



# INDIA

## Proxy Voting Guidelines Benchmark Policy Recommendations

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# 1. Board of Directors

## Election of Directors

**General Recommendation:** Generally vote for the election of directors unless:

### Independence:

- The nominee is an executive director serving on the audit, remuneration, or nomination committee;
- Any non-independent director nominees where independent directors represent less than one-third of the board when the chairman is a non-executive director, or less than one-half of the board when the chairman is an executive director or a promoter director;
- The nominee is proposed to be (re) appointed as an independent director by the board and has a tenure of more than 10 years on the board;
- The nominee is proposed to be (re) appointed as an independent director by the board and has served or is serving on the board of a holding or subsidiary company, or an entity merged with the company, for an aggregate tenure of more than 10 years, without a cooling-off period of three years; or
- During the proposed term of appointment or re-appointment of the nominee as an independent director, nominee's association with the company, including tenure served at a holding or subsidiary company or an entity merged with the company, will exceed 10 years.

### Composition:

- The nominee has attended less than 75 percent of board and key committee (audit, compensation, and nominating) meetings over the most recent fiscal year, without a satisfactory explanation. Acceptable reasons for director absences are generally limited to the following:
  - Medical issues/illness;
  - Family emergencies;
  - The director has served on the board for less than a year; and
  - Missing only one meeting (when the total of all meetings is three or fewer);
- The nominee sits on more than six<sup>1</sup> public (listed) company boards;
- Sufficient information on the director's qualifications or relevant experience is not publicly available; or
- The nominee is a politician or has linkages with a political party and does not appear to have relevant qualifications or experience.

### Gender Diversity

Generally vote against the chair of the nomination committee (or other senior members of the nomination committee on a case-by-case basis) up for reelection if the board does not comply with board gender diversity regulations.

In making any of the above recommendations on the election of directors, ISS generally will not recommend against the election of a CEO, managing director, executive chairman, or founder whose removal from the board would be expected to have a material negative impact on shareholder value.

### Accountability:

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<sup>1</sup> A commitment to reduce the number of boards to six or fewer by the next annual meeting will be considered. The commitment would need to be disclosed prior to the AGM in the relevant meeting materials, such as the meeting notice, circular, or annual report.

**Problematic Audit-Related Practices:**

Generally vote against all members of the audit committee up for reelection if:

- The non-audit fees paid to the auditor are excessive<sup>2</sup>;
- The company did not disclose the audit fees and/or non-audit fees in the latest fiscal year; or
- The company auditors have provided an adverse/qualified opinion on the company's latest financial statements.

**Board Permenancy:**

Generally vote against directors who are not liable to retire by rotation and whose continuation on the board will not be subject to shareholder review, unless:

- The nominee's continuation is exempted from shareholders' review as per SEBI LODR <sup>3</sup>.

**Climate Accountability:**

For companies that are significant greenhouse gas (GHG) emitters, through their operations or value chain<sup>4</sup>, generally vote against the responsible incumbent director(s), or any other appropriate item(s) in cases where ISS determines that the company is not taking the minimum steps needed to understand, assess, and mitigate risks related to climate change to the company and the larger economy.

Minimum steps to understand and mitigate those risks are considered to be the following. Both minimum criteria will be required to be in alignment with the policy:

- Detailed disclosure of climate-related risks, such as according to the framework established by the Task Force on Climate-related Financial Disclosures (TCFD), including:
  - Board governance measures;
  - Corporate strategy;
  - Risk management analyses; and
  - Metrics and targets.
- Appropriate GHG emissions reduction targets.

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<sup>2</sup> The non-audit fees have constituted more than 50 percent of the total auditor compensation during the fiscal year. ISS will make an exception if the excessive non-audit fees are in relation to special projects or due to unusual circumstances, and are not recurring in nature and are unlikely to create conflicts of interest.

<sup>3</sup> As per Regulation 17 (1D) of the SEBI LODR, from April 1, 2024, the continuation of directors serving on the board of directors of a listed entity shall be subject to the approval by the shareholders in a general meeting at least once in every five years from the date of their appointment or reappointment.

