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

May 30, 2018

Dear Sir,

SUBMISSION ON PIC AMENDMENT BILL

We appreciate the extended opportunity to comment on the Public Investment Corporation Amendment Bill.

We limit our comments to sections of the Bill that impact on the free flow of information and freedom of the media, since these fall within our advocacy mandate – to help secure the information rights that are the lifeblood of our field, investigative journalism. We note, however, that information rights are indivisible and that whatever benefit there may be for investigative journalists also apply to the rest of the media and the public in general.

ABOUT AMABHUNGANE

The amaBhungane for Investigative Journalism NPC (amaBhungane) is a non-profit company founded in 2009 to develop investigative journalism so as to promote a free, capable media and open, accountable, just democracy.
We pursue our objective through:

• **Our investigations programme:** developing best practice in our field by producing major investigative stories that are accurate and fair, advance methods and standards, set an example to the wider media, expose wrongdoing and enable people to hold power to account;
• **Investigations support programme:** to help others develop and practice investigative journalism.
• **Advocacy programme:** to help secure the information rights investigative journalists need to do their work.

As we practise investigative journalism, we are ideally placed to identify legal, policy and practical threats to the information flows that are the lifeblood of our field.

Our submission follows. We are available to elaborate in an oral presentation to the committee.

Yours faithfully,

Karabo Rajuili
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PREAMBLE

The Public Investment Corporation (PIC) is the biggest single investor in the economy. It is a market mover and can make winners and losers via its investments.

The very extensive influence this creates in the economy gives it a power than can be used for the benefit of its clients and the broader public, or abused for individual benefit, market manipulation and political or factional patronage.

Up to now the PIC has operated under very limited oversight and disclosure provisions considering the enormous financial power that it exercises.

Recent media articles, based in part on leaks and in part on the examination of the limited public information that there is about the PIC's investments, suggest the fears of abuse are well founded.

For example, the PIC invested billions in Ayo Technologies and Sekunjalo Independent Media, and it nearly invested billions more in Sagarmatha Technologies. All three companies appeared to be seriously overvalued and all three are controlled by the same man.

Meanwhile, the PIC's CEO Dan Matjila has been publicly accused of channelling funds to a "girlfriend". The police are investigating.

Questionable and politically-motivated PIC investments are not a new phenomenon. For examples, read amaBhungane's reporting on Erin Energy (previously named Camac Energy) and the PIC's 2012 deal with Capitec's BEE consortium. Please refer to the articles in Annexure 1.

We are busy trying to scrutinise a number of other potentially problematic deals. But without transparency, holding the PIC to account is slow and difficult work, with only a limited chance of success.

Clause 2 of the Bill creates a substitute for Section 5 which would significantly broaden the mandate of the PIC to intervene in the economy for various public policy purposes.

Worthy as these purposes may be, they would also introduce greater subjectivity in decision-making. This in turn would reinforce the need for transparency of the PIC's investments <u>and</u> of its decision-making processes.

The Bill attempts to deal with disclosure, but in our view the proposed provisions are insufficient given the very real temptation to abuse the PIC's enormous financial muscle.

RATIONALE FOR GREATER TRANSPARENCY

It is trite that transparency disincentivises the abuse of power and incentivises good decision-making.

But on what grounds could one dictate openness to an institution that in many ways is the equivalent of a private fund manager, which would be subject to very little transparency?

The answer is simple: GEPF, the PIC's main client, is a defined benefit fund, guaranteed by the state.[1] If PIC fails to satisfy GEPF's obligations to civil servant pensioners, the state has to make good.

This is a matter of great public interest as tax money will be used and as there may be potentially catastrophic knock-on risks to the entire economy.

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[1] Section 31 of the Government Employees Pension Law, 1996, provides: "This Law shall bind the State and the Government shall be responsible for meeting the obligations of the Fund, whether properly funded or not, in favour of its members, pensioners and beneficiaries…"

TRANSPARENT SELECTION OF THE BOARD

Clause 3 of the Bill provides for the minister to appoint board members in consultation with Cabinet.

In keeping with other institutions that exercise significant public power and oversight, our view is that appointments to the PIC board should follow a public interview process conducted by the National Assembly.

Not only stakeholders, but also members of the public should be able to make nominations.

DISCLOSURE PROVISIONS

The Bill makes three attempts to improve disclosure.

1. **The addition of subclause (5) after section 6(4) of the current Act, to provide for the publication of ministerial directives.**

The current Act provides:

> (4) The Minister may issue directives to the board regarding the management of the corporation if—
> *(a)* it is in the public interest; or
> *(b)* it is reasonably necessary to do so.

The addition would provide:

> (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.

We **support** the proposal that any directive of the minister is tabled and published on the PIC's website within 30 days.

2. **The amendment by Clause 4 of Section 10 of the current Act to provide for the annual tabling and publishing of a report reflecting all investments of deposits, whether listed or unlisted.**

The amendment would add:

> **(**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.

We **support** this disclosure. It is central to the transparency required.

We fail to understand Treasury/the PIC/the GEPF's objection to this proposal. It merely codifies the practice of the past two years, motivated by Treasury.

The above parties argued in their April 19 submission to the Committee:

> *The PIC as asset manager 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.*

This argument appears to assume privileges for the GEPF which it as a public entity simply does not have. The GEPF is a creature of law – the Government Employees Pension Law, 1996, and related instruments ("GEP Laws").

The GEP Laws already impose significant transparency provisions on the GEPF.

