**SUBMISSION OF A LEGISLATIVE PROPOSAL: MEMORANDUM IN TERMS OF RULE 273 OF THE RULES OF THE NATIONAL ASSEMBLY BY THE STANDING COMMITTEE ON FINANCE, DATED 22 MAY 2018**

The Standing Committee on Finance (“Committee”) is hereby requesting the permission of the House in terms of Rule 273(1) for the introduction of the following legislation in the House, namely the Public Investment Corporation Amendment Bill, 2018.

**(1)** **Particulars of the Bill**

The Bill will amend the Public Investment Corporation Act, 2004 (Act No. 23 of 2004) (“the Act”) as follows –

1. inserting definitions for “Government Employees Pension Fund”; ‘‘National Assembly’’; “property”; and ‘‘prescribe’’;
2. requiring that the Public Investment Corporation (“the corporation”), in the exercise of its powers, acts in accordance with the instructions of the depositors taking into account the following:
   1. securing fund investment’s financial sustainability and security;
   2. creating and protecting local jobs;
   3. industrialising the economy of the Republic, building the manufacturing sector and boosting exports;
   4. sustainable development;
   5. priority investments must be in the Republic and preference should be given to those investments than to the investments outside the Republic;
   6. the Republic’s development objectives;
   7. building a capacitated development state;
   8. transformation of the economy and society; and
3. that the corporation may assist with financing the buying of property by the members of the Government Employees Pension Fund.; providing for the composition of the board of the corporation; for the Minister of Finance or the Deputy Minister, if designated by the Minister, to be the chairperson of the board; and, for the appointment of the other executive and non-executive members to be in consultation with Cabinet;
4. providing for a representative of the department and two or three representatives 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;
5. providing that directives must be tabled in the National Assembly and published on the website of the corporation;
6. requiring an annual report reflecting all investments of deposits, whether listed or unlisted, to be submitted to the Minister for tabling in the National Assembly, and published;
7. requiring 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;
8. providing for progressive implementation of the new manner in which the board is constituted; and
9. providing for a procedure that the Minister must follow before making regulations, and requiring tabling of regulations once made in the National Assembly.

**(2)** **Background and Objects of the Bill**

In its engagements with the corporation the Committee resolved that the Act establishing the corporation requires amendments to promote transparency and good governance within the corporation. To achieve this, the committee proposes amendments to achieve the following objects:

* Composition of the board is to be structured so as to incorporate key stakeholders;
* Expand the objects of the corporation to ensure that corporation promotes, facilitates, and support the buying of property by the depositors and economic growth.
* Providing for greater transparency in the operations of the corporation through the publication or tabling of various directives, regulations and reports.

**(3)** **Financial Implications for the State**

None.

**(4)** **Views of the Executive on the objects of the proposed legislation**

On 19 April 2018 the National Treasury, the Public Investment Corporation SOC Limited and the Principal Officer of the Government Employees Pension Fund (“GEPF”) made a joint submission to the Committee.

1. On the proposed objects of the Bill, which includes include the promotion, facilitation, support and assisting in the financing of buying the property for depositors, economic growth, job creation and development of infrastructure and the reduction of social inequalities and the interests of the poor and lower income earners, the submission is that this constitutes a client mandate matter and should not be included in the Bill. The corporation must act as investment manager in accordance with the instructions of the client, such as for example, the GEPF and other clients such the Unemployment Insurance Fund and the Compensation Fund. The clients of the corporation, such as the GEPF, mandate the PIC as an investment manager with the authority to act as its agent in managing and administering its portfolio in accordance with the Investment Management Agreement.
2. Concerning the composition of the board, the submission proposes that the current arrangement in the Act that the Minister appoints the Chairperson and other members of the Board in consultation with Cabinet be retained. It is further proposed that the Act be amended to stipulate that the Chairperson and the Deputy Chairperson of the Board must be independent persons as recommended in Principle 71 of King IV read with Recommended Practices 31 and 32.
3. It was further submitted that the proposed direct trade union representation on the Board will undermine the framework governing the relationship between the employer and employees through the Public Service Co-ordination Bargaining Council (“PSCBC”). Members and pensioners of the GEPF and the employer have equal representation on the Board of the GEPF. As the current Act allows for depositor representation on the PIC Board, the submission is that depositor representation be made compulsory by stipulating at least one representative of a depositor (such stating the largest by value of assets). The inclusion of a representative of the National Treasury on the Board is supported since the Minister administers the PIC Act and is the Executive Authority of the PIC, in terms of the Public Finance Management Act.
4. It is proposed that the number of board members be left to the Memorandum of Incorporation (“MOI”) of the corporation, which is determined by the State’s shareholder representative. A sufficient number of Board members are necessary to ensure independence and to accommodate the different Committees of the Board. It is proposed that the Bill provides that the Chief Executive Officer and at least one other executive be appointed to the Board but the identity of the second executive and the total number of executive members be determined by the MOI

Alternative proposals in the submission to amend the Act as follows -

1. provide for a transparent process for appointing the Chairperson, Deputy Chairperson and non-executive Board members through a requirement to advertise vacancies for applications and/or nominations;
2. replace the current criteria for appointment to the board, i.e. on the “grounds of their knowledge and experience, with due regard to the FAIS Act, when considered collectively, should enable the board to obtain the objects of the corporation” with the following:

“with due regard to any applicable fit and proper requirements envisaged in the FAIS Act, the appropriate balance of knowledge, skills, experience, diversity and independence for the board to discharge its governance role and responsibilities and to attain the objects of the corporation objectively and effectively”;

and

1. require that the majority of the members of the Board must be non-executive members and a quorum for a Board meeting is a majority of the non-executive members.
2. The submission supports the proposal that a directive of the Minister on the management of the corporation if in the public interest or reasonably necessary to do so must be tabled in the National Assembly and published on the website of the corporation. However, it is proposed that the provision makes it clear that the management of the corporation excludes investment decisions in accordance with clients’ mandates.
3. The Bill proposes that a report listing all investments of deposits, whether listed or unlisted, must annually be submitted to the Minister for tabling in the annual report of the National Treasury and be published on the website of the corporation. The submission does not support this provision. The corporation is an asset manager and should not be compelled to disclose information about another entity, i.e. its clients and that are also the assets owners (e.g. the GEPF) without consent.
4. The Bill proposes that the corporation must annually report on the number and detail of requests made to the Minister for approval of significant transactions required to be approved in terms of the Public Finance Management Act or in terms of other legislation and whether the requests were granted. The submission does not support this provision since it is operational in nature. The provision may also create the incorrect impression that the Minister may approve significant investment transactions which relate to the assets of a client.
5. The submission of the draft regulations for parliamentary scrutiny as proposed in both Bills is supported.

**Report to be considered.**