

Investments in infrastructures: Interpretation of the concept of leverage according to Art. 53 para. 5 OPO 2

1. Background

On 26 August 2020, the Federal Council amended the Ordinance on Occupational Old Age, Survivors' and Invalidity Pension Provision (OPO 2). A new category for investments in infrastructures was included in the catalogue of investments under Art. 53 para. 1 letter d^{bis} after these had been subsumed pursuant to old law under alternative investments and, accordingly, also fell under the category limit for alternative investments of 15 percent of total assets (Art. 55 letter d OPO 2). A separate category limit of 10 percent of total assets was ultimately also created for the new category of infrastructure investments (Art. 55 letter f OPO 2).

Despite the expansion of investment categories in Art. 53 para. 1, the scope of application of Art. 53 para. 5, which governs the admissibility of leverage, was not adjusted. It was not extended to include the new category for infrastructure investments. Consequently, leverage according to para. 5 continues to be permitted only in the previous cases, i.e. alternative investments and the others stipulated.

In the bulletin on occupational pensions of 16 September 2020, the FSIO published a position statement¹ on the definition of leverage in connection with an infrastructure investment. According to this bulletin, infrastructure investments falling under the new category may include investments in the debt and equity capital of infrastructure companies, which investments are not required to be listed or issued. The use of debt capital at the level of an infrastructure company will not constitute leverage. However, if "participations in this company/project are leveraged, e.g. at fund or fund of fund level, this is considered leverage".

In the light of the foregoing, the question arises as to when, at the level of funds or target funds, the criteria for what is deemed to be "leverage" in accordance with Art. 53 para. 5 OPO 2 are not met and the new category for investments in infrastructures actually applies. The present communication conveys the mutual understanding of the concept of leverage by the above-mentioned associations. It was acknowledged by the Occupational Pension Supervisory Commission (OPSC).

¹ FSIO bulletin on occupational pensions no. 153 of 16 September 2020, margin no. 1038 (p. 14), <https://sozialversicherungen.admin.ch/de/d/15346/download> (published in German and French only)

2. What is not deemed to be admissible leverage in accordance with Art. 53 para. 5 OPO 2 in respect of the new investment category of infrastructure investments?

In connection with infrastructure investments, debt financing (at the level of funds or target funds) is only considered to constitute "leverage" within the meaning of Art. 53 para. 5 OPO 2 if a higher return is sought (systematic leverage).

Short-term debt financing with a term of (usually) up to 6 months or, in justified cases, up to a maximum of 12 months does not constitute systematic leverage. This applies in particular, but not exclusively, to debt financing for the following purposes:

- general, operational liquidity management,
- capital calls/credit lines for fund subscriptions and fund redemptions,
- hedging transactions.

Debt financing must be covered by contractual capital commitments.

The deciding factor in determining whether a concrete case constitutes systematic leverage is not the purely legal admissibility of the use of debt according to the fund documentation, but the actual use of the debt.

3. Summary

In the context of the new investment category in accordance with Art. 53 para. 1 letter dbis OPO 2, debt financing at the level of funds and target funds is only considered to constitute leverage within the meaning of Art. 53 para. 5 OPO 2 if a higher return is sought (systematic leverage). In cases where the criteria for what is deemed to be systematic leverage are met, investments in infrastructures constitute, as pursuant to old law, alternative investments in accordance with Art. 53 para. 1 letter e OPO 2.
