Legal Requirements in India vs ISS India Voting Policy

Updated as of January 2025

This document is published in accordance with SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/147 dated August 3, 2020. The intent of this document is to highlight the differences between the current legal requirements in India and the ISS India voting policy with respect to key agenda items which are generally proposed in shareholder meetings.

ISS STOXX

Introduction

There are many instances when regulations only set thresholds or minimum legal requirements for companies in areas in which they may seek shareholder approval, but those legal thresholds or requirements may be insufficient for shareholders in considering governance perspectives or other aspects of stewardship, which at times go beyond the wording of the regulations, and focus on the spirit of the regulations, global best practices and the context/background to the immediate situations.

ISS' voting policies and standards are therefore drafted from this perspective, taking into account relevant laws, customs, and established market practices of each market or region, as well as the right and responsibility of shareholders to make informed voting decisions. ISS voting policies are also reviewed and, where necessary, updated annually to capture emerging governance issues, evolving market good practices and feedback from market participants.

In most cases, the methodologies used by ISS reflect the consensus views of investor clients. In other words, where a policy or methodology is more stringent than a legal requirement, often this is because of the higher expectations which sophisticated institutional investor clients have of the companies in which they invest.

Voting advisory reports published by ISS provide a detailed commentary on the voting rationale which, apart from an analysis of the information in the proxy circular and other public filings, may include snapshots of the ISS voting guidelines, potential impact of the recommendations, opportunities for further votes in future on the issue, market implications from any precedent created, and the relevant business context for the assessment of the resolution.

This document, to that extent, may not be exhaustive in every aspect and should be read along with the final advisory report and the ISS India Voting Guidelines [LINK] to get a fully rounded view of the ISS approach.

General Terminology

ED: Executive Director

NED: Non-executive director (both independent and non-independent)

NE-NID: Non-executive non-independent director

ID: Independent director

CA: Companies Act 2013

LODR: SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

AC: Audit Committee

NRC: Nomination and Remuneration Committee

CATEGORY	DISCUSSION POINT	REGULATORY SECTIONS	LEGAL REQUIREMENTS	ISS VOTING GUIDELINES AND RATIONALE
Election of directors[1]	Executive directors (EDs) serving on audit or nomination and remuneration committees	CA: Sections 177 and 178 LODR: Regulations 18 and 19	AC: No restrictions on EDs serving on the committee. However, banks shall constitute the committee with only NEDs[2]. NRC: Must comprise of Non-Executive Directors (NEDs) (but executive chairperson can be a member).	It is preferable that members of key board committees be limited to NEDs only, as the presence of executives on these committees may potentially create conflict of interest and undermine the committees' ability to provide independent oversight.
	Appointment of Non-Executive and Non-Independent Director (NE-NID) when board independence norms are not met	CA: Section 149 LODR: Regulation 17	Where the board chair is a NED, at least one-third of the board should be independent; where the chair is an ED or promoter or is related to any promoter, at least one-half of the board should be independent.	Having adequate independent directors on a board contributes to the exercise of objective judgment and opinion. Furthermore, their ability to impartially scrutinize individual and corporate performance and executive compensation may be compromised if they have low representation. Therefore, an AGAINST vote recommendation will generally be sanctioned for NE-NID nominees whenever board independence norms are not met.

[1] For this entire resolution category, ISS may make exceptions for 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.

[2] As per RBI guidelines on Corporate Governance in Banks - Appointment of Directors and Constitution of Committees of the Board, dated April 26, 2021. [LINK]

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	Appointment of Independent Directors (IDs) when the tenure of nominee exceeds 10 years	CA: Section 149	An ID can be appointed for a term up to five consecutive years and thereafter can be re-appointed for another term of up to five consecutive years after passing of a special resolution in a general meeting. However, any tenure of an ID on the date of commencement of the Companies Act 2013 shall not be counted as a term. They can be appointed after two terms if a here years cooling off period is served.	Having IDs on a board with long tenures raises questions on their ability to exercise objective judgment and opinion. Furthermore, their ability to impartially scrutinize management performance and executive compensation may be compromised, and they may suffer from conflicts of interest. Therefore, an AGAINST vote recommendation will generally be sanctioned under ISS' guidelines for such nominees.
	Appointment of ID when the ID served/ is serving in a holding or subsidiary company or a company that was merged with the company and his tenure in addition to term served at holding/ subsidiary/ merged entity exceeds 10 years	N/A	There is no specific legal requirement for IDs tenure at holding or subsidiary company.	A prolonged tenure and association may compromise an individual's ability to impartially evaluate such matters as management performance and executive compensation due to their familiarity with the management, leading to potential conflicts of interest. In addition to tenure on the Board of the company, any tenure served by the nominee on the board of the company's holding company, subsidiary companies, or entities that have merged with the company will also be considered for arriving at the vote recommendation. Therefore, an AGAINST vote recommendation will generally be sanctioned under ISS' guidelines for such nominees.