**The approval of shareholders shall not be required in the following cases:**

- In case of the Whole-Time Director, Managing Director, Manager, Independent Director or a Director retiring as per Section 152(6) of the Companies Act, 2013, if the approval of the shareholders for the reappointment or continuation of the aforesaid directors or Manager is otherwise provided for by the provisions of these regulations or the Companies Act, 2013 and has been complied.
- Director is appointed pursuant to the order of a Court or a Tribunal.
- Nominee director of the Government on the board of a listed entity, other than a public sector company.
- Nominee director of a financial sector regulator on the board of a listed entity.
- Director nominated by a financial institution registered with or regulated by the Reserve Bank of India under a lending arrangement in its normal course of business.
- Director nominated by a Debenture Trustee registered with the Board under a subscription agreement for the debentures issued by the listed entity.

<sup>4</sup> Companies defined as "significant GHG emitters" will be those on the current Climate Action 100+ Focus Group list.

At this time, “appropriate GHG emissions reductions targets” will be medium-term GHG reduction targets or Net Zero-by-2050 GHG reduction targets for a company's operations (Scope 1) and electricity use (Scope 2). Targets should cover the vast majority of the company's direct emissions.

**Governance Failures:**

Under extraordinary circumstances, vote against directors or supervisors, members of a committee, or the entire board, due to:

- Material failures of governance, stewardship, risk oversight (including, but not limited to, environmental, social, and climate change issues), or fiduciary responsibilities at the company;
- Failure to replace management as appropriate; or
- Egregious actions related to a director's or supervisor's service on other boards that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company.

## Classification of Directors

### Executive Director

- Employee or executive of the company or a wholly-owned subsidiary 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 shareholder of the company;
- Any director who is also an employee or executive of a significant<sup>[1]</sup> shareholder of the company;
- Any director who is also an employee or executive of a subsidiary, associate, joint venture, or company that is affiliated with a significant<sup>[1]</sup> shareholder of the company;
- Any director who is nominated by a dissenting significant shareholder, unless there is a clear lack of material<sup>[2]</sup> connection with the dissident, either currently or historically;
- Beneficial owner (direct or indirect) of at least two 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 two percent individually, but collectively own more than two 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 has provided (or a relative<sup>[3]</sup> provides) professional services<sup>[4]</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 the latest fiscal year in excess of USD 10,000 per year;
- Represents customer, supplier, creditor, banker, or other entity with which the company maintains transactional/commercial relationship (unless company discloses information to apply a materiality test<sup>[5]</sup>);
- Any director who has a conflicting relationship with the company, including but not limited to cross-directorships with executive directors or the chairman of the company;
- Relative<sup>[3]</sup> of a current employee or executive of the company or its affiliates;
- Relative<sup>[3]</sup> of a former employee or 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 or executive;
- Former employee or executive (five-year cooling off period);
- Any director with a tenure of more than ten years on the board;
- Any director whose tenure, including tenure served at holding or subsidiary company or an entity merged with the company, is more than ten years, without a cooling-off period of at least three years; or
- Any additional relationship or principle considered to compromise independence under local corporate governance best practice guidance.

### Independent NED

- No material<sup>[2]</sup> connection, either directly or indirectly, to the company (other than a board seat) or the dissenting significant shareholder.

### Employee Representative

- Represents employees or employee shareholders of the company (classified as "employee representative" but considered a non-independent NED).

### Footnotes:

[1] At least two percent of the company's stock, unless market best practice dictates a lower ownership and/or disclosure threshold.

[2] 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.

[3] "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.

[4] 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.

[5] 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.

## Executive Appointment

**General Recommendation:** Vote for executive appointment and remuneration proposals, unless there is evidence of problems in the past or significant concerns with the individual's qualifications, proposed remuneration, or performance or the position<sup>5</sup>.

### Discussion

In India, companies are required to seek shareholder approval to appoint a director or an individual related to a director to an executive position. This is a standalone proposal separate from director election. Generally, these proposals would seek to approve an executive contract including the remuneration for a period of three to five years. When an executive also sits on the company's board, the executive appointment and remuneration will be judged for their own merit and the policy on director election will not be applied.

## Shareholder Directors

**General Recommendation:** Generally vote against the appointment of shareholder directors unless sufficient information regarding the candidate is disclosed. If sufficient information is provided, the policy for director election applies.

### Discussion

State-owned corporations or Public Sector Undertakings (PSUs) as termed in India are classified as Public Sector Enterprises (PSEs), Central Public Sector Enterprises (CPSEs) and Public Sector Banks (PSBs). At PSUs, the nomination of directors is endorsed by the Government of India. At PSBs, registered shareholders as of the specified record date other than the Government of India have the right to nominate and appoint one to three directors (or shareholder directors) on the board. The number of shareholder directors is dependent on the level of ownership held by the public as prescribed.

