

Brazil



Remote Voting Card (RVC)

Frequently Asked Questions

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The purpose of this FAQ is to explain the new mandatory remote voting card (RVC) in Brazil, how it works, and ISS' policy application regarding the procedural questions. As 2018 will be the first year of wide adoption of the RVC, which is now mandated to all Brazilian publicly-traded companies, this document will continue to be updated as market practices adapt to the new regulatory requirements and new information becomes available.

1. What is the remote voting card (RVC)?

The RVC enables investors to participate and vote remotely at shareholder meetings of Brazilian publicly-traded companies. The Brazilian Securities Regulator's (CVM) Instruction 561/2015 was the first one to regulate the remote voting system, initially authorized after a legislative reform in 2011, when articles 121 and 127 of the Brazilian Corporate Law (Law 6,404/1976) were amended to allow shareholders to participate and vote remotely at shareholder meetings. The structure of the remote voting card was included as Chapter III-A of the Instruction 481/2009, which governs the disclosure requirements of general and special meetings for publicly-traded companies in Brazil.

Following the 2017 proxy season, when the remote voting card was first mandatory for a limited number of companies, the Brazilian Regulator reviewed the first experiences and published, on Dec. 20, 2017, the new Instruction 594/2017 setting out new rules and the language of an updated remote voting card as part of the effort to address some of the obstacles discovered after the introduction of the remote voting card system during the 2017 proxy season.

2. What problem does the remote voting card system try to address?

According to the Brazilian Securities Regulator, the current proxy voting system did not provide a cost-effective route for shareholder participation due to the high registration costs. For example, requirements for power-of-attorney and proof of shareholder status, which, in the case of foreign legal entities, involve a complex process of translation and registration of the entities' bylaws and management acts.

The RVC instruction now regulates a parallel system, which did not replace the proxy voting process, but created an alternative voting avenue that utilizes the same chain currently used by investors to process corporate events such as distribution of dividends and the exercise of preemptive rights - specifically central depositories, custodians, and bookkeepers.

The Regulator determined that the voting instructions sent through the RVC should be treated by companies as a direct vote from the shareholder, with no need to register additional documents. The Regulator intends this to substantially reduce voting costs for shareholders and lower some of the barriers to participation at shareholder meetings.

3. What companies are required to provide a remote voting card?

As of January 2018, the RVC is mandatory to all Brazilian publicly-traded companies.

4. When do Brazilian publicly-traded companies need to publish the remote voting card?

Companies are required to file the remote voting card with the Brazilian Securities Regulator (CVM) 30 days prior to the shareholder meeting.

The date for the annual shareholder meeting must be disclosed by the companies during the first 15 days of the fiscal year (until Jan. 15 for companies with fiscal year ended on Dec. 31, for example). If such communication is not presented to the market within the aforementioned deadline, the annual shareholder meeting will take place on the same day as the previous fiscal year.

5. Must the remote voting card be provided by the companies for all their shareholder meetings?

The original rules established that the RVC was mandatory for annual shareholder meetings and for special meetings with elections proposals (board and fiscal council elections) held at any time of the year. The updated instruction, released on Dec. 20, 2017, amended this provision and established, in addition to the aforementioned shareholder meetings, that the RVC is also mandatory for all special meetings held on the same day of the annual shareholder meetings. The goal is to provide greater standardization to the market.

6. What is included on the remote voting card?

The RVC must reflect all proposals to be presented at the meeting, including the names of board nominees appointed by management and by minority shareholders. The remote voting card also includes a number of procedural questions related, for example, to cumulative voting, separate elections for minority nominees, and the installation of a fiscal council. The specific questions will be further discussed below.

7. Does the remote voting card replace the proxy voting system?

No. The remote voting card is an additional alternative for shareholders to submit their voting instructions. The proxy voting system also remains a valid option in Brazil.

8. How can investors submit their remote voting card instructions?

Shareholders have the option to send the RVC instructions (i) directly to the company or (ii) through authorized service providers, such as custodians, in case of shares registered at the central depository, or bookkeepers, for shares not centrally deposited.

Custodians and bookkeepers can receive the RVC instructions by any means they use to communicate with their clients.

9. Is there a deadline for the submission of the remote voting card instructions?

Yes. The RVC instructions must be submitted no later than seven (7) calendar days prior to the meeting date.

