

# Brazil Policy and Americas Regional Policy – Classification of Directors – Tenure Limit

## Background and Overview

Under the current ISS Voting Guidelines for both Brazil and Americas Regional (Latin American markets, excluding Brazil), director tenure is not a determining factor in making director independence classifications. In recent years however, a number of markets covered by these policies (mainly Argentina, Brazil, and Peru) have implemented a mix of both hard and soft laws that either cap tenure for independent directors or suggest that “excessive” tenure may compromise a director's independence.

Most notably, Brazil's Corporate Governance Code now recommends that independent directors should not serve an excessive number of terms, without defining what would be considered “excessive”. Meanwhile, Argentina's securities regulator (*CNV*) announced in April 2018 a regulation deeming directors as non-independent after serving a tenure of 10 consecutive years.

## Key Changes Under Consideration

Under the proposed classification of directors, beginning in Feb. 2019, ISS would deem any director as non-independent if he/she has served for 12 or more years consecutively on the board of directors.

Furthermore, in the event that a market's best practices code recommends a stricter tenure limit, ISS will follow the market's approach.

## Intent and Impact

ISS proposes changes to its classification of directors in response to the recent developments in various markets covered by the Brazil and Americas Regional Policies. After considering a number of different scenarios, ISS considers that the 12-year tenure would be a reasonable threshold for consideration of a director as non-independent. This seeks to balance the importance of board refreshment with allowing independent board members to build company-specific knowledge.

The proposed policy update does not mean a direct change to voting policy on individual directors not considered independent. ISS policy considers the balance of independent directors on a board. Given that overall board independence is a key vote recommendation driver for both Brazil and the Americas Region, however, changes in overall board independence could lead to an increase in AGAINST recommendations. Considering the most widely-held companies, under the proposed 12-year tenure policy, approximately 3.2 percent of independent directors in Brazil and 24.7 percent of independent directors in the Americas Region would be deemed non-independent. The increase in AGAINST vote recommendations, however, would be much lower for the reason given above.

For markets covered under these policies, in order to recommend a vote FOR director nominees, ISS requires both the timely disclosure of board nominees and a minimum overall board independence threshold. The minimum independence requirement ranges from one independent director on the board to 30-percent overall board independence, depending on the country and the listing segment of the company. Considering the vote recommendations made by ISS on management nominees during

the 2018 proxy season, under the proposed change, ISS estimates an increase in AGAINST recommendations for director elections of approximately three percent for Brazilian board elections and four percent for elections in the remainder of Latin America.

### **Request for Comment**

While we will appreciate any comments on this topic, ISS specifically seeks feedback on the following:

- Does your organization favor the implementation of a director tenure policy determining a threshold above which all directors would be classified as non-independent?
- If you answered yes to the previous question, is 12 years a reasonable tenure limit for such proposed policy?
- Are there any additional factors that should be considered when evaluating a director's tenure as a determining factor for a director's classification?