), is to provide guidance to practising members who have been requested by a listed issuer to act as scrutineer when a poll is called at a general meeting.
2. The Main Board Listing Rule 13.39(5) and GEM Listing Rule 17.47(5) state that if voting at a general meeting is taken on poll, the listed issuer shall announce the results of the poll (including:
 - (i) the total number of shares entitling the holder to attend and vote for or against the resolution at the meeting,
 - (ii) the total number of shares entitling the holder to attend and vote only against the resolution at the meeting,
 - (iii) the number of shares represented by votes for and against the relevant resolution),by way of an announcement which is published in the newspapers on the business day following the meeting. The listed issuer shall appoint its auditors, share registrar or external accountants who are qualified to serve as auditors for the listed issuer as scrutineer for the vote-taking and state the identity of the scrutineer in the announcement. The listed issuer shall confirm in the announcement whether or not any parties that have stated their intention in the listed issuer's circular to shareholders to vote against the relevant resolution or to abstain have done so at the general meeting.
3. Taking into account the nature of the engagement, practising members would perform an agreed-upon procedures engagement when acting as scrutineer at a general meeting of a listed issuer. Accordingly, practising members will carry out their work in accordance with Hong Kong Standard on Related Services (HKSRS) 4400 "Engagements to Perform Agreed-upon Procedures Regarding Financial Information".

SCOPE OF WORK

4. Practising members' responsibility as scrutineer will normally be limited to the work performed below.
 - (i) To obtain the results of the votes cast (for example, the total of votes cast for and against each motion) included in the poll results summary prepared by the listed issuer and check the additions of the totals included in the summary.
 - (ii) To compare the individual details of votes cast included in the summary to the poll forms collected and provided by the listed issuer. This would not be expected to be carried out on a test basis.

5. Practising members will not in any way act as management. It is the directors' responsibility to undertake any poll and vote-taking, and to ensure that such are carried out properly in compliance with all applicable laws and regulations and that adequate controls are in place to ensure the completeness, authenticity and accuracy of the votes cast and the poll results. The directors are also responsible for ensuring the completeness and accuracy of the details of the poll results included in the announcement on the poll.
6. Practising members will not be required to report, as part of their procedures, on the listed issuer's procedures over the process of registration of the shareholders and authorized proxies, the distribution and collection of poll forms, the safeguarding of vote collection boxes, the counting process of the poll forms and the input of the poll results into the poll results summary. Practising members will state in the engagement letter that their work should not be relied upon in any way as confirmation of any voter's entitlement to vote.
7. Although practising members will not be required to report on the matters set out in paragraph (6) above, they will gain an understanding, through observation and enquiry, of the listed issuer's above procedures. Furthermore, observation and enquiry will also include ensuring that counters of the listed issuer:
 - are present when the ballot boxes are opened;
 - open all sealed envelopes;
 - check validity and signature for each ballot paper;
 - tabulate the valid and void papers
 - confirm the votes, and
 - prepare the necessary report.

During the observation and enquiry of the listed issuer's procedures on the poll, practising members are encouraged to select a sample of shareholders/authorised proxies and compare the identity to the information on the members' register and/or proxy form.
8. The procedures that practising members will perform will not constitute an assurance engagement in accordance with Hong Kong Standards on Auditing, Hong Kong Standards on Review Engagements or Hong Kong Standards on Assurance Engagements issued by the Hong Kong Institute of Certified Public Accountants and, consequently, no assurance will be expressed. Furthermore, practising members will also include in their engagement letter that the engagement cannot be relied upon to identify or disclose whether fraud or errors, or illegal acts exist or have been undertaken.
9. Under HKSRS 4400, independence is not normally a requirement for agreed-upon procedures engagements; however, the terms or objectives of an engagement may require practising members to comply with certain independence requirements. In this regard, there is no objection to practising members who are auditors acting as scrutineers in general meeting provided that they observe the Statements of Professional Ethics/*Code of Ethics for Professional Accountants* issued by the Hong Kong Institute of Certified Public Accountants.
10. Where practising members are not independent in relation to acting as scrutineer for a poll in respect of their reappointment as auditors, a statement to that effect would be made in their report of factual findings. However, practising members will refrain from accepting appointment as scrutineer for a poll in respect of their reappointment where the reappointment is contested.