The nominations of shareholder directors are scrutinized by the nomination committee in accordance with the Fit & Proper Guidelines issued by the Reserve Bank of India. If valid nominations matched the number of vacancies to

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<sup>5</sup> Concern with position include a director serving in executive role in more than one company. In such instances, ISS evaluates the size, diversity of operations, relationship between the companies (subsidiary/associate) in which director holds executive positions.

be filled by the election, the candidates so nominated shall be deemed to be elected immediately. If valid nominations are more than the number of directors to be elected, the candidates polling the majority of votes shall be deemed to have been elected and their names will be published in newspapers.

Unlike most director appointments, the names of the shareholders who nominated the directors and curricula vitae of director nominees are generally not provided in the meeting notices. Without information on the nominees, shareholders are restricted from making an informed decision. As such, until sufficient information becomes available, ISS recommends voting against the appointment of shareholder directors.



## 2. Remuneration

### Director Commission and Executive Compensation

#### General Recommendation:

##### Fees for non-executive directors

- For aggregate non-executive director remuneration, generally vote for resolutions regarding director fees unless there is a clear indication that directors are being rewarded for poor performance, or the fees are excessive relative to fees paid by other companies of similar size.
- For individual non-executive director remuneration, vote on a case-to-case basis depending on the role and contribution of the concerned director, company performance, the quantum of proposed remuneration, peer benchmarking, and the overall pay structure.

##### Executive Compensation

Generally vote against the payment of remuneration in excess of the minimum remuneration and the waiver of recovery of excess remuneration paid to executives in the event of loss or inadequate profit unless compelling justification is provided in support of the proposal.

Remuneration should motivate executives to achieve the company's strategic objectives, while ensuring that executive rewards reflect returns to long-term shareholders. Pay should not be excessive and remuneration committees should exercise due caution when considering pay increases. Any increases in total remuneration for executives should not be out of line with general increases at the company.

ISS will vote on executive compensation proposals on a case-to-case basis, paying attention as to whether:

- Quantum of pay and proposed hike is reasonable and commensurate with the size and scale of company
- Past remuneration has been aligned with performance
- Pay is benchmarked to industry/market peers
- Pay as a multiple of median employee pay is reasonable
- The proposed pay structure has sufficient degree of variable pay
- Terms of LTIP/stock option plans are disclosed
- The award levels for the different components of variable pay are clearly defined and capped
- Performance conditions have been stated
- Malus/clawback/deferred pay provisions are in place
- The board has unreasonable level of discretion and flexibility in deciding the final pay.

##### Discussion

Under the Companies Act, 2013 (CA 2013), shareholder approval is required to pass the following remuneration-related proposals:

- Remuneration by way of commission at a specified percentage of net profits to non-executive directors;
- Remuneration for one non-executive director when it exceeds 50 percent of the aggregate remuneration paid to all non-executive directors;
- Remuneration of a director or relative of a director appointed to an executive position in the company or in a subsidiary. Executive compensation is broken down into monthly cash salary, perquisites, and commission and/or bonuses;
- Revision in the remuneration package of an executive; and

- Remuneration paid/payable to an executive in excess of the prescribed limits in case of the company having no profits or inadequate profits.

## Equity Compensation Plans

**General Recommendation:** Generally vote for option plans and restricted share plans.

Vote against an option plan if:

The maximum dilution level under the proposed plan(s) and previously approved option plans exceeds:

- 5 percent of issued share capital for a mature company (this may be increased to 10 percent if the plan includes other positive features such as a challenging performance criteria and meaningful vesting periods as these partially offset dilution concerns by reducing the likelihood that options will become exercisable or performance shares are issued unless there is a clear improvement in shareholder value); or
- 10 percent for a growth company.

The plan permits options to be issued with an exercise price at a discount to the current market price.

Vote against a restricted share plan if:

- Under the proposed plan(s) and previously approved option plans exceeds:
  - 5 percent of issued capital for a mature company (this may be increased to 10 percent if the plan includes other positive features such as a challenging performance criteria and meaningful vesting periods as these partially offset dilution concerns by reducing the likelihood that options will become exercisable or performance shares are issued unless there is a clear improvement in shareholder value); or
  - 10 percent for a growth company.
- The plan does not include a challenging performance criteria and meaningful vesting periods to partially offset dilution concerns by reducing the likelihood that performance shares are issued unless there is a clear improvement in shareholder value.

Vote against the extension of an option plan or restricted share plan if:

- The plan provides the authority for the granting of stock options and restricted stock units to employees of holding/associate/group companies, unless a compelling rationale for the grant to these specific employees is provided.