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	IDs overall tenure during proposed term of appointment/ re-appointment will exceed 10 years	CA: Section 149	An ID can be appointed for a term up to five consecutive years and thereafter can be re-appointed for another term of up to five-consecutive years after passing of a special resolution in a general meeting. However, any tenure of an ID on the date of commencement of the Companies Act 2013 shall not be counted as a term. They can be appointed after two terms if a here years cooling off period is served.	A prolonged tenure and association may compromise an individual's ability to impartially evaluate such matters as management performance and executive compensation due to their familiarity with the management, leading to potential conflicts of interest. Given that, IDs are proposed to be appointed for a fixed term of upto five years, if during the proposed term of appointment/ re-appointment, their association is likely to cross ten years if the full term is served, then an AGAINST vote recommendation will generally be sanctioned under ISS' guidelines for such nominees.
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	Low director attendance level of less than 75% in board and committee meetings	N/A	There is no specific legal requirement for director attendance. However, it is required under CA that directors shall exercise their "duties with due and reasonable care, skill and diligence and shall exercise independent judgment."	Attendance levels are an indication of a directors' time commitments towards the company's affairs – and therefore their ability to fulfill their duties with due care and diligence. An AGAINST voting recommendation will generally be issued in such cases. If attendance levels are low, the company must take steps to explain this in the annual report.

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	Nominee serving on more than six listed boards	CA: Section 165 LODR: Regulation 17A	There is a maximum limit of seven listed directorships for any individual.	Investors may be concerned whether directors are able to fulfill their fiduciary responsibilities when they are serving on multiple boards. While the demands of each board, and the capacity of each person, will vary, a maximum of six listed directorships is considered a globally acceptable threshold. For an over-boarded director, any disclosed commitment to reduce the number of directorships will be considered positively.
	Sufficient information of director's qualification or relevant experience is not publicly available	LODR: Regulation 36 (3)	In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the following information: a) a brief resume of the director b) nature of expertise in specific functional areas.	Although, the proposals to appoint directors provide a brief profile, in some cases these profiles lack sufficient information on the director's qualifications or the relevant experience. In those situations, it is difficult to ascertain the suitability and relevance of the director to be appointed as a director on board. While arriving at a vote recommendation for a nominee, past leadership /board position and/or experience in industry and/or details about their work-experience and qualifications would be analyzed. Scant details and lack of experience may lead to an AGAINST voting recommendation in such cases.

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	The nominee is a politician or has linkages with a political party and does not appear to have relevant qualifications or experience	N/A	There is no specific legal requirement for a director to not hold any political position or be affiliated with a political party.	Political influence in the boardroom is seen as a governance concern, as it can skew the overall decision making, intimidate/ influence certain board members and jeopardize independent and objective thinking of the board. An AGAINST voting recommendation may be made for nominees who serve in a political position or have in the past established links with a political party.
	Re-election of Nomination and Remuneration Committee (NRC) chair/senior members when board composition or gender diversity norms are not met	CA: Section 178 LODR: Schedule II	The NRC is responsible for identifying the right board composition, and for devising a policy on diversity.	Given the nature of their responsibilities the NRC chair/senior members of NRC must be held accountable if board composition is not in line with regulatory requirements. Any disclosed commitment to comply with the requirements going forward may be considered positively.
	Re-election of Audit Committee (AC) members when non-audit fees exceed 50% of total auditor remuneration	CA: Section 144	Statutory auditors are barred from providing specific types of non-audit services (which includes investment advisory, investment banking, internal audit, etc) to their audit clients.	In some cases, it is still observed that audit firms provide tax compliance and other non-audit services to their clients. While these may be within the legal definition of permitted non-audit services and while large auditors may have effective internal barriers to protect against conflicts of interest, an auditor's ability to remain objective becomes questionable when non-audit fees exceed the standard audit fees. Therefore, an AGAINST vote recommendation may be issued in such situations.