REPORTING

11. The engagement report will be addressed to the board of directors and will state the factual findings in respect of the poll results summary, including details of errors or exceptions found, in accordance with HKSRS 4400. It will also state that no assurance engagement has been performed on the poll results summary and accordingly, no assurance is expressed thereon by

practising members. In addition, if practising members when carrying out their work are of the view that irregularities or differences of view occur on the poll, such irregularities and differences of view will be included in the engagement report.

12. In accordance with HKSRS 4400, the engagement report will not be distributed to any parties who have not agreed to the procedures to be performed. Accordingly, the engagement report shall state this. Consequently, the engagement report will be for the listed issuer's information only and it shall not be copied, referred to or disclosed in whole or in part to any other persons and this should be stated including expressly disclaiming any liability to any such party in this respect. However, it will be necessary to allow the listed issuer to disclose the contents and/or send a copy of the report to the regulators upon request.
13. The name of practising members, as scrutineer, will normally be identified in the listed issuer's public announcement of the poll results to be issued on the business day following the relevant general meeting. Practising members will normally agree to this provided that the following in respect of the scope of their work is included in the announcement:

Scope of work of ABC & Co

The poll results were subject to scrutiny by ABC & Co, Certified Public Accountants (Practising), whose work was limited to certain procedures requested by the Company to agree the poll results summary prepared by the Company to poll forms collected and provided by the Company to ABC & Co. The work performed by ABC & Co in this respect did not constitute an assurance engagement in accordance with Hong Kong Standards on Auditing, Hong Kong Standards on Review Engagements or Hong Kong Standards on Assurance Engagements issued by the Hong Kong Institute of Certified Public Accountants nor did it include provision of any assurance or advice on matters of legal interpretation or entitlement to vote.

14. Practising members would request the listed issuer to entitle them, as scrutineer, to review, comment on the appropriateness of, and object to, the contents of any of the listed issuer's announcement containing references to the practising members prior to its issuance. Furthermore, practising members would request the listed issuer to take account of their comments and objections and to agree that the listed issuer's announcement shall not be finalised or published without having obtained their prior written consent. If a situation arises where the listed issuer's announcement is published without taking into account the practising members' comments and objections and without having obtained their prior written consent, they will be required to write to the listed issuer's audit committee regarding the discrepancies and request the audit committee to inform the SEHK of such matter.

REPRESENTATIONS BY MANAGEMENT

15. Practising members would obtain written representations from management of the listed issuer on the results of the poll in the relevant general meeting.

EXAMPLE ENGAGEMENT LETTER, REPRESENTATION LETTER AND ENGAGEMENT REPORT

16. An example engagement letter is set out in Appendix 1.
17. An example letter of representations is set out in Appendix 2.
18. An example report of factual findings is set out in Appendix 3.

APPENDIX 1

Example engagement letter

The following engagement letter is for use as a guide only and will need to be varied according to individual requirements and circumstances¹.

To the Board of Directors of [XYZ Company]:

The purpose of this letter is to set out the basis on which we are to act as scrutineer of [XYZ Company] (the “Company”) with respect to the poll in the general meeting to be held on [date], the responsibilities of the directors, and the scope of our work as scrutineer [*and the fee to be charged by us*]².

1. Responsibilities of directors

- 1.1 As directors of the Company, you are responsible for establishing and maintaining adequate systems of internal control to ensure that the poll is carried out properly and to ensure the completeness and accuracy of the results of the poll.
- 1.2 You are also responsible to ensure the accuracy of the information included in the summary of the poll results and in any announcement of the results of the poll.
- 1.3 You will confirm to us that all proxy forms have been properly received and all votes cast are legally valid, and that the poll results are complete and accurate.
- 1.4 You will make available to us:
 - all written policies, internal memoranda, correspondence and working papers relating to the vote-taking; and
 - other information necessary for us to perform the agreed-upon procedures as set out in our scope of work in paragraph 2 below.

