

# POLICY BRIEFING

---

## UNLOCKING THE POTENTIAL OF SHAREHOLDER VOTING IN CHINA

May 2023

*The information contained in this briefing is provided for informational purposes only and should not be construed as legal advice on any subject matter. Except where expressly stated otherwise, the opinions, recommendations, findings, interpretations and conclusions expressed in this report are those of PRI Association, and do not necessarily represent the views of the contributors to the briefing or any signatories to the Principles for Responsible Investment (individually or as a whole). In any situation, readers should not rely on the information in this briefing to make any commercial or non-commercial decisions. PRI Association, the contributors to this briefing, the acknowledged parties, and the signatories to PRI are not liable to any organization or individual for the information contained in this briefing.*

# ABOUT THE PRI

The Principles for Responsible Investment (PRI) works with its international network of signatories to put the six Principles for Responsible Investment into practice. Its goals are to understand the investment implications of environmental, social and governance (ESG) issues and to support signatories in integrating these issues into investment and ownership decisions. The PRI acts in the long-term interests of its signatories, of the financial markets and economies in which they operate and ultimately of the environment and society as a whole.

The six Principles for Responsible Investment are a voluntary and aspirational set of investment principles that offer a menu of possible actions for incorporating ESG issues into investment practice. The Principles were developed by investors, for investors. In implementing them, signatories contribute to developing a more sustainable global financial system.

More information: [www.unpri.org](http://www.unpri.org)

## ABOUT THIS BRIEFING

This briefing focuses on shareholder voting in China. It makes policy recommendations to help mobilise institutional investors to exercise their voting rights more effectively and responsibly for the purpose of securing and enhancing overall long-term value for clients or beneficiaries. This briefing examines the challenges limiting institutional investors' ability to exercise voting rights in China and suggests possible reforms to address these issues to support sustainable growth and fulfil their fiduciary duties.

The PRI would like to extend a thank you to all signatories who took part in PRI Stewardship in China Survey and the stakeholders who generously provided comments and input.

- Fidelity International
- Harvest Fund Management
- HSBC Asset Management
- Insurance Asset Management Association of China (IAMAC)
- South China Asset Management
- Yinhua Fund Management
- ZD Proxy Shareholder Services

Thanks to the following partners/advisors/lawyers at JunHe LLP for their support in enhancing our understanding of Chinese laws and regulations in the fields of ESG, investment, finance, and securities: Zhu He, Ni Tianling, Cui Xiao, Xie Qing, Wang Man, Zhang Yino, Zhu Jiayin, Huang Weijia, Shi Di, Yang Yating, and Cui Yongze.

### For more information, contact:

Daniel Wiseman  
Head of APAC Policy

[daniel.wiseman@unpri.org](mailto:daniel.wiseman@unpri.org)

Junru Liu  
Senior Policy Analyst

[junru.liu@unpri.org](mailto:junru.liu@unpri.org)

## Contents

|  |    |
|--|----|
| EXECUTIVE SUMMARY .....  | 4  |
| Key challenges .....   | 4  |
| Recommendations.....   | 5  |
| THE IMPORTANCE OF SHAREHOLDER VOTING.....  | 6  |
| SHAREHOLDER VOTING IN CHINA.....   | 7  |
| Voting Rights of listed company shareholders .....                                       | 7  |
| Voting and investor duties in China.....   | 9  |
| The state of shareholder voting practices in China .....                                 | 10 |
| Onshore shareholders are less active than offshore shareholders .....                    | 10 |
| Limited transparency .....   | 11 |
| RESEARCH FINDINGS: CHALLENGES TO SHAREHOLDER VOTING IN CHINA                             | 12 |
| Research methodology .....   | 12 |
| Challenges to the practical effectiveness of shareholder voting .....                    | 13 |
| Concentration of ownership and portfolio diversification.....                            | 13 |
| Lack of guidance and support for investor collaboration.....                             | 14 |
| Insufficient appropriate internal policies or practices .....                            | 15 |
| Investee company communications and practices .....                                      | 16 |
| Challenges to ensuring accountability in institutional investors' voting practices ..... | 19 |
| Lack of clarity on investor duties to manage investor rights .....                       | 19 |
| POLICY RECOMMENDATIONS .....   | 21 |
| Clarify investor duties in relation to voting.....                                       | 21 |
| Creating an enabling environment for effective voting .....                              | 23 |
| Establishing a robust implementation and monitoring mechanism .....                      | 24 |
| ANNEX .....  | 25 |
| The right to vote (by asset classes, excluding listed equity) .....                      | 25 |
| Investor duties related to voting (by types of institutional investors).....             | 26 |

# EXECUTIVE SUMMARY

In May 2022, the PRI published its [Unlocking the Potential of Investor Stewardship in China](#) report. This report identified a significant potential for investors active in China to support improved corporate governance and the sustainable transition and growth of the economy through effective stewardship. The report suggested five high-level recommendations to help Chinese policymakers establish a more enabling environment to unlock this potential.

Following the publication of this report, the PRI conducted an investor survey to better understand the specific challenges to effective stewardship faced by investors in China. Informed by the results of the investor survey, this briefing focuses on the more specific topic of shareholder voting in China. Consequently, it includes policy recommendations for mobilising institutional investors to exercise voting rights more effectively and responsibly to secure and enhance overall long-term value for clients or beneficiaries.

Chinese law grants shareholders the right to propose and vote on corporate matters, including business strategy and investment plans, with successful resolutions being binding. Voting is, therefore, a potentially powerful stewardship tool for shareholders to communicate views, strengthen engagement and fulfil their duties to clients and beneficiaries.

However, although voting has been explicitly encouraged by Chinese financial regulators, with the exception of insurance companies, there are currently no explicit requirements for investors to manage investor rights, including voting rights, as part of their duties to serve the best interests of their clients or beneficiaries. Compared to other large capital markets, practical infrastructure and guidance to support effective shareholder voting is also limited.

Recent research has shown that despite some positive improvement in active ownership in China, Chinese investors are less active and transparent in exercising their voting rights than their offshore peers. Through desktop research and an investor survey, this briefing examines the challenges limiting institutional investors' ability to serve the best interests of their clients or beneficiaries through effective and responsible voting.

## KEY CHALLENGES

The findings of the desktop research and survey results revealed two broad categories of challenges to effective shareholder voting in China. These are set out below.

### Challenges to the practical effectiveness of shareholder voting

Currently, a range of market and regulatory features present practical limitations on investors' effective use of voting powers. First, concentrated ownership structures and portfolio diversification limit minority shareholders' voting power. At the same time, investee companies' insufficient accountability to minority shareholders and legal uncertainties regarding investor collaboration hinder collective influence. Compared to their overseas peers, Chinese institutional investors also face challenges from insufficient internal governance, including limitations related to capacity, voting policies and performance assessment frameworks. On the investee side, insufficient information disclosure and short voting timeframes may deter effective shareholder voting.

### Challenges to ensuring accountability in institutional investors' voting practices

Alongside practical challenges, existing policy and regulatory features may also limit incentives and accountability for investors attempting to exercise their voting powers. In this respect, the current lack of clarity on investor duties creates ambiguity about the extent to which voting rights should be managed in line with client interests. This confusion can challenge the fulfilment of duties throughout the

investment chain. Insufficient corporate disclosure and mismatched performance assessment mechanisms may also hinder institutional investors' efforts to incorporate long-term client interests into voting decisions.

## RECOMMENDATIONS

In order to address the identified challenges, this briefing suggests a number of areas for policy reform to support Chinese institutional investors' effective exercise of their voting power. More specifically, three recommendations are proposed for China's key financial regulators to consider. They will be relevant for the National Financial Regulatory Administration (NFRA),<sup>1</sup> China's Securities Regulatory Commission (CSRC), the Ministry of Finance (MoF) and the Ministry of Human Resources and Social Security (MoHRSS).

### Clarification of investor duties in relation to voting

To guide institutional investors in making voting decisions in the best interests of clients or beneficiaries, financial regulators may consider clarifying the scope of investors' duties to carry out stewardship. Additionally, they may consider providing guidance on key issues related to voting, including the creation and publication of a voting policy, capacity building, streamlining the voting process, disclosing voting records, establishing governance structures to enhance accountability and incorporating ESG factors and client preferences into voting decisions.

### Creation of an enabling environment for effective voting

Financial regulators may need to create an environment that better facilitates effective investor voting by enhancing corporate accountability towards minority shareholders. It is also important to facilitate appropriate investor collaboration by clarifying existing legal uncertainties about the extent to which such collaboration is permitted and supporting the development of collaboration platforms. Further, action should be taken to better enable informed shareholder voting decisions by enhancing the quality of corporate ESG reporting and facilitating investor engagement.

### Establishment of a robust implementation and monitoring mechanism

Financial regulators may consider establishing a robust implementation and monitoring mechanism that supports and incentivises outcomes-focused investor stewardship and avoids mechanical compliance. This process could be achieved by launching mechanisms to monitor disclosure, assess outcomes and provide guidance for best practices in the market.

---

<sup>1</sup> China will set up a national financial regulatory administration in charge of regulating the financial industry except the securities sector, replacing the China Banking and Insurance Regulatory Commission. See [https://english.www.gov.cn/news/topnews/202303/07/content\\_WS6406ffa2c6d0a757729e7d6c.html](https://english.www.gov.cn/news/topnews/202303/07/content_WS6406ffa2c6d0a757729e7d6c.html).

