

MORROW SODALI

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BRAZIL PROXY UPDATES

ISS 2020 PROXY GUIDELINES UPDATE

Institutional Shareholder Services (“ISS”) released its policy updates that will go into effect for meetings on or after February 1, 2020. The policy updates can be viewed [here](#). In general, ISS’ policy guidelines updates consider relevant regulatory changes by the Brazilian Securities Regulator (CVM), internal reviews of emerging issues and notable trends in Brazil’s capital market, and information gathered throughout the year, such as studies, researches and ISS’ 2019 Global Policy Survey with feedback from investors and companies. We discuss all the policy changes in greater detail below.

COMPENSATION PLANS

As already announced in 2019, **ISS will generally support reasonable equity pay plans** that encourage long-term commitment and ownership by its recipients without posing significant risks to shareholder value.

The 2020 policy was updated to disclose that **ISS will also consider the potential for conflict of interests** when administrators are also beneficiaries of equity compensation plans, and whether there are sufficient safeguards to mitigate such concerns.

BOARD OF DIRECTORS: DISMISS DIRECTORS

Considering some recent cases in Brazil (mostly in, but not limited to, state-controlled companies) in which controlling shareholders have proposed to dismiss directors before the end of their terms without a rationale, this update codifies **ISS’** current practice to disclose their analysis approach of such proposals paying particular attention to the company’s rationale and the impact of the proposed change in board composition and independence level.

ISS will vote on a case-by-case basis when the company proposes to dismiss directors, paying particular attention, but not limited, to:

- Whether the company has presented a **compelling rationale** for the request; and
- Whether the overall **independence level** of the newly proposed board is in line with ISS policy guidelines.

Minimum Independence Levels: *ISS’ benchmark board independence policy specifies that the boards of issuers belonging to the Novo Mercado and Nivel 2, the country’s highest levels of corporate governance, must be at least 30-percent independent, consistent with proportional board representation best practices and the growing expectations of institutional investors. ISS also recommends a minimum of at least one independent director for companies listed under the Nivel 1 differentiated corporate governance segment and the Traditional segment.*

BOARD OF DIRECTORS: DIRECTOR, OFFICER, AND AUDITOR INDEMNIFICATION AND LIABILITY PROVISIONS

In response to the evolving market practices, the policy update provides greater clarity on the analytical framework for indemnity proposals, which have become more prevalent in the Brazilian market on the heels of multiple ongoing corruption investigations.

ISS will vote on a case-by-case basis for proposals seeking indemnification and liability protection for company’s directors, officers, and/or fiscal council members and employees directors and officers. **ISS will consider the company’s disclosure regarding terms**, such as: safeguards to prevent potential conflict of interests, description of acts and events that can and cannot be covered by the indemnity policy, its potential financial impact, the eligible beneficiaries, and treatment of indemnity payments already made in the event of a final irreversible court ruling.

ISS will vote against proposals that would:

- Allow indemnity coverage for current and/or former director, officers, and/or fiscal council members who have entered into leniency agreements with the country’s authorities in the context of corruption investigations;
- Allow indemnity coverage of acts committed outside the normal exercise of duties of the administrator, acts performed in bad faith, malice, or fraud, or acts committed in detriment of the company’s best interest; and
- Indemnify external auditors.

GLASS LEWIS 2020 PROXY GUIDELINES UPDATE

Glass Lewis (“GL”) issued its policy update for the upcoming 2020 proxy season. The guidelines are available on Glass Lewis’ client website [here](#). Glass Lewis’ policy guidelines take into account Brazil’s capital market law, regulations of the listing segments on B3 and CVM, IBGC’s recommendations and what they view as universal best corporate governance practices. These guidelines are reviewed annually and on an *ad-hoc* basis to ensure they remain in accordance with market practice. Overall, the scope of the update is fairly minor this year. Among the main changes, GL has updated its guidelines following the approval of CVM Instruction 614/2019 on September 3, 2019, where shareholders will no longer need to choose between supporting the minority candidates and the management/controlling shareholders’ proposed slate. We summarize the new policy and all the other changes below.

ELECTION OF DIRECTORS

Following the regulatory changes, **GL will recommend on a case-by-case basis the candidates up for election as directors**, and recommend that shareholders cast their votes on the suitable candidate(s) proposed by minority shareholders and/or on the slate presented by the controlling shareholder/management.

GL will base their recommendation on the nominees’ qualifications and experience, as well as on the company’s shareholder structure, in cases where multiple minority candidates have been nominated.

CUMULATIVE VOTING

From January 1, 2020, non-controlling common shareholders will have the opportunity to vote both on the slate presented by the controlling shareholder/management, and the minority candidate(s), who will continue to be elected through a separate election.

GL will recommend shareholders distribute their votes equally among suitable candidates, taking into account the number of candidates presented and the shareholder structure, so as to ensure a reasonable balance between independent and non-independent directors on the board.

GL will analyse on a case-by-case basis the candidates up for election and the composition of the board.

ENVIRONMENTAL AND SOCIAL RISK OVERSIGHT

In addition, as of 2019, the GL proxy guidelines were updated to also codify their approach to reviewing how boards are overseeing environmental and social issues.

GL may recommend against members of the board who are responsible for oversight of environmental and social risks, if a company has not properly managed or mitigated environmental or social risks to the detriment of shareholder value, or when such mismanagement has threatened shareholder value.

GL may recommend against members of the audit committee, if there is an explicit absence of board oversight of environmental and social issues.

We will monitor how the new ISS and GL guidelines impact voting in 2020 and update our clients to any significant developments.

In the meantime, please contact your Morrow Sodali representative if you have any questions.