EXISTING TRANSPARENCY PROVISIONS IMPOSED ON GEPF

In terms of section 9(6) and 10 of the GEP Laws, the Minister of Finance shall submit to Parliament the GEPF's annual financial statements, report of the auditors and a report by the board regarding the state of affairs, business and financial position of the of the GEPF, and the degree in which the objects of the GEPF have been furthered. Significant detail is required in the board report.

In terms of items 4.10.1 and 4.10.2 of Schedule 1 to the GEP Laws ("**Schedule 1**"), the board of the GEPF must cause to be published in the Government Gazette a report on the activities of the GEPF, including the financial statements of the GEPF; and remuneration paid to trustees.

In terms of item 4.10.3 of Schedule 1, a copy of the report must be made available to any member of or person who has an interest in the GEPF upon the payment of a fee.

The GEPF annual reports submitted by the Minister to Parliament can be readily accessed online at http://www.gepf.gov.za/index.php/annual_reports.

The annual financial statements ("**AFS**") of the GEPF are also published online as part of the annual reports. The AFS provide information in relation to the investment of the GEPF's assets.

The GEPF's AFS include detailed accounts relating to the GEPF's investments. The details of the top 10 investments per investment category are included in the schedules to the AFS.

As already noted, the state guarantees the GEPF's obligation to beneficiaries, which is a matter of great public interest and of necessity imposes a transparency obligation on the GEPF and by extension the PIC.

As also noted, if the PIC's investment mandate is broadened as proposed in Clause 2 of the Bill, then the PIC's investment choices and their consequences are in any case a matter of direct public interest .

There is no indication that the PIC or the companies it invests in have suffered as a result of the last two rounds of disclosure.

We note that the amendment proposed by Clause 4 of the Bill does not specify which classes of information regarding the PIC's investments should be disclosed. We assume this is a matter for regulation as provided for in Clause 7 of the Bill.

We welcome the proposal that the Minister must table draft regulations in the National Assembly for comment. We believe, however, that Clause 7 could be strengthened as follows:

a) It should require public participation.
b) It should require National Assembly approval.
c) It should require that the minister must prescribe the classes of information to be disclosed in terms of Section 10(4).

In our view, classes of information to be disclosed should include:

- ✓ 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. The insertion by Clause 4 of a Section 11A, requiring the publication of any significant transactions requiring approval in terms of the PFMA and other legislation.

The insertion would add:

> 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.''.

As we understand it, this provision seeks to promote transparency with regard to the extent of the PIC investment in other public entities or their debt, including government and parastatal bonds. If our understanding is correct, we **support** this initiative.

This is particularly relevant given the extent of the PIC/GEPF's exposure to SOCs like Eskom, whose potential default may cause systemic economic risk.

EXTENDING DISCLOSURE

In leaked information that has come to light, we have seen that internal concerns, such as those raised by the Risk Committee, have been ignored.

To that end we propose a provision enabling public access to records of the PIC's investment decisions. This would include board, portfolio and investment committee minutes in so far as they deal with investment decisions.

We note that PAIA may not be the appropriate mechanism for such access, given that Section 44, *Operation of Public Bodies*, allows a public body to refuse access to records containing inter alia:

> *(ii) an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law.*

We recommend a dedicated provision with the following features:

> Any member of the public may request, and the PIC must provide within seven days, any minute of a decision regarding a PIC investment, provided that:
> a) A prescribed period must have passed after the investment was made;
> b) Disclosure may be refused for reasons of commercial confidentiality, subject to all reasonable efforts to redact the relevant records on the same grounds;
> c) Any records that are already publicly available in some form may not be refused;
> d) Where there is an overriding public interest, records may not be refused.

Publication: Sunday Times Issued: Date: 2006-10-08 Reporter: Simpiwe Piliso

ANC Chief in R50m Get-Rich-Quick Deal

Publication	Sunday Times
Date	2006-10-08
Reporter	Simpiwe Piliso
Web Link	www.sundaytimes.co.za

Ngonyama central in controversial dumping of Telkom shares

Smuts Ngonyama, the ANC's Head of the Presidency, has emerged as a central figure in the secret sale of a large chunk of Telkom shares.

The shares are part of a R9-billion stake that the Elephant Consortium bought from a US-based company last year in one of the country's biggest empowerment deals.

When the deal was announced, Elephant's purchase sparked an outcry and was billed as a get-rich-quick scheme for a select few.

The consortium included Ngonyama, former government Telecommunications director-general Andile Ngcaba, Gloria Serobe of women's empowerment group Wiphold, and a string of former civil servants and businessmen.

Ngonyama and the consortium bought a 15.1% stake in Telkom from US-based Thintana, but the deal became mired in controversy when it emerged that the Public Investment Corporation (PIC), which manages R600-billion in civil servants' pension savings, had warehoused the shares to allow them time to raise cash.

Ngonyama has consistently denied making money from the deal, maintaining that he is yet to be "rewarded" for his role.

The latest revelation comes as the ANC's National Executive Committee (NEC) was this week finalising recommendations on dealing with the issue of its members' business ethics.

The Sunday Times has established that Ngonyama, through an adviser, controlled about one million shares, held via two private companies.

One of the companies, Clidet 532 was run by a former banker, Alan Norman, the man who represented Ngonyama at several meetings of the consortium.

On Friday, Tshepo Mahloele, who previously handled the deal for the PIC, confirmed that his office issued documents for permission to allow Clidet 532 to sell in June this year.

This company had a 5% stake, worth more than R50-million.

It is not clear how this deal was structured as the agreement with the PIC stipulates that no one is allowed to sell for another four years.