10. Is there a requirement to disclose the remote voting card in English?

No. The CVM rule does not require English disclosure of the RVC. Nonetheless, companies listed under the Novo Mercado and the Nivel 2 differentiated corporate governance segments of the Sao Paulo Stock Exchange (B3) are required to provide English disclosure.

Due to recent changes to its regulations, the Novo Mercado segment now requires the disclosure of English materials "concurrently" with the respective disclosure in Portuguese. Nivel 2 companies are required to translate their financial statements "at the latest 15 days after the Portuguese language financial statement is released", based on the current Nivel 2 regulation.

In the event of any information discrepancies between documents published in different languages, ISS will only use the materials disclosed in Portuguese to settle such discrepancies.

11. Can a shareholder change his/her votes after sending the RVC?

Yes. According to the updated rules, in the event a shareholder wishes to send updated instructions through the remote voting card, the service provider used on the processing of the original instructions must inform the shareholders of the procedures to submit the new instructions. This communication can also include a warning that, in the event the submission of new instructions is carried out through a different service provider, voting instructions will be considered conflicting ones.

Shareholders voting through the remote voting card can still change their votes, if they choose to do so, at the time of the meeting.

12. Are companies mandated to disclose the votes received via the RVC?

Yes. Companies must disclose the votes received via the RVC 48 hours before the shareholder meeting, presenting a breakdown of FOR, AGAINST, and ABSTAIN voting instructions for each agenda item.

Companies are also required to disclose a brief voting "map", on the day of the meeting, consolidating the votes received through the remote voting card and the votes in person, including the ones presented by proxy representation. Companies must also identify the number of FOR, AGAINST, and ABSTAIN votes for each proposal, as well the number of votes received for each nominee or slate.

In addition, companies are now also required to disclose a final voting "map", up to seven business days following the shareholder meeting, consolidating all votes received through the different voting channels, identifying each shareholder through their first five digits of their Brazilian tax ID, and also including the votes issued by each shareholder for the respective proposals. This seeks to address previous concerns raised by shareholders regarding whether their votes had been accepted and properly accounted for by the companies.

13. Can companies amend their RVC?

This will likely be one of the biggest changes for the 2018 proxy season. After the obstacles identified in the first year of the adoption of the RVC in Brazil, in 2017, due to the lack of flexibility for the refiling of the RVC, the Regulator changed the rule and companies are now allowed to refile the card up to 20 days prior to the meeting date. Under the original rules, after the publication of the remote voting card 30 days prior to the meeting, no changes could be made.

Companies must clearly communicate to the market the reason for the refiling of the card, the changes made, whether the votes previously received by the company are still valid or not, and the deadline to send new voting instructions, when applicable.

The updated rules now establish that changes can be made to the remote voting card in the following cases:

- › To include the names of candidates to the board of directors, or fiscal council, presented by minority nominees after the initial disclosure of the RVC (mandated at 30 days prior to the meeting date);
- › To correct material mistakes that can hinder the comprehension of the proposal(s) to be voted by shareholders; and
- › To adjust the proposal(s) to the country's regulation or the company's bylaws.

14. May companies refile their remote voting card at any time?

No. Amendments or other changes to the RVC can only be made by the companies up to 20 days prior to the meeting date. After this deadline, no additional changes can be made.

15. If the remote voting card is amended after a shareholder has already submitted the voting instructions, what would happen to the instructions previously sent?

If the refiling of the RVC is due to the inclusion of board or fiscal council minority candidates, the votes already sent by shareholders will be counted under the original instructions, unless the shareholder sends new instructions to the company.

If the company refiled the RVC to fix material mistakes in its proposals, the votes already received will be invalidated, and shareholders would have to present their votes again.

16. What is the deadline for minority shareholders to submit nomination proposals if they want to appoint a board and/or fiscal council nominee to be included in the remote voting card?

The updated rules also added flexibility to the deadline for the submission of minority shareholder nominations to be included in the remote voting card. Minority shareholders can now present nominations up to 25 days prior to the meeting date to have the names of their nominees included in an amended version of the RVC.

For the inclusion of minority nominees in the original remote voting card instructions, the one disclosed at 30 days prior to the meeting, shareholders must present their nominations 45 days prior to the meeting date for annual meetings, and 35 days for special meetings with election proposals, as established under Instruction 561/2015. Shareholders must have held the companies' shares for at least three consecutive months prior to the meeting to appoint nominees.

As mentioned under question 14, companies may only refile the remote voting card up to 20 days prior to the meeting date. After this deadline, no further amendments can be made to the RVC.