# THE IMPORTANCE OF SHAREHOLDER VOTING

Voting on resolutions is one of the most concrete and powerful stewardship tools available to shareholders. It can help investors communicate their views to investee companies, strengthen engagement and facilitate two-way accountability.<sup>2</sup> The power of an investor's vote lies in the ability of a resolution to lead to changes. Passing or blocking a resolution, or even a steady year-on-year increase in support for an emerging environment, social and corporate governance (ESG) trend or issue can be a forceful tool that drives change and holds management at investee companies to account. When utilised effectively and in parallel with other stewardship levers such as engagement, voting on a resolution can strengthen investor influence on investee companies by:

- focusing the communication on a single, concrete and clear call to action, aggregating a more comprehensive set of investor views in a transparent manner
- providing investors with a solid basis for any further actions
- enabling the company to respond to a successful resolution
- urging the company to reflect on management performance and take steps to engage with investors even when relevant management resolutions receive a relatively low level of investor support

With the Chinese capital market having rapidly developed into one of the world's largest in the last decade,<sup>3</sup> the effective use of voting power to influence investee companies to maximise their overall value, including by addressing system-level ESG risks, is now more relevant than ever. Accordingly, voting is a crucial way for institutional investors to fulfil their duties to their clients and beneficiaries. Where they fail to do so, they might arguably be breaching their fiduciary duty or equivalent obligations towards clients or beneficiaries.<sup>4</sup>

---

<sup>2</sup> PRI (2022), [Making Voting Count](#), 5.

<sup>3</sup> The World Economic Forum, [China Asset Management at an Inflection Point](#).

<sup>4</sup> PRI, UNEP FI and The Generation Foundation (2019), [Fiduciary Duty in the 21<sup>st</sup> Century: Final Report](#).

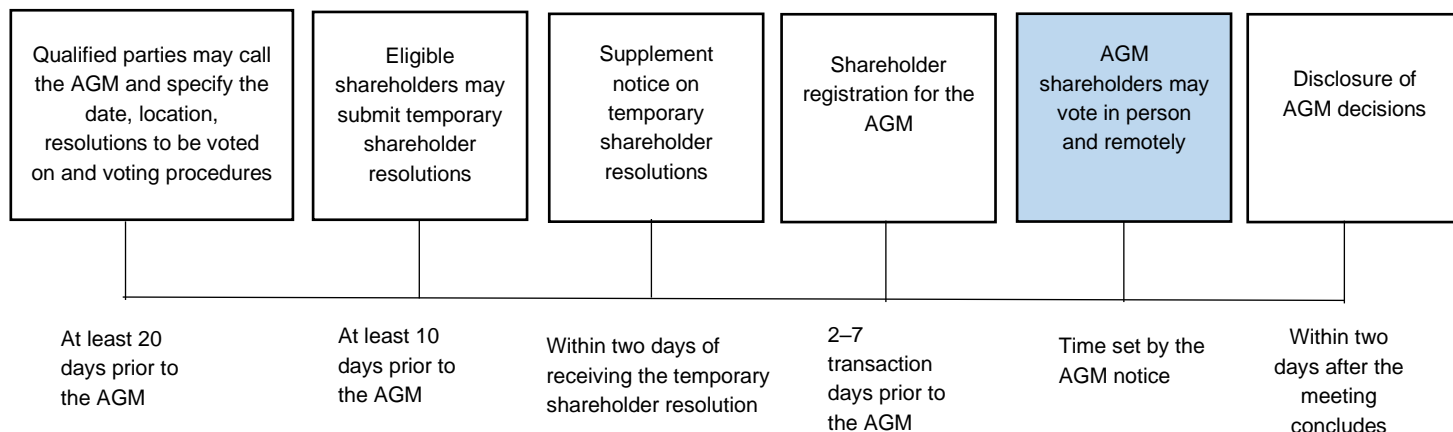
# SHAREHOLDER VOTING IN CHINA

In China, investors are entitled to participate in corporate governance by exercising a range of investor rights, including the right to vote. The substantial and procedural elements of the right to vote are shaped by a number of rules, including company law, securities law, departmental regulations on particular types of asset classes, security issuance rules published by stock exchanges, articles of associations of investee companies and investment agreements. For the sake of clarity and simplicity, the following analysis focuses on the voting rights of shareholders of companies that are publicly listed on Chinese stock exchanges, also known as A-share listed companies. Nonetheless, it is important to note that beyond listed equity, investors of other asset classes, such as private equity, corporate bonds, financial bonds and public funds, may also enjoy the right to vote in certain contexts (See Annex 1).

## VOTING RIGHTS OF LISTED COMPANY SHAREHOLDERS

Chart 1 shows the process for shareholders to exercise their voting rights at annual general meetings (AGMs) in China, flagging the key dates and actions to take. As shown in Table 1 below, shareholders of listed Chinese companies have the right to vote on resolutions at AGMs or extraordinary shareholder meetings to decide on a wide range of corporate matters, including the company’s business strategy and investment plan. Ordinary resolutions are adopted by a majority vote, and special resolutions are adopted by two-thirds or more of the votes held by the shareholders present at the meeting.<sup>5</sup> Adopted resolutions are binding unless they are successfully challenged in court.<sup>6</sup> As such, voting is a powerful and meaningful lever for shareholders to influence corporate governance and hold companies to account.

Chart 1: The voting process for listed equity in China (AGM as an example)



Source: JunHe LLP, PRI

<sup>5</sup> Article 67 of the Guidelines for Listed Company Articles of Association.

<sup>6</sup> Article 22 of the Company Law.

**Table 1: Key elements of shareholder voting rights at listed companies in China**

|                                  |  |
|----------------------------------|--|
| <b>Legal basis</b>               | Article 103 of the Company Law and Article 33 of the Guidelines for Listed Company Articles of Association   |
| <b>Occasions</b>                 | Annual general shareholder meetings and extraordinary shareholder meetings   |
| <b>Who has the right to vote</b> | Any shareholder whose name is registered on the shareholder list. In the case of institutional investors, they have the statutory right to vote. Clients and beneficiaries do not directly own the shares but have an economic interest in the investment.   |
| <b>Conditions</b>                | <ul style="list-style-type: none"> <li>• No minimum shareholding requirement to exercise the right to vote</li> <li>• Shareholders may appoint a proxy to attend a general meeting.</li> <li>• Shareholders may vote remotely and in person</li> </ul>   |
| <b>Scope of resolutions</b>      | <p>By participating in shareholders' meetings, shareholders have the power to collectively decide on a wide range of corporate matters through voting on proposed resolutions. The board of directors, supervisory board and shareholders who individually or collectively hold more than 3% of the total shares issued by the company are eligible to propose resolutions.</p> <p>The scope of resolutions may include, but is not limited to, the following matters:</p> <ul style="list-style-type: none"> <li>• Set the company's business strategy and investment plans.</li> <li>• Elect and remove directors and supervisors who are not representatives of employees.</li> <li>• Decide the remuneration of directors and supervisors.</li> <li>• Review and approve the reports of the board of directors, supervisory board, annual financial budget plans, financial accounting plans and profit distribution plans.</li> <li>• Approve certain related parties' transactions.<sup>7</sup></li> </ul> |
| <b>Restrictions</b>              | <p>One vote for each share except for the following situations:</p> <ul style="list-style-type: none"> <li>• Holders of preferred shares are not entitled to vote except on matters directly connected to or with a material influence on their interests.<sup>8</sup></li> <li>• The company cannot vote based on its own shares.</li> <li>• For resolutions on related party transactions, the relevant shareholders are not allowed to vote or exercise the voting rights of any other shareholders on their behalf on such a resolution.</li> </ul>  |

Sources: JunHe LLP, PRI

<sup>7</sup> Article 6.3.8 of the Listing Rules of the Shanghai Stock Exchange and Article 6.3.7 of the Listing Rules of the Shenzhen Stock Exchange.

<sup>8</sup> Article 33 of the Guidelines for Listed Company Articles of Association.



## VOTING AND INVESTOR DUTIES IN CHINA

Under Chinese rules, institutional investors are encouraged to exercise stewardship.<sup>9</sup> However, except for insurance companies, there are no explicit requirements for investors to manage investor rights to monitor and advance the performance of investee companies as part and parcel of their duties towards clients or beneficiaries. (See Annex 2 for more details) For insurance companies, despite clear obligations to exercise stewardship,<sup>10</sup> there is limited criteria or best practice guidance (for example, a stewardship code) to help them enhance effectiveness, transparency and accountability in voting.

---

*'Promote public funds and other professional institutional investors to actively participate in the governance of listed companies, not only to "vote with their feet" but also to "vote with their hands" to help listed companies develop with high quality'.*

*--- China Securities Regulatory Commission (CSRC), Opinions on accelerating the high-quality development of the public fund-raising industry*

---

Despite the lack of explicit requirements regarding investor voting, it is nonetheless possible to construe that existing investor duties cover the need for investors to carry out stewardship in the best interests of clients and beneficiaries, including the right to vote.

