

Environmental, Social and Governance (“ESG”) Information Covenant Package (the “ESG Covenant Package”)

Infrastructure debt investors Aviva Investors, LGIM Real Assets, IFM Investors, Macquarie Asset Management, abrdn, BlackRock and Allianz Global Investors (the “Parties”) have collectively developed the ESG Covenant Package with the assistance of Eversheds Sutherland. The initiative has two main aims:

- (i) greater unify ESG data collection by providing a consistent set of requirements as “best practice” for borrowers when reporting to lenders in respect of ESG matters; and
- (ii) facilitating lenders’ compliance with their increasing ESG disclosure obligations under applicable EU and/or UK law and regulations and, where relevant, lenders’ compliance with their own net zero targets and investor demand.

The ESG Covenant Package has been designed as part of a proposal to gather feedback from market participants on the approach to be adopted in finance documentation. Ultimately it is intended to be provided and considered as part of the term sheet negotiation stage between the relevant parties, in order to facilitate discussion on ESG reporting obligations under the finance documents.

For the avoidance of doubt, this document is in a non-binding form. Its intention is to be used as a starting point for negotiation only. Individual parties are free to depart from its terms and should always satisfy themselves of the regulatory implications of its use.

Draft, dated 29 November 2021.

IMPORTANT NOTICE:

This note is intended as an overview and is not intended to be comprehensive. Whilst every care has been taken in its preparation, no representation or warranty is given by the Parties, their agents, Eversheds Sutherland (International) LLP or any person contributing to the production of this note as to:

- *the accuracy or completeness of the contents of this note; or*
- *the extent to which any documentary measure discussed in this note is effective to address any applicable regulatory or other requirement.*

Most importantly, this note is not designed to provide legal or other advice on any matter whatsoever.

Document Scope

Geographical Focus: Europe

Asset Type: Infrastructure, where senior unsubordinated or senior subordinated debt is provided in [private] markets

Transaction Stage:

- (i) Primary financings of construction/greenfield infrastructure
- (ii) Refinancings – typically operational infrastructure

Note that secondary trades of existing debt where documents are agreed fall beyond the scope of this document

KEY WORKING ASSUMPTIONS:

1. Assumptions with respect to Origination Stage Due Diligence

It is assumed that ESG due diligence and assessment will be carried out prior to financial close, including a review of the EIA, to the extent there is one associated with the [Project]. We also expect to be provided with the Environmental and Social Action Plan (if any will be applicable as at financial close) and agree the form of Environmental and Social Monitoring Report.

2. Assumptions with respect to the provisions in the ESG Covenant Package

- (a) Terms defined in the definitions section of the ESG Covenant Package in page 7 below have the same meaning when used in this note. Defined terms in square brackets have not been defined in this note or the ESG Covenant Package and need to be aligned with the drafting of the relevant Facilities Agreement (“**FA**”) or Common Terms Agreement (“**CTA**”) for the relevant transaction.
- (b) The ESG Covenant Package primarily focuses on ESG reporting obligations. The reporting obligations of the [Borrower] in relation to ESG will consist of:
 - (i) The Environmental and Social Monitoring Report
 - (ii) Ad hoc reporting in respect to certain issues
- (c) To ensure consistency across all EU and UK projects, the ESG Covenant Package is primarily based on the requirements of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (the “**SFDR**”). There are two versions of the Environmental and Social Monitoring Report:
 - (i) Version 1 of the Environmental and Social Monitoring Report is based on (A) the indicators used for making principal adverse sustainability impacts (PASI) statements as set out in Table 1 of the Final Report on draft Regulatory Technical Standards dated 2 February 2021 (the “**RTS**”) and (B) the Task Force on Climate-Related Financial Disclosures (TCFD) along with (C) certain other key ESG Policies, Health & Safety and ESG Incident Monitoring information required by lenders. The intention is that this would apply to all financial market participants (defined under the SFDR).
 - (ii) Version 2 of the Environmental and Social Monitoring Report is broader and contains not only the elements in Version 1 described above, but also (A) the additional indicators in Tables 2 and 3 of the RTS, which are optional indicators and (B) GRESB

