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## **Annexe 1 à la circulaire NBB\_2018\_29**

### **Criteria checklist for qualifying infrastructure investment**

#### Champ d'application

*Entreprises d'assurance ou de réassurance de droit belge.*

*Groupes d'assurance ou de réassurance de droit belge.*

Criteria – Infrastructure entity project finance	Yes/No	Comments
It is an infrastructure asset <sup>1</sup>		
It is an infrastructure entity <sup>2</sup>		
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		
The cash flows that the infrastructure entity generates for debt providers and equity investors are predictable <sup>3</sup>		
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:		
<ul style="list-style-type: none"> <li>(i) 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: <ul style="list-style-type: none"> <li>(i) the revenues of the infrastructure entity are funded by payments from a large number of users; or</li> <li>(ii) the revenues are subject to a rate-of-return regulation;</li> </ul> </li> </ul>		
<ul style="list-style-type: none"> <li>(ii) the infrastructure entity has sufficient reserve funds or other financial arrangements to cover the contingency funding and working capital requirements of the project.</li> </ul>		
Where investments are in bonds or loans, this contractual framework shall also include the following:		
<ul style="list-style-type: none"> <li>(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;</li> </ul>		
Notwithstanding (i), 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		

<sup>1</sup> Definition cf. Delegated Regulation 2015/35 article 1 §55a

<sup>2</sup> Definition cf. Delegated Regulation 2015/35 article 1 §55b

<sup>3</sup> Requirements cf. Delegated Regulation 2015/35 article 164a §2

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;

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(ii) the use of net operating cash flows after mandatory payments from the project for purposes other than servicing debt obligations is restricted;

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(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;

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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;

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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;

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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:

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- the infrastructure assets and infrastructure entity are located in the EEA or in the OECD;
  - 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:

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- o the equity investors have a history of successfully overseeing

infrastructure projects and the relevant expertise;

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- 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 their default;
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- the equity investors are incentivised to protect the interests of investors;
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- where there are construction risks, safeguards to ensure completion of the project according to the agreed specification, budget or completion date
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- where operating risks are material, they are properly managed
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- the infrastructure entity uses tested technology and design
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- the capital structure of the infrastructure entity allows it to service its debt
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- the refinancing risk for the infrastructure entity is low
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- the infrastructure entity uses derivatives only for risk-mitigation purposes.

Criteria – Infrastructure corporate finance	Yes/No	Comments
It is an infrastructure asset <sup>4</sup>		
It is an infrastructure entity <sup>5</sup>		
The substantial majority of the infrastructure entity's revenues is derived from owning, financing, developing or operating infrastructure assets located in the EEA or the OECD		
The revenues generated by the infrastructure assets satisfy one of the criteria set out in Article 164a(2)(a)		
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)		
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		
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		
Where no credit assessment from a nominated ECAI is available for the infrastructure entity:		
<ul style="list-style-type: none"> <li>- 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</li> </ul>		
<ul style="list-style-type: none"> <li>- 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</li> </ul>		
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.		

<sup>4</sup> Definition cf. Delegated Regulation 2015/35 article 1 §55a

<sup>5</sup> Definition cf. Delegated Regulation 2015/35 article 1 §55b