Both public and private fund managers are either subject to the trust law obligation<sup>11</sup> or contractual obligations<sup>12</sup> to pursue the best interests of their clients with honesty, good faith, prudence and effectiveness. Similar requirements apply to pension trustees.<sup>13</sup> Although not well established, these duties are arguably broad enough to capture the need to manage voting rights to improve the performance of individual companies and broader portfolios.

As sustainability concerns, including system-level issues like climate change, are being widely recognised as financially material, institutional investors would arguably be obliged to consider their investment impact and take actions to manage sustainability-related risks. In circumstances where achieving sustainability outcomes and impacts is instrumental to realising financial returns, investors are likely required to take actions (including stewardship activities) to pursue such goals.<sup>14</sup>

---

<sup>9</sup> CSRC, Rules of Corporate Governance for Listed Companies (Corporate Governance Code), Article 78; [Guiding Opinions to Promote High-quality Development of the Public Fund Industry](#); AMAC, [Guidance on Fund Managers Exercising Voting Rights on behalf of Funds](#).

<sup>10</sup> Notice of the General Office of China Banking and Insurance Regulatory Commission on Matters Relating to the Investment of Insurance Funds in Pooled Funds Trust, Article 12; Interim Rules for Insurance Capital Involved in Equity Investment, Article 19(3).

<sup>11</sup> Articles 25–30 of the [Trust Law](#) and Clause 24, Section 2, Chapter 4, Part 2 of [the Interpretation of the Trust Law](#). For further analysis of these duties, see Freshfields Bruckhaus Deringer, PRI, UNEP FI and Generation Foundation (2021), [A Legal Framework for Impact: Sustainability Impact in Investor Decision-making](#), para. 2.3.8. Details of responsibilities are also listed in, for example, the [Securities Investment Fund Law](#) and CSRC, [Measures for the Administration of Private Asset Management Business of Securities and Futures Operators](#).

<sup>12</sup> For the contractual and agency duties owed to the unitholders due to entrustment arrangements, see Chapter 7 of Part I of the Civil Code, and Chapter 23 of Part III of the Civil Code. See [A Legal Framework for Impact](#).

<sup>13</sup> Contractual and agency duties owed by the trustees to fund sponsors arise out of the entrustment arrangements. See Chapter 7 of Part I of the Civil Code and Chapter 23 of Part III of the Civil Code. See [A Legal Framework for Impact](#).

<sup>14</sup> [A Legal Framework for Impact](#).

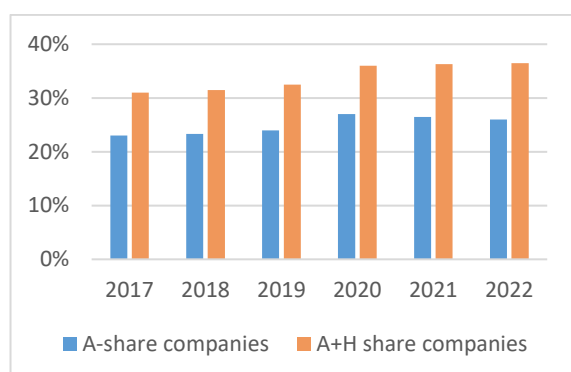
## THE STATE OF SHAREHOLDER VOTING PRACTICES IN CHINA

Recent research has shown that although active ownership in China has improved compared to its offshore peers, Chinese investors are less active and transparent in exercising their voting rights.

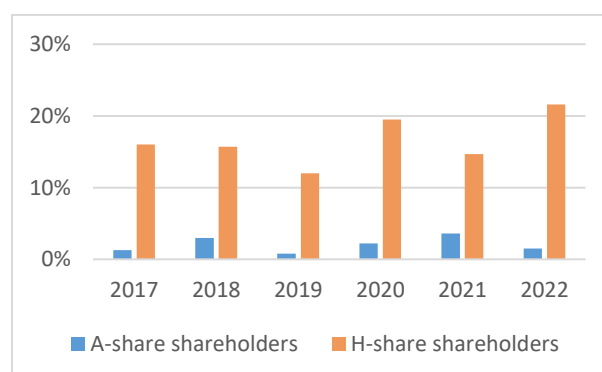
### ONSHORE SHAREHOLDERS ARE LESS ACTIVE THAN OFFSHORE SHAREHOLDERS

Compared to overseas investors, Chinese institutional investors are less active in voting. [Research](#) by Fidelity International and ZD Proxy Shareholder Services shows that for the period 2017–2022, minority shareholders' voter turnout at dual-listed A+H companies<sup>15</sup> was 10 per cent higher than that at A-share only companies. The gap also appeared in expressions of dissent where resolutions at dual-listed companies saw a much lower rate of against or abstained votes from onshore shareholders than from offshore shareholders. That means that the significant voting power held by onshore shareholders is not being effectively translated into real influence on investee companies, whether in terms of monitoring their performance or creating value.

**Chart 2: Minority shareholders' voter turnout at dual-listed A+H companies vs. A-share only companies**



**Chart 3: Dissent rates among onshore and offshore shareholders at dual-listed A+H companies**



Source: Fidelity International, ZD Proxy Shareholder Services, November 2022. Note: 2022 data is through June 20.

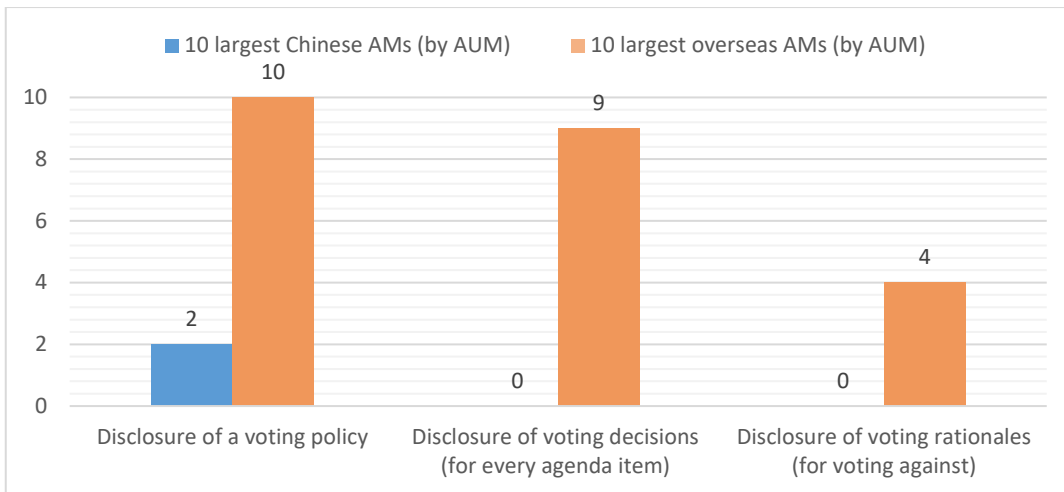
<sup>15</sup> Dual-listed A+H companies are those incorporated in mainland China and issued A-shares traded on mainland China's stock exchanges and H-shares traded in Hong Kong.

## LIMITED TRANSPARENCY

Transparency in voting is crucial for clients or beneficiaries to hold institutional investors to account to ensure voting is conducted in line with fiduciary duties. Transparency is also key to enhancing the impact of voting by facilitating the communication between institutional investors and stakeholders, including investee companies, clients or beneficiaries, peer investors and civil society. However, compared to other markets, transparency in relation to investor voting practices in China needs further improvement.

By comparing the level of proxy voting transparency of the ten largest asset managers (by AUM) in China<sup>16</sup> and the global market,<sup>17</sup> we observed that the largest Chinese asset managers fail to match a similar level of transparency in proxy voting compared to their overseas peers. Only two of the ten largest Chinese asset managers have publicly disclosed a very brief and high-level voting policy, whereas the public disclosure of a detailed voting policy is standard practice for their overseas counterparts. No Chinese asset managers covered in this research disclosed their voting records on an individual agenda item basis or the reasons for their voting decisions.

**Chart 4: The level of voting transparency among the ten largest Chinese AMs compared to the ten largest overseas AMs**



Source: PRI research, data is through January 2023.

<sup>16</sup> Including E Fund, GF Fund Management, Tianhong Asset Management, Southern Asset Management, China AMC, Bosera Asset Management, Fullgoal Asset Management, Penghua Fund, China Universal Asset Management, Harvest Fund Management. Source: Wind, as of April 2023.

<sup>17</sup> Including BlackRock, Vanguard, Fidelity Management, State Street Global Advisors, J.P. Morgan Chase, Allianz Group, Capital Group, Goldman Sachs Group, BNY Mellon, Amundi. Ranking by Thinking Ahead Institute and Pensions & Investments, [The World's Largest 500 Asset Managers](#), 2022.

# RESEARCH FINDINGS: CHALLENGES TO SHAREHOLDER VOTING IN CHINA

As set out above, current shareholder voting practices in China indicate that voting rights have not been effectively used to hold company managers to account and create value. In addition, institutional investors' voting practices lack transparency, which may cause accountability concerns. Through investor surveys and desk research, we identified the following challenges that may hinder institutional investors from effectively and responsibly using their voting rights in China. For clarity, we group these challenges into two categories: those that substantially limit the practical effectiveness of shareholder voting rights and those that may impede the level of accountability in exercising voting rights.