PIC chief executive Brian Molefe confirmed that the terms of the original agreement with the Elephant Consortium, stipulated that no trading may take place until May 2010.

"If the terms of our original agreement have been violated, I cannot comment," Molefe said.

On Friday, when contacted for comment, Norman asked the Sunday Times to call him later in the day. However, all further attempts, including repeated messages, were unsuccessful.

Ngonyama who was attending the NEC meeting, refused to talk about the Telkom deal.

The deal has been fraught with controversy since the outset, when Ngcaba's Lion group went up against Ngonyama's Buffalo consortium.

Ngcaba had secured the backing of President Thabo Mbeki before Ngonyama.

But when the competition between the two groups heated up, ANC treasurer-general Mendi Msimang stepped in to keep the peace.

In a letter, dated September 29 2004, Msimang told James Khan, vice-president of US-based SBC Communications, a member of the Thintana consortium, which owned the 15% stake in the fixed-line phone operator, that the Telkom deal had been presented to Mbeki.

"In our meeting, which was attended by Mr Ngonyama, the President indicated that the government had already been approached for support by a group led by Mr Andile Ngcaba. The President then expressed ... that the two consortia should co-operate," Msimang wrote in the letter.

The Elephant consortium then secured the deal as a joint venture between the two groups.

Today the consortium comprises:

•The Leopard Group, comprising Gloria Serobe's Wiphold, Blue Label Investments, local businessmen Barend Hendricks, Dali Mpofu, US businessman Jim Myers, former government adviser Rafique Bagus, and Clidet 532 and Clidet 531. Documents list "Smuts & Co" as another beneficiary;

•Other than Ngcaba, the other beneficiaries in the Lion group are not known; and

•A third, broad-based empowerment group, managed by the PIC.

Two weeks ago it emerged that some of these beneficiaries had instructed lawyers to unmask secret shareholders and investigate if anyone who participated in the R9-billion deal had cashed in their shares.

They had consulted their lawyers to conduct an assessment of the shares and shareholders, mainly held via trusts registered with the Master of the High Court in Pretoria.

The move was sparked by concerns that some beneficiaries had secretly sold or ceded a portion of the consortium's Telkom shares to raise cash.

With acknowledgements to Simpiwe Piliso and Sunday Times.

BEE indeed!

But it's better if one is an ANC office bearer or benefactor.

R50 million profit in a year with no risk, no financial capital, just political capital.

It's no empowerment, it's fraud.

28 Sep 2012 - Tabelo Timse

ANC stands to benefit from R1bn Capitec bank bonanza

Regiments chairman & Thebe Investments co-founder Litha Nyhonyha.

Regiments chairman & Thebe Investments co-founder Litha Nyhonyha.

Free shares worth almost R1-billion in Capitec Bank, the stand-out stockmarket success. That is what a consortium intimately linked to financing the ANC has scored thanks to finance from two state bodies: the Public Investment Corporation (PIC), which is supposed to focus on growing state employee pensions, and the Industrial Development Corporation (IDC), tasked with economic development.

Alongside a funding trust set up by ANC leaders, individual beneficiaries include Gugu Mtshali, the life partner of Deputy President Kgalema Motlanthe, Lotto boss Bongani Khumalo and Pilisiwe Twala-Tau, the wife of Johannesburg mayor Parks Tau.

The deal was simple. The consortium, assembled by a controversial ANC fundraiser, bought an empowerment stake in Capitec using funds provided by the IDC. Later, exploiting strong growth in the Capitec stock price, it sold just enough to the PIC to pay off all debt associated with the original purchase.

The ANC and some well connected individuals now stand to benefit from the value of the remaining shares -- over R950-million -- in another instance of the ruling party acting as both player and referee. The party has hit flak in the past for investing through its front company, Chancellor House, in areas where government has a say.

The consortium is named Coral Lagoon after the shelf company it uses to house its interest in Capitec. Coral Lagoon was launched by a controversial ANC fundraiser, and its second-largest beneficiary is the Batho Batho Trust, founded by ANC leaders in 1992.

Despite attempts to dissociate itself from the ANC, Batho Batho is a major sponsor of the party. A spokesperson would not say whether Batho Batho would transfer proceeds from the Capitec windfall to the ANC, calling it a “hypothetical question” (see “The consortium players that will reap the rewards from the deal”).

Batho Batho holds 20% of Coral Lagoon, giving it a net gain of Capitec shares now worth about R190-million.

Other significant stakes are held by the companies Keabetsoe Holdings (32%) and Regiments Capital (18%), both of which appear to have strong links to the ANC treasury.

Individual beneficiaries include Motlanthe’s life partner, Gugu Mtshali, who gained shares now worth R9.5-million. She worked for the ANC treasury when Coral Lagoon was formed.

Share warehouse

The PIC’s role is particularly contentious, because it bought the shares only to warehouse them for onward BEE sale. This echoes its 2004 warehousing of Telkom shares to assist the politically connected Elephant Consortium that consisted of close associates of then-president Thabo Mbeki.

The warehousing allowed Coral Lagoon to gain hugely from an investment for which it paid nothing. But the long-term benefit to the PIC and its customers — government employees, whose pensions it invests — is not as clear.

The IDC and PIC both denied politics played a role, saying they acted within their mandate of supporting BEE while ensuring decent returns.

Coral Lagoon said in a statement: “This transaction can be seen as one of the most successful BEE transactions in South Africa as Coral Lagoon now has an unencumbered holding in Capitec that pays regular dividends.”

Capitec said it had found both the IDC and PIC "professional" in their dealings and that it had been un-aware the ANC might benefit.