2 Scope of our work

- 2.1 You have requested us to act as scrutineer for any vote-taking to be taken place during the Company’s general meeting to be held on [date]. The scope of our work as scrutineer will be limited to the procedures agreed with you as set out in this section below. In carrying out our work, we will not in any way act as management. Your responsibilities as directors of the Company have been set out in section 1 above.
- 2.2 As agreed with you, we will perform the following procedures:
 - We will obtain the results of the votes cast (for example, the total of votes cast for and against each motion) included in the poll results summary prepared by the Company and will check the additions of the totals included in the summary.
 - We will compare the individual details of votes cast included in the summary to the poll forms collected and provided to us by the Company.

¹ Practising members may consider it appropriate to include a limitation of liability clause in their engagement letter in accordance with their risk management policies.

² Delete where not applicable.

- 2.3 Our work will be carried out in accordance with Hong Kong Standard on Related Services (HKSRS) 4400 “Engagements to Perform Agreed-upon Procedures Regarding Financial Information” issued by the Hong Kong Institute of Certified Public Accountants (“HKICPA”).
- 2.4 The procedures that we will perform will not constitute an assurance engagement in accordance with Hong Kong Standards on Auditing, Hong Kong Standards on Review Engagements or Hong Kong Standards on Assurance Engagements issued by the HKICPA and, consequently, no assurance will be expressed.
- 2.5 Our engagement cannot be relied upon to identify or disclose whether fraud or errors, or illegal acts exist or have been undertaken. However, we will inform you of any such matters which come to our attention.

3 Reporting

- 3.1 Our report will be addressed to the Board of Directors of the Company and will state our factual findings in respect of the poll results summary, including details of errors or exceptions found, in accordance with HKSRS 4400. It will also state that we have not performed an assurance engagement on the poll results summary and accordingly express no assurance thereon. In addition, if when carrying out our work we are of the view that irregularities or differences of view occur on the poll, such irregularities and differences of view will be included in the engagement report.
- 3.2 In accordance with HKSRS 4400, our report should not be distributed to any parties who have not agreed to the procedures to be performed. Accordingly, our report will state this. Consequently, our report will be for the information of the Board of Directors of the Company only and it should not be copied, referred to or disclosed in whole or in part to any other persons and we expressly disclaim any liability to any such party in this respect. However, we will allow you to disclose the contents and/or send a copy of the report to the regulators upon request.
- 3.3 We understand that our name, as scrutineer, will be identified in the Company’s public announcement of the poll results to be issued on the business day following the general meeting. We will agree to this provided that the following in respect of our scope of work is included in the announcement.

Scope of work of ABC & Co

The poll results were subject to scrutiny by ABC & Co, Certified Public Accountants (Practising), whose work was limited to certain procedures requested by the Company to agree the poll results summary prepared by the Company to poll forms collected and provided by the Company to ABC & Co. The work performed by ABC & Co in this respect did not constitute an assurance engagement in accordance with Hong Kong Standards on Auditing, Hong Kong Standards on Review Engagements or Hong Kong Standards on Assurance Engagements issued by the Hong Kong Institute of Certified Public Accountants nor did it include provision of any assurance or advice on matters of legal interpretation or entitlement to vote.

- 3.4 We will be entitled to review, comment on the appropriateness of, and object to, the contents of any announcement containing references to ABC & Co prior to its issuance. The Company will take account of our comments and objections and the Company agrees that the announcement will not be finalised or published without having obtained our prior written consent. If a situation arises where your announcement is published without taking into account our comments and objections and without having obtained our prior written consent, we will be required to write to your audit committee regarding the discrepancies and request the audit committee to inform the SEHK of such matter.

²[4. Fee]

Yours faithfully,

ABC & Co
Certified Public Accountants (Practising) [or Certified Public Accountants]
Date

We agree to the terms of this letter.

(Signed)

Director, for and on behalf of the Board of [XYZ Company]

² See footnote 2.