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	Re-election of Audit Committee members where auditors have provided an adverse/ qualified opinion on the company's latest available financial statements	CA: Section 177	Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include, examination of the financial statement and the auditors' report thereon. The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.	Members of a company's audit committee have responsibility for overseeing the integrity of the company's financial reporting process, including accounting practices and internal controls. When the company's auditor provides an adverse or qualified opinion on the company's financial statements, it signals deficiencies in accounting practices or weaknesses in internal controls. An adverse or qualified opinion indicates a failure of the audit committee in ensuring accurate and transparent financial reporting, and that robust internal controls are maintained. A negative vote recommendation for all members of an audit committee in such a situation holds them accountable, emphasizing the importance of accountability in financial reporting systems.
	Election of directors with contentious track record	CA: Section 166	A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.	Under extra-ordinary circumstances, an AGAINST vote recommendation may be warranted for material failures of governance, stewardship, risk oversight, or fiduciary responsibilities; or due to egregious actions related to a director's service on other boards.

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	Directors holding more than one MD/ED position	CA: Section 203	A director may act as a managing director not more than two companies, provided that appointment is approved by a resolution passed at a board meeting with the consent of all the directors present at the meeting.	An AGAINST vote recommendation will generally be sanctioned for directors holding multiple whole-time roles. Few promoter directors have been holding whole-time directorships in two or more large companies with diverse business interests. As these directors are responsible for the day-to-day operations of a company, multiple whole-time roles may make it challenging to devote adequate time to the affairs of each company.
Classification of directors	NEDs who are executives in a wholly owned subsidiary of the company	N/A	There are no restrictions in such directors being classified as a NED in the parent company.	All such directors to be reclassified as ED. This is because a wholly owned subsidiary is fully consolidated in the group accounts and effectively functions as an indistinguishable arm of the parent company. In addition, any NED who receives salary, fees, bonus, and/or other benefits that are in line with the highest-paid executives of the company will also be classified as an ED.

[2] Companies defined as “significant GHG emitters” will be those on the current Climate Action 100+ Focus Group list.

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	Any ID who is an employee or executive of a significant shareholder	CA: Section 149	An ID should not hold together with his relatives two per cent. or more of the total voting power of the company	IDs should remain free of conflict, impartial and be accountable to all shareholders. Hence, an ID who is an employee or executive of any significant shareholder of the company shall be re-classified to non-independent, since such relationship may lead to conflict of interest.
	Any ID who, or whose firm, provides professional services in excess of USD 10,000 per year	CA: Section 149	If a director has had pecuniary relationship, (other than remuneration as such director) or has had transaction exceeding ten per cent. of his total income with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year, the director will be considered NE-NID. If the director is an executive of a legal or a consulting firm that has or had any transaction with the company (or group entities) amounting to ten per cent. or more of the gross turnover of such firm, the director will be considered NE-NID.	To be reclassified as NE-NID, whenever the level of professional services goes beyond USD 10,000 (ca. INR 0.7 million) – in line with acceptable global practices.

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	ID with a tenure of more than 10 years on the board of the company or on the board of holding or subsidiary company or an entity merged with the company, unless a cooling off period of three years is served	CA: Section 152	An independent director can be appointed for a term up to five consecutive years and thereafter can be re-appointed for another term of up to five consecutive years after passing of a special resolution in a general meeting. However, any tenure of an independent director on the date of commencement of the Companies Act 2013 shall not be counted as a term.	Having independent directors on a board with long tenures raises questions on their ability to exercise objective judgment and opinion. Furthermore, their ability to impartially scrutinize management performance and executive compensation may be compromised, and they may suffer from conflicts of interest. Additionally, on account of their familiarity with the management, tenure on the board of the company and any tenure served by the nominee on the board of the company's holding company, subsidiary companies, or entities that have merged with the company will also be considered Therefore, such directors shall be considered as non-independent under ISS' guidelines.
	Cooling-off period for former executives before they can be appointed as ID	CA: Section 149	Person should not have been a key managerial personnel or employee of the company, or its holding company or subsidiary or associate company in any of the three preceding financial years. Further, person should not have been an employee or proprietor or partner of a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company.	The requirement for cooling-off is five years. This will allow additional time for complete disassociation from the company, its management and the board before getting reelected as independent.