ANC treasurer Mathews Phosa declined to respond to questions.

New kid on the block
JSE-listed Capitec entered retail banking as little more than a microlender in 2001 but, because of technological innovation and product simplicity, it is now barking at the heels of the four big retail banks.

In 2006, Capitec found itself way behind the financial sector charter's target of a 25% black shareholding by 2010, after a restructuring reduced its BEE shareholding from 17% to 4%.

Capitec needed a new BEE partner. Although potential takers for such deals tend to be plentiful, institutions willing to finance them are not.

What set Coral Lagoon apart was that it brought the IDC along, offering to lend almost the entire purchase price.

ANC's "Mr 15%"
Central to putting the consortium together was Zwelibanzi "Miles" Nzama, a controversial ANC fund-raiser.

Nzama attracted public attention in 2003 when a printing company alleged in court that it had lost a Transnet tender because it rebuffed his attempt to extort shares for the ANC.

The company, Sechaba Photoscan, said in an affidavit: "Miles Nzama informed us that ... with his contacts in the African National Congress, he could guarantee our success for a consideration of 15% of [our] shares ... at no cost to his principal."

Though Transnet had scored Sechaba Photoscan the highest, it awarded the tender to a rival bidder, which had allegedly fallen for Nzama's advances. Sechaba Photoscan won a record R57-million in damages from Transnet.

Nzama, who at the time ran the ANC Fundraising Trust with the then ANC treasurer, Mendi Msimang, remained closely associated with the ANC treasury.

Nzama is now an executive of Chancellor House, ANC front company. He did not reply to questions.

... and his friends
Nzama in turn roped in Regiments Capital, a black-owned investment and advisory firm, to help with the corporate financing and to take up a stake.

Regiments executive chairperson Litha Nyhonyha told the *Mail & Guardian* earlier this year: "Miles [Nzama] and I go back a long way so I know him very well ... Capitec was looking for BEE partners. I don't know how they got to approach Miles. And he came to me. We were invited to participate and that's how the deal happened."

Nyhonyha too has a long-standing connection with the ANC treasury. In 1992 he and Vusi Khanyile, who was then head of ANC finance, established the Thebe Investment Corporation, then fully owned by Batho Batho.

Nyhonyha denied rumours that Regiments is linked to the ANC treasury. "We are a strict private company. We were never set up by the ANC and we were never facilitated by the ANC."

But he added: "We believe in this country democracy should be supported financially and, yes indeed, we do donate to the ANC."

A third person who helped to set up Coral Lagoon was investment banker Tshepo Mahloele. After stints at the PIC and the Development Bank, he was qualified to help. In fact, as head of the PIC's BEE-supporting Isibaya Fund between 2003 and 2005, he was directly responsible for warehousing the Elephant Consortium's Telkom shares.

Shares mystery
Mahloele heads Keabetsoe Holdings, a special purpose vehicle whose 32% in Coral Lagoon makes it the biggest beneficiary of the Capitec deal. It gained shares now worth about R300-million.

But Keabetsoe's shareholding is opaque. In a January 2007 circular announcing its imminent deal with Coral Lagoon, Capitec stated that Mahloele and Nzama each held 50% of Keabetsoe.

However, attempts to establish Nzama's supposed 50% share and whether he held it personally or as a nominee for the ANC, led to contradictory responses. Mahloele even produced a share register purporting to show that Nzama had never held any shares.

This would leave Nzama without any stake in Coral Lagoon, which is highly unlikely given his role in launching it. Company registration records show him as one of its active directors.

The deal
Capitec issued 10-million shares to Coral Lagoon in February 2007. At R30 a share, the price was R300-million.

Information provided by the parties shows that Coral Lagoon financed the purchase with two loans: R285-million from the IDC and R15-million from Capitec itself. As this covered the full purchase price and the loans were structured using preference shares, Coral Lagoon carried no risk, even if Capitec's share price collapsed.

This left Coral Lagoon as the owner of just over 12% of Capitec, but without the full benefit, as it had to use the substantial dividends received from Capitec to service the IDC and Capitec loans.

That changed in February this year, when the PIC bought about 5.3-million of the 10-million shares from Coral Lagoon, at a small discount to the going price of R185 a share. The proceeds were enough to redeem the full original IDC and Capitec loans and pay taxes and transaction costs.

The net result was that Coral Lagoon remained with about 4.7-million Capitec shares unencumbered by any debt, then worth R872-million.

Further growth in the Capitec share price took this to more than R950-million by the close of trading on Wednesday this week.

Coral Lagoon may have some difficulty in turning the shares into instant cash — they cannot be sold on the open market as they must remain in BEE hands — but there is already the benefit of Capitec's sturdy dividend flow. Since February, Coral Lagoon has earned about R22-million in pre-tax dividends.

Denials
The IDC and the PIC denied favouring Coral Lagoon because it is politically connected and said that the deals made commercial sense.

The IDC sidestepped a question about whether it knew of Coral Lagoon's closeness to the ANC treasury, saying: "The IDC considers all applications for funding based on the economic viability and developmental impact of each transaction ... Political affiliation of applicants is not a consideration for funding whatsoever."

The PIC responded: "The PIC follows robust and rigorous due diligence processes on all transaction we invest in. This includes assessing transactions on merit and value to be derived for our clients. The PIC does not exclude anyone based on their political affiliations."

On whether warehousing the shares could expose it to undue risk — there are concerns that significant growth in Capitec's unsecured lending might end its bull run — the PIC said it had done a full analysis.

