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FEDUSA SUBMISSION ON THE PUBLIC

INVESTMENT CORPORATION

AMENDMENT BILL

&

THE PRIVATE MEMBERS BILL

(MR. D.J. MAYNIER, MP)

2018

**The Standing Committee on Finance
(National Assembly)**

Cape Town

31 May 2018

Presented by:

Mr. Koos Kruger & Mr. Rifos Mahlake

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INTRODUCTION

The Federation of Unions of South Africa (FEDUSA) welcomes the opportunity to make the following joint submission on behalf of our affiliated unions operative within the public sector in South Africa, engaged at both the national and provincial spheres of government. FEDUSA's collective membership within the public sector constitutes approximately 310 000, of which this membership is active contributors to the Government Employees Pension Fund (the 'GEPF'). The GEPF has more than 1, 2 million active members and more than 400 000 pensioners and beneficiaries. FEDUSA's members therefore represents approximately 35 % of the GEPF membership.

The GEPF has assets worth more than R1, 8 trillion. The investment of approximately 95% of the GEPF assets is managed by the Public Investment Corporation ('the PIC'). According to its Integrated Annual Report 2017, the PIC has assets under management of R1, 928 trillion as at 31 March 2017. Of this, 87, 72% or R1, 691 trillion is managed by the PIC on behalf of the GEPF. The GEPF is described as the PIC's largest client.

It is therefore abundantly clear that FEDUSA's public sector affiliates, through the GEPF, has a substantial interest in the constitution, governance and management of the PIC. Our collective inputs on the Amendment Bills is therefore considered to be crucial, to ensure that the hard-fought gains and life time contributions by our members are safeguarded, whilst ensuring the continued sustainability of the PIC.

PRINCIPLES UNDERLYING THESE SUBMISSIONS

1. Before considering the detail of the proposed amendments, it is important to establish the direct and vested interest of the FEDUSA public sector unions in them, then to consider the nature of the assets under management by the Public Investment Corporation and the origin of those assets, and the duties imposed on the Board of Trustees of the Government Employees Pension Fund, described as the largest client of the Public Investment Corporation. These submissions are informed by those three important principles.

The Public Investment Corporation

2. The PIC is established as a juristic person under the provisions of the Public Investment Corporation Act, 1984. It is this Act which the amendments propose to amend. The board of the PIC must control the business of the PIC, direct its operations and exercise all such powers of the PIC that are not required to be exercised by its shareholders.¹

¹ Section 8 of the Public Investment Corporation Act, 1984.

3. The Integrated Annual Report of the PIC as at 31 March 2017 records assets under management as follows:

Client	Client Holdings (%)
Government Employees Pension Fund	87.72%
Unemployment Insurance Fund	7.03%
Compensation Commissioner Fund	1.93%
Compensation Commissioner Pension Fund	0.96%
Associated Institutions Pension Fund	0.77%
Other (various clients with smaller portfolios)	1.59%
TOTAL	100%

4. By far the greatest percentage of the assets under management (89.45%) are the assets of three pension funds. Pension funds exist for providing benefits for their members in the event of a member's death, cessation of employment and retirement.
5. It must always be borne in mind that nearly 90% the assets managed by the PIC are assets which have been contributed by members and their employers and exist for the benefit of those members and their beneficiaries. They are not state assets, but assets held and managed in trust for the members of the three pension funds.

The Government Employees Pension Fund

6. The GEPF is a pension fund contemplated in section 2 of the Government Employees Pension Law, Proclamation 21 of 1996 ("the GEP Law"). The GEPF is a juristic person and operates under the provisions of the GEP Law and the Rules of the GEPF made by the board of the GEPF under the provisions of the GEP Law.
7. As set out above, the GEPF is the largest client of the PIC and by far the largest percentage of the assets under the management of the PIC belong to the GEPF.
8. Under the GEP Law –
- 8.1 The object of the GEPF is expressed to be to provide pensions and certain other related benefits as determined in the Law to members and pensioners and their beneficiaries.²
- 8.2 The Board of Trustees of the GEPF, which is responsible for the management of the Fund, must, acting in consultation with the Minister of Finance, determine the investment policy of the Fund.³