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	Non-Executive Director being re-classified and appointed as Independent Director	N/A	There are no restrictions in regulations on appointment of a NED as Independent Director.	An AGAINST vote recommendation will be generally made when an existing non-executive director is appointed as Independent Director or reclassified as Independent Director without sufficient rationale as to why the director was not initially appointed as Independent. The absence of relevant information on the rationale for redesignation hinder the shareholders from making a fair assessment and ascertaining director's independence.
Remuneration of directors	Executive and non-executive director compensation	CA: Section 197-200 LODR: Regulation 17(6)	Regulations generally specify remuneration thresholds for board members (based on net profits of the company). Pay levels over these thresholds need special shareholder approval. However, there is no restriction on the final quantum of remuneration that may be paid.	Vote recommendations are made 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.
Equity compensation plans	Dilution	SEBI (Share Based Employee Benefits Regulations) 2014	No restriction on dilution.	The maximum size of the equity compensation plan must not generally exceed 5 percent of issued share capital for a mature company (10 percent for a growth company). This will ensure that shareholders are not diluted excessively and that companies seek their approval on a more periodic basis (when the plan limit gets exhausted).

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	Exercise price	SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 CA: Section 53	Companies cannot issue shares below the face value of their shares.	Discounted stock options/equity instruments will be viewed as an area of concern. This is primarily because such instruments in this market generally follow a time-based vesting schedule - implying that vesting is guaranteed if an employee decides to continue their employment with the company. This is not a good governance practice as the employee rewards in such cases may not be consistent with the shareholder experience. In case of adverse price movements in the market, the options my remain in the money even when shareholder wealth is eroded. In the round, stock options are at-risk instruments. By providing a discount to market price, the company risks skewing the alignment of interests between company executives and shareholders.
	Performance criteria	N/A	No requirement to provide disclosure of performance criteria	In case of performance based options or RSU plans, where exercise price is face value, it is expected that vesting is based on certain objective performance criteria and companies provide details such as targets, thresholds, weightage of objective performance criteria to assess the potential linkage between pay and performance. It is understood that it may not be feasible for a company to disclose the vesting conditions,

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				targets and weighing for each employee or its hierarchy in the circular proposing the stock option scheme. As a good practice, upon vesting of such options, companies should disclose the vesting criteria, weightages and targets assigned to key managerial personnel based on which such options vested. This can be reported in annual report upon vesting on options in respective year. In case where information is not provided on the above, AGAINST recommendation may be issued.
	Vesting Period	N/A	There shall be a minimum vesting period of one year in case of ESOS.	While the regulations have prescribed a minimum vesting period of one year, it is expected the companies have a longer vesting period, preferably a five-year period which is in line with general market practice. This helps promoting alignment of the interests of employees with shareholder experience. The lack of a staggered and prolonged vesting period will promote only an ephemeral view of the business. Therefore, an AGAINST recommendation may be issued in cases where the scheme allows options to be granted with a maximum vesting period of one year.

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	Extension of equity compensation plans	SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021		Granting of options/ RSU/ SAR's to the employees of the company as well employee of the subsidiaries is an accepted market practice. However, some companies are also proposing to extend these benefits to employees of group, holding and associate companies. Since, these entities do not directly contribute to the performance of the company, there should be a compelling rationale for such benefit schemes to be extended to these employees. Nomination and remuneration committees of the company, which is generally the administrator of the scheme, may lack adequate oversight over the employees of these group, holding or associate entities. An AGAINST recommendation may be issued for extension of plans to associate or holding companies if proposals lack a detailed and compelling rationale.
Audit	Profile of auditors	CA: Section 139	Any accountancy firm with valid registration can be appointed as auditors.	Some companies may appoint audit firms with no available track record. This makes it difficult for shareholders to assess if the audit firm is independent or if it has the resources and the required expertise in that sector to conduct an effective audit process. Accordingly, a negative recommendation maybe made in cases where the profile of the audit firm being appointed is not disclosed

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				or not available in the public domain. In addition, an AGAINST recommendation may be issued if the audit firm being proposed to be appointed is a sole proprietorship for a company with significant size and scale of operations, since a proprietorship model may not be appropriate to ensure the quality of audit being performed.
	Non-audit fees	CA: Section 144	The regulations list out specific categories of services which the statutory auditor of the company will not be allowed to provide.	Based on global experience, ISS has a wider definition of non-audit services. In addition, unless the nature of the tax services was indicated as tax compliance/tax return preparation, tax audit and taxation matters are classified as non-audit related fees. 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 and special situation audits exceed the standard annual audit fees. As such, where non-audit fees have constituted more than 50 percent of total auditor compensation during the fiscal year, support for the reelection of the audit firm will generally be withheld.

