



# BRAZIL

## Remote Voting Card (RVC) Frequently Asked Questions

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Updated March 9, 2020

New and materially updated questions are highlighted in yellow

*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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**The purpose of this FAQ is to provide additional information regarding the mandatory remote voting card (RVC) in Brazil, how it works, and ISS' policy application regarding the procedural questions. 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 year of implementation and published, on Dec. 20, 2017, the new Instruction 594/2017 setting out revised 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, for example - 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?**

Since 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) and the Sao Paulo Stock Exchange (B3), 30 days prior to the shareholder meeting.

The date that the annual shareholder meeting will be held 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 shareholder meetings?

The original rules established that the RVC was mandatory for annual shareholder meetings and for special meetings with election 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 voting instructions. The proxy voting system 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 to the company 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.

ISS will use materials disclosed in Portuguese to settle eventual information discrepancies between documents published in different languages.

### 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 and therefore invalidated.

Shareholders voting through the remote voting card can still change their votes, if they choose to do so, at the time of the meeting. Votes cast at the meeting will take precedence over voting instructions sent through the remote voting card in case there may be any discrepancies.

### 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 as the number of votes received for each nominee or slate.

In addition, companies are now 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 the 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?

The Regulator updated its original rules to allow companies to refile the RVC 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?**

Updated CVM rules added some 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 any changes for the election of directors under the remote voting card for the 2020 proxy season?**

Yes. The Brazilian Securities Regulator (CVM) issued Instruction 614, in September 2019, updating the guidelines for companies on how to account for the votes submitted by shareholders for the election of directors. The updated rule establishes that holders of voting shares can now submit voting instructions simultaneously for the election of the management nominees presented either individually or through a slate (Item 12 of the Remote Voting Card) AND for the election of a minority shareholder board representative presented under a separate election proposal (Items 13 and 13-A of the Remote Voting Card), effective immediately.

Prior to the updated norm, shareholders had to choose between providing voting instructions either for the management nominees/slate presented under the majority election and/or the cumulative voting or for the minority separate election. Voting instructions would be rejected in the event investors had provided valid votes for both election scenarios.

### **18. What was the reason for the updating of the Remote Voting Card rule?**

Under the original rule, as shareholders had to choose between providing voting instructions for the management nominees or for the minority separate election, in the event the minimum quorum required under the Brazilian Corporate Law for the establishment of a separate election was not met, voting instructions sent by shareholders to the separate election proposal would be discarded.

The updated rule now allows investors to support both election scenarios. Therefore, if the separate election for a minority board representative does not take place, due to lack of minimum quorum, voting instructions submitted for the majority election would be counted.

### **19. How would the votes under the different election scenarios be considered by companies?**

According to the Brazilian Corporate Law, each share can only be voted once; therefore, the valid voting instructions would be counted in only one of the different election scenarios.

CVM instructs companies to first establish whether the minimum quorum requirement for a separate election for a minority board representative has been met at the time of the meeting.

According to the Brazilian Corporate Law minimum quorum requirements for the holding of a separate election of a minority shareholder board representative are:

- Ordinary (voting) shares: a minimum of 15 percent of voting shares;
- Preferred (non-voting) shares: a minimum of 10 percent of non-voting shares;
- Ordinary and Preferred shares combined: If neither ordinary nor preferred minority shareholders are able to reach their respective minimum quorum requirement to hold a separate election for a board representative elected by minority shareholders (one to be elected by minority ordinary holders and one by minority preferred holders), both classes of shares can be combined to reach a minimum quorum requirement of 10 percent of shares to elect a single board member representing both ordinary and preferred minority shareholders.

As such, companies must first establish whether minimum regulatory quorum requirements were met for the holding of the separate minority election and if such election will be carried out. If YES, the voting instructions to be considered by the company will be only the ones submitted under the separate election proposal. If NO, the company will disregard the instructions submitted for the separate minority election (as this one will not take place) and will only consider the votes submitted for the majority election proposal.