- 2021 Infrastructure Asset Questionnaire data tables, which contemplate equity investors that report to GRESB. The intention is a lender would decide which optional indicator(s) from Tables 2 and 3 of the RTS that it wishes to report against, which would apply to the relevant [Project] /[Borrower], and amend Version 2 accordingly.
- (iii) The Environmental and Social Action Plan is comprised of (A) policies referred to in the Environmental and Social Monitoring Report that are delivered together with the Environmental and Social Monitoring Report and (B) policies required to satisfy the requirements of applicable planning approval.
- (d) Other controls that complement ESG reporting obligations in the ESG Covenant Package, to be considered for incorporation into the relevant/CTA framework include the following:
- (i) Conditions precedent to financial close to include any ESG due diligence and assessments carried out prior to financial close, the Environmental and Social Action Plan and the EU Taxonomy Confirmation or other whole lifecycle carbon analysis as required by the [Lenders].
 - (ii) The following representations relating to the various ESG issues and concepts and the possibility of expanding existing connected representations in the CTA/FA framework to include the same:
 - (A) The accuracy, etc. of ESG due diligence and assessments carried out prior to financial close. Potentially covered by “No Misleading Information”-type representations.
 - (B) The [Borrower]’s compliance with Environmental and Social Standards and the Environmental and Social Action Plan. Potentially covered by no breach of law-type representations.
 - (C) The [Borrower]’s business, operations, assets and other facilities are in compliance with Environmental and Social Matters. Potentially covered by no breach of law-type representations.
 - (D) All required consents/authorisations relating to ESG have been obtained. Potentially covered by representations relation to obtaining project authorisations.
 - (E) No Environmental and Social Claim has been commenced or threatened. Potentially covered by no litigation-type representations.
 - (iii) An undertaking ensuring that the [Project] is constructed and operated in accordance with, among other things, Environmental and Social Standards and the Environmental and Social Action Plan. Typical undertakings to providing for the [Project] to be constructed and operated in accordance with good industry practice, applicable laws, transaction documents, etc. can be expanded to include this.
 - (iv) An undertaking providing for the finance parties and the ESG Advisor to attend meetings on the project, raise queries on the same and have access to the [Project] for the purposes of monitoring compliance with Environmental and Social Standards and the Environmental and Social Action Plan, among other things. Typical undertakings providing for access to the [Project] can be expanded to include this.
 - (v) The requirements to disclose information in relation to Regulation (EU) 2020/852 (Taxonomy) on the establishment of a framework to facilitate sustainable investment

(EU Taxonomy) or whole life carbon analysis is not provided for in the ESG Covenant Package, and may be included by a lender as necessary.

- (vi) The lenders' technical advisor will also perform any ESG advisory function on behalf of the lenders. Should there the ESG advisory function be performed by a separate entity from the lenders' technical advisor, lenders should consider including obligations on the Borrower to procure periodic reporting by such separate entity.
 - (vii) Treatment of any failure to comply with the ESG reporting obligations in the ESG Covenant Package (i.e. whether or not it shall be a specific event of default or otherwise) is customarily a matter of discussion between the commercial principals, taking into account the specific requirements of the [Project] and applicable law and regulation.
 - (viii) Any disputes in relation to ESG will be resolved using the existing dispute resolution procedures in the relevant/CTA framework.
- (e) Qualifying ESG-related obligations and controls (e.g. with materiality, reasonableness, thresholds, etc.) is customarily a matter of discussion between the commercial principals, taking into account the specific requirements of the [Project] and applicable law and regulation.

ESG COVENANT PACKAGE

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1. [[Borrower]’s reporting]

- (a) As soon as available but, in any event, within [60] days after the end of each of its financial years, the [Borrower] must deliver to the [Agent] an Environmental and Social Monitoring Report for such financial year, together with all supporting documentation referred to in such Environmental and Social Monitoring Report.

[Periodical audit right]

- (b) Every [three] years from the [Technical Completion Date], the [Agent] shall have the right (if so instructed by the [Majority Lenders]) to require the [Borrower] to, at its own expense, procure that:
- (i) an environmental and social audit of the [Project] be carried out by the [Lenders’ Technical Advisor]; and
 - (ii) the results of such audit be submitted to the [Agent].

TBD if there should be an obligation following an audit to amend the Environmental and Social Monitoring Report as necessary.