### Discussion

All equity compensation plans must be approved by shareholders in a special resolution. Employees including directors of the company and its subsidiaries or holding company are eligible to participate in the company's incentive plans. Promoter directors and any director who, either by himself or through his relatives or through any corporate entity that, either directly or indirectly, holds more than 10 percent of a company's outstanding equity shares, are not eligible to participate. In addition, independent directors are not entitled to receive stock options under the CA 2013.

In accordance with the CA 2013, the explanatory statement must accompany the proposal for a compensation plan to the notice, and the resolution proposed to be passed must contain the following information:

- The total number of options to be granted;
- Identification of classes of employees entitled to participate in the Employee Stock Option Plan (ESOP);
- Vesting requirements;
- Maximum period within which the options shall be vested;
- Exercise price or pricing formula;
- Exercise period and process of exercise;
- The appraisal process for determining eligibility of employees to the ESOP; and
- Maximum number of options to be issued per employee and in aggregate.

No ESOP can be offered unless the company establishes a compensation committee for administration of the ESOP. The compensation committee shall be a committee of the board consisting of a majority of independent directors. The compensation committee formulates the detailed terms and conditions of the ESOP.

Employee stock purchase plan (ESPP) in India includes features similar to that of a restricted share plan. The eligibility of an employee is determined by the compensation committee and shares are issued at par value. Performance conditions or vesting of awards are usually not disclosed in meeting materials.

ISS' guidelines for equity plans are for dilution to generally not exceed 5 percent of issued share capital for a mature company and 10 percent for a growth company. However, ISS will support plans at mature companies with dilution levels up to 10 percent if the plan includes other positive features as outlined above.

## 3. Audit

### Appointment of Auditors

**General Recommendation:** Generally vote for the (re)appointment of auditors and authorizing the board to fix their remuneration, unless:

- There are serious concerns about the accounts presented or the audit procedures used;
- The auditor is being changed without explanation;
- Non-audit related fees are in excess of standard annual audit fees; or
- The profile of the new audit firm being appointed is not disclosed or not available in the public domain.

#### Discussion

Shareholder approval of auditors and auditor remuneration is required by law. Mandatory rotation of auditors has been introduced in the CA 2013 – every five years for an individual auditor and every 10 years (or two terms of five consecutive years) for an audit firm. As per the disclosure requirements in the CA 2013, the breakdown of payments to auditors must be disclosed in the profit and loss account of the company as (a) auditor (i.e. statutory audit, certification, and tax audit); (b) for taxation matters; (c) for company law matters; (d) for management services; (e) for other services; and (f) for reimbursement of expenses or out-of-pocket expenses.

In practice, unless the nature of the tax services was indicated as tax compliance/tax return preparation, ISS categorizes tax audit and taxation matters as other fees, which will be included in the computation of non-audit related fees. In addition, ISS categorizes reimbursement of expenses as audit-related fees based on the premise that these fees are expenses incurred by auditors in carrying out their audit functions.

However, banks in India are not required under the prevailing banking laws to provide the itemized breakdown of audit and non-audit fees paid to the auditor.

The practice of auditors providing non-audit services to companies is problematic. While large auditors may have effective internal barriers to protect against conflicts of interest, an auditor's ability to remain objective becomes questionable when fees paid to the auditor for non-audit services such as management consulting, general bookkeeping, and special situation audits exceed the standard annual audit fees.

While ISS will consider the nature and scope of non-audit fees when assessing their magnitude, where non-audit fees have constituted more than 50 percent of total auditor compensation during the fiscal year, ISS will ordinarily not recommend support for the reelection of the audit firm. ISS will make exception to this policy if excessive non-audit fees are in relation to special projects or due to unusual circumstance, and are not recurring in nature and are unlikely to create conflicts of interest. An example of acceptable "non-audit" fees would be fees for a special audit in connection with an IPO.

### Accept Financial Statements and Statutory Reports

**General Recommendation:** Generally vote for approval of financial statements and statutory reports, unless:

- There are concerns about the accounts presented or audit procedures used; or
- There has been an accounting fraud or material misstatement during the year.

## 4. Equity Issuance Requests

### General Issuance Mandate

**General Recommendation:** Generally vote for general issuances of equity or equity-linked securities without preemptive rights when dilution is not more than 20 percent of a company's issued share capital.