APPENDIX 2

Example letter of representations

(To auditors)

(Date)

Dear Sirs

We refer to your report dated [*date*] on the results of the agreed-upon procedures on the poll undertaken in the general meeting of [XYZ Company] (the “Company”) held on [*date*] (“the poll”).

We confirm to the best of our knowledge and belief the following representations given to you in connection with your above report.

- 1 We acknowledge that the Company is responsible for establishing and maintaining adequate systems of internal control to ensure that the poll is carried out properly and to ensure the completeness and accuracy of the results of the poll.
- 2 We are also responsible to ensure the accuracy of the information included in the summary of the poll results and in any announcement of the results of the poll.
- 3 We confirm that all proxy forms have been properly received and all votes cast are legally valid and that the poll results are complete and accurate.
- 4 We have made available to you
 - all written policies, internal memoranda, correspondence and working papers relating to the vote-taking; and
 - other information necessary for you to perform the agreed-upon procedures as stated in the engagement letter dated [*date*].
- 5 We confirm the poll outcome as [included in the attached summary][follows] ¹:

	For	Against	Spoilt votes/abstention
Motion 1			
Motion 2			
etc.			

Yours faithfully

By Order of the Board

Name:

Name:

Position:

Position:

¹ If the engagement report is issued on the same day as the poll is taken, the details of votes cast may need to be manually included on the representation letter.

APPENDIX 3

Example report of factual findings

Report of Factual Findings

To: Board of Directors
[XYZ Company]

We have performed the procedures agreed with you in our engagement letter dated [date] and enumerated below with respect to the poll undertaken in the general meeting of [XYZ Company] (the "Company") on [date] ("the poll"). Our engagement was conducted in accordance with Hong Kong Standard on Related Services 4400 "Engagements to Perform Agreed-upon Procedures Regarding Financial Information" issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA"). The procedures were performed solely to assist you in satisfying the requirement of the Main Board Listing Rule 13.39(5) [or GEM Listing Rule 17.47(5)] issued by the Stock Exchange of Hong Kong Limited and are summarized as follows:

- 1) We obtained the results of the votes cast included in the poll results summary prepared by the Company attached to this report and checked the additions of the totals included in the summary.
- 2) We compared the individual details of votes cast included in the summary to the poll voting forms collected and provided to us by the Company.

Based on the information and documents made available to us, we report our findings as follows:

- a) With respect to item 1, we found the additions of the totals to be [correct][correct except for the following errors set out below (*such errors to be set out*)].
- b) With respect to item 2, we found the individual details of votes cast included in the summary agreed to the poll forms collected and provided to us by the Company.

For the purpose of this report, the following convention has been adopted in presenting our procedures and findings:

- The phrase "compared" means agreed to and found to be in agreement unless otherwise noted. Such agreed amounts and percentages are deemed to be in agreement if differences are attributable to rounding.

Because the above procedures do not constitute an assurance engagement in accordance with Hong Kong Standards on Auditing, Hong Kong Standards on Review Engagements or Hong Kong Standards on Assurance Engagements issued by the HKICPA, we do not express any assurance on the results of the poll.

[In relation to the poll in respect of the reappointment of auditors, we declare that we are the auditors of the Company seeking reappointment.]*

As agreed with you, the Company is responsible for ensuring the completeness and authenticity of all votes cast and proxy forms and for ensuring each voter's entitlement to vote. Our work and this report do not constitute confirmation of such nor confirmation of, or advice on, any legal matters or matters subject to legal interpretation.

* Delete where not applicable.

Had we performed additional procedures or had we performed an assurance engagement in accordance with Hong Kong Standards on Auditing, Hong Kong Standards on Review Engagements or Hong Kong Standards on Assurance Engagements issued by the HKICPA, other matters might have come to our attention that would have been reported to you.

This report is solely for the purpose set forth in the first paragraph above and for your information only and is not to be used for any other purpose or to be distributed to any other parties. We expressly disclaim any liability to any such party in this respect.

ABC & Co
Certified Public Accountants (Practising) [or Certified Public Accountants]
Date