## RESEARCH METHODOLOGY

This research identifies challenges to shareholder voting in China, primarily through a combination of desk research of regulatory framework and market structure for shareholder voting and an investor survey. The PRI conducted an online survey of institutional investors with exposure to the Chinese market to identify the challenges they face in exercising stewardship in China, including voting, engagement and filing shareholder resolutions (PRI Stewardship in China Survey, 2022). The survey was shared with PRI signatories active in China and was open for one month in July 2022. It included 17 questions and was provided in both Chinese and English. The survey received 38 responses, with Chinese and overseas-headquartered investors equally represented among the respondents, primarily asset managers (87%), with the remainder being asset owners (13%).

Chart 5: Investor survey: domicile of respondent

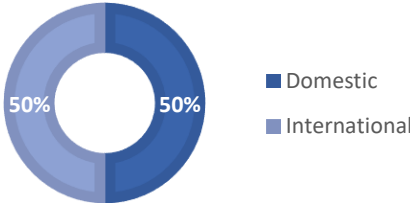
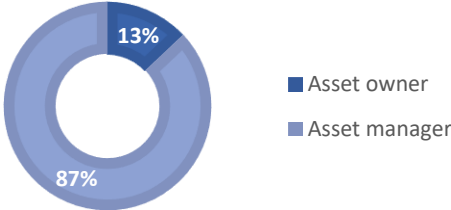


Chart 6: Investor survey: respondent type



# CHALLENGES TO THE PRACTICAL EFFECTIVENESS OF SHAREHOLDER VOTING

## CONCENTRATION OF OWNERSHIP AND PORTFOLIO DIVERSIFICATION

Some research suggests that the dominance of controlling shareholders in many of China's A-shares listed companies,<sup>18</sup> combined with portfolio diversification strategies voluntarily adopted by investors or mandatorily required by financial regulators,<sup>19</sup> has made it difficult historically for institutional investors to gather sufficient voting power to shape corporate governance in most listed companies in China.

Based on current trends, however, this issue may become less of a concern. The ownership structure is gradually changing, and the shares held by institutional investors in A-shares-listed companies are growing rapidly to a level of around 50% of free-float shares in 2021 from less than 10% in 2003.<sup>20</sup> Financial regulators have also been taking measures to increase the influence of minority shareholders.<sup>21</sup>

Minority shareholders' influence could be enhanced through a combination use of voting and engagement. Despite recent advancements in supporting engagement between listed companies and investors<sup>22</sup> and the updated Securities Law establishing rules for voting solicitation,<sup>23</sup> corporate accountability to minority shareholders needs improvement, especially in terms of the extent to which companies actively engage with investors to understand their concerns and provide meaningful responses when company-backed resolutions are passed with a high dissent rate. Investors' attempts to constructively engage with investee companies in China on ESG issues still face challenges. As revealed by the PRI investor survey, key challenges include insufficient ESG disclosures by investee companies, limited awareness of ESG factors, lack of access to the board and limited follow-ups by investee companies after investor engagements. Notably, international investors face much greater challenges in obtaining responses from investee companies to their engagement requests than Chinese investors.

---

<sup>18</sup> A relatively large number of A-shares companies have controlling shareholders. As of the end of 2017, the percentage of A-shares companies where the three largest shareholders held more than 50% of the shares stood at 57%. See D. W. Puchniak (2021), [The False Hope of Stewardship in the Context of Controlling Shareholders: Making Sense Out of the Global Transplant of a Legal Misfit](#), Working Paper 589/2021, 45–46.

<sup>19</sup> For example, if the security at issue is a listed equity, the shares owned by all public funds of one financial institution is limited to 15% of the free-float shares of the listed company. See, Liquidity Risk Management Regulations for Publicly Offered Open-end Securities Investment Funds, Article 15; Management Measures for the Operation of Publicly Raised Securities Investment Funds, Article 32; [Guiding Opinions](#) of the People's Bank of China (PBoC), the China Banking and Insurance Regulatory Commission (CBIRC), the China Securities Regulatory Commission (CSRC) and the State Administration of Foreign Exchange (SAFE) on Regulating the Asset Management Business of Financial Institutions, Article 16.

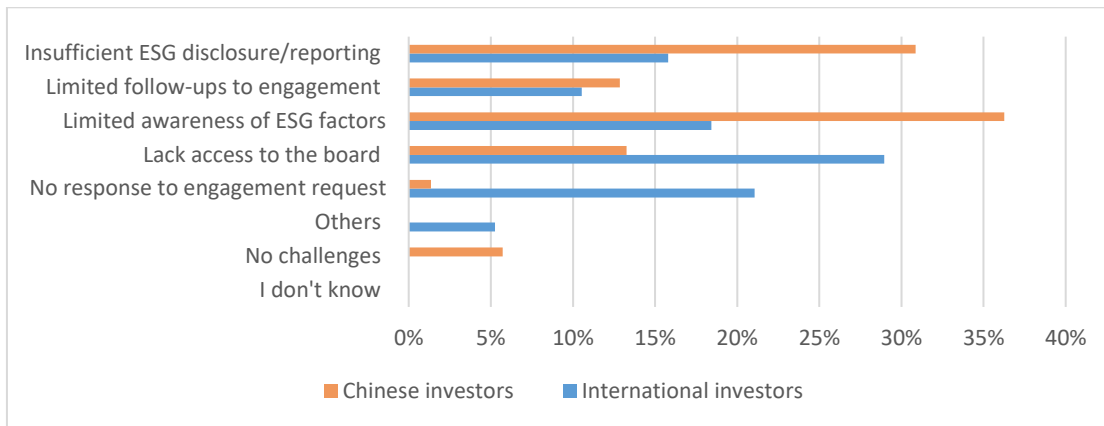
<sup>20</sup> Fidelity International and ZD Proxy Shareholder Services, [China Stewardship Report 2022](#), 7.

<sup>21</sup> For example, votes by minority shareholders will be counted separately and the results disclosed in a timely manner. For related party transactions, related shareholders are not allowed to vote. For listed companies, accumulative voting may be used to strengthen the ability of minority shareholders to elect a director and supervisor.

<sup>22</sup> CSRC (2022), [Investor Relationship Management Guidance for Listed Companies](#).

<sup>23</sup> Article 19, Securities Law of the PRC.

**Chart 7: What are the key challenges to constructive engagement on ESG issues in China, resulting from policies or practices at investee companies?<sup>24</sup>**



Source: PRI Stewardship in China Survey, 2022.

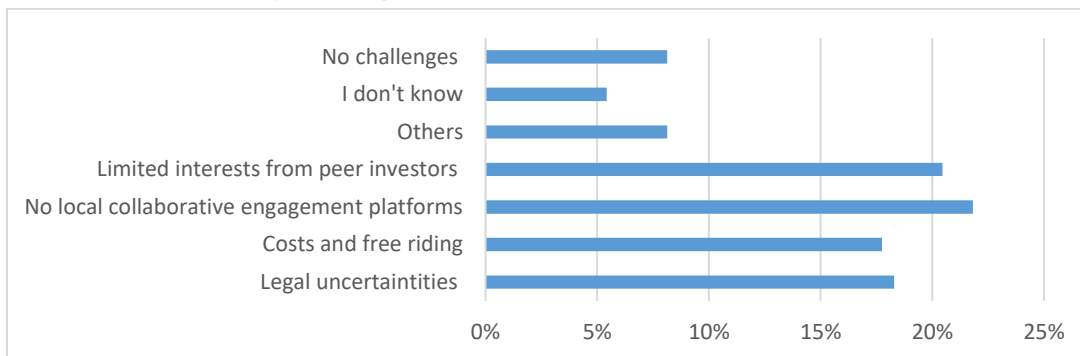
## LACK OF GUIDANCE AND SUPPORT FOR INVESTOR COLLABORATION

Even as minority shareholders, institutional investors can wield substantial influence through collaboration. By speaking to companies with a unified voice or voting the same way on a particular resolution, investors can more effectively communicate their concerns to corporate management.<sup>25</sup> However, the PRI investor survey results reveal that collaboration in stewardship in China faces substantial challenges.

Given the extent to which investor collaboration is susceptible to free-riding, the lack of local collaborative engagement platforms to address such concerns is likely to be a key limiting factor in coordinating collaboration and enabling cost sharing.

Additionally, while no law prohibits collaboration, concerns over acting-in-concert regulations and competition law enforcement<sup>26</sup> may discourage cooperation and result in over-compliance.

**Chart 8: What are the key challenges to investor collaboration in stewardship?**



Source: PRI Stewardship in China Survey, 2022.

<sup>24</sup> Since multiple answers could be chosen for the survey question, percentages in the figure above add up to more than 100%. The answers of international and Chinese investors are calculated separately, an approach used in other charts in this briefing.

<sup>25</sup> PRI, [Introductory Guide to Collaborative Engagement](#).

<sup>26</sup> PRI, A Legal Framework for Impact, China Annex, 262.

## INSUFFICIENT APPROPRIATE INTERNAL POLICIES OR PRACTICES

Investors' ability to effectively exercise voting rights is primarily shaped by how voting activities are governed, assessed and motivated internally. Through the investor survey, we identified key aspects of internal governance that may warrant further improvement to enhance investors' voting capability. These issues were much more common among Chinese investors than international investors.

