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## 2014 Russia and Kazakhstan Proxy Voting Guidelines

December 19, 2013

Institutional Shareholder Services Inc.

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## ISS' 2014 Russia and Kazakhstan Proxy Voting Guidelines

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## Introduction

The Law on Joint Stock Companies (JSC Law) is the main law regulating the activities of joint stock companies in Russia. Of particular importance are also the Federal Law on the Securities Market, which regulates the issuance and circulation of securities and the Listing Rules of the Moscow Exchange (latest update effective from 21 February 2013).

On 1 September 2013, the powers of the Federal Financial Markets Service (FFMS), Russia's securities commission, in the field of regulation, control and supervision in the financial markets were transferred to the Bank of Russia. The regulatory, supervisory, and oversight functions of the Bank of Russia in the field of financial markets will be fulfilled by the Financial Supervision Committee.

The Law on Joint Stock Companies (JSC Law) dated May 13, 2003, is the main law regulating the activities of joint stock companies in Kazakhstan.

The Committee for the Control and Supervision of the Financial Market and Financial Organizations of the National Bank of Kazakhstan, established in 2011, is the main regulator of the Kazakhstan's capital market. The Committee performs the functions of state control and supervision of activities of banks, insurance companies, pension and investment funds, and securities market entities, as well as protection of rights of consumers of financial services.

Legal and regulatory requirements are typically incorporated into the company's charter, which is the main document covering the governance of the company, and the internal regulations. Issuers in Russia and Kazakhstan have multiple internal documents stipulating the rules and procedures for the governing bodies of the company.

At the typical Russian AGM, shareholders will be asked to approve the following:

- Annual report and financial statements
- Allocation of Income, including payment of dividends
- Auditors' appointment
- Election of directors
- Election of audit commission members
- Related-party transactions and large-scale transactions
- Amendments to the Charter and other internal regulations
- Approval of director fees
- Approval of remuneration policy for non-executive directors.

This document outlines the ISS policy on the above resolutions. For proposals which typically appear on an infrequent basis at Russian and Kazakh meetings, and which are not covered in this document, ISS will refer to the EMEA Regional Policy as a framework for analysis.

# 1. OPERATIONAL ITEMS

## Financial Results/Director and Auditor Reports

Vote for approval of financial statements and director and auditor reports, unless:

- The financial statements and/or auditor's report are not disclosed or are incomplete
- There are concerns about the accounts presented or audit procedures used; or
- The company is not responsive to shareholder questions about specific items that should be publicly disclosed.

## Appointment of Auditors and Auditor Fees

Vote for the (re)election of auditors and/or proposals authorizing the board to fix auditor fees, unless:

- There are serious concerns about the procedures used by the auditor;
- There is reason to believe that the auditor has rendered an opinion which is neither accurate nor indicative of the company's financial position;
- External auditors have previously served the company in an executive capacity or can otherwise be considered affiliated with the company;
- Name of the proposed auditors has not been published; or
- The auditors are being changed without explanation;

For concerns related to the audit procedures, independence of auditors, and/or name of auditors, ISS may recommend against the auditor (re)election

## Appointment of Audit Commission Members

Vote for the election of the audit commission members where the number of nominees is equal to the number of seats on the audit commission unless:

- Adequate disclosure, including the nominees' names, has not been provided in a timely manner;
- There are serious concerns about the work and/or the composition of the audit commission;
- There are serious concerns about the statutory reports presented or the audit procedures used;
- There are serious concerns over questionable finances or restatements;

Where the number of nominees exceeds the number of seats on the audit commission, vote on a case-by-case basis considering the following factors:

- Nominees' independence and potential conflicts of interest;
- Nominees' qualifications, experience, and past track records;
- Current composition of audit commission;

## Early Termination of Powers of the Audit Commission

ISS will recommend a vote for the early termination of powers of the audit commission unless there are any concerns with this proposal.

## Allocation of Income

Vote for approval of the allocation of income, unless:

- The dividend payout ratio has been consistently below 30 percent without adequate explanation; or
- The payout is excessive given the company's financial position.

## Amendments to Articles of Association

Vote amendments to the articles of association on a case-by-case basis.

## Change in Company Fiscal Term

Vote for resolutions to change a company's fiscal term unless a company's motivation for the change is to postpone its AGM.

## Transact Other Business

Vote against other business when it appears as a voting item.

