

Commission Delegated Regulation (EU) 2015/35 of 10 October 2014
supplementing Directive 2009/138/EC of the European Parliament
and of the Council on the taking-up and pursuit of the business of
Insurance and Reinsurance (Solvency II) (Text with EEA relevance)

TITLE I

[^{X1}VALUATION AND RISK-BASED CAPITAL REQUIREMENTS
(PILLAR I), ENHANCED GOVERNANCE (PILLAR II)
AND INCREASED TRANSPARENCY (PILLAR III)]

CHAPTER V

SOLVENCY CAPITAL REQUIREMENT STANDARD FORMULA

SECTION 5

Market risk module

[^{F1}Subsection 1a

Qualifying infrastructure investments

Article 164a

Qualifying infrastructure investments

[^{F21} For the purposes of this Regulation, qualifying infrastructure investment shall include investment in an infrastructure entity that meets the following criteria:

- a the cash flows generated by the infrastructure assets allow for all financial obligations to be met under sustained stresses that are relevant for the risks of the project;
- b the cash flows that the infrastructure entity generates for debt providers and equity investors are predictable;
- c the infrastructure assets and infrastructure entity are governed by a regulatory or contractual framework that provides debt providers and equity investors with a high degree of protection including the following:
 - (a) 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, unless one of the following conditions is met:
 - (i) the revenues of the infrastructure entity are funded by payments from a large number of users; or
 - (ii) the revenues are subject to a rate-of-return regulation;

Changes to legislation: Commission Delegated Regulation (EU) 2015/35, Subsection 1a is up to date with all changes known to be in force on or before 21 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (b) the infrastructure 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 or the benefit of security to the extent permitted by applicable law in all assets and contracts that are critical to the operation of the project;
- (ii) the use of net operating cash flows after mandatory payments from the project for purposes other than servicing debt obligations is restricted;
- (iii) restrictions on activities that may be detrimental to debt providers, including that new debt cannot be issued without the consent of existing debt providers in the form agreed with them, unless such new debt issuance is permitted under the documentation for the existing debt;

Notwithstanding point (i) of the second subparagraph, for investments in bonds or loans, where undertakings can demonstrate that security in all assets and contracts is not essential for debt providers to effectively protect or recover the vast majority of their investment, other security mechanisms may be used. In that case, the other security mechanisms shall comprise at least one of the following:

- (i) pledge of shares;
 - (ii) step-in rights;
 - (iii) lien over bank accounts;
 - (iv) control over cash flows;
 - (v) provisions for assignment of contracts;
- 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 or loans for which a credit assessment by a nominated ECAI is not available, the investment instrument and other pari passu instruments are senior to all other claims other than statutory claims and claims from liquidity facility providers, trustees and 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 entity are located^{F3}... in the OECD;
 - (ii) where the infrastructure project 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 entity as a result of the their default,

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- the equity investors are incentivised to protect the interests of investors;
- (iii) where there are construction risks, 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 entity uses tested technology and design;
- (vi) the capital structure of the infrastructure entity allows it to service its debt;
- (vii) the refinancing risk for the infrastructure entity is low;
- (viii) the infrastructure 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.

Textual Amendments

- F2** Substituted by Commission Delegated Regulation (EU) 2017/1542 of 8 June 2017 amending Delegated Regulation (EU) 2015/35 concerning the calculation of regulatory capital requirements for certain categories of assets held by insurance and reinsurance undertakings (infrastructure corporates) (Text with EEA relevance).
- F3** Words in Art. 164a(1)(f)(i) omitted (31.12.2020) by virtue of The Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019 (S.I. 2019/407), regs. 1(2), 11(16) (as amended by S.I. 2020/1385, regs. 1(2), 54(2) and with savings in S.I. 2019/680, reg. 11)

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I F⁴ Article 164b

Qualifying infrastructure corporate investments

For the purpose of this Regulation, qualifying infrastructure corporate investment shall include investment in an infrastructure entity that meets the following criteria:

- (1) The substantial majority of the infrastructure entity's revenues is derived from owning, financing, developing or operating infrastructure assets located in ^{F⁵}... the OECD;
- (2) The revenues generated by the infrastructure assets satisfy one of the criteria set out in Article 164a(2)(a);
- (3) Where the revenues of the infrastructure 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 entity shall be one of the entities listed in Article 164a(2)(b);
- (4) The revenues shall be diversified in terms of activities, location, or payers, unless the revenues are subject to a rate-of-return regulation in accordance with Article 164a(1)(c)(a)(ii) or a take-or-pay contract or the revenues are availability based;
- (5) 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;
- (6) Where no credit assessment from a nominated ECAI is available for the infrastructure entity:
 - (a) the capital structure of the infrastructure corporate shall allow it to service all its debt under conservative assumptions based on an analysis of the relevant financial ratios;
 - (b) the infrastructure entity shall have been active for at least three years or, in the case of an acquired business, it shall have been in operation for at least three years;
- (7) Where a credit assessment from a nominated ECAI is available for the infrastructure entity, such credit assessment has a credit quality step between 0 and 3.]]