### Lack of a supervision mechanism to assess, monitor and incentivise voting

A large share of Chinese respondents indicated that only limited internal key performance indicators or remuneration plans are directly linked to the actions, progress and outcomes of stewardship, including voting.

### Lack of processes or mechanisms to address and prevent conflicts of interest

Managing conflicts of interest is vital to fulfilling investor duties.<sup>27</sup> Neglecting to manage conflicts of interest may result in voting decisions that do not align with clients' or beneficiaries' interests.

### Time-consuming administrative approvals and logistical obstacles

A large proportion of Chinese respondents also pointed out that the internal approval process for exercising voting rights could be unnecessarily burdensome and time-consuming, making it challenging to respond in a timely manner during the busy proxy season.

**Chart 9: What are the key challenges to effective shareholder voting arising from internal policies or investment practices?**



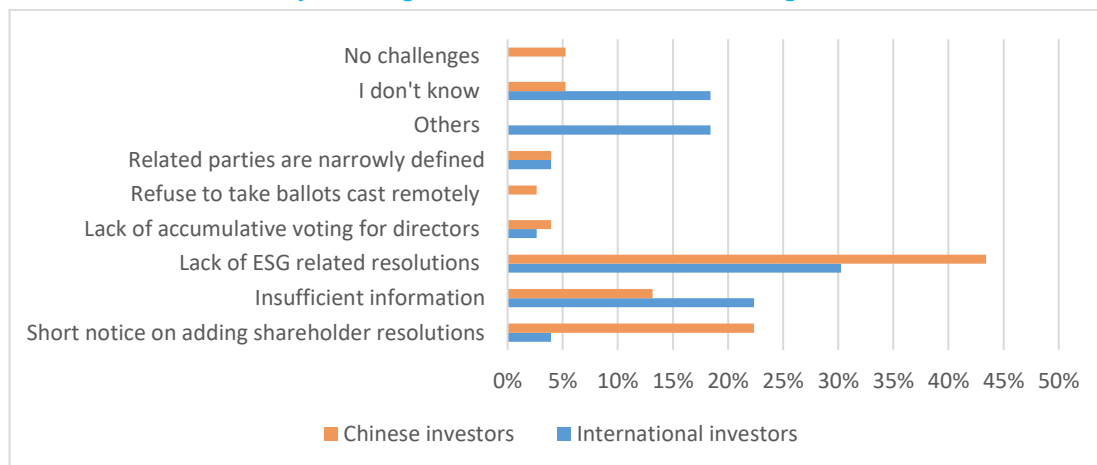
Source: PRI Stewardship in China Survey, 2022.

<sup>27</sup> See, for example, [Measures for the Administration of the Operation of Publicly Raised Securities Investment Funds](#), [Measures for the Administration of Related-party Transactions of Insurance Companies](#), [Measures for the Administration of Wealth Management Subsidiaries of Commercial Banks](#), [Private Asset Management Business of Securities and Futures Management Institutions](#) and [Measures for the Supervision of the Conduct of Majority Shareholders of Banking and Insurance Institutions \(Trial\)](#).

## INVESTEE COMPANY COMMUNICATIONS AND PRACTICES

Effective voting relies not only on institutional investors improving their internal governance mechanisms but also on investee companies facilitating and being receptive to communication with investors on material ESG-related matters. Survey respondents identified the following challenges arising from investee companies that are most important to effective voting.

**Chart 10: What are the key challenges to effective shareholder voting that arise from the investee side?**



Source: PRI Stewardship in China Survey, 2022.

### Lack of ESG-related resolutions

In China, resolutions are proposed mainly by managers and controlling shareholders, and environment, climate and social issue-related resolutions are extremely rare.<sup>28</sup> Worldwide, as investors increase their scrutiny of companies' ESG practices, the number of ESG-related shareholder or management-backed resolutions filed in 2022 reached a record number of 576, 15% higher than the 499 resolutions in 2021.<sup>29</sup>

Although minority shareholders in China can propose shareholder resolutions, they must at least individually or collectively hold a minimum of 3% of the company's shares. In earlier sections, we highlighted key challenges to investor collaboration, including co-filing shareholder resolutions.<sup>30</sup> The PRI investor survey identified key challenges to filing shareholder resolutions in China, including limited capacity and inefficiencies in internal processes, as well as concerns about managing relationships with investee companies. In many cases, proposed resolutions are easily rejected without proper justifications from the company. Notably, Chinese investors are far more sceptical of the cost-effectiveness of filing shareholder resolutions than their international counterparts.

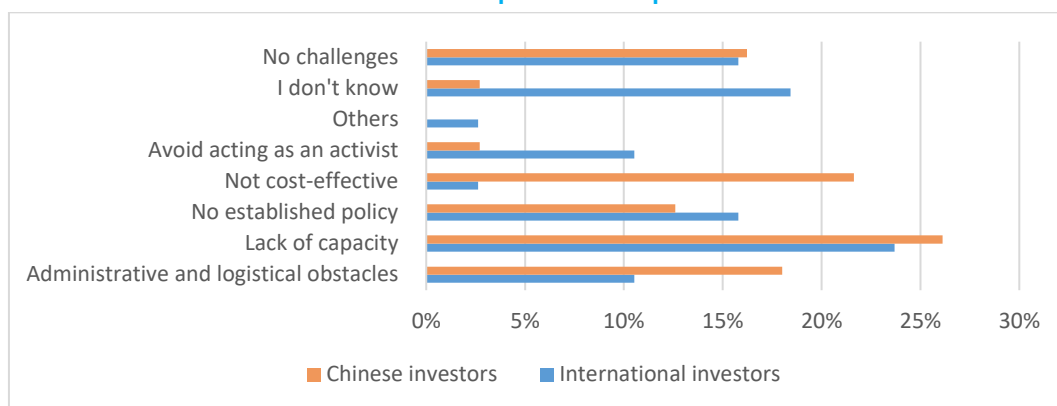
<sup>28</sup> Fidelity International, ZD Proxy Shareholder Services, [China Stewardship Report 2022](#), 13.

<sup>29</sup> Rob Henry, [The 2022 AGM Season: Which ESG Issues Have Shareholders Targeted?](#)

<sup>30</sup> For details of the legal condition for filing ESG-related shareholder resolution in China, see for example, ClientEarth, AIGCC, [Net Zero Engagement in Asia: A Guide to Shareholder Climate Resolutions](#).

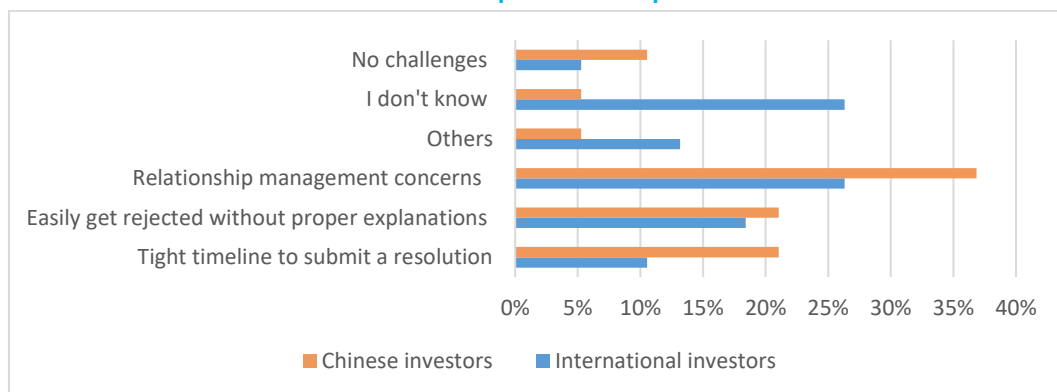


**Chart 11: What are the key challenges resulting from the policies or practices of *the investor* to filing shareholder resolutions in China that drive positive ESG performance?**



Source: PRI Stewardship in China Survey, 2022.

**Chart 12: What are the key challenges resulting from policies or practices of *investee companies* to filing shareholder resolutions in China that drive positive ESG performance?**



Source: PRI Stewardship in China Survey, 2022.

Despite the lack of ESG-related resolutions, investors are still able to and should hold corporate management to account for material ESG issues by voicing their concerns through scrutinising general resolutions, such as those related to electing or replacing directors and approving the reports of the board of directors or supervisors, the standard of remuneration, etc. by incorporating ESG factors into voting decisions.

**Insufficiency of the information necessary for investors to make informed voting decisions**

The lack of appropriate disclosure by investee companies, both in terms of regular ESG reporting and disclosures regarding shareholder meetings, may challenge good voting decisions. On the one hand, China’s existing rules on corporate ESG disclosures fall short of providing investors with standardised, quantitative and comparable information to fully grasp a company’s ESG-related profile.<sup>31</sup> On the other hand, although listed companies are required to disclose necessary information to support informed voting decisions prior to shareholder meetings,<sup>32</sup> some survey respondents pointed out that it is not uncommon for information to be disclosed in a way that is not investor friendly (too late or not in a consolidated circular) or is insufficient.

<sup>31</sup> According to the CSRC’s [disclosure standards](#) for listed companies’ annual and half-year reporting, most ESG disclosure indicators are voluntary or on a comply or explain basis, mostly qualitative and are not aligned with internationally recognized standards.

<sup>32</sup> Article 4.2.3 the Listing Rules of the Shang Stock Exchange and the Shenzhen Stock Exchange.