# 2. BOARD OF DIRECTORS

## Director Elections

### Mechanics of the Cumulative Voting System in Russia and Kazakhstan

Under a cumulative voting system, each share represents a number of votes equal to the size of the board that will be elected [i.e. if the board is composed of 10 directors, each company share will represent 10 votes]. These votes may be apportioned equally among the candidates or, if a shareholder wishes to exclude some nominees, among the desired candidates that remain.

It is important to recognize that in the context of director elections by cumulative voting, shareholders do not vote against any nominee, but rather support some of the nominees. This is an important distinction, as in some cases, shareholders may choose to support not all but rather a limited number of nominees.

### ISS Policy

Where the number of candidates is equal to the number of board seats, vote for all independent director nominees (per ISS' classification of directors).

Where the number of candidates exceeds the number of board seats, vote for all or a limited number of the independent director nominees (per ISS' classification of directors) considering factors including, but not limited to, the following:

- Past composition of the board, including proportion of the independent directors vis-a-vis the size of the board;
- Nominee(s) qualification, knowledge, and experience;
- Attendance record of the directors nominees;
- Company's free float;

Where none of the director nominees can be classified as independent (per ISS' classification of directors), ISS will consider factors including, but not limited to, the following when deciding whether to recommend in favour of a candidate's (re)election:

- A director nominee, while not classified as independent per ISS' classification of directors, has been classified as independent per company's director classification criteria and/or any other directors classification criteria widely used in the market;
- A director nominee possesses adequate qualification, knowledge and experience;
- There are no specific concerns about the individual, such as criminal wrongdoing or breach of fiduciary responsibilities;

ISS may consider not supporting the election of an individual director in case:

- Adequate disclosure has not been provided in a timely manner;
- A director nominee has been involved in questionable transactions with conflicts of interest;

- A director nominee has breached fiduciary duties or engaged in willful misconduct or gross negligence in his/her capacity as a director that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company;
- There are any records of abuses against minority shareholder interests.
- Material failures of governance, stewardship, risk oversight, or fiduciary responsibilities at the company;

At companies on the main index, ISS may recommend against all nominees, if none of the proposed candidates can be classified as independent non-executive directors (per ISS' classification of directors).

Vote on a case-by-case basis for contested elections of directors, e.g. the election of shareholder nominees or the dismissal of incumbent directors, determining which directors may be best suited to add value for shareholders.

### Disclosure of Nominee Names

ISS will recommend a vote against the election of directors at all companies if the names of the nominees are not disclosed in a timely manner prior to the meeting.

### ISS Classification of Directors

#### Executive Director

- Any director who is disclosed as an employee or executive of the company;
- Any director who is classified as a non-executive, but receives salary, fees, bonus, and/or other benefits that are in line with the highest-paid executives of the company.

#### Non-Independent Non-Executive Director (NED)

- Any director who is attested by the board to be a non-independent NED;
- Any director specifically designated as a representative of a significant shareholder of the company;
- Any director who is also an employee or executive of a significant shareholder of the company;
- Any director who is nominated by a significant shareholder, unless there is a clear lack of material<sup>[5]</sup> connection with the shareholder, either currently or historically;
- Beneficial owner (direct or indirect) of at least 10 percent of the company's stock, either in economic terms or in voting rights (this may be aggregated if voting power is distributed among more than one member of a defined group, e.g., family members who beneficially own less than 10 percent individually, but collectively own more than 10 percent), unless market best practice dictates a lower ownership and/or disclosure threshold (and in other special market-specific circumstances);
- Government representative;
- Currently provides (or a relative<sup>[1]</sup> provides) professional services<sup>[2]</sup> to the company, to an affiliate of the company, or to an individual officer of the company or of one of its affiliates in excess of \$10,000 per year;
- Represents customer, supplier, creditor, banker, or other entity with which company maintains transactional/commercial relationship (unless company discloses information to apply a materiality test<sup>[3]</sup>);
- Any director who has conflicting or cross-directorships with executive directors or the chairman of the company;
- Relative<sup>[1]</sup> of a current or former executive of the company or its affiliates;
- A new appointee elected other than by a formal process through the General Meeting (such as a contractual appointment by a substantial shareholder);
- Founder/co-founder/member of founding family but not currently an employee;
- Former executive (five-year cooling off period);
- Years of service is generally not a determining factor unless it is recommended best practice in a market and/or in extreme circumstances, in which case it may be considered.
- Any additional relationship or principle considered to compromise independence under local corporate governance best practice guidance.