Minority shareholders, however, can present the name of their nominees up to the time of the meeting, as allowed under the Brazilian Corporate Law. Nonetheless, if the names are disclosed after the 25-day deadline prior to the meeting date, companies are not required to include the information in their RVC.

17. Are there minimum ownership requirements for the inclusion of proposals in the remote voting card?

According to the original rules (Instruction 561/2015), a minimum ownership requirement applies for shareholders to include proposals in the remote voting card. The criteria established by the Regulator is based on the company's share capital, as follows:

Company's share capital (R\$)	% ownership required
$X \leq 500,000,000$	5%
$500,000,000 < X \leq 2,000,000,000$	3%
$2,000,000,000 < X \leq 10,000,000,000$	2%
$10,000,000,000 < X$	1%

Although some stakeholders asked the Regulator, during a commentary period in 2017, to remove the abovementioned ownership requirement for the inclusion of shareholder proposals under the remote voting card, the Regulator stated that a revision of such ownership requirements would only take place after the analysis of the adoption of the RVC by a larger number of companies, which will take place in 2018.

18. Which are the procedural questions included in the RVC?

The RVC includes a number of procedural questions, along with the actual board proposals. According to the Brazilian Securities Regulator, the card seeks to facilitate the exercise of minority shareholders' rights guaranteed under the Brazilian Corporate Law, such as the request of cumulative voting, separate elections for minority shareholders, and the installment of the fiscal council.

All such scenarios were included as part of the RVC instructions, and shareholders are asked to provide voting instructions under the procedural questions, as well as the board proposals. Most of the scenarios that the RVC tries to anticipate to allow shareholders to exercise their voting rights will only be confirmed at the time of the meeting, when voting procedures and minimum quorum requirements will be established.

Regardless of the voting instructions sent by shareholders prior to the meeting - RVC instructions must be submitted up to seven days prior to the meeting date - the AGM and EGM will have the ultimate decisions regarding the different voting scenarios to be adopted such as cumulative voting and/or separate minority election, for example.

19. List of the procedural questions included in the remote voting card, each followed by notes on how ISS will address them in terms of vote recommendations, consistent with ISS policy guidelines:

- a. **RVC Question:** Do you wish to adopt cumulative voting for the election of the members of the board of directors, under the terms of Article 141 of the Brazilian Corporate Law?

- › A cumulative voting request can be used as a shareholder strategy to allow for the concentration of all, or a portion, of the shareholder's votes on a single candidate, as board elections will be held individually, rather than a slate, under this request. It is an instrument that can be used by minority shareholders to facilitate the election of minority board representatives.
 - › According to the Brazilian Corporate Law, the request can be presented by shareholders up to 48 hours prior to the meeting date.
 - › In the absence of publicly-available information that a cumulative voting request has been presented by a minority shareholder, institutional shareholders are prevented from making an informed voting decision regarding this proposal. As such, ISS will recommend an **ABSTAIN** vote.
 - › In the event that a cumulative voting request has been publicly disclosed, in a timely manner, the vote recommendation will be issued on case-by-case basis.
- b. **RVC Question:** *In case cumulative voting is adopted, do you wish to equally distribute your votes to all nominees in the slate? (For meeting with bundled election, which remains the most common market practice in Brazil) OR In case cumulative voting is adopted, do you wish to equally distribute your votes for each supported nominee? (For meetings with unbundled election)*
- › If no information is publicly available regarding a cumulative voting request, ISS will recommend an **ABSTAIN** vote.
 - › As cumulative voting allows shareholders to concentrate their votes on the election of one or more shareholder representatives, in the event that publicly-available information regarding a cumulative voting request is disclosed, this question will be addressed on a case-by-case basis.
- c. **RVC Question:** *In case there is any change to the board slate composition, may your votes still be counted for the proposed slate?*
- › Changes to the board composition can significantly impact independence levels in ways that cannot be anticipated by institutional shareholders. In the absence of publicly-available information, disclosed in a timely manner, regarding the changes in the slate composition, ISS will recommend a vote **AGAINST** this procedural question.
- d. **RVC Question:** *In case one of the nominees leaves the fiscal council slate due to a separate minority election, as allowed under Articles 161 and 240 of the Brazilian Corporate Law, may your votes still be counted for the proposed slate?*
- › In the event of a separate minority election, as allowed under the Brazilian Corporate Law, minority shareholders would likely benefit from electing a fiscal council representative under the separate election, which can likely increase the governance oversight of the company. In such case, voting at the minority candidate would likely be preferable than supporting the fiscal council slate proposed by the company's management, consistent with ISS Brazil Proxy Voting Guidelines.
 - › As such, ISS will recommend a vote **AGAINST** this procedural question.