#### Discussion

Under the CA 2013, shareholder approval is required to disapply preemptive rights in connection with any issuance of equity or debt securities. General issuance requests in India only include the stipulation on the aggregate value of securities to be issued and confer authority on the board to determine the type of securities, issue price, timing, and recipients of such securities, in accordance with the relevant SEBI regulations. The authority is valid for one year, as revoked or renewed by shareholders.

A popular equity fund raising route is the issuance of securities through qualified institutional placement (QIP). The recipients of this issuance include public financial institution, scheduled commercial banks, mutual funds, foreign institutional investor registered with SEBI, multilateral and bilateral development financial institutions, venture capital funds registered with SEBI, foreign venture capital investors, and state industrial development corporations, or collectively termed as qualified institutional buyers.

As per the applicable provisions, the issue price of securities under QIP shall not be less than the average of the weekly high and low of the closing prices of the related equity shares quoted on a stock exchange during the two weeks preceding the relevant date, less a discount of not more than 5 percent.

In case of allotment of equity shares, the relevant date is the date of the meeting in which the board or committee decides to open the issue. While in case of allotment of convertible securities, the relevant date is defined as being the date of the meeting in which the board or committee decides to open the issue or the date on which the holders of such convertible securities become entitled to apply for the equity shares.

Given the limited disclosure on the type of securities and cap on the number of equity shares that it may issue under this enabling authority, ISS computes the potential dilution of the issuance request based on recent trading share prices of the issuer. ISS supports general issuances of equity or equity-linked securities without preemptive rights when dilution is not more than 20 percent of a company's issued share capital.

### Preferential Issuance Requests

**General Recommendation:** Vote case-by-case on requests for preferential issuance (private placements).

#### Discussion

Private placements, called preferential issuance, are fairly common in India, and many firms typically seek shareholder approval to allot new shares to a promoter/promoter group of the company.

As per the applicable provisions, the issue price of securities offered on a preferential basis shall be not less than the higher of the following: (a) the average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date or (b) the average of the weekly

high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date.

The preferential offering must be completed within a period of 15 days from the receipt of shareholder approval for the issuance and that the securities allotted on a preferential basis to promoter/promoter group are not transferable for a period of three years from the date of allotment of securities or equity shares arising out of exercise of the right attached to the warrants.

## Preferential Issuance of Warrants

**General Recommendation:** Vote case-by-case of requests for issuance of preferential warrants.

### Discussion

Preferential warrants are a fund-raising tool that is unique in India. Indian companies offer warrants to select group of individuals, usually the promoter/promoter groups. Each warrant will entitle the holder to subscribe for one equity share in the company at any time before the expiry of 18 months from the date of allotment. An amount equivalent to 25 percent of the fixed price per warrant is payable on the date of allotment and the balance 75 percent upon exercise into equity shares.

## Specific Issuance Requests

**General Recommendation:** Vote case-by-case on issuances of shares for specific purposes.

### Discussion

A company may request the issuance of shares for an acquisition in the form of a rights issue to raise funds for a cash payment, or else a company could request an issuance without preemptive rights for use in a share-based acquisition or issuance to a third party. A more routine request would be an authority to issue shares without preemptive rights for issuance as needed upon conversion of convertible securities or to service a share option plan. These shares can only be used for the purpose defined in the resolution. Such a request could be of any size.

## Share Purchase Plans

**General Recommendation:** Generally vote for share repurchase programs/market repurchase authorities, provided that the proposal meets the following parameters:

- Maximum volume: 10 percent for market repurchase within any single authority and 10 percent of outstanding shares to be kept in treasury (“on the shelf”); and
- Duration does not exceed 18 months.

Vote case-by-case on authorities to repurchase shares in excess of the 10 percent repurchase limit.

## **Discussion**

An Indian company is allowed to purchase its own shares or other securities out of its free reserves, securities premium account, or issue proceeds, provided the following parameters are met:

- Share buyback is authorized by its articles;
- A special resolution has been passed at a general meeting of the company authorizing the buy-back; and
- The funds to be deployed on buybacks should not exceed 25 percent of the paid-up capital and free reserves of a company.

Share buybacks of not more than 10 percent of the total paid-up equity capital and free reserves of the company only require the approval of the board. There should also be a minimum gap of one year between two buyback offers made by the company as required under the relevant regulations.