#### Independent NED

- No material<sup>[4]</sup> connection, either directly or indirectly, to the company (other than the board seat) or to a significant shareholder.

**Footnotes:**

[1] “Relative” follows the definition of “immediate family members” which covers spouses, parents, children, stepparents, step-children, siblings, in-laws, and any person (other than a tenant or employee) sharing the household of any director, nominee for director, executive officer, or significant shareholder of the company.

[2] Professional services can be characterized as advisory in nature and generally include the following: investment banking/financial advisory services; commercial banking (beyond deposit services); investment services; insurance services; accounting/audit services; consulting services; marketing services; and legal services. The case of participation in a banking syndicate by a non-lead bank should be considered a transaction (and hence subject to the associated materiality test) rather than a professional relationship.

[3] A business relationship may be material if the transaction value (of all outstanding transactions) entered into between the company and the company or organization with which the director is associated is equivalent to either 1 percent of the company's turnover or 1 percent of the turnover of the company or organization with which the director is associated. OR, A business relationship may be material if the transaction value (of all outstanding financing operations) entered into between the company and the company or organization with which the director is associated is more than 10 percent of the company's shareholder equity or the transaction value, (of all outstanding financing operations), compared to the company's total assets, is more than 5 percent. OR, A business relationship may be material if it is considered that it may be of significance the director.

[4] For purposes of ISS' director independence classification, “material” will be defined as a standard of relationship financial, personal or otherwise that a reasonable person might conclude could potentially influence one's objectivity in the boardroom in a manner that would have a meaningful impact on an individual's ability to satisfy requisite fiduciary standards on behalf of shareholders.

## Early Termination of Powers of Board of Directors

ISS will recommend a vote for the early termination of powers of the board of directors where such a proposal is supported by compelling justification.

ISS will recommend a vote against proposals seeking to alter the composition of the board and resulting in majority shareholder increasing its influence on the board.

## Election of General Director (CEO)

Generally vote for the election of the general director, unless there are significant concerns with the proposed candidate and/or compelling controversies with the election process exist.

## Early Termination of Powers of General Director (CEO)

ISS will recommend a vote for the early termination of powers of the general director where such a proposal is supported by compelling justification.

ISS will recommend a vote against proposals to terminate the powers of the general director if such proposals are not supported by compelling rationale.

## Contested Director Elections

For contested elections of directors, e.g. the election of shareholder nominees or the dismissal of incumbent directors, ISS will make its recommendation on a case-by-case basis, determining which directors may be best suited to add value for shareholders.

The analysis will generally be based on, but not limited to, the following major decision factors:

- Company performance relative to its peers;
- Strategy of the incumbents versus the dissidents;
- Independence of directors/nominees;
- Experience and skills of board candidates;
- Governance profile of the company;
- Evidence of management entrenchment;

- Responsiveness to shareholders;
- Whether a takeover offer has been rebuffed;
- Whether minority or majority representation is being sought.

When analyzing a contested election of directors, ISS will generally focus on two central questions: (1) Have the dissidents proved that board change is warranted? And (2) if so, are the dissident board nominees likely to effect positive change (i.e., maximize long-term shareholder value).

### Director, Officer, and Auditor Indemnification and Liability Provisions

Vote proposals seeking indemnification and liability protection for directors and officers on a case-by-case basis.

Vote against proposals to indemnify external auditors.

### Board Structure

Vote for proposals to fix board size unless such a proposal will result in change of the size or structure of the board that will have a negative impact for minority shareholders.

Vote against the introduction of classified boards and mandatory retirement ages for directors.

Vote against proposals to alter board structure or size in the context of a fight for control of the company or the board.

## 3. CAPITAL STRUCTURE

### Share Issuance Requests

#### *General Issuances*

Vote for issuance requests with preemptive rights to a maximum of 100 percent of currently issued capital.

Vote for issuance requests without preemptive rights to a maximum of 20 percent of currently issued capital.

#### *Specific Issuances*

Vote on a case-by-case basis on all requests, with or without preemptive rights.

### Authorized Capital Increase Requests

Vote for non-specific proposals to increase authorized capital up to 100 percent of the current authorization unless the increase would leave the company with less than 30 percent of its new authorization outstanding.

Vote for specific proposals to increase authorized capital to any amount, unless:

- The specific purpose of the increase (such as a share-based acquisition or merger) does not meet ISS guidelines for the purpose being proposed; or
- The increase would leave the company with less than 30 percent of its new authorization outstanding after adjusting for all proposed issuances.

