

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

NO. 593

15 JUNE 2018

PUBLIC INVESTMENT CORPORATION AMENDMENT BILL

The Standing Committee on Finance invites stakeholders and interested parties to submit written submissions on the Public Investment Corporation Second Amendment Bill.

The Bills aim to:

- amend the Public Investment Corporation Act, 2004, so as to insert certain definitions;
- require the corporation to consider certain matters when exercising its powers;
- determine the composition of the corporation's board of directors and to provide for the progressive implementation of the new composition;
- provide for the Minister or Deputy Minister to be the chairperson of the board;
- provide for the Minister to appoint the members of the board in consultation with Cabinet;
- provide for specific representation on the board, including trade union representation;
- require directives regarding the management of the corporation to be tabled in the National Assembly and published;
- require the corporation to publish and submit a report on all investments to the Minister for tabling;
- provide for annual reporting on requests for approval made in terms of legislation;
- provide for a procedure that the Minister must follow before making regulations;
- provide that the Minister must table regulations in the National Assembly;
- and provide for matters connected therewith.

Submissions must be directed to the Committee Secretaries, Mr Allen Wicomb and Ms Teboho Sepanya, 3rd Floor, 90 Plein Street, Cape Town, 8000 or awicomb@parliament.gov.za / tsepanya@parliament.gov.za tel. (021) 403-3759 / (021) 403-3738 or fax: (021) 403-3942.

Submissions must be received within four weeks after the date of this publication. Late submission may be considered.

REPUBLIC OF SOUTH AFRICA

PUBLIC INVESTMENT CORPORATION AMENDMENT BILL

(As introduced in the National Assembly (proposed section 75); Explanatory summary of Bill and prior notice of its introduction published in Government Gazette No 41704 of 15 June 2018)

(The English text is the official text of the Bill)

(Standing Committee on Finance)

[B_ 2018]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Public Investment Corporation Act, 2004, so as to insert certain definitions; to require the corporation to consider certain things when exercising its powers; to determine the composition of the corporation's board of directors and to provide for the progressive implementation of the new composition; to provide for the Minister to be the chairperson of the board; to provide for the Minister to appoint the members of the board in consultation with Cabinet; to provide for specific representation on the board; to require directives regarding the management of the corporation to be tabled before the depositors, in the National Assembly and published; to require the corporation to publish and submit a report on all investments to the Minister for tabling; to provide for annual reporting on requests for approval made in terms of legislation; to provide for a procedure that the Minister must follow before making regulations; to provide that the Minister must table regulations in the National Assembly; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 23 of 2004

1. Section 1 of the Public Investment Corporation Act, 2004 (Act No. 23 of 2004) (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of “financial year” of the following definition:

“Government Employees Pension Fund” means the Government Employees Pension Fund referred to in section 2 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996); and

(b) by the insertion after the definition of “Minister” of the following definitions:

“National Assembly” means the House of the Parliament of the Republic of South Africa referred to in section 42(1)(a) of the Constitution of the Republic of South Africa, 1996;

“prescribe” means prescribe by regulation contemplated in section 16;

“property” means an immovable permanent residential structure to be owned and used as a primary home by a member of the Government Employees Pension Fund;”.

Substitution of section 5 of Act 23 of 2004

2. The following section is hereby substituted for section 5 of the principal Act:

“5. (1) The corporation has all the powers necessary to enable it to realise its objects, including such powers as may be prescribed by regulation, unless expressly excluded or qualified by this Act.

(2) For the purposes of attaining its objects, the corporation must act in accordance with the instructions of the depositors taking into account the following:

- (a) Securing fund investment’s financial sustainability and security;
- (b) creating and protecting local jobs;
- (c) industrialising the economy of the Republic, building the manufacturing sector and boosting exports;
- (d) sustainable development;

- (e) priority investments must be in the Republic and preference should be given to those investments than to the investments outside the Republic;
- (f) the Republic's development objectives;
- (g) building a capacitated development state; and
- (h) transformation of the economy and society.

(3) The corporation may assist with financing the buying of property by the members of the Government Employees Pension Fund.”.

Amendment of section 6 of Act 23 of 2004

3. Section 6 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) of the following subsection:

“(1) The Minister must[, **in consultation with Cabinet,**] determine and appoint the following members of the board in accordance with the process contemplated in subsection (2).

(a) ten non-executive members; and

(b) two executive members as the Chief Executive Officer and Chief Financial Officer of the corporation, or a similar designation, respectively.”;

(b) by the insertion after subsection (1) of subsection (1A) of the following subsection:

“(1A) The Minister, or if so designated by the Minister, the Deputy Minister is the chairperson of the board.”;

(c) by the substitution for subsection (2) of the following subsection:

(2) (a) The Minister must, when appointing **[the board, have due regard to the nominations submitted to him or her by the depositors]** the ten non-executive members and the two executive members, do so in consultation with Cabinet, subject to paragraph (b).

(b) The ten non-executive members must include—

(i) a representative of the department;

(ii) a representative of each major depositor; and

(iii) two or more, but not more than three representatives of a registered trade union, whose members are the majority of the members of the Government Employees Pension Fund. These representatives are to be selected by the trade unions at the PSCBC based upon their proportional composition.”;

and

(b) by the addition after subsection (4) of the following subsection:

“(5) A directive contemplated in subsection (4) must be—

(a) based on the investment criteria set out in section 5 of this Act;

(b) tabled in the National Assembly;

(c) tabled before the depositors; and

(d) published on the website of the corporation,

within 30 days from the date on which it was issued.”.