- e. **RVC Question:** In case neither class of shares reaches the minimum quorum required by the Brazilian Corporate Law to elect a board representative in separate elections, would you like to use your votes to elect the candidate with more votes to represent both classes?
- › Under this scenario, the votes of ordinary and preferred minority shareholders would be combined only in the event that neither class of shares reaches the minimum quorum requirement under the Brazilian Corporate Law to hold separate elections for ordinary holders (15% of the company's unaffiliated voting shares) and for preferred shareholders (10% percent of the company's unaffiliated preferred stock).
 - › In such scenario, the Brazilian Corporate Law allows minority ordinary and preferred shareholders to combine their shares to elect a single director representing both classes of shares, under a separate election without the participation of the controlling shareholder, as long as a minimum quorum requirement of 10% of the combined unaffiliated shares (voting and non-voting) is reached.
 - › This remote voting card question tries to anticipate a scenario that will only be confirmed at the time of the meeting, when quorum is established. Nonetheless, ISS will recommend **FOR** this proposal to provide minority shareholders with an additional avenue to potentially elect a board representative.
- f. **RVC Question:** Do you wish to request the installation of a fiscal council, under the terms of Article 161 of the Brazilian Corporate Law?
- › Under the Brazilian Corporate Law, fiscal councils can be permanent or not, and can be established at the request of shareholders at the general meeting. CVM's Instruction 324/2000 provides the minimum ownership requirement for minority shareholders to request the creation of a fiscal council.
 - › For companies with BRL 150 million share capital or more, ordinary minority holders can request the creation of the fiscal council with 2% ownership, while preferred minority holders need only 1% of the company's shares.
 - › Once the establishment of the fiscal council is approved at the shareholder meeting, its members must be elected at the same meeting.
 - › Fiscal council nominees can be presented up to the time of the meeting.
 - › The fiscal council is a supervisory body elected directly by the company's shareholders and has the fiduciary duty to supervise the acts of the company's officers and directors to ensure compliance with legal and statutory requirements. The establishment of such body can potentially improve company's oversight.
 - › Therefore, ISS will recommend **FOR** the creation of a fiscal council.
- g. **RVC Question:** As an ordinary shareholder, would you like to request a separate minority election of a member of the board of directors, under the terms of Article 141 of the Brazilian Corporate Law?
- › The right to elect a representative to the board under a separate election is a fundamental minority shareholder right in Brazil, mandated under Article 141 of the Brazilian Corporate Law.
 - › The increased shareholder activism in Brazil has brought the election of minority representatives to the forefront of the governance landscape in the country. Under this question, the RVC asks minority ordinary holders whether they seek to elect a board

- representative under a separate election, in which the controlling shareholder will not be allowed to vote. The minority nominee with the highest number of votes would be elected.
- › As this is a fundamental shareholder right, ISS will recommend a vote **FOR** this procedural question when timely disclosure is provided regarding a minority candidate. Nonetheless, the final election format will only be decided at the time of the meeting based on the minimum quorum requirements. In addition, minority shareholders can present the names of their nominees up to the time of the meeting, according to the country's Corporate Law.
 - › In the absence of publicly-available information regarding a minority shareholder nominee, disclosed in a timely manner, vote recommendation will be determined on a case-by-case basis.
- h. **RVC Question:** As a preferred shareholder, would you like to request a separate minority election of a member of the board of directors, under the terms of Article 141 of the Brazilian Corporate Law?
- › In line with the rationale provided above (question g), ISS will recommend a vote **FOR** this procedural question for minority preferred shareholders when timely disclosure is provided regarding a minority preferred shareholder nominee.
 - › In the absence of publicly-available information regarding a minority preferred shareholder candidate, disclosed in a timely manner, vote recommendation will be determined on a case-by-case basis.

The questions and answers in this FAQ document are intended to provide high-level guidance regarding the way in which ISS' Global Research Department will generally analyze certain issues in the context of preparing proxy analyses and vote recommendations for Brazilian companies. However, these responses should not be construed as a guarantee as to how ISS' Global Research Department will apply its benchmark policy in any particular situation.

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