## 5. Debt Issuance Requests

**General Recommendation:** In evaluating debt-related proposals, consider the following factors:

- *Rationale/use of proceeds:* Why does the company need additional capital? How will that capital be used?
- *Terms of the debts:* Are the debt instruments convertible into equity? What are the interest rate and maturity dates? Any call or put options? Often these terms will not be determined until the time of issuance of debt instruments (or when the actual loan agreement is signed). The terms of the debts would generally be determined by the market conditions, and lack of disclosure concerning these terms should not be a cause for significant concern so long as the debt is not convertible into equity.
- *Size:* At a minimum, the size of the debt issuance/potential borrowing should be disclosed.
- *The company's financial position:* What is the company's current leverage and how does that compare to its peers?
- *The risk of non-approval:* What might happen if the proposal is not approved? Are there any alternative sources of funding? Could the company continue to fund its operations? Would it hinder the company's ability to realize opportunities?

A distinction should be made between a specific debt issuance or pledging of assets, and authority to issue or increase debt; as in the case of specific equity issuances and requests for authority to issue equity.

### Increase in Borrowing Powers

**General Recommendation:** Indian companies are allowed to borrow in excess of the aggregate of its paid-up capital and free reserves, subject to shareholder approval by means of a special resolution.

Vote for proposals to approve increases in a company's borrowing powers if:

- The size of the debt being requested is disclosed;
- A credible reason for the need for additional funding is provided;
- The potential increase in debt is not excessive; and
- There are no significant causes for shareholder concern regarding the terms and conditions of the debt.

For non-financial companies, the following criteria are used to assess whether the potential increase in debt is considered excessive:

- The proposed maximum amount is more than twice the company's total debt;
- It could result in the company's debt-to-equity ratio, or gearing level, exceeding 300 percent; and
- The maximum hypothetical debt-to-equity ratio is more than three times the industry and/or market norm.

Generally vote for debt-related proposals of financial companies taking into account the current financial standing of the company, including but not limited to:

- The capital adequacy to risk (weighted) assets; or
- Capital adequacy ratio vis-à-vis the regulatory norm;
- Revenue growth; and
- Asset base.



## Pledging of Assets for Debt

**General Recommendation:** Vote for proposals to approve the specific pledging of assets for debt if:

- The size of the debt being requested is disclosed;
- A credible reason for the need for additional funding is provided;
- Details regarding the assets to be pledged are disclosed; and
- There are no significant causes for shareholder concern regarding the terms and conditions of the debt.

For proposals seeking a general authority to pledge assets for debt, the specific assets to be pledged need not be disclosed. However, in such cases, the authority should be limited such that it would not result in an excessive increase in debt. Vote against proposals that grant excessive authority to the board or management.

### Discussion

Directors may not sell, lease, or otherwise dispose of all or substantially all of a company's assets without prior shareholder approval. Mortgages and/or charges against the company's assets in connection with proposed debt issuances can be regarded as disposals under company law and are commonly used by companies in India.

## Financial Assistance

**General Recommendation:** Vote case-by-case on requests for financial assistance. Generally vote against the provision of a guarantee where:

- The identity of the entity receiving the guarantee is not disclosed;
- The guarantee is being provided to a director, executive, parent company, or affiliated entities where the company has no direct or indirect equity ownership; or
- The guarantee is provided to an entity in which the company's ownership stake is less than 75 percent; and such guarantee is not proportionate to the company's equity stake or other parties have not provided a counter guarantee.

When the proposed guarantee does not fall into the above criteria, generally vote for the request provided that there are no significant concerns regarding the entity receiving the guarantee, the relationship between the listed company and the entity receiving the guarantee, the purpose of the guarantee, or the terms of the guarantee agreement. Examples of such concerns include a previous default by the entity receiving the guarantee or a sub-investment grade credit rating.

### Discussion

Indian companies often provide financial assistance in the form of investments in securities, extending securities/guarantees, or loans to subsidiaries, affiliates, and related parties. Prior shareholder approval by means of a special resolution is required when the aggregate amount of financial assistance exceeds 60 percent of the company's paid-up share capital, free reserves, and securities premium account, or 100 percent of its free reserves and securities premium account, whichever is higher. In most cases, the terms and conditions of the financial assistance (i.e. recipient of such financial assistance and deployment schedule of funds) are not disclosed in the meeting materials.

## 6. Amend Articles of Association

**General Recommendation:** Vote case-by-case on amendments to the articles of association (AoA).

Requests to amend a company's articles of association are usually motivated by changes in the company's legal and regulatory environment, although evolution of general business practice can also prompt amendments.

When reviewing proposals to revise the existing articles or to adopt a new set of articles, ISS analyses the changes proposed according to what is in the best interest of shareholders.

Generally vote for proposals where the changes are driven by regulatory or compliance considerations.