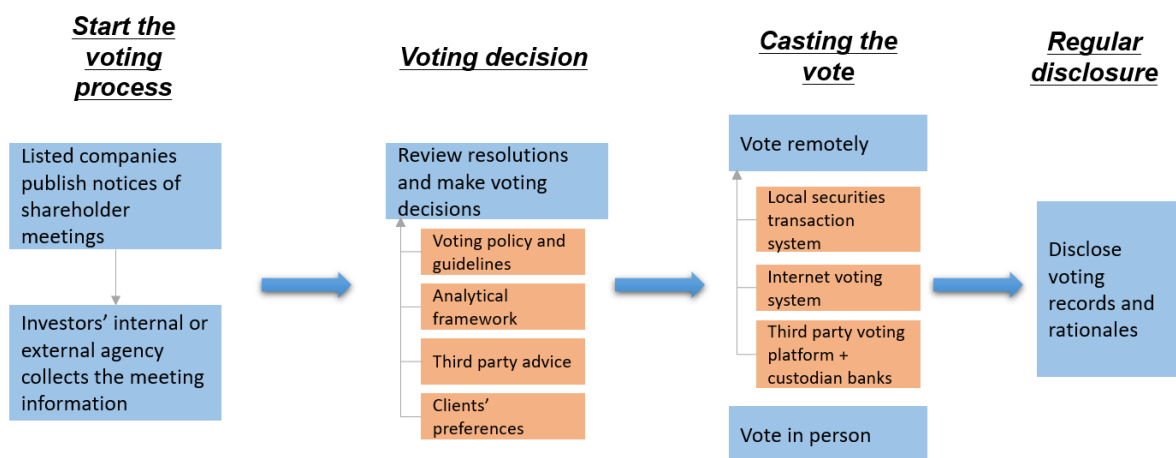
## Short notice on adding a temporary shareholder resolution to the voting agenda

In China, a temporary shareholder resolution can be filed just ten days prior to the shareholder meeting.<sup>33</sup> Some listed companies take advantage of this rule by adding company-backed resolutions through controlling shareholders.<sup>34</sup> The short timeframe makes it challenging for investors to effectively review all resolutions discussed and voted on at the meeting.

## Lack of monitoring and confirmation from investee companies of the validity of voting

In the survey, some overseas investors pointed out that it is not uncommon that some of their voting instructions have not been validly received, recorded and counted when voting remotely. As more intermediaries (such as the custodian banks or the remote voting systems) are being involved in transmitting voting information and instructions, it is becoming increasingly important to ensure the voting process is efficient and transparent. Without a proper confirmation from investee companies of receipt of the votes, there may be delay in identifying and correcting defects in the voting process.

Chart 13: An example of how institutional investors may process voting in China



Source: ZD Proxy Shareholder Services, PRI.

<sup>33</sup> Guidelines on Articles of Association of Listed Companies, Article 54.

<sup>34</sup> Fidelity International, ZD Proxy Shareholder Services, [China Stewardship Report 2020](#).

# CHALLENGES TO ENSURING ACCOUNTABILITY IN INSTITUTIONAL INVESTORS' VOTING PRACTICES

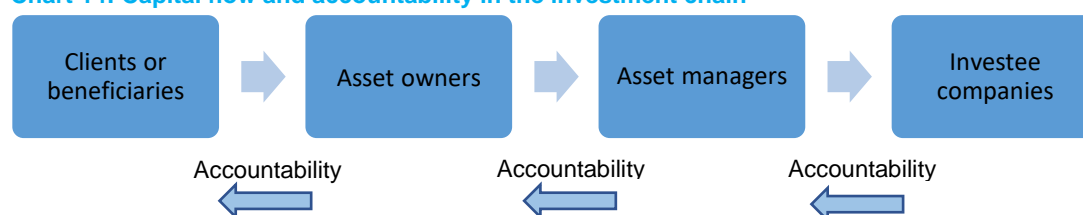
## LACK OF CLARITY ON INVESTOR DUTIES TO MANAGE INVESTOR RIGHTS

Except for insurance companies, the lack of clarity in investor duties on managing voting rights associated with investments for the interest of clients or beneficiaries by institutional investors can lead to the subordination of their interests in voting decisions. Confusions regarding investor duties to manage voting rights could result in institutional investors' lack of accountability and hinder clients' and beneficiaries' ability to scrutinise voting records and influence investee companies. This ambiguity may also exacerbate the free-riding issue, with only a few investors dedicating resources to voting while all shareholders benefit, leading to a focus on short-term trading over stewardship and the reluctance to dedicate resources and establish governance to support effective and responsible voting practices.

### Challenges to aligning voting practices with clients/beneficiaries' interests along the investment chain

Apart from directly financing companies, institutional investors also indirectly invest through external asset managers. In such cases, institutional investors acting as asset owners still need to fulfil their investor duties by ensuring that external asset managers handle entrusted assets in line with the interests of their clients and beneficiaries,<sup>35</sup> including how they exercise voting rights.

Chart 14: Capital flow and accountability in the investment chain

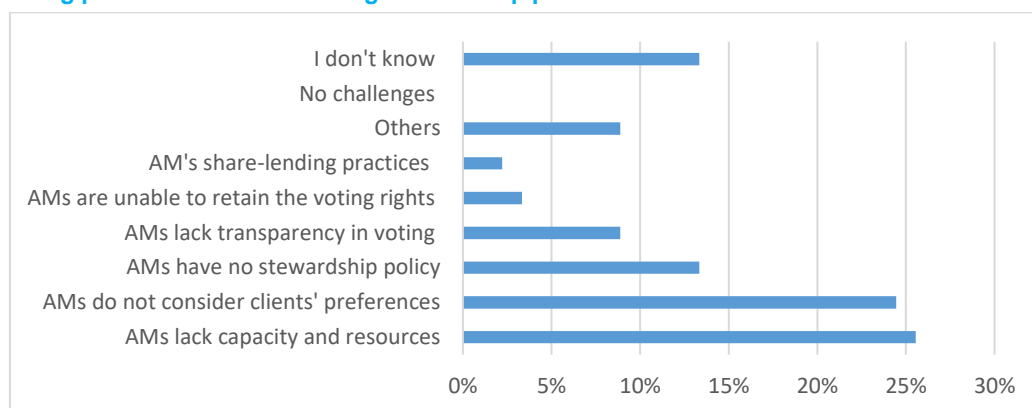


Survey respondents identified major challenges that would limit their capacity to align external asset managers' voting practices with the interests of end investors. One major challenge can be attributed to the lack of capacity and internal governance (no voting policy, lack of transparency) concerning voting by external asset managers. Another major challenge stems from restrictions on asset managers' ability to incorporate clients' preferences into voting decisions. Such restrictions may be found in asset managers' policy or investment agreements (mostly for pooled funds). Notably, CSRC explicitly forbids certain private funds from following the guidance of their clients or a third party when exercising investor rights.<sup>36</sup>

<sup>35</sup> [Guiding Opinions](#) of the People's Bank of China (PBoC), the China Banking and Insurance Regulatory Commission (CBIRC), the China Securities Regulatory Commission (CSRC), and the State Administration of Foreign Exchange (SAFE) on Regulating the Asset Management Business of Financial Institutions, Article 22.

<sup>36</sup> CSRC, [Measures for the Administration of Private Asset Management Business of Securities and Futures Institutions](#), Article 46.

**Chart 15: What are the key challenges facing asset owners in aligning external asset managers' (AM) voting practices with their voting/stewardship policies?**



Source: PRI Stewardship in China Survey, 2022.

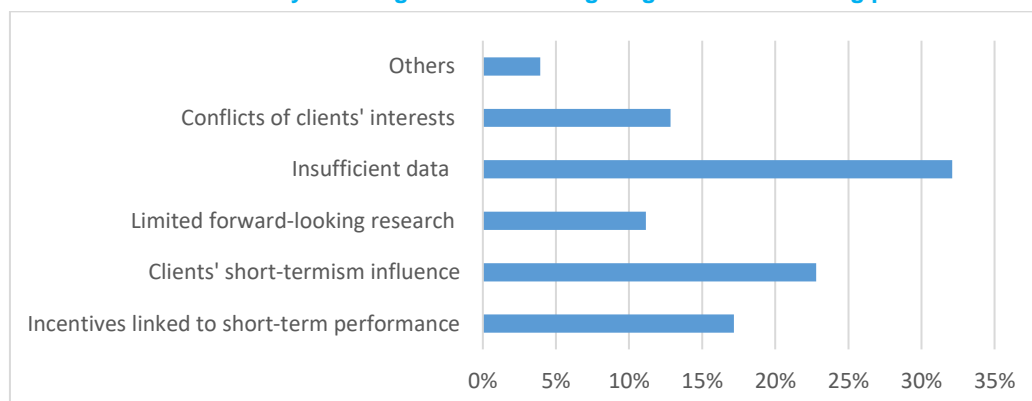
### Challenges to aligning voting practices with clients' and beneficiaries' investment horizons

Compared with short-term trading, it is crucial for investors to exercise stewardship, including voting and engagement, to monitor and enhance performance at investee companies to maximise the overall long-term value of assets entrusted by their clients or beneficiaries.<sup>37</sup> To fully discharge their fiduciary duties, investors need to align asset management activities, including voting according to their clients' investment horizons. Our survey identified the following challenges for investors in aligning stewardship, including proxy voting, with a long-term investment horizon, including:

- Insufficient data and disclosure to inform long-term stewardship decisions, such as forward-looking scenario analysis and mid-term and long-term commitments and transition plans.
- Clients (asset owners) primarily rely on short-term performance indicators when granting investment mandates or monitoring asset managers' performance.
- KPIs and remuneration plans mainly focus on short-term performance and do not incentivise stewardship activities aligned with clients' long-term investment horizons.