It was "comfortable that the risks related to unsecured lending were within acceptable levels given the proposed holding period of the shares and that the indicative financial returns were in line with our benchmark return requirements."

Capitec said it was unaware that the ANC could benefit from the transaction. "Until we received your questions, we were also unaware of the fact that Mr Miles Nzama is a fundraiser for the ANC.

"We believe it is wrong for the ANC, as a political party, to participate in a BEE deal and to benefit from funding intended for BEE. We do not, however, believe that somebody who is employed by the ANC or any other political organisation can for that reason be disqualified from participating in a BEE deal."

The consortium players that will reap the rewards from the deal

Keabetsoe Holdings: 31.9% = Capitec shares worth R303-million
Announcing its BEE deal with Coral Lagoon in 2007, Capitec said Keabetsoe was owned by Tshepo Mahloele and Zwelibanzi "Miles" Nzama, the ANC fundraiser. But the true ownership remains a mystery, as Capitec says it is now informed that "the administration surrounding the shareholding structure has not been formalised yet", whereas Mahloele has produced a share register showing only himself and businessman Blessing Rugara as shareholders from the start.

Batho Batho Trust: 20% = Capitec shares worth R190-million
Founded in 1992 by ANC and struggle leaders including Nelson Mandela, Walter Sisulu and Beyers Naudé, initially as the sole owner of Thebe Investment Corporation.

Managing trustee Molefe Tsele insists it is "factually incorrect" that Batho Batho was set up by the ANC or is accountable to it — the founders acted "in their private capacity as community leaders".

Batho Batho's deed binds it to support "democracy and socioeconomic transformation" and "the institutional viability and self-sustainability of historically black organisations".

However, the ANC remains an important beneficiary. The *Sunday Times* has revealed an ANC document dating from Batho Batho's founding, stating that "in the trust's documents the area that the trust covers must be defined in extremely narrow terms, such that any profits received are donated to the ANC".

Although Batho Batho has boasted of donating R230-million to a range of beneficiaries, the ANC is thought to be the largest.

When Batho Batho received an amount approaching R100-million from the sale of Thebe shares in 2006, Tsele and then ANC treasurer Mendi Msimang publicly disagreed about whether the ANC should automatically benefit.

The ANC is believed to have received the lion's share, although Tsele would not confirm details.

Tsele says that, “without reservation, we do not see it as either legally or morally problematic” to benefit from the Capitec deal.

Regiments Capital: 18% = Capitec shares worth R171-million
Regiments is led by Litha Nyhonyha and his partners, Niven Pillay and Eric Wood. Nyhonyha co-founded Thebe Investment Corporation, set up in tandem with the Batho Batho Trust in 1992.

Lemoshanang Trust: 5% = shares worth R47.5-million
The family trust of prominent businessman Baekeng Japie Moropa.

Capitec Bank Group Employee Empowerment Trust: 5% = Capitec shares worth R47.5-million
A trust set up for Capitec employees that was included in Coral Lagoon in return for Capitec agreeing to finance 5% of Coral Lagoon’s purchase of Capitec shares.

Nozala Investments: 5% = Capitec shares worth R47.5-million
A BEE investment company whose board boasts Chancellor House trustee Salukazi Dakile-Hlongwane and, at the time Coral Lagoon bought into Capitec, Mandela daughter Makaziwe Mandela and Lorato Phalatse, a senior official in Thabo Mbeki’s presidency.

Mdumo Trust: 4.7% = Capitec shares worth R44.7-million
A youth development trust founded by Abdoolrawoof Ahmed, a former accountant of Udumo Investments, a company directed by Nzama and Msimang.

Koma Trust: 3.5% = Capitec shares worth R33.3-million
The purpose of the trust is unclear. Trustees include Tlhalefang Sekano, a former union moneyman closely tied to Nzama.

Rorisang Basadi Investment Holdings: 3% = Capitec shares worth R28.5-million
A BEE investment company whose board includes Jackie Huntley, a lawyer in partnership with Leslie Mkhabela, who represented ANC moneyman Sandi Majali before being used by PetroSA in a largely unsuccessful attempt to recover Oilgate money from Majali. Huntley represented Julius Malema in his hate speech trial last year.

Gugu Mtshali: 1% = Capitec shares worth R9.5-million
The life partner of Deputy President Kgalema Motlanthe. She worked in the ANC treasury when Coral Lagoon obtained its Capitec stake in 2007. Since then she has courted business controversy as a shareholder in the politically connected Imperial Crown Trading, which obtained exploration rights to Kumba’s Sishen iron ore mine (later overturned in court). More recently, she was implicated in an alleged sanctions-busting deal to supply helicopter parts to Iran.

Bongani Khumalo: 1% = Capitec shares worth R9.5-million
Prominent businessman and former Transnet chairperson, who now heads Lotto operator Gidani.

Pilisiwe Twala-Tau: 1% = Capitec shares worth R9.5-million
Wife of Johannesburg mayor Parks Tau and chief executive of Gauteng Enterprise Propeller. She previously occupied senior positions at the Ekurhuleni and Johannesburg metros.

Tdikeledi Majola: 1% = Capitec shares worth R9.5-million
Unknown.

Values were calculated using a Capitec share price of R201.47.

Consortium members generally preferred not to answer questions but associated themselves with this statement from Coral Lagoon: “The consortium is delighted with its shareholding in Capitec, which has played a major role in taking banking to the unbanked in South Africa.

