



MINISTRY: FINANCE

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Mr YI Carrim, MP
Chairperson
Standing Committee on Finance
National Assembly

Per email: awicomb@parliament.co.za & tsepanya@parliament.co.za

Dear Chairperson

COMMENT ON PUBLIC INVESTMENT CORPORATION AMENDMENT (PRIVATE MEMBERS' BILL) AND DRAFT PUBLIC INVESTMENT CORPORATION BILL (COMMITTEE BILL)

I hereby wish to submit the following comment on the above Bills:

Mandate of Public Investment Corporation (PIC)

1. In clause 2 of the Committee Bill it is proposed that the PIC must act in accordance with depositors' instructions taking into account:
 - securing fund investment's financial sustainability and security;
 - creating and protecting local jobs;
 - industrialising the economy of the Republic, building the manufacturing sector and boosting exports;
 - sustainable development
 - priority investments must be in the Republic and preference should be given to those investments than to the investments outside the Republic;
 - the Republic's development objectives;
 - building a capacitated development state; and
 - transformation of the economy and society.

Comment: The PIC makes investments (manages assets) on behalf of depositors (clients) and therefore it should only be required to act in accordance with the depositor's instructions. A depositor must give instructions in accordance with the legislation regulating to the depositor. Any considerations to be taken into account by a depositor in its instructions to the PIC should be imposed on the depositor through its legislation. Any one or more of the considerations listed above may not necessarily accord with a depositor's instruction to the PIC.

2. Clause 4 of the Committee Bill provides that the PIC must, when investing funds on behalf of a depositor, invest in projects that will benefit “the members” of the depositor.

Comment: The depositor like the GEPF must act in the best interests of its members, i.e. fulfil its fiduciary duties. The PIC must in turn act in accordance with the depositor's instructions. Therefore the obligation to ensure that investments are in the best interest of the beneficiaries of the depositor is that of the depositor and the depositor must also ensure the financial stability of the depositor as an entity. Depositors such as the Unemployment Insurance Fund and Compensation Fund do not have members.

3. Clause 4 of the Committee Bill also stipulates that the PIC may assist with financing the buying of property by the members of the GEPF. Property is defined in clause 1 as an immovable permanent residential structure to be owned and used as a primary home by a GEPF member.

Comment: The PIC Act regulates the PIC's role as an asset/investment manager of deposits by depositors which is defined without identifying any specific depositors. This clause now mentions a specific depositor. The clause does not identify which funds may be used for this purpose. It could therefore entail the PIC's own funds, the GEPF's funds and/or the funds of another depositor. As to the use of the GEPF's deposits with the PIC, the GEPF should be the one instructing the PIC to so utilise its deposits.

Board

4. The Committee Bill provides in clause 3 that the Act stipulates that the Minister or, if so designated by the Minister, the Deputy Minister is the chairperson of the Board.

Comment: The current Act and the Memorandum of Incorporation (MOI) do not specify who is to be appointed as chairperson. The Minister is the executive authority responsible for the PIC as a public entity listed in the Public Finance Management Act, 1999, and is also representing the State as the sole shareholder. The Board must account to the Minister and the Minister must account to Parliament for the entity. Therefore it is not advisable to have the Minister as the chairperson. It is proposed that the Act do not identify the chairperson and that the current provision that the Minister appoints the members of the board (including the chairperson and deputy chairperson) in consultation with Cabinet be retained. Should the Minister in consultation with Cabinet appoint the Deputy Minister as deputy chairperson, the appointment of an independent deputy chairperson, as advised by King IV, should be made. This has been the practice.

5. The Private Members' and Committee Bills (clauses 2 and 3, respectively) provide that the Board consists ten non-executive and two non-executive members, namely the Chief Executive Officer and the Chief Financial Officer.

Comment: It is proposed that the number of members be determined by the MOI or, if included in the Act that provision be made for no less than 10 and no more than 15 members, as currently provided in the MOI. This is to have sufficient members for the different committees of the Board. If the number of non-executive members is specified in the Act, it is proposed that only the Chief Executive Officer be identified as a member and

that that the identity of the second executive to serve on the Board be determined by the Minister or the MOI.

6. The Private Members' Bill proposes a parliamentary process for appointment of board members. The Committee Bill does not contain such a provision but retains the current arrangement of the Minister appointing in consultation with Cabinet.

Comment: The retention of the current arrangement is supported.

7. The Private Members' and Committee Bills provide that the 10 non-executive members to include-

- a representative of the National Treasury (NT)
- a representative of each major depositor
- the Committee Bill proposes two to three "representatives of a registered trade union, whose members are the majority" of the GEPF members and selected by trade unions at the PSCBC based on their proportional representation.

Comment:

(1) The meaning of major depositor should be clarified. What percentage of the value of investments managed by the PIC will be used for this purpose?

(2) The provision may mean that all the union representatives will be from one union. It is proposed that the two/three union representatives should be nominated by the two/three largest unions represented in the PSCBC.

Ministerial directives

8. The current Act enables the Minister to issue directives regarding the management of the PIC. Private Members' and Committee Bills (clauses 2(b) and 3(b), respectively) provide for the disclosure of directives.

Comment: The disclosure through tabling in the National Assembly and before depositors and also publication on the PIC's website is supported. The provision in clause 3(b) of the Committee Bill provides that the directives must be based on the investment criteria in the proposed section 5. It is submitted that this reference may be unnecessary since the directives regarding the PIC's management does not apply to investment decisions by the PIC on behalf of depositors.

Disclosure of investments

9. Private Members' and Committee Bills (clause 4) provide for a report reflecting all listed and unlisted investments of deposits must annually be submitted to the Minister for tabling with the NT's annual report and published on the PIC's website.

Comment:

(1) In NT's submission to the SCOF in April 2018 entailed that the disclosure of investments made on behalf of depositors should only occur with their consent. It should be considered whether the disclosure of investments is not a matter to be dealt with by depositors in accordance with applicable law, and not the PIC that acts on behalf of depositors.

(2) If this provision in the Bill is retained, it is proposed that it be subject to the depositor (client)'s consent and be limited to unlisted investments for the reasons indicated below.

(3) One of the depositors, the GEPF, discloses certain unlisted investment information in their annual report. The GEPF does not have to comply with the PFMA and as such they do not table their annual report like other entities and departments by 30 September. They normally table by end October to beginning of November. It will thus be better timed to disclose the information once GEPF has tabled their annual report.

(4) The PIC has not disclosed listed investment information. The shareholders of listed companies are publicly available information and the major shareholders are also listed in companies' annual reports as well as on their websites. When the PIC disclosed the unlisted investment information in the past it obtained the clients' approvals and in 2016 consulted the Financial Service Board to ensure the PIC do not disclose confidential information and risk the withdrawal of its financial service provider licence. The PIC in the first year obtained consent from all these unlisted companies, but now has a contractual provision enabling the disclosure of certain information.

(2) As the disclosure of listed investments, it is not supported because it will entail a collation of all the listed investments with can influence the market. Other investors can very easily see what the PIC's positions and views of the market are, and that is risky since the PIC is the largest investor on the JSE.

The Committee's consideration of the comment in the finalisation of the Bills will be appreciated.

Kind regards,



Nhlanhla Nene, MP

Minister of Finance

Date: 25/5/2018