Vote against proposals to adopt unlimited capital authorizations.

### Reduction of Capital Requests

Vote for proposals to reduce capital for routine accounting purposes unless the terms are unfavourable to shareholders.

Vote proposals to reduce capital in connection with corporate restructuring on a case-by-case basis.

### Changes to Capital Structures

Vote for resolutions that seek to maintain or convert to a one-share, one-vote capital structure.

Vote against requests for the creation or continuation of dual-class capital structures or the creation of new or additional super voting shares.

### Preferred Stock Requests

Vote for the creation of a new class of preferred stock or for issuances of preferred stock up to 50 percent of issued capital unless the terms of the preferred stock would adversely affect the rights of existing shareholders.

Vote for the creation/issuance of convertible preferred stock as long as the maximum number of common shares that could be issued upon conversion meets ISS guidelines on equity issuance requests.

Vote against the creation of a new class of preference shares that would carry superior voting rights to the common shares.

Vote against the creation of blank check preferred stock unless the board clearly states that the authorization will not be used to thwart a takeover bid.

Vote proposals to increase blank check preferred authorizations on a case-by-case basis.

### Debt Issuance Requests

Vote non-convertible debt issuance requests on a case-by-case basis, with or without preemptive rights.

Vote for the creation/issuance of convertible debt instruments as long as the maximum number of common shares that could be issued upon conversion meets ISS guidelines on equity issuance requests.

Vote for proposals to restructure existing debt arrangements unless the terms of the restructuring would adversely affect the rights of shareholders.

### Pledging of Assets for Debt

Vote proposals to approve the pledging of assets for debt on a case-by-case basis.

### Share Repurchase Plans

Generally vote for market repurchase authorities (share repurchase programs) if the terms comply with the following criteria:

- A repurchase limit of up to 10 percent of outstanding issued share capital;
- A holding limit of up to 10 percent of a company's issued share capital in treasury ("on the shelf"); and
- A duration of no more than five years, or such lower threshold as may be set by applicable law, regulation, or code of governance best practice.

Authorities to repurchase shares in excess of the 10 percent repurchase limit will be assessed on a case-by-case basis. ISS may support such share repurchase authorities under special circumstances, which are required to be publicly disclosed by the company, provided that, on balance, the proposal is in shareholders' interests. In such cases, the authority must comply with the following criteria:

- A holding limit of up to 10 percent of a company's issued share capital in treasury ("on the shelf"); and
- A duration of no more than 18 months.

In addition, ISS will recommend against any proposal where:

- The repurchase can be used for takeover defences;
- There is clear evidence of abuse or risk of abuse;
- There is no safeguard against selective buybacks; and/or
- Pricing provisions and safeguards are deemed to be unreasonable in light of market practice.

## Capitalization of Reserves for Bonus Issues/Increase in Par Value

Vote for requests to capitalize reserves for bonus issues of shares or to increase par value.

# 4. COMPENSATION

## Non-Executive Director Compensation

ISS will generally recommend a vote for proposals to award cash fees to non-executive directors, but will recommend a vote against where:

- Documents (including general meeting documents, annual report) provided prior to the general meeting do not disclose the fees paid to non-executive directors.
- Proposed amounts are excessive relative to other companies in the country or industry.
- The company intends to increase the fees excessively in comparison with market/sector practices, without stating compelling reasons that justify the increase.
- Proposals provide for the granting of stock options, or similarly performance-based compensation, to non-executive directors.
- Proposals introduce retirement benefits for non-executive directors.

And recommend a vote on a case-by-case basis where:

- Proposals include both cash and share-based components to non-executive directors.
- Proposals bundle compensation for both non-executive and executive directors into a single resolution.

## Equity-Based Compensation Guidelines

ISS will generally recommend a vote for equity based compensation proposals for employees if the plan(s) are in line with long-term shareholder interests and align the award with shareholder value. This assessment includes, but is not limited to, the following factors:

- The volume of awards transferred to participants must not be excessive;
- The potential volume of fully diluted issued share capital from equity-based compensation plans must not exceed the following ISS guidelines:
- The shares reserved for all share plans may not exceed 5 percent of a company's issued share capital, except in the case of high-growth companies or particularly well-designed plans, in which case we allow dilution of between 5 and 10 percent: in this case, we will need to have performance conditions attached to the plans which should be acceptable under ISS criteria (challenging criteria)\*;
- The plan(s) must be sufficiently long-term in nature/structure: the minimum vesting period must be no less than three years from date of grant;
- The awards must be granted at market price. Discounts, if any, must be mitigated by performance criteria or other features that justify such discount;
- If applicable, performance standards must be fully disclosed, quantified, and long-term, with relative performance measures preferred.

