

Honourable Yunus Carrim
Chairperson, Standing Committee on Finance
National Assembly
By email ycarrim@parliament.gov.za
cc awicomb@parliament.gov.za

July 18, 2018

Dear Sir,

SUBMISSION ON PUBLIC INVESTMENT CORPORATION SECOND AMENDMENT BILL, 2018

We appreciate the opportunity to make comment on the second draft of the PIC Amendment Bill.

We commend the Committee in the progress it has made in drafting this legislation. In this second submission, we limit our comments to the remaining sections of the Bill which, in their current form, may limit the free flow of information and freedom of the media. In particular, we focus on:

1. Open and transparent selection of the Board
2. Detailing disclosure requirements of all investments deposits, listed or unlisted
3. Detailing disclosure requirements for significant transaction disclosures through regulations
4. Public access to records of the PIC's investment decisions.

We attach as an annexure our previous submission, as some of our comments refer to it.

We are at your disposal should you seek clarity on any matter we raise.

Yours faithfully,



Karabo Rajuili
Advocacy coordinator
karabor@amabhungane.org
021 813 6836/082 3656553

1. Open and transparent selection of the Board

Clause 3 of the Bill deals with board appointments. We note that it envisages no role for Parliament in the board appointment process. We submit the importance of a transparent process in the appointment of the Board remains, regardless of who makes the appointments.

Therefore, we propose that:

- Section 6 of the principal Act should include specific wording which provides for the appointment process to be open and transparent; this should include an opportunity for public comment on all nominated candidates prior to the finalisation of appointment process by the Minister, and include public access to all candidate interviews;
- If the Bill itself does not prescribe which information or aspects of the appointment process must be public, this may be detailed in the regulations, including access to candidate curriculum vitae, selection committee meeting minutes (the more so if the meetings are not open themselves), and records relating to the selection criteria, short-listing and final decision-making on non-executive and executive board appointments.

2. Detailing disclosure of all investments deposits, listed or unlisted

We welcome the insertion at clause 4 of section 10(4) to provide for the annual disclosure of listed and unlisted investments. It would however be strengthened by stipulating that the regulations should prescribe which classes of information regarding the PIC's investments should be disclosed.

Our proposal in our previous submission remains the same in this regard. For ease of reference, we include classes of information that may be prescribed in the regulations, including:

- ✓ *significant equity acquisitions and disposals;*
- ✓ *the price paid (received for disposals);*
- ✓ *the extent of any discount;*
- ✓ *the external fees associated with the transaction and to whom they were paid;*
- ✓ *the value of the investment as of a designated cut-off date and the associated current profit/loss;*
- ✓ *any debt financing and their terms;*
- ✓ *the risk profile of the investment;*
- ✓ *the level/percentage of control exercised by the PIC;*
- ✓ *the identity of any board representatives appointed by the PIC;*
- ✓ *the identity and nature of any conflict disclosures relating to the investment;*
- ✓ *the identity of the promoters of any investment opportunity.*

3. Detailing significant transaction disclosures through regulations

A similar point can be made on significant transaction disclosures at clause 5 of the Bill, which inserts a new section 11A requiring annual reporting on request made to the Minister for approval of significant transactions. It would be prudent for the Bill to ensure this is spelt out in the regulations as follows:

Section 11 (A) The corporation must annually report on the total number and details as prescribed of requests made to the Minister for approval of any significant transactions ...

4. Public access to records of the PIC's investment decisions.

Our previous submission underscored the importance of extending the PIC transparency to include public access to investment decisions, including board, portfolio and investment committee minutes in so far as they deal with investment decisions.

Our submission remains the same in this regard (*refer to annexed submission, page 5*), although we emphasise that we accept that commercially sensitive information may legitimately be withheld from disclosure.

Extending disclosure is in line with the move towards greater transparency globally in the investment community, and among asset managers and public pension fund managers, in order to build public trust and confidence in their decision-making and mitigate the risk of corruption.

For example, the United Nations Principles for Responsible Investment, and the transparent reporting requirements mark a shift in this direction¹.

The Alternative Investment Fund Managers Directive (AIFMD) now obliges transparency and regulatory reporting obligations for Alternative Investment Fund Managers (AIFM) including investment strategy.²

In contrast to the received wisdom that such transparency is not practical, we point out that the California Public Employees' Retirement System (CalPERS) provides for Board and its Committees meeting to be open to the public, including opportunity for comment on agenda items.³ Board meetings may be viewed live and retrospectively on the CalPERS website at <https://www.calpers.ca.gov/page/about/board/board-meetings>

We note that the controversies currently bedeviling the PIC would in many cases have been avoided or minimised via public oversight of its investment decisions.

We note also the experience of the current chair (the deputy minister) that oversight by a board operating behind closed doors is sometimes not equal to the pressures that are inevitably brought to bear on an institution as powerful as the PIC. We attach an affidavit recently submitted by the chair regarding his experiences at board level.

#ENDS

¹ UNPRI champions a global move towards responsible investment. Monitoring and public reporting on Environmental, Social and Governance More information available here < <https://www.unpri.org/download?ac=4839> >

² Walkers Global (2013) AIFMD Transparency and Reporting Factsheet Available at <<https://www.walkersglobal.com/images/AIFMD/AIFMD-Transparency-and-Reporting-Factsheet.pdf>>

³ Calpers Online Available at <<https://www.calpers.ca.gov/page/about/board/board-meetings>>