Textual Amendments

- F4** Inserted by [Commission Delegated Regulation \(EU\) 2017/1542 of 8 June 2017 amending Delegated Regulation \(EU\) 2015/35 concerning the calculation of regulatory capital requirements for certain categories of assets held by insurance and reinsurance undertakings \(infrastructure corporates\)](#) (Text with EEA relevance).
- F5** Words in Art. 164b(1) omitted (31.12.2020) by virtue of [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **11(17)** (as amended by S.I. 2020/1385, regs. 1(2), 54(2) and with savings in S.I. 2019/680, reg. 11)

Changes to legislation:

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Changes and effects yet to be applied to :

- [Recital 53 Sentence 1 replacement by EUR 2016/2283 Regulation](#)

Changes and effects yet to be applied to the whole legislation item and associated provisions

- [Art. 1\(18a\) words substituted by S.I. 2024/705 Sch. 2 para. 27\(a\)](#)
- [Art. 1\(18b\)\(a\) substituted by S.I. 2024/705 Sch. 2 para. 27\(b\)\(i\)](#)
- [Art. 1\(18b\)\(a\) word omitted by S.I. 2024/705 Sch. 2 para. 27\(b\)\(ii\)](#)
- [Art. 1\(18b\)\(c\) and word inserted by S.I. 2024/705 Sch. 2 para. 27\(b\)\(iii\)](#)
- [Art. 1\(19\) words substituted by S.I. 2024/705 Sch. 2 para. 27\(c\)](#)
- [Art. 1\(20\) words substituted by S.I. 2024/705 Sch. 2 para. 27\(d\)](#)
- [Art. 1\(21\) words substituted by S.I. 2024/705 Sch. 2 para. 27\(e\)](#)
- [Art. 1\(22\) words substituted by S.I. 2024/705 Sch. 2 para. 27\(f\)](#)
- [Art. 1\(23\) words substituted by S.I. 2024/705 Sch. 2 para. 27\(g\)](#)
- [Art. 177\(2\)\(b\) words omitted by S.I. 2019/407 reg. 11\(25\)\(a\) \(This amendment not applied to legislation.gov.uk. Reg. 11\(25\)\(39\) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1\(2\), 22\)](#)
- [Art. 177\(2\)\(h\)\(i\) words omitted by S.I. 2019/407 reg. 11\(25\)\(b\)\(ii\) \(This amendment not applied to legislation.gov.uk. Reg. 11\(25\)\(39\) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1\(2\), 22\)](#)
- [Art. 177\(2\)\(h\)\(i\) words substituted by S.I. 2019/407 reg. 11\(25\)\(b\)\(i\) \(This amendment not applied to legislation.gov.uk. Reg. 11\(25\)\(39\) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1\(2\), 22\)](#)
- [Art. 177\(2\)\(r\) words substituted by S.I. 2019/407 reg. 11\(25\)\(c\) \(This amendment not applied to legislation.gov.uk. Reg. 11\(25\)\(39\) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1\(2\), 22\)](#)
- [Art. 177\(2\)\(s\) words substituted by S.I. 2019/407 reg. 11\(25\)\(c\) \(This amendment not applied to legislation.gov.uk. Reg. 11\(25\)\(39\) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1\(2\), 22\)](#)
- [Art. 177\(2\)\(t\) words substituted by S.I. 2019/407 reg. 11\(25\)\(d\) \(This amendment not applied to legislation.gov.uk. Reg. 11\(25\)\(39\) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1\(2\), 22\)](#)
- [Art. 177\(5\)\(a\) words substituted by S.I. 2019/407 reg. 11\(25\)\(f\) \(This amendment not applied to legislation.gov.uk. Reg. 11\(25\)\(39\) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1\(2\), 22\)](#)
- [Art. 177\(5\)\(c\) words substituted by S.I. 2019/407 reg. 11\(25\)\(f\) \(This amendment not applied to legislation.gov.uk. Reg. 11\(25\)\(39\) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1\(2\), 22\)](#)
- [Art. 257\(1A\) inserted by S.I. 2024/705 Sch. 2 para. 28\(3\)](#)
- [Art. 257\(6\) inserted by S.I. 2024/705 Sch. 2 para. 28\(7\)](#)