Generally vote against if:

- The draft of the new AoA is not disclosed or if the proposed changes are not adequately highlighted in the shareholder notice; or
- The proposal provides for special rights to any shareholder including the right to nominate directors to the board, where such an arrangement allows for a disproportionate degree of influence over the company or the board and (or) is not in line with the shareholding.

## 7. Related-Party Transactions

**General Recommendation:** Vote case-by-case on related party transactions after considering factors including, but not limited to, the following:

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

Generally vote against on perpetual arrangements where the transactions will not be subjected to further shareholder review going forward.

For proposals on royalty payments, vote on a case-by-case basis based on disclosures provided.

### Discussion

Transactions that a company may engage in with a related party as identified in the CA 2013 include:

- Sale or purchase of goods or property of any kind;
- Lease of property of any kind;
- Avail or render of any services; and
- Appointment of a related party to any office or place of profit in the company, its subsidiary company or associate company.

A related-party transaction (RPT) requires prior shareholder approval by means of an ordinary resolution when the transaction value exceed the prescribed amount or when such transaction is not in the ordinary course of business or is not on an arm's length basis. Interested parties will be restricted from voting in favor of such transactions.

## 8. Mergers and Acquisitions

**General Recommendation:** Vote case-by-case on mergers or acquisitions, taking into consideration:

- Valuation - Is the value to be received by the target shareholders (or paid by the acquirer) reasonable? If a fairness opinion has been prepared, it provides an initial starting point for assessing valuation reasonableness, but ISS also 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.
- Negotiations and process - Were the terms of the transaction negotiated at arms-length? Was the process fair and equitable? A fair process helps to ensure the best price for shareholders.
- Conflicts of interest - Are insiders benefiting from the transaction disproportionately and inappropriately as compared to non-insider shareholders? As the result of potential conflicts, the directors and officers of the company may be more likely to vote to approve a merger than if they did not hold these interests. ISS will consider whether these 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 respective 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.

### Sale of Undertaking

**General Recommendation:** Vote case-by-case on asset sale requests, taking into consideration:

- Impact on the balance sheet/working capital;
- Potential elimination of diseconomies;
- Anticipated financial and operating benefits;
- Anticipated use of funds;
- Value received for the asset; accountants' report; fairness opinion (if any);
- How the deal was negotiated;
- Conflicts of interest.

For proposals seeking a general authority to sell non-operating assets, which normally are not accompanied with disclosure of relevant information such as potential buyer(s) and consideration, the rationale of the disposal and the company's history of asset disposals will be closely examined. Generally vote for such requests as long as the authority requested is not excessive and there are no known issues with asset disposals in the past.

### Discussion

The sale or lease of a company's business undertaking or substantially the whole of such undertaking requires shareholder approval by means of a special resolution, when such transaction meets the following criteria:

The company's investment in the business undertaking exceeds 20 percent of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates 20 percent of the total income of the company during the previous financial year. or

The expression “substantially the whole of the undertaking” in any financial year shall mean 20 percent or more of the value of the business undertaking as per the audited balance sheet of the preceding financial year.

## 9. Miscellaneous

### Acceptance of Deposits

**General Recommendation:** Generally vote against proposals to accept deposits from shareholders and/or the public, unless there are no significant causes for shareholder concern regarding the terms and conditions of the deposit. Sufficient information regarding the deposits must be disclosed, including:

- Justification for the need for additional funding; and
- The interest rate offered, which must not exceed the interest rate prescribed by the Reserve Bank of India (RBI) for acceptance of deposits by non-banking financial companies (NBFCs).

#### Discussion

The Companies Act, 2013 (CA 2013), which came into effect in 2014, requires companies (other than banks and NBFCs) to seek shareholder approval to accept deposits from shareholders and/or the public. In addition, the Companies Rules, 2014 (Rules) provides that such deposits (a) shall not exceed 10 percent of the aggregate of issued shares and free reserves of the company and (b) are repayable not earlier than three months from the date of such deposit. Furthermore, the Rules provide that the interest rate on such deposits shall not exceed the interest rate prescribed by the RBI for acceptance of deposits by NBFCs.

### Dividend Distribution

**General Recommendation:** Generally vote for approval of dividends, unless the payout is excessive given the company's financial position.

#### Discussion

Unless there are major concerns about the payout ratio, ISS will usually recommend approval of this item.