² Section 3 of the GEP Law

³ Sub-sections (2) and (7) of section 6 of the GEP Law

- 8.3 The GEPF is funded by contributions made by members and the employers.⁴ From this it follows that at least 87,72% of the assets managed by the PIC are contributed by the members and the employers in the GEPF.
9. According to its own statements, the GEPF complies with the requirements of the GEP Law and the rules of the Fund, but also looks to the Pension Funds Act for best practice where the two are not in conflict. The Board governs the Fund – it is accountable for its administrative and investment performance.
10. According to the GEP Law, fiduciary responsibility for the Fund rests with the Board of Trustees.
11. In determining the investment policy of the GEPF, the Trustees are bound by and must pay attention to their fiduciary duties as set out in the common law and in the Rules of the GEPF, more particularly Rule 4.1.19, the relevant parts of which read –
- “4.1.19 Each trustee or a substitute referred to in rule 4.1.6 shall, notwithstanding the duties as may be determined by the Board -*
- (a) take all reasonable steps to ensure that the interests of members in terms of the rules of the Fund and the provisions of the Law are protected always, especially in the event of an amalgamation or splitting of the Fund, termination or reduction of contributions by the employer, increase of contributions by members and withdrawal of an employer;*
 - (b) act at all times with due care and diligence and in good faith;*
 - (c) avoid conflicts of interest;*
 - (d) act with impartiality in respect of all members and beneficiaries;*
 - (e) ensure that adequate and appropriate information is communicated to the members informing them of their rights, benefits and duties in terms of the rules of the Fund;*
 - (f) obtain expert advice on matters where Board members may lack expertise;*
 - (g) ensure that the operation and administration of the Fund comply with the Law, and all other applicable laws; and*
 - (h) adhere to the principles of privileged information and confidentiality.*
12. The GEPF has adopted an Investment Policy Statement. In this statement the principle long-term objectives of the GEPF are described as follows:
- 12.1 to provide members and their dependents with the benefits promised;
 - 12.2 to target the granting of full inflationary increases to pensions;
 - 12.3 to keep the employer contribution rate as stable as possible;
 - 12.4 to invest responsibly for the long-term.
13. The GEPF has given the PIC an investment mandate. FEDUSA does not have knowledge of the terms of this mandate but submits that the terms of the mandate are highly relevant to the

⁴ Section 17 of the GEPF Law

deliberations of the Standing Committee on the proposed amendments. The Standing Committee is urged to obtain a copy of the mandate. The mandate should reflect the investment policy determined by the Trustees and should reflect that the Trustees have applied their minds to, and acted in accordance with, their duties as set out particularly in Rule 4.1.19.

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Section 2: proposed section 5(2)

14. This provision needs to be reconsidered. It should be clearly expressed to be subject to any investment mandate that may be given by any of its investors. It must allow the depositors to determine their own investment mandate and must oblige the PIC to act accordingly.
15. The GEPF and the other two pension funds together have placed under the management of the PIC not less than 89% of the assets managed by the PIC.
16. The proposed section takes no account of, and appears not to recognize, the duties of those pension funds to their members. Nor does it reflect the long-term objectives of its largest client, the GEPF. There should be nothing in the statute which permits the PIC to ignore or overrule or depart from the investment objectives of its clients.
17. The phrase "*securing funds investments financial sustainability and security*" is vague and is inconsistent with the investment mandate which should be given by pension funds to their investment manager, and that is that the interests of the pension funds and their members and beneficiaries should take precedence over any other interests.
18. While it could be noted that the State is obliged to guarantee the benefits promised by the GEPF to its members, any failure of the investments of the GEPF affects the ability of the GEPF to meet its pension obligations and to improve benefits, to keep pace with inflation and to keep the employer contribution rate stable.

Section 2: proposed section 5(3)

19. This provision has no place in the PIC Act and should be deleted, as should the proposed definition of "property" in section 1.
20. The Rules of the GEPF make no provision for assistance to members for buying property. It is inconsistent therefore for the PIC to provide that assistance using GEPF funds.
21. A proper model for providing financial assistance to members of a pension fund in connection with immovable property is to be found in section 19(5) of the Pension Funds Act. 1956.
22. The provision of such assistance is a matter for the pension fund and the employer who together have knowledge of a member's financial position and needs.
23. If the provision of such assistance is desired, then the GEPF Law and the GEPF Rules should be amended.

Section 3: proposed amendments to section 6(1) and (1A)

24. Sub-section (1) contemplates a board consisting of 12 members. Sub-section (1A) provides for the Minister or Deputy Minister to be the chairperson. Whether or not the Minister or Deputy – Minister is a member of the board or not, should be clarified.