[Ad hoc reporting]

- (c) The [Borrower] must, promptly upon becoming aware, notify the [Agent] of:
- (i) details of any breach or potential breach of any of the Environmental and Social Standards;
 - (ii) within [] Business Days after becoming aware of a material breach of an Environmental and Social Standard, details of the Environmental and Social Remedial Plan;
 - (iii) any Environmental and Social Claim which is current, or to its knowledge, pending or threatened against it or any [Major Project Party] or in relation to the [Project];
 - (iv) any circumstances reasonably likely to result in an Environmental and Social Claim;
 - (v) any suspension, revocation or modification of any Environmental and Social Approval; or
 - (vi) any Environmental and Social Claims, major incidents or force majeure events affecting the [Project] generally,

and where an event or circumstance notified pursuant to paragraphs (c)(i) to (c)(vi) above is a required disclosure item under the Environmental and Social Monitoring Report, the [Borrower] must ensure that such event or circumstance is included in the Environmental and Social Monitoring Report for the relevant period.

[Catch-All]

- (d) The [Borrower] shall furnish promptly to the [Agent] such information as the [Finance Parties] may from time to time reasonably require with respect to Environmental and Social Matters .

[Environmental and Social Action Plan]

- (e) The [Borrower] shall diligently implement and adhere to the Environmental and Social Action Plan and monitor the implementation of the Environmental and Social Action Plan.

[Environmental and Social Monitoring Report]

- (f) The [Borrower] must not amend or replace any of the Restricted Policies or the form of the Environmental and Social Monitoring Report without the consent of the [Agent].

Definitions

"**Environment**" means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water).

"**Environmental and Social Action Plan**" means:

- (a) Restricted Policies;
- (b) *[insert any policies that are determined to be conditions precedent following due diligence, including any policies that have been implemented in order to satisfy planning approvals.];* and
- (c) any other then applicable policies provided by the [Borrower] to the [Agent] as supporting documentation referred to in any Environmental and Social Monitoring Report delivered pursuant to paragraph (a) of Clause [].

"**Environmental and Social Approval**" means any [Authorisations] required under any relevant Environmental and Social Law for the construction, development and operation of the [Project] by the [Borrower].

"**Environmental and Social Claim**" means any claim, proceeding, formal notice or investigation by a person in respect of an Environmental and Social Law or an environmental and social agreement between the [Borrower] and another person.

"**Environmental and Social Law**" means any applicable law or regulation which relates to:

- (a) pollution or protection of the Environment, including related laws or regulations relating to participation in decision-making;
- (b) labour and employment conditions;
- (c) occupational health and safety; and
- (d) public health, safety and security; and
- (e) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

"**Environmental and Social Matter**" means any matter that is the subject of any Environmental and Social Laws, any Environmental and Social Standards, the Environmental and Social Claims or the Environmental and Social Action Plan.

"**Environmental and Social Monitoring Report**" means an environmental and social monitoring report satisfactory to each [Lender] and prepared on behalf of the [Borrower], and at the cost of the [Borrower] in the form set out in Schedule [] (*Form of Environmental and Social Monitoring Report*).

"**Environmental and Social Remedial Plan**" means, where required to remedy a breach of any of the Environmental and Social Standards, a remedial plan prepared by the [Borrower], acceptable to the [Lenders' Technical Advisor] and (where relevant) agreed with the relevant [Material Project Party] to remedy such breach.

"**Environmental and Social Standard**" means:

- (a) any Environmental and Social Approval;
- (b) any Environmental and Social Law; and
- (c) any other standard or guideline as the [Agent] and the [Borrower] may from time to time agree, in each case as relevant to the [Borrower] or the [Project].

"Restricted Policies" means:

- (a) *[insert specific policies (whether or not as a result of a fund objective) that the lenders have identified as requiring their consent for any amendments.];* and
- (b) *[insert relevant carbon reduction policies]* and any other carbon reduction policies applying to the [Borrower] or the [Project] from time to time.

This definition identifies the relevant policies that require consent by the lenders for any amendment or replacement. Given their importance all carbon reduction policies applying to the [Borrower] or the [Project] require such lender consent.

SCHEDULE []
FORM OF ENVIRONMENTAL AND SOCIAL MONITORING REPORT

Appropriate form of report (i.e. either version 1 or version 2 with relevant amendments) to be appended.