

# German Government facilitates pension schemes' investments in infrastructure

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On February 7, 2025, the 8th Amendment Ordinance to Ordinances under the Insurance Supervision Act (Achte Verordnung zur Änderung von Verordnung nach dem Versicherungsaufsichtsgesetz – “**Ordinance**”) entered into force. It introduces amendments to the German Investment Ordinance (*Anlageverordnung* – “**AnIV**”) regarding infrastructure investments made by pension schemes (*Pensionskassen*), small insurance companies and funeral expense funds (*Sterbekassen*) but, notably, is generally applicable to pension funds as well due to references in state law regulations (such investors together, the “**AnIV Investors**”).

The German government had already published a further draft on the Second Act to Strengthen Occupational Pensions (*Zweites Betriebsrentenstärkungsgesetz* – “**BRSG**”) on 16 September, 2024 (“Draft”), which – among other regulations – proposed the aforementioned amendments to the AnIV. However, due to the subsequent end of the German government coalition in November 2024, the BSRG was not expected to enter into force during the current legislative period. Unexpectedly, the German Federal Ministry of Finance (*Bundesministerium der Finanzen*) announced the isolated adoption of the AnIV on February 5, 2025.

While few amendments have been introduced to the AnIV, they are of significance for the AnIV Investors, particularly those interested in infrastructure investments.

### **5% QUOTA OF GUARANTEE ASSETS FOR INFRASTRUCTURE INVESTMENTS**

Most notably, the German government aims to facilitate infrastructure investments by implementing a separate quota of 5% of the guarantee assets (*Sicherungsvermögen*) for infrastructure investments of AnIV Investors. Pursuant to Section 3 paragraph 7 AnIV, such infrastructure investments comprise direct and indirect investments for the financing of infrastructure facilities (*Infrastrukturanlagen*) and infrastructure companies (*Infrastrukturunternehmen*) that meet the requirements for eligible investments under Section 2 of the AnIV and that serve the construction, expansion, renovation, maintenance, provision, operation or management of infrastructure. Such infrastructure investments will, up to the new designated 5% infrastructure quota, not be counted towards the existing allocation quotas (*Mischungsquoten*) pursuant to Section 3 paragraphs 1 through 6 of the AnIV.

Such investments were previously not independently addressed in the AnIV. AnIV Investors had to include infrastructure investments in the existing allocation quotas such as the private equity participation quota (15%) or the real estate quota (25%). In the past, these quotas had often been fully utilized due to the increased allocation of alternative investments in the portfolios of AnIV Investors and, more recently, the denominator effect. Thus, the Ordinance aims to provide relief-enhanced possibilities for infrastructure investments and reduce competition with other types of investments. Pursuant to the explanatory memorandum of the Draft, the Ordinance does not limit infrastructure investments to 5% nor does it require them to be credited against the specific quota for infrastructure investments. Accordingly, investments may still be counted towards other quotas pursuant to Section 2 paragraph 1 AnIV, provided that they meet the specific regulatory requirements. The explanatory memorandum of the Draft also clarifies that investments for the financing of infrastructure investments under Section 2 paragraph 7 AnIV can be included if they are held by open-ended special AIFs. In accordance with a guidance published by the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht – “BaFin”*), this should require establishing a look-through approach to comply with transparency requirements.

### **RISK CAPITAL QUOTA INCREASE TO 40%**

The risk capital quota of the guarantee assets under Section 3 paragraph 3 AnIV has been increased from previously 35% to 40%. This quota includes, besides investments in private equity (funds), equities and some debt instruments. The Draft notes that compliance with Section 1 paragraphs 3 and 4 AnIV continues to be applicable and any increase is determined by investment and risk management as well as the risk-bearing capacity of the AnIV Investors.

### **OPENING CLAUSE (ÖFFNUNGSKLAUSEL) FOR EXCEEDING DIVERSIFICATION LIMITS**

The opening clause of the AnIV for guarantee assets allows for a quota of generally up to 5% of the guarantee assets that do not comply with the requirements set for investments pursuant to Section 2 paragraph 1 AnIV as long as they are not inadmissible under Section 2 paragraph 4 AnIV, which prohibits direct and indirect investments in consumer loans, participations in group companies of the insurance company and companies to which the

insurance company has transferred its business operations. With approval from the BaFin, the quota may amount to up to 10% of the guarantee assets.

This quota is left untouched; however, the Ordinance now includes investments that exceed the diversification limits pursuant to Section 4 paragraphs 1 through 4 AnIV with the aim of increasing flexibility with respect to investments in specific debtors or assets in order to facilitate investments in assets with higher returns.

**CONFIRMATION FOR ADMINISTRATIVE PRACTICE FOR CLOSE-ENDED AIFS**

It is current regulatory practice for close-ended AIFs to be able to hold investments in infrastructure project companies (*Infrastruktur-Projektgesellschaften*). However, this had not been expressly allowed under the Ordinance previously. Section 2 paragraph 1 sentence 1 number 13 litera b AnIV now explicitly references Section 261 paragraph 1 number 4 German Investment Code (*Kapitalanlagegesetzbuch*).

<b>Risk Capital Quota: Increase to 40%</b>				<b>25%</b>	<b>5%</b>	<b>5% (with approval by BaFin: 10%)</b>
<b>15%</b>	<b>10%</b>	<b>5%</b>	<b>7.5%</b>	<b>Real Estate Quota</b>	<b>Infrastructure Investment Quota</b>	<b>Opening Clause (now applicable to exceeding diversification limits)</b>
<b>Private Equity Participation Quota</b>	<b>Asset Backed Securities and Credit Linked Notes</b>	<b>High- Yield Bonds</b>	<b>Other AIF</b>			

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