Is he or she one of the ten non-executive members, or does the board consist of 13 members? In any event, **FEDUSA submits that the chairperson should not be the Minister or the Deputy**

Minister, but rather be appointed from amongst the members of the board appointed following the prescribed process.

25. It is not clear why the obligation to consult with the cabinet has been removed but **FEDUSA suggests that the Minister should be obliged to consult with depositors before making any appointments.**

Section 3: proposed amendment to section 6(2)

26. It is not acceptable that the obligation to have regard to nominations submitted by depositors is deleted in respect of the twelve members of the board.

Since the PIC invests the assets belonging to the depositors it is fundamental that depositors should have their views heard on who is to manage their money.

27. In addition, **the Minister should be under a statutory obligation to call for nominations from depositors and members of the public and to have regard to those nominations in making any appointment.**
28. What makes a depositor into a “*major depositor*” must be defined. Having regard to the table at paragraph 3 of these submissions, it is obvious that the GEPF is a major depositor. And the GEPF is defined. But what about the others? Is it to be determined by the rand value of the investment, or by way of percentages?
29. As it is by far the largest client of the PIC, and while its active or contributing members are represented by the trade union parties to the PSCBC, **GEPF pensioners are not. It is proposed therefore that the list should include one pensioner member of the GEPF nominated by the GEPF.**
30. Regarding the proposed sub-section (2)(b)(iii), **FEDUSA proposes that these members be nominated, not by reference to membership of the GEPF, but by the three trade unions in the PSCBC with the largest membership, as determined by the PSCBC vote weight determination procedures.**
31. **The idea of “proportional composition” needs to be clarified. Is it proportional to the membership of each of the unions, or is it proportional to the members of the unions who are also members of the GEPF?**

Section 3: proposed amendment to section 6(5)

32. The directive in sub-section (4) relates to the management of the PIC if it is in the public interest to do so, and if it is reasonably necessary to do so.
33. **The proposed sub-section (5)(a) is not acceptable unless the suggested changes are made to section 5 as discussed in paragraphs 14 to 18 of these submissions.**
34. In addition, **there is little point in complying with this section AFTER the directive is issued.** The ability to issue directives of this nature is, in effect, giving the Minister the power to undermine the independence of the board of the PIC in a way which shareholders ordinarily are not able to do. It is important therefore that interested parties be given an opportunity to comment before directives are issued.

Section 4: proposed amendment to section 10

35. This should be expressed to be subject to any agreement with or mandate given by a depositor.

Section 5: proposed amendment to section 11A

36. There **MUST** be a definition of “*significant transactions*”.

Section 6: proposed amendment to section 12

37. This is a transitional provision and while the intention is clear, it needs to be worked out in greater detail. It is not known, for example, what the terms of office of current board members are.

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Section 2: proposed amendment to section 6(1) and (2)

38. The formulation of sub-section (1) makes clear the point which we raised in paragraph 24 of these submissions. **It also excludes the idea that the Minister or the Deputy-Minister is to act as the chairperson. This formulation is to be preferred.**
39. For the reasons set out in paragraphs 26 and 27 of these submissions, **FEDUSA does not agree that the obligation to have regard to the nominations submitted by depositors should be deleted. FEDUSA goes further and submits that the Minister should be obliged to call for nominations, not only in relation to the appointment of the chairperson, but for all board appointments, and must then have regard to those nominations. As suggested above, the Minister should be obliged to consult with depositors before making any appointments.**
40. It is noted that no amendment is proposed to sub-section (3) and FEDUSA supports this.
41. FEDUSA considers that the chairperson should be appointed by the Minister from amongst those appointed to the Board, is after following the prescribed process for appointment of the members of the board.
42. Regarding the proposed sub-section (c), FEDUSA repeats the submissions made in paragraphs 28 and 29 of these submissions.
43. Regarding the proposed sub-section (5), FEDUSA repeats its submissions in paragraphs 32 to 34 of these submissions.

Section 4: proposed amendment to section 11A

44. There should be a definition of “*significant transactions*”.

Section 5: proposed amendment to section 12

45. These are transitional provisions and while the intention is clear, it needs to be worked out in greater detail. It is not known, for example, what the terms of office of current board members are.
46. The proposal for sub-section (13) is supported by FEDUSA.