“It is very pleased with the return on its investment to date and with its significant remaining stake in the company. This transaction can be seen as one of the most successful BEE transactions in South Africa as Coral Lagoon now has an unencumbered holding in Capitec that pays regular dividends.” — *Stefaans Brümmer, Tabelo Timse & James Wood*

- **Capitec Bank Holdings’ chairperson is the founder of the Millennium Trust, one of the funders of the M&G Centre for Investigative Journalism**

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28 Aug 2014 - Sam Sole & Craig McKune

What's black and white and in the red all over?

Though the Public Investment Corporation has a massive stake in the struggling Independent, it has all but handed control to Iqbal Survé.

Though the Public Investment Corporation has a massive stake in the struggling Independent, it has all but handed control to Iqbal Survé.

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The Public Investment Corporation (PIC) risked state pensioners' cash to help to buy Independent newspapers last year, whereas other investors rejected the deal as overpriced and potentially toxic.

Now Independent is buckling under the weight of its huge debt, falling revenue, retrenchments and plunging staff morale (See "Grim picture of declining revenues (and morale)" below).

Despite this, the PIC has not taken up seats on the Independent board to safeguard the huge investment – estimated at R1.4-billion – it made a year ago.

The corporation, which invests Government Employees' Pension Fund money, has imposed a news blackout on the issue.

The chief investment officer, Dan Matjila, told the *Mail & Guardian* at the end of July: "We will make no further comment on this investment."

Independent has also rebuffed several attempts by the *M&G* to raise issues with the group.

Independent is controlled almost single-handedly by Cape businessperson Dr Iqbal Survé, assisted by a board dominated by his family.

The PIC appears to have left Survé to his own devices, despite its massive investment and contrary to its policy of shareholder activism and strict standards of corporate governance.

PIC foots the bill
A consortium led by Survé bought Independent Media from its Irish owners for R2-billion in mid-2013, and two state-owned Chinese companies took a 20% share, worth about R400-million.

The PIC took a 25% stake, worth about R500-million, but less well known is that a PIC loan funded most of the other 55%, housed in Survé's Sekunjalo Independent Media (SIM) consortium.

Approving the terms of the deal, the Competition Commission assumed the PIC would have board representation and stipulated the corporation should "not appoint any common directors" with the Times Media Group, in which the PIC has a smaller shareholding.

Survé, who criticised the previous owners for running Independent "like a spaza shop", is the lone director of SIM.

He exercises sole control of 55% of Independent, despite the fact his personal stake in the SIM consortium appears to be quite small.

On the main Independent board, of which Survé is the executive chairperson, are his 21-year-old daughter, his two sisters, his brother-in-law and his two company secretaries.

Little to no investor representation
Survé's empowerment partners, on the other hand, do not appear to be very empowered.

The Sactwu Investment Group, the investment arm of the South African Clothing and Textile Workers (Sactwu), put up R150-million, according to a well-placed source, but has also not taken up the board seat to which it is entitled.

The Sactwu general secretary, André Kriel, refused to comment.

It is understood that other black economic empowerment shareholders and minority investors in the consortium did not put up any capital. Instead their portions were to be paid for through future dividends.

But one prominent shareholder, who declined to be named, told the *M&G* last month that no formal agreement had been signed, and there had not been any further communication with shareholders about the status of the investment.

The only investment partners on the Independent board are two Chinese directors, representing China International Television Corporation and the China Africa

Development (CAD) Fund.

The involvement of the CAD Fund is perhaps surprising as it was part of a different consortium that walked away from the deal in December 2012.

A lemon?
A letter in the possession of amaBhungane lists concerns that led a competing consortium to decide not to invest.

It is signed on behalf of Guma Capital, owned by a prominent businessperson, Robert Gumede, and separately on behalf of the CAD Fund.

The parties cite concerns about the financial health of Independent, including:

- Minimal tangible assets such as buildings and printing presses as “most of the assets have been disposed of … leaving the balance sheet bare”;
- A “substantial” R257-million unfunded exposure, believed to be related to a medical aid liability; and
- A potential tax liability of R140.9-million.

The letter makes it all the more surprising that the CAD Fund later emerged as an investor alongside Sekunjalo.

The CAD Fund country director, Lu Zhengyi, declined to answer questions, including whether the fund came under pressure to revise its position following the Brics (Brazil, Russia, India, China and South Africa) summit in South Africa in March last year.

The letter supports suggestions that two other consortiums that knew the company well – one led by former *Sunday Independent* editor Shaun Johnson and another led by former Independent manager Nazeem Howa – had bid significantly less than Survé.

"Voodoo economics"
In a recent interview, Survé boasted he knew “exactly what I am buying and paying for”, but in staff forums he has complained of finding “voodoo economics” and “black boxes” in the company accounts.

Both the PIC’s lack of interest and the CAD Fund’s unexplained about-face suggest Survé was able to raise R2-billion because of political rather than financial calculations.

Now he may also be counting on political support to get him out of the financial burden of buying at a premium: Survé has set up a new public-sector division and told staff of plans to launch a national Sunday title to capture government advertising.

The director of journalism at the University of the Witwatersrand, Anton Harber, said Survé has talked about reinvesting in the company “but all the evidence is that he’s cutting more than ever”. –Additional reporting by Stefaans Brümmer, Lynley Donnelly and Lisa Steyn.

Grim picture of declining Indy revenues (and morale)

Employees of Independent newspapers are paying a high price for Iqbal Survé’s costly purchase of a troubled company in a declining industry.

Cape Argus editor Jermaine Craig told a staff meeting this month in Survé’s presence: “I have never been in a company where the spirit is as low as it is at the moment.”

