

## Neuer Article 164a Solvency II

### Qualifying infrastructure investments

1. For the purposes of this Regulation, qualifying infrastructure investment shall include investment in an infrastructure project entity that meets the following criteria:

- (a) the infrastructure project entity can meet its financial obligations under sustained stresses that are relevant for the risk of the project;
- (b) the cash flows that the infrastructure project entity generates for debt providers and equity investors are predictable;
- (c) the infrastructure assets and infrastructure project entity are governed by a contractual framework that provides debt providers and equity investors with a high degree of protection including the following:
  - (a) where the revenues of the infrastructure project entity are not funded by payments from a large number of users, the contractual framework shall include provisions that effectively protect debt providers and equity investors against losses resulting from the termination of the project by the party which agrees to purchase the goods or services provided by the infrastructure project entity;
  - (b) the infrastructure project entity has sufficient reserve funds or other financial arrangements to cover the contingency funding and working capital requirements of the project;

Where investments are in bonds or loans, this contractual framework shall also include the following:

- (i) debt providers have security to the extent permitted by applicable law in all assets and contracts necessary to operate the project;
- (ii) equity is pledged to debt providers such that they are able to take control of the infrastructure project entity prior to default;
- (iii) the use of net operating cash flows after mandatory payments from the project for purposes other than servicing debt obligations is restricted;
- (iv) contractual restrictions on the ability of the infrastructure project entity to perform activities that may be detrimental to debt providers, including that new debt cannot be issued without the consent of existing debt providers;
- (d) where investments are in bonds or loans, the insurance or reinsurance undertaking can demonstrate to the supervisor that it is able to hold the investment to maturity;
- (e) where investments are in bonds for which a credit assessment by a nominated ECAI is not available, the investment instrument is senior to all other claims other than statutory claims and claims from derivatives counterparties;
- (f) where investments are in equities, or bonds or loans for which a credit assessment by a nominated ECAI is not available, the following criteria are met:
  - (i) the infrastructure assets and infrastructure project entity are located in the EEA or in the OECD;
  - (ii) where the infrastructure project entity is in the construction phase the following criteria shall be fulfilled by the equity investor, or where there is more than one equity investor, the following criteria shall be fulfilled by a group of equity investors as a whole:

- the equity investors have a history of successfully overseeing infrastructure projects and the relevant expertise,
- the equity investors have a low risk of default, or there is a low risk of material losses for the infrastructure project entity as a result of the their default,
- the equity investors are incentivised to protect the interests of investors;
- (iii)the infrastructure project entity has established safeguards to ensure completion of the project according to the agreed specification, budget or completion date;
- (iv) where operating risks are material, they are properly managed;
- (v) the infrastructure project entity uses tested technology and design;
- (vi)the capital structure of the infrastructure project entity allows it to service its debt;
- (vii) the refinancing risk for the infrastructure project entity is low;
- (viii)the infrastructure project entity uses derivatives only for risk-mitigation purposes.

2. For the purposes of paragraph 1(b), the cash flows generated for debt providers and equity investors shall not be considered predictable unless all except an immaterial part of the revenues satisfies the following conditions:

(a)one of the following criteria is met:

- (i) the revenues are availability-based;
- (ii) the revenues are subject to a rate-of-return regulation;
- (iii) the revenues are subject to a take-or-pay contract;
- (iv)the level of output or the usage and the price shall independently meet one of the following criteria:

- it is regulated,
- it is contractually fixed,
- it is sufficiently predictable as a result of low demand risk;

(b)where the revenues of the infrastructure project entity are not funded by payments from a large number of users, the party which agrees to purchase the goods or services provided by the infrastructure project entity shall be one of the following:

- (i) an entity listed in Article 180(2) of this Regulation;
- (ii)a regional government or local authority listed in the Regulation adopted pursuant to Article 109a(2)(a) of Directive 2009/138/EC;
- (iii) an entity with an ECAI rating with a credit quality step of at least 3;
- (iv)an entity that is replaceable without a significant change in the level and timing of revenues.;