# 5. OTHER ITEMS

## Reorganizations/Restructurings

Vote reorganizations and restructurings on a case-by-case basis.

## Mergers and Acquisitions

Vote case-by-case on mergers and acquisitions taking into account all relevant available information.

For every M&A analysis, ISS reviews publicly available information as of the date of the report and evaluates the merits and drawbacks of the proposed transaction, balancing various and sometimes countervailing factors including:

- Valuation - Is the value to be received by the target shareholders (or paid by the acquirer) reasonable? While the fairness opinion may provide an initial starting point for assessing valuation reasonableness, ISS places emphasis on the offer premium, market reaction, and strategic rationale.
- Market reaction - How has the market responded to the proposed deal? A negative market reaction will cause ISS to scrutinize a deal more closely.
- Strategic rationale - Does the deal make sense strategically? From where is the value derived? Cost and revenue synergies should not be overly aggressive or optimistic, but reasonably achievable. Management should also have a favorable track record of successful integration of historical acquisitions.
- Conflicts of interest - Are insiders benefiting from the transaction disproportionately and inappropriately as compared to non-insider shareholders? ISS will consider whether any special interests may have influenced these directors and officers to support or recommend the merger.
- Governance - Will the combined company have a better or worse governance profile than the current governance profiles of the respective parties to the transaction? If the governance profile is to change for the worse, the burden is on the company to prove that other issues (such as valuation) outweigh any deterioration in governance.

Vote against if the companies do not provide sufficient information to make an informed voting decision.

### Mandatory Takeover Bid Waivers

Vote proposals to waive mandatory takeover bid requirements on a case-by-case basis.

### Expansion of Business Activities

Vote resolutions to expand business activities on a case-by-case basis.

### Related-Party Transactions

In evaluating resolutions that seek shareholder approval of related-party transactions (RPTs), vote on a case-by-case basis, considering factors including, but not limited to, the following:

- The parties on either side of the transaction;
- The nature of the asset transferred/service provided;
- The pricing of the transaction (and any associated professional valuation);
- The views of independent directors (where provided);
- The views of an independent financial adviser (where appointed);
- Whether any entities party to the transaction (including advisers) are conflicted; and
- The stated rationale for the transaction, including discussions of timing.

If there is a transaction that ISS deemed problematic and that was not put to a shareholder vote, ISS may recommend against the election of the director involved in the related-party transaction or the full board.

### Antitakeover Mechanisms

Generally vote against all antitakeover proposals, unless they are structured in such a way that they give shareholders the ultimate decision on any proposal or offer.

### Shareholder Proposals

Vote all shareholder proposals on a case-by-case basis.

Vote for proposals that would improve the company's corporate governance or business profile at a reasonable cost.

Vote against proposals that limit the company's business activities or capabilities or result in significant cost being incurred with little or no benefit.

## Social/Environmental Issues

### *Global Approach*

Issues that may be covered include a wide range of topics, including consumer and product safety, environment and energy, labour covered standards and human rights, workplace and board diversity, and corporate political issues. While a variety of factors goes into each analysis, the overall principle guiding all vote recommendations focuses on how the proposal may enhance or protect shareholder value in either the short term or long term.

Generally vote case-by-case, taking into consideration whether implementation of the proposal is likely to enhance or protect shareholder value, and in addition the following will be considered:

- If the issues presented in the proposal may more appropriately or effectively dealt with through legislation or government regulation;
- If the company has already responded in an appropriate and sufficient manner to the issue(s) raised in the proposal;
- Whether the proposal's request is unduly burdensome (scope, timeframe, or cost) or overly prescriptive;
- The company's approach compared with any industry standard practices for addressing the issue(s) raised by the proposal;
- If the proposal requests increased disclosure or greater transparency, whether or not reasonable and sufficient information is currently available to shareholders from the company or from other publicly available sources; and
- If the proposal requests increased disclosure, whether or not implementation would reveal proprietary or confidential information that could place the company at a competitive disadvantage.

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