These findings echo the challenges identified earlier regarding the internal governance issues of institutional investors and the lack of information for effective voting decisions.

**Chart 16: What are the key challenges to embedding long-termism in voting practices?**



Source: PRI Stewardship in China Survey, 2022.

<sup>37</sup> PRI, [An Introduction to Responsible Investment: Stewardship](#).

# POLICY RECOMMENDATIONS

The last decade has witnessed a ten-fold increase in the size of AUM by institutional investors in China, making it one of the world's largest capital markets today.<sup>38</sup> However, the voting power of Chinese institutional investors remains to be developed and effectively used to drive the sustainable growth of the real economy and to fulfil fiduciary duties to clients and beneficiaries. To overcome the challenges identified above, targeted policy reforms can help provide the right incentives and guidance. The following policy recommendations are developed in alignment with [the latest sustainable investment policy implementation guide](#) developed by the PRI and the World Bank, which sets out key policy elements needed to establish a regulatory framework for effective stewardship.

## CLARIFY INVESTOR DUTIES IN RELATION TO VOTING

Ensuring effective and accountable shareholder voting by institutional investors in China requires a clear definition of their duty to manage investor rights, including voting rights, and the provision of guidance to fulfil this duty.<sup>39</sup> In an earlier section, we suggest that it is possible to construe existing investor duties to cover stewardship, including exercising the right to vote, for the best interests of clients and beneficiaries. To better guide institutional investors in exercising the right to vote, the NFRA, the CSRC, MoF and MoHRSS may consider clarifying the key elements of such responsibilities for institutional investors under their supervision.

For **asset owners**, financial regulators, particularly the NFRA, MoF and MoHRSS, may consider clarifying that asset owners, such as insurance companies and public and private pension schemes, should fulfil their statutory and contractual obligations to beneficiaries by managing assets, including managing investor rights (such as voting rights) associated with those assets. If assets are managed externally by asset managers who hold exclusive voting rights, asset owners remain responsible and accountable to their beneficiaries, who must be confident that investor rights, including voting rights, are being managed in their best interests. In this case, based on existing regulations,<sup>40</sup> financial regulators may consider requiring asset owners to ensure this through the careful selection and monitoring of asset managers and disclose to their beneficiaries or the general public any policies and procedures established for this purpose and outcomes achieved.

For **asset managers**, financial regulators, particularly the NFRA and CSRC, may clarify their stewardship responsibilities to include the following key elements:

- establish and publish a policy for voting and managing other investor rights, to communicate their key expectations for investee companies and guide voting practices,
- build capacity to manage investor rights, including the right to vote, by providing necessary training and resources,
- streamline the voting process to reduce bureaucracy and increase efficiency,
- disclose voting records to allow clients and beneficiaries to scrutinise voting activities ,

---

<sup>38</sup> The World Economic Forum, [China Asset Management at an Inflection Point](#).

<sup>39</sup> Although previous research largely has focused on shareholder voting, investors in other asset classes in China also enjoy voting rights with different scope and stakeholders involved. (See Annex 2)

<sup>40</sup> Notice of the General Office of the China Banking and Insurance Regulatory Commission on Matters Related to Investment of Insurance Funds in Collective Trust Funds, Article 3. Interim Measures for the Investment of Insurance Funds in Equity" Article 10, Article 18(2), Article 19(3). Notice of the China Banking and Insurance Regulatory Commission on Financial Products Related to the Investment of Insurance Funds, Article 5, Articles 8 to 10, and Article 12. Management Measures for Insurance Fund Entrusted Investment" Article 6, Article 10, Article 18, Article 19, Article 23. Management Measures for the Utilization of Insurance Funds, Article 27(2). Interim Measures for the National Social Security Fund Investment Management" Article 9, Article 11, Article 12. Administrative Measures for Enterprise Annuity Fund Management" Article 22, Article 23, Articles 40 to 42.

- establish a governance structure to assess the performance of voting and other stewardship activities in light of clients' investment horizons and manage conflicts of interest,
- incorporate material ESG factors, including system-level risks, into voting decisions,
- take measures to understand and consider clients' and beneficiaries' preferences when voting.

In light of this, CSRC may need to reconsider the existing restrictions that prevent asset managers of certain private funds from voting or exercising other investors' rights following the guidance of clients or a third party,<sup>41</sup> which may hinder asset owners from fulfilling their duties to beneficiaries.

While it is essential to clarify the scope of investor duties associated with managing investor rights, institutional investors must nonetheless retain the flexibility and discretion to decide on a case-by-case basis whether and when to exercise those rights in light of the best interests of their clients or beneficiaries. In cases where they decide it is in their clients' or beneficiaries' best interests not to exercise those rights, they should clearly communicate and explain their reasoning to clients and beneficiaries.

### Box 1: An example of using financial regulations to clarify investor duties to vote

#### US SEC and Department of Labor on the Scope of Fiduciary Duties in Relation to Proxy Voting

Under the Investment Advisers Act of 1940, which applies to investment advisers registered with the SEC, an adviser is a fiduciary that owes each of its clients the duties of care and loyalty with respect to all services undertaken on the client's behalf, including proxy voting. The duty of care requires an adviser with proxy voting authority to monitor corporate events and to vote the proxies. To satisfy its duty of loyalty, the adviser must cast the proxy votes in a manner consistent with the best interest of its client and must not subrogate client interests to its own.<sup>42</sup> An adviser does not need to exercise every opportunity to vote a proxy if either of two situations applies. First, the investment adviser need not cast a vote on behalf of the client where contemplated by their agreement. Second, an investment adviser with voting authority may refrain from voting a proxy on behalf of a client if it has determined that refraining is in the best interest of that client.<sup>43</sup>

For private pension plans subject to the Employee Retirement Income Security Act of 1974 (ERISA), the Department of Labor's longstanding position is that the fiduciary act of managing plan assets includes the management of voting rights (as well as other shareholder rights) appurtenant to shares of stock. Although the rule relating to fiduciary duties regarding proxy voting and shareholder rights has been subject to frequent changes recently, the core principles have remained the same.<sup>44</sup> To guide plan fiduciaries to exercise the right to vote to fulfil their duties, the DoL provides guidance on what must be considered when deciding whether and when to exercise shareholder rights.

<sup>41</sup> CSRC, [Measures for the Administration of Private Asset Management Business of Securities and Futures Institutions](#), Article 46.

<sup>42</sup> SEC (2003), [Final Rule: Proxy Voting by Investment advisers, Release No. IA-2106; File No. S7-38-02](#).

<sup>43</sup> SEC (2019), [Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers, Release Nos. IA-5325; IC-33605, 23-24](#).

<sup>44</sup> DoL 2020 Final Rule on Fiduciary Duties Regarding Proxy Voting and Shareholder Rights, Article (e)(1), and DoL 2021 Proposed Rule on Fiduciary Duties Regarding Proxy Voting and Shareholder Rights, Article (d)(1).

## CREATING AN ENABLING ENVIRONMENT FOR EFFECTIVE VOTING

Alongside the clarification of investors' legal duties, to address many of the challenges identified in earlier sections, it will be necessary to create a more enabling environment for effective voting. We recommend the consideration of the following measures:

- To effectively enhance corporate accountability to minority shareholders, further measures could be introduced to require investee companies, particularly board members, senior managers responsible for the issues being raised and members of the supervisory board, to actively engage with minority shareholders to understand their concerns and provide a meaningful response when corporate-backed resolutions receive a substantial level of shareholder dissent.
- Creating a safe harbour for investor collaboration aimed at addressing system-level risks that are material to the sustainable growth of listed companies and the real economy in China.
- Supporting platforms for collaborative investor engagement to enable minority investors to engage collaboratively with investee companies.
- Encouraging and guiding the development of service providers such as proxy voting advisers and voting system intermediaries to provide cost-effective technical support for the information transmission between investors and investee companies and for institutional investors to exercise voting rights, disclose voting records and manage conflicts of interest.
- Introducing mandatory standardised corporate ESG reporting requirements that align with and build on the global and regional standards being developed to allow for more informed voting decisions.
- Extending the notice period for adding ad hoc shareholder resolutions so that investors have sufficient time to review proposals and make voting decisions.
- Require listed companies to monitor the collecting and counting of votes cast remotely and to treat all recognised voting channels equally. Listed companies should be required to confirm with shareholders that their votes have been validly recorded and counted. Where intermediaries facilitating the voting process receive such confirmation, they should transmit it without delay to the shareholder.