### **20. Does the same rule apply to the election of fiscal council members?**

No. The CVM Instruction 614/2019 addresses only the election of board members and does not apply to the election of fiscal council members. For fiscal council elections, the existing voting restrictions still apply, and minority shareholders must choose between supporting the management fiscal council nominees (either presented in a slate or in individual elections) OR supporting the election of a minority fiscal council representative presented under a separate election. Voting instructions submitted for both fiscal council election scenarios would result in votes being rejected.

### **21. Are there any changes in the ISS benchmark policy guidelines regarding the election of directors in light of the changes implemented by the CVM Instruction 614/2019?**

No. The ISS benchmark policy continues to prioritize the support for the election of minority shareholders' candidates under a separate election. The election of directors appointed by minority shareholders is considered one of the most effective ways to increase minority representation at the board level and bring greater board independence.

Nonetheless, considering CVM Instruction 614/2019, shareholders can now also support the election of management nominees, increasing the chances that their votes will be counted at the time of the meeting even in the absence of sufficient quorum for the holding of a separate election.

As such, the ISS benchmark reports will include vote recommendations for both the separate minority elections AND the management nominees presented under a majority election. Vote recommendations will continue to follow the existing policy guidelines considering: (i) whether the proposed board has sufficient independence (as recommended under ISS policy guidelines) and (ii) whether there are governance concerns with the company and/or its board.

## 22. Does the CVM Instruction 614/2019 impact ISS vote recommendations under the cumulative voting process?

At this time, ISS does not anticipate policy changes on the vote recommendation for cumulative elections in Brazil. Current policy application for such election scenario, which remains the exception in the Brazilian market, is discussed under questions 25a and 25b of this Brazil Remote Voting Card – FAQ.

## 23. 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 could only take place after the analysis of the adoption of the RVC by a larger number of companies.

## 24. 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 a 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.



**25. 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. Cumulative voting can increase minority shareholders' chances to elect one or more nominees to the board of directors.
  - A request for cumulative voting presented by a minority shareholder may indicate that negotiations with the company for the inclusion of specific minority candidates for election may have been unsuccessful. Minority holders can then decide to pursue the cumulative voting and concentrate their votes on the election of minority candidates, rather than the management nominees.
  - According to the Brazilian Corporate Law, the request can be presented by shareholders up to 48 hours prior to the meeting date.
  - The following framework/vote recommendation will be applied by ISS when analyzing cumulative voting requests:
    - For controlled companies:
      - 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.
    - For dispersed capital companies:
      - A case-by-case analysis will be carried out accounting for the fact that the company does not have a controlling shareholder(s). Therefore, different shareholders with potentially different interests may seek to influence and/or determine the board composition.

Shareholders should note that, as clarified by the Brazilian Securities Regulator in its 2019 guidance to the market (*Oficio Circular/CVM/SEP/Nº 3/2019*), in the event a cumulative voting election takes place at the shareholder meeting, the ABSTAIN votes will not be counted for the quorum of such deliberation, leaving the decision on the hands of those shareholders who have provided votes FOR or AGAINST, as long as such votes are not considered in conflict with other election scenarios (such as the separate minority election, for example, when applicable).

- b. **RVC Question: In case cumulative voting is adopted, do you wish to equally distribute your votes to all nominees?**
- If no information is publicly available regarding a cumulative voting request, ISS will recommend an **ABSTAIN** vote.
  - As cumulative voting allows shareholders to concentrate votes on the election of one or more board nominees, if publicly-available information regarding a cumulative voting request is disclosed, as well as in the context of a dispersed capital company, 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 potentially 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 on 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.
  - Shareholders should note that the request for the installation of a fiscal council may not necessarily mean that a fiscal council will actually be elected. The adoption of the RVC and the presence of such procedural question among the voting instructions meant, during the 2018 proxy season, that the installation of a fiscal council was requested in a number of shareholder meetings. Nonetheless, even when the question received enough votes to be approved, there were cases in which no actual candidates were presented for election by the management and/or the minority shareholders. As such, the result seen in some annual meetings is that no fiscal council was actually installed due to the absence of nominees.
  - As 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, even though it may be unclear at the time international institutional shareholders must submit their voting instructions whether there will be fiscal council candidates presented at the meeting.
- 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.

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