Morale has deteriorated as Independent has appeared to lurch from one crisis to the next, despite Survé’s laudable intent to introduce “scientific decision-making” to a company that suffered years of neglect and profit-taking by its former Irish masters.

According to several company sources, Survé’s takeover has coincided with a 60% drop in projected revenue, leading to a scramble to find money to service loans raised to purchase the company.

Among the titles said to be losing money are the *Cape Argus*, the *Daily Voice*, the *Star*, the *Saturday Star*, the *Sunday Independent* and the *Daily News*.

The Gauteng operation is alleged to be in the red for the first time ever.

Keeping things afloat is the successful seven-day isiZulu-language *Isolezwe*, which Survé plans to expand to Gauteng.

Retrenchments in the pipeline
The company has repeatedly dodged questions about its loan commitments but Survé’s consortium is thought to have borrowed as much as R1-billion, suggesting he needs to repay between R100-million and R200-million a year.

In a bid to raise cash, Survé has announced plans for retrenchments, is negotiating to sell and lease back his KwaZulu-Natal building and is alleged to have offered Chinese shareholders a bigger stake.

Worse still, staff speak of decisions driven by panic, of paralysing micromanagement by Survé’s office and of a lack of the editorial understanding needed to turn the company around.

Insiders describe the planned break-up of the centralised production hub, in a bid to cut sub-editing expenses by 40%, as “not implementable”.

One said: “Iqbal keeps saying we have got to start leveraging the advantages that we have in operating like a group … and then one of the first really big decisions he makes is to dismantle the only national department that’s ever worked in editorial.”

Senior staff leave in droves
On top of that has been a persistent culture clash that has seen a stream of dismissals of or departures by senior staff.

It began with Survé’s conflict with the sacked *Cape Times* editor Alide Dasnois over her decision to wrap coverage of Nelson Mandela’s death around a critical front-page report on one of Survé’s other companies.

It continued last week with the suspension of the respected *Business Report* deputy editor Peter de Ionno.

Three black editors – Makhudu Sefara, Moshoeshoe Monare and Philani Mgwaba – have also jumped ship.

But there have been expensive add-ons, such as the group executive editor Karima Brown, who is widely seen as an editorial commissar.

For example, in an email to editors this week, she demanded to know why news of Survé’s bid to buy the South African Press Association had been downplayed.

She instructed them: “Can I please be made to understand why each title used the story the way they did.”

One senior insider said talk in the corridors was that the company was overpriced: “It was known to be a lemon.

"But it was a platform for political influence. Still, for that platform to function, you need news products and for that you need intellectual capital and institutional memory, and the company is losing these." – Sam Sole & Craig McKune

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08 Apr 2018 - Sam Sole

Iqbal Survé's mythical beast

Analysis

Analysis

The full extent of the destruction at Independent Media since the Public Investment Corporation placed the company at the disposal of Iqbal Survé has been laid bare – ironically via Survé's outrageous attempt to use other peoples money to plug the R2,3-billion hole in his media balance sheet.

Last week, on 28 March, a company 73% owned by Survé's family trust issued a remarkable "Pre-listing Statement" inviting selected investors to subscribe for a "private placement" of shares ahead of a planned listing on the Johannesburg Stock Exchange.

The company's name is Sagarmatha Technologies (a grandiose reference to the Nepali name for mount Everest) and the pre-listing statement represents a desperate bid to portray it as a high-tech start-up in the mould of an African Google or Amazon.

In reality, it looks like a desperate attempt to save Independent, which will be incorporated into Sagarmatha if the private placement attracts enough money.

Survé is seeking to raise a minimum of R3-billion via this private placement despite the fact that the company he's selling is technically insolvent and labouring under the burden of some R2,3-billion in debt.

The situation is dire because Survé needs to find R863-million by August this year to repay a 50% portion of loans from a Chinese state consortium and the Government Employees Pension Fund (GEPF) that funded his acquisition and development of Independent Media.

Sekunjalo Independent Media (SIM), controlled by Survé, owns 55% of Independent Media.

Independent is the successor to the venerable but battered Argus newspaper group that was offered up in politically directed sales, first to the Irish Independent group in 1994, and then to Survé's consortium in 2013 in a R2-billion mainly debt-funded deal.

The funds from the GEPF were controversially extended to Survé's consortium via the Public Investment Corporation (PIC), which drew criticism for making an investment driven by political considerations rather than returns for government employee pensions.

The PIC itself took 25% of Independent, as well as funding Survé. The other 20% of Independent was picked up by a consortium consisting of the China Africa Development Fund and China International Television Corporation.

The deal was veiled in secrecy – as were the subsequent fortunes of the group, though plunging circulations, staff retrenchments, resignations and allegations of asset-stripping suggested managing the purchase debt was always going to be a challenge.

Suspicions are now rife that the private placement has been engineered largely to allow the PIC to come to the rescue with more government pensioners' cash.

The institution refused to confirm or deny whether is was taking up any portion of the private placement.

Just what a mess Survé made of Independent is now laid out in brutal detail in his pre-listing statement.

The interim financial information disclosed by SIM reveals that, as of 30 June 2017, SIM had accumulated losses of R752-million and that the company's total liabilities exceed its assets by R547-million.

The figures include and reflect the financial state of Independent because SIM exercises control over via its 55% holding.

The pre-listing statement discloses that SIM suffered significant losses every year of operation since Survé took over.

It says the group's revenue was "negatively affected" by declining advertising sales and reduced margins on advertising.

The group is losing cash, mainly due to interest payments, though it has been making only limited interest payments on its major loans, whose repayment deadlines are looming.