### **Box 2: An example of increasing corporate accountability when corporate-backed resolutions receive a high level of dissent from shareholders**

[The UK Corporate Governance Code 2018](#) provides that when 20 per cent or more votes have been cast against the board recommendation for a resolution, the company should explain, when announcing the voting results, what actions it intends to take to consult shareholders in order to understand the reasons behind the result. An update on the views received from shareholders and actions taken should be published no later than six months after the shareholder meeting. The board should then provide a final summary in the annual report and, if applicable, in the explanatory notes to resolutions at the next shareholder meeting on what impact the feedback has had on the decisions the board has taken and any actions or resolutions now proposed.

Further, the code also authorized the UK Investment Association to establish a [Public Register](#) to track shareholder dissent at listed companies. This tool tracks key details about a resolution, the results of shareholder votes and the company's response to the dissent. This process helps to identify which companies are acknowledging shareholder dissent and how they are addressing their shareholders' concerns.

## ESTABLISHING A ROBUST IMPLEMENTATION AND MONITORING MECHANISM

A robust implementation and monitoring mechanism should support and incentivise outcomes-focused investor stewardship and help to avoid the adoption of a mechanical compliance approach. Although this briefing focuses on voting, the assessment of stewardship outcomes should examine all stewardship activities as a whole and see voting as an integral part of the investors' stewardship approach. Key to driving long-term improvements in investor stewardship, including voting, will be gradually raising the floor for stewardship practices established by regulation while ensuring stewardship codes or other voluntary standards recognise best-in-class practices. More specific efforts may include the establishment of mechanisms to:

- Monitor the disclosure of voting policy, records and outcomes to ensure investors fulfil their duties and prevent greenwashing.
- Monitor and assess how the outcomes (including progress) of investor stewardship align with investor duties and how this leads to sustainable benefits for the economy, the environment and society, including how voting has contributed to achieving such outcomes.
- Set out guidance that incorporates and encourages best-in-class practices in the market.

### Box 3: Highlights of the implementation mechanism for stewardship policies in the UK

#### A co-ordinated regulatory approach

The Stewardship Regulators Group (SRG) convenes UK regulators and government departments, including the Financial Reporting Council (FRC), Financial Conduct Authority (FCA) and the Department for Work and Pensions (DWP), to foster a co-ordinated regulatory approach to the stewardship initiatives covering various types of investors.

#### A hybrid approach with both mandatory and voluntary requirements

The first UK stewardship code was published by the FRC in 2010 and revised in 2012 and 2019. It sets out stewardship principles for both investors and service providers to adopt on a voluntary basis. FCA and DWP set the minimum requirements for stewardship practices through mandatory rules that require asset managers, insurance and reinsurance asset owners and pension scheme asset owners to publish and explain their stewardship policies.

#### Feedback-oriented rather than compliance-oriented implementation

The implementation of the UK stewardship code follows a comply and explain approach that is designed to avoid a mechanical box-ticking compliance approach and incentivize quality feedback from signatories on how they have applied stewardship principles in light of their different risk profiles, strategies and asset classes under management.

#### Greater emphasis on outcomes

Signatories to the UK stewardship code are expected to annually report on the activities they have taken to apply the principle and the outcomes have been achieved through stewardship. This requirement has prompted investors to be more reflective about not just their stewardship policy but also the progress made to meet the established objectives. They also identify next steps where appropriate and note the areas where objectives have not been met and lessons learned.

#### Key metrics to report on (taking voting as an example)

- Disclose voting policies, including how they exercise the right to vote, how they use the recommendations of proxy advisers, the extent to which clients may override a house policy or direct voting in segregated and pooled accounts.
- Disclose voting records and the proportion of shares that were voted and explain rationales.
- Outcomes of voting: provide examples of outcomes of resolutions investors have voted on.



# ANNEX

## THE RIGHT TO VOTE (BY ASSET CLASSES, EXCLUDING LISTED EQUITY)

| Asset classes                     | Details of the right to vote   |
|-----------------------------------|--|
| <b>Private equity</b>             | <p>Private equity investors enjoy the right to vote at ordinary and extraordinary shareholder meetings based on Article 103 of the Company Law and the article of associations of the investee company.</p> <p>Investors are entitled to vote to decide a wide range of corporate matters, including the company's plans; electing, replacing and remunerating directors and supervisors; approving the company's reports by the board of directors and supervisors; and amending the article of associations.</p>   |
| <b>Bonds</b>                      | <p>Depending on the type of bonds involved in the investment, investors' rights to vote are shaped by the rules issued by CSRC, NDRC and NAFMII.<sup>45</sup> Investors are entitled to attend a bondholders' meeting or debt finance instrument holders' meeting convened only when specific conditions are met.</p> <p>Bondholders are entitled to vote on matters directly related to investment returns, including approving amendments to debt covenants and/or terms of issuance, approving debt restructuring plans and approving amendments to the use of proceeds.</p>  |
| <b>Public funds<sup>46</sup></b>  | <p>Investors in public funds may participate in the governance of the funds by exercising the right to vote at the fund unit holders' meeting based on Article 46(5) of the Law of Securities Investment Funds and investment agreements.</p> <p>At the fund unit holders' meeting, investors may vote to decide on matters including amending the clauses of the fund contract or terminating the contract, replacing the fund manager or custodian and adjusting the remuneration standard applied to the fund manager or the custodian.</p>   |
| <b>Private funds<sup>47</sup></b> | <p>Private funds could be categorised into three different types, and investor rights to participate in the governance of the funds vary depending on the type of fund involved.</p> <ul style="list-style-type: none"> <li>-<i>Private funds as a corporation</i>: investors are company shareholders and therefore enjoy the right to vote as per the Company Law and the article of associations.</li> <li>-<i>Private funds as a limited partnership</i>: investors are limited partners and therefore enjoy the right to vote as per the Partnership Enterprise Law and the partnership agreement.</li> <li>-<i>Private funds based on investment contracts</i>: investors are entitled to vote at a fund's unit holders meeting based on Article 46(5) of the Law of Securities Investment Funds and investment agreements.</li> </ul> |

Source: JunHe LLP, PRI research.

<sup>45</sup> CSRC, Regulations on Corporate Bonds Issuance and Transaction; Corporate Bond Listing Rules by SSE and SZSE; Notice of the General Office of the National Development and Reform Commission (NDRC) on issues related to further strengthening the supervision of the duration of corporate bonds; National Association of Financial Market Institutional Investors, Regulations for Meetings of Holders of Non-financial Corporate Debt Financing Instruments in the Interbank Bond Market (2019 Edition).

<sup>46</sup> Public funds are also known as publicly-offered funds, which are offered to unspecific investors or more than 200 specific investors cumulatively.

<sup>47</sup> Private funds are also known as non-publicly offered funds, which are offered to qualified investors. The number of qualified investors shall not exceed 200 cumulatively.

## INVESTOR DUTIES RELATED TO VOTING (BY TYPES OF INSTITUTIONAL INVESTORS)

| Institutional investors    | To what extent do institutional investors have the duty to manage vote rights in the interests of clients or beneficiaries   |
|----------------------------|--|
| <b>Public funds</b>        | <p>There are no explicit requirements to manage voting rights in the interests of clients or beneficiaries; however, it is possible to construe general investor duties to include such requirements.</p> <ul style="list-style-type: none"> <li>• Fund managers are obliged to file litigation and take ‘other legal actions’ in the interest of their clients,<sup>48</sup> where ‘other legal actions’ could be interpreted as covering exercising the right to vote.</li> <li>• Fund managers are obliged to handle trust affairs in the best interests of their beneficiaries with honesty, good faith, prudence and effectiveness. In cases where investors’ votes might enhance the value of investee companies, fund managers are arguably under the obligation to do so.</li> </ul> |
| <b>Private funds</b>       | <p>No matter the type of private fund, managers are under the fiduciary duty to manage entrusted assets in the best interest of clients.<sup>49</sup> In cases where investors’ votes might enhance the value of investee companies, fund managers are arguably under the obligation to do so.</p>   |
| <b>Pension funds</b>       | <p>There are no explicit requirements to manage voting rights in the interests of clients or beneficiaries; however, it is possible to construe that general investor duties include such requirements.</p> <p>Contractual and agency duties owed by the trustees to fund sponsors arise from the entrustment arrangements and require that trustees fulfil the duties of honesty, good faith, prudence and diligence. In cases where investors’ votes might enhance the value of investee companies, fund managers are arguably under the obligation to do so.</p>  |
| <b>Insurance companies</b> | <p>NFRA sets out explicit requirements for insurance companies to exercise investor rights, arguably including the right to vote, to monitor and improve the ESG performance<sup>50</sup> of portfolio companies (for direct investment)<sup>51</sup> or asset managers (for indirect investment).<sup>52</sup></p>  |

Source: JunHe LLP, PRI research.

<sup>48</sup> Law of Securities Investment Funds, Article 19.

<sup>49</sup> AMAC, Research on Fiduciary Duties of Fund Managers.

<sup>50</sup> CBIRC Green Finance Guidelines for Banking and Insurance Institutions.

<sup>51</sup> Interim Rules for Insurance Capital Involved in Equity Investment, Article 19(2); CBIRC Green Finance Guidelines for Banking and Insurance Institutions; Interim Measures for Insurance Funds Investment in Real Estate, Article 20(2).

<sup>52</sup> Notice of the General Office of China Banking and Insurance Regulatory Commission on Matters Relating to the Investment of Insurance Funds in Pooled Funds Trust, Article 12; Interim Rules for Insurance Capital Involved in Equity Investment, Article 19(3).