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	Accept financial statements	CA: Sections 129(2) and 134	The only legal requirement is to put up the financial statements for shareholder approval at the AGM.	An AGAINST recommendation may be issued in cases where the auditors have raised concerns about the accounts presented or audit procedures used or where there has been an accounting fraud or misstatements. This is to ensure accuracy and integrity of the financial statements which are presented to shareholders.
Equity Issuance	General and preferential issuances	CA: Section 62 SEBI (ICDR) Regulations	No restriction on dilution.	Generally, issuances without preemption rights are supported only if issue size is restricted to 20% of issued share capital. This is to ensure existing shareholders are not diluted excessively. In addition, the final recommendation will depend on the rationale, urgency of funds, and capital structure.
Debt Related	Increase borrowing limits, issue debt securities, pledge assets as collateral	CA: Sections 42, 71 and 180(1)	No restrictions on the quantum of debt to be raised or size of assets to be pledged.	Recommendations are made on a case-by-case basis depending on the rationale/use of proceeds, terms of the debt instruments, current and proposed debt levels, leverage profile, credit rating and the risk of non-approval.
	Acceptance of Fixed Deposits	CA: Sections 73-76	The legal provisions outline the process to be followed for accepting deposits from public.	An AGAINST recommendation may be issued for proposals to accept deposits from shareholders and/or the public, if there are significant causes for shareholder concern regarding the terms and conditions of the deposit.

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Articles of Association	Amend Articles of Association (AoA)	CA: Section 14	No restriction on the nature of 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. Special rights to a specific group of shareholders or permanent board seats will be scrutinized closely. An AGAINST recommendation may be made if the draft of the new AoA is not disclosed or if the proposed changes are not adequately highlighted in the shareholder notice.
Related Party Transactions	Related party transactions	CA: Section 188	Several legal provisions mandate companies to seek shareholder approval for material related party transactions. The laws do not restrict the quantum or nature of related party transactions. However, the amended provision of the SEBI LORD specifies that omnibus approval granted by the audit committee to undertake such transactions shall be valid for a period not exceeding one year and shall require fresh shareholder approval for material related party transactions after expiry of one year.	Recommendations are made on a case-by-case basis after considering factors including, 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 periodicity and frequency of transactions; • The views of an independent financial adviser, where appointed; and

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				• The stated rationale for the transaction, including discussions of timing.
	Financial assistance	CA: Sections 185 and 186	No restrictions on the amount of financial assistance that could be provided to group entities or other companies.	Provision of financial assistance or guarantees must be proportionate to the equity stake held by the company in the beneficiary entity. Recommendations are decided based on the rationale for the assistance, the financial health of the recipient parties and the nature of affiliation between the promoters/directors and the recipients.
Corporate Restructurings	Mergers and Acquisitions (M&A)	CA: Section 230-232 LODR: Regulations 11, 37	Applications for schemes of arrangement need to be submitted to the concerned National Company Law Tribunal (NCLT) for approval. The NCLT may direct the company to convene a meeting of its shareholders and creditors and get their approval.	Recommendations are made on a case-by-case basis depending on the valuation, market reaction, strategic rationale, process followed, conflicts of interest, and other similar governance parameters.
Charitable Donations	Make donations	CA: Section 181	The legal provisions allow companies to make charitable contributions upto 5% of net profits - shareholder approval is required for contributions beyond this threshold.	There are concerns about the potential for abuse and lack of accountability in such proposals. 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

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				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. As a result, an AGAINST recommendation may be issued unless there is a compelling rationale and adequate disclosures are provided in the meeting circular.

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ISS STOXX delivers world-class research, data, and technology solutions that empower capital market participants to pursue their visions with confidence. Our expertise spans indices, corporate governance, sustainability, cyber risk, and fund intelligence, giving clients the tools they need to uncover opportunities, manage risks, and navigate evolving regulations. We are made up of 4,000 professionals operating across 20 countries and serving approximately 5,000 clients, including many of the world's leading institutional investors. Our scale and reach give us deep market knowledge, while our innovative methodologies allow us to offer our clients tailored insights that drive impact and success.