Amendment of section 10 of Act 23 of 2004

4. Section 10 of the principal Act is hereby amended by the addition after subsection (2) of the following subsections respectively:

“(3) The corporation must, when investing a deposit on behalf of the depositor, invest in projects that will benefit the members of the respective depositor.

(4) A report reflecting all investments of deposits, whether listed or unlisted, must annually be—

(a) submitted to the Minister for tabling with the annual report of the department; and

(b) published on the website of the corporation.”.

Insertion of section 11A in Act 23 of 2004

5. The following section is hereby inserted after section 11 of the principal Act:

“Tabling of requests

11A. (1) The corporation must annually report on the total number and details of requests made to the Minister for approval of any significant transactions requiring such approval in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), or in terms of any other legislation, together with an indication of which of those requests were granted.

(2) The corporation must submit the report contemplated in subsection (1) to the Minister for tabling together with the annual report of the department.”.

Amendment of section 12 of Act 23 of 2004

6. Section 12 of the principal Act is hereby amended by the addition after subsection (11) of the following subsection:

“(12) The Minister must take the necessary steps to be progressively compliant with the procedure contemplated in the Public Investment Corporation Amendment Act, 2018, for appointment of the members of the board, taking into account any existing rights of the current members of the board.”.

Substitution of section 16 of Act 23 of 2004

7. The following section is hereby substituted for section 16 of the principal Act:

“Regulations

16. (1) The Minister may, by notice in the *Gazette*, make regulations with regard to any matter which is necessary to prescribe for the proper implementation or administration of this Act.

(2) Before making any regulations, the Minister must—

(a) table a draft of the proposed regulations together with a statement explaining the need for, intended operation of, and expected impact of those regulations, in the National Assembly while the Assembly is in session; and

(b) consider any comments on the proposed regulations received from the National Assembly.

(3) The period allowed for scrutiny of the regulations by the National Assembly as contemplated in subsection (2), must be at least 30 days while the Assembly is in session.

(4) The Minister may not make regulations contemplated in subsection (1) that materially differs from the proposed regulations tabled in the National Assembly, without having consulted the National Assembly on such changes in accordance with the process contemplated in subsection (2).

(5) The Minister must table the regulations contemplated in subsection (1) in the National Assembly.”.

Short title

8. This Act is called the Public Investment Corporation Amendment Act, 2018.

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MEMORANDUM ON THE OBJECTS OF THE PUBLIC INVESTMENT CORPORATION AMENDMENT BILL

1. INTRODUCTION

The Public Investment Corporation (“PIC”) is a key component of the financial services sector and as a financial services provider for the government of the Republic and bodies, councils, funds or accounts established by law, plays an important role in the financial security of South Africa. It is thus of the utmost importance that its management structures and reporting be subject to effective checks and balances. The current mechanisms are overly centralised and may lessen investor confidence.

2. OBJECTS OF THE BILL

The Bill amends the Public Investment Corporation Act, 2004 (Act No. 23 of 2004) (“the Act”), in order to promote transparency and good governance within the PIC. To achieve this, appointment of the chairperson to the board is made subject to parliamentary scrutiny, and the remainder of the board is to be structured so as to incorporate key stakeholders. The Bill also amends the section dealing with the powers of the PIC by placing a duty on the PIC to consider certain things when fulfilling its objects and exercising its powers. The Bill further provides for greater transparency in the operations of the corporation through the publication or tabling of various directives, regulations and reports.

3. CONTENTS OF THE BILL

- 3.1** Clause 1 amends section 1 of the Act by inserting certain definitions.
- 3.2** Clause 2 amends section 5 of the Act by requiring the PIC, in the exercise of its powers, to consider certain things when fulfilling its objects. This clause also empowers the corporation to finance the buying of property for the members of the GEPPF.
- 3.3** Clause 3 substitutes section 6 of the Act to determine how the board of the PIC is constituted and to provide for the appointment of the members of the board which should be done in consultation with Cabinet. The clause designated the Minister to be chairperson of the board or for him or her to designate the deputy Minister as

the chairperson of the board. The clause further provides for a representative of the department and two or more but not more than three representative of a registered trade union, whose members are the majority of the members of the Government Employees Pension Fund, to form part of the group of non-executive members. The clause lastly provides that directives must be tabled in the National Assembly; to the depositors and published on the website of the corporation.

3.4 Clause 4 amends section 10 of the Act and requires an annual report reflecting all investments of deposits, whether listed or unlisted, to be submitted to the Minister for tabling, and published.

3.5 Clause 5 inserts section 11A into the Act. This section requires the corporation to annually report on the total number of requests made, and details thereof, to the Minister for approval of any significant transactions requiring such approval in terms of legislation, and for the Minister to table that report with the annual report of the department.

3.6 Clause 6 amends section 12 of the Act and provides for progressive implementation of the new manner in which the board is constituted.

3.7 Clause 7 substitutes section 16 of the Act so as to provide for a procedure that the Minister must follow before making regulations, and requiring tabling of regulations once made in the National Assembly.

3.8 Clause 8 provides for the short title.

4. FINANCIAL IMPLICATIONS FOR THE STATE

None.

5. PARLIAMENTARY PROCEDURE

5.1 The Standing Committee on Finance (“Committee”), proposes that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedures set out in section 74 or 76 of the Constitution apply.

- 5.2 The Committee is of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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