### Charitable Donations

**General Recommendation:** Vote against proposed charitable donations, unless:

- Adequate disclosure on the rationale for the donation and exact term of the authority are provided in the meeting materials, and
- The party receiving the charitable donation is an independent third party.

#### Discussion

Charitable donations are subject to shareholder approval when the amount of such contributions, in any financial year, exceeds 5 percent of the company's average net profits for the three immediately preceding financial years.

Charitable donations could increase the company's goodwill in the market and further their corporate social responsibility ideals. Public companies are increasingly being asked to be responsible members of the society in which they operate and returning a portion of the earnings to communities and those in need could be an appropriate way to facilitate the company's sustainability efforts and community engagement. Furthermore, these activities could help improve the company's brand image as well as to gain the community's trust, which in turn may improve financial performance in the long term. Moreover, these activities and charitable giving could improve the company's sustainability ranking and scores as measured by various institutions, potentially providing greater access to funds.

There are, however, concerns about the potential for abuse and lack of accountability. Many corporations give funds to individuals or entities associated with their directors or major shareholders in the name of charitable giving. While these funds may be used for charitable purposes, there is a risk of expropriating shareholders' wealth for the benefit of an affiliate. Additionally, many companies do not disclose the use of the donated funds or the impact the donations have made, and as such the effectiveness of the use of the company's capital is often difficult to ascertain. Hence, there should be a reasonable mechanism for monitoring and transparency.

## Increase in Foreign Shareholding Limit

**General Recommendation:** Vote for requests for increases in foreign shareholder limits, unless there are outstanding issues concerning the company.

### Discussion

SEBI registered foreign institutional investors (FIIs) and their sub-accounts are allowed to acquire up to 24 percent of the paid-up capital of an Indian company. However, this ceiling can be raised to the applicable sector cap/statutory limit prescribed by the company law, subject to approval of the company's shareholders in a general meeting.

## Social and Environmental Issues

ISS applies a common approach globally to evaluating social and environmental proposals which cover a wide range of topics, including consumer and product safety, environment and energy, labour 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 or long term.

**General Recommendation:** Generally vote case-by-case, examining primarily whether implementation of the proposal is likely to enhance or protect shareholder value. The following factors will be considered:

- If the issues presented in the proposal are being 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 or timeframe) or overly prescriptive;
- The company's approach compared with any industry standard practices for addressing the issue(s) raised by the proposal;

- Whether there are significant controversies, fines, penalties, or litigation associated with the company's practices related to the issue(s) raised in the proposal;
- If the proposal requests increased disclosure or greater transparency, whether 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 or greater transparency, whether implementation would reveal proprietary or confidential information that could place the company at a competitive disadvantage.

## Say on Climate (SoC) Management Proposals

**General Recommendation:** Vote case-by-case on management proposals that request shareholders to approve the company's climate transition action plan<sup>6</sup>, taking into account the completeness and rigor of the plan. Information that will be considered where available includes the following:

- The extent to which the company's climate related disclosures are in line with TCFD recommendations and meet other market standards;
  - Disclosure of its operational and supply chain GHG emissions (Scopes 1, 2, and 3);
  - The completeness and rigor of company's short-, medium-, and long-term targets for reducing operational and supply chain GHG emissions (Scopes 1, 2, and 3 if relevant);
  - Whether the company has sought and approved third-party approval that its targets are science-based;
  - Whether the company has made a commitment to be "net zero" for operational and supply chain emissions (Scopes 1, 2, and 3) by 2050;
  - Whether the company discloses a commitment to report on the implementation of its plan in subsequent years;
  - Whether the company's climate data has received third-party assurance;
  - Disclosure of how the company's lobbying activities and its capital expenditures align with company strategy;
  - Whether there are specific industry decarbonization challenges; and
- The company's related commitment, disclosure, and performance compared to its industry peers.

## Say on Climate (SoC) Shareholder Proposals

**General Recommendation:** Vote case-by-case on shareholder proposals that request the company to disclose a report providing its GHG emissions levels and reduction targets and/or its upcoming/approved climate transition action plan and provide shareholders the opportunity to express approval or disapproval of its GHG emissions reduction plan, taking into account information such as the following:

- The completeness and rigor of the company's climate-related disclosure;
- The company's actual GHG emissions performance;
- Whether the company has been the subject of recent, significant violations, fines, litigation, or controversy related to its GHG emissions; and
- Whether the proposal's request is unduly burdensome (scope or timeframe) or overly prescriptive.

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<sup>6</sup> Variations of this request also include climate transition related ambitions, or commitment to reporting on the implementation of a climate plan.



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