The interest bearing debt of some R2,3-billion includes just under R1-billion owed to the Chinese, half of which must be paid by 15 August and R770-million owed to the GEPF, half of which also falls due in August.

Another debt to GEPF is currently sitting at R490-million, but is due for final calculation and payment only in 2020.

Given that the company is technically bankrupt, the auditor's report notes: "The ability of the company to continue as a going concern is dependent on a number of factors. The most significant of these is that the directors continue to procure funding for the ongoing operations for the company."

In other words, Survé needs cash and, given the August debt deadlines, he needs a lot and he needs it fast.

What to do?

Enter Sagarmatha.

The issue about Sagarmatha – and the listing as a whole – is the disconcerting way in which benefits appear to flow to Survé and his family interests. To understand this, we need to follow closely how the initial Sagarmatha package was put together.

Step 1 – establish a company at R1 per share

Sagarmatha Technologies started corporate life in 2013 as the rather more lowly Independent Media Corporate Services Proprietary Limited, of which 120 shares were issued to a company which is effectively wholly-owned by Survé's family trust. The shares were a nominal R1 each.

Step 2 – get another company you control to buy shares for real cash

On 31 December 2014 – Independent, controlled by Survé, injected R10.3-million into Sagarmatha Technologies in exchange for 31 new shares.

There were now 151 shares. Independent held 20,5% of the company for which it had paid R10.3-million. Survé's family trust now held 79,5% of the company, for which it had paid just R120.

Step 3 – inject assets

Several new and some existing assets were injected into Sagarmatha Technologies.

ANA

In March 2015 Survé launched the African News Agency (ANA). It was held 79% by Sagarmatha Technologies and 21% by another vehicle of the Survé family trust.
ANA was established to replace the old SA Press Association, which closed its doors at the end of March 2015.

ANA is tiny. The pre-listing statement says it currently has a staff of 26 and its low cost strategy is "crafted around strategic media partnerships" that enable ANA "to package and on-sell authentic African content to news and media organisations across Europe, North America and the BRICS countries".

ANA's sales for 2015 were R8,3-million (with an operating loss of R22,5-million) but Survé somehow managed to persuade the China Africa Fund to buy 5% of the company for R357 million.

This ridiculous sum valued ANA alone as being worth R7,14-billion.

What were the Chinese actually buying? That remains to be seen. (Note, this share expansion diluted the Survé trust holding in ANA slightly to 20%. That 20% will be relevant later.)

Loot

Also in March 2015 Sagarmatha Technologies acquired a 75% shareholding in Loot Online, an internet shopping site.

The purchase was funded mainly via R420-million rands worth of free advertising, which would have come mainly from Independent's print titles – not from Sagarmatha's resources.

It is not clear from the pre-listing document how this gift to Sagarmatha was accounted for in Independent's books.

Loot Online actually brings in a bit of cash, earning R150-million in 2016, though at a R3-million operating loss.
IOL

Independent also transferred its online offering to Sagarmatha – Independent Online, which leverages its value off Independent's titles, for a price of R19-million – as well as the IOL Property Joint Venture, for R7,7-million.

Step 4 – repeat Step 2

On 31 December 2016 Independent was again persuaded to buy more shares in Sagarmatha: this time 10 shares for just under R137-million, or R13,7-million per share.

Step 5 – sell yourself shares at a discount

On exactly the same date, 31 December 2016, the Survé family vehicle bought 839 shares for R553-million.

This is R659,222 per share, compared to the R13,7-million per share that Independent paid on the same date.

To recap: Independent contributed a total of R147-million – for 41 shares, giving it 4.1% of Sagarmatha Technologies, while the Survé trust contributed R553-million for 959 (839 + 120) shares, giving it 95.9% Sagarmatha Technologies.

Still, R553-million was a lot of money – or was it?

In fact, the pre-listing statement discloses that no money changed hands at all.

Instead Sagarmatha Technologies (controlled by the Survé family trust) issued 839 new shares, effectively to the Survé family trust, in exchange for the 20% of the African News Agency owned by the Survé family trust.

This "R553-million" transaction valued ANA at a still ridiculous R2,7-billion.

So Survé effectively got 95.9% percent of Sagarmatha in exchange for 20% of ANA.

The pre-listing document deals rather coyly with this transaction, noting: "The share issues to Independent Media and [the company owned by the Survé family trust] on 31 December 2016 were part of an internal group restructuring in order to obtain the optimal Listing structure. All entities were under common control at the time of issue and therefore the issue price of the shares was not the determining factor."

You don't say.

So now Survé had a little company selling stuff online (at a loss) but with a stated value of R392-million, mainly due to the ridiculous valuation of ANA.

It is this vehicle, Sagarmatha Technologies, into which he now wants to inject SIM – with its 55% of Independent and its massive debt. Then he wants to list this elaborate confection on the Johannesburg Stock Exchange.

But he can't.

Even with Sagarmatha Technologies extravagant R392-million valuation, the pre-listing documents show that SIM's debt still drowns the combined entity, leaving it with a negative valuation (minus R303-million) or minus 30 cents per share for each of the 1 billion shares in issue.

Who would buy those shares?

Enter "the African Unicorn".

Survé's newspaper titles have carried a blizzard of material punting Sagarmatha in recent days, from four page wrap-around advertorial, to breathless puff pieces from his chief cheerleader, Adri Senekal de Wet, the editor of *Business Report*.

She has hyped Sagarmatha as an "African Unicorn", employing American terminology where a technology start-up valued at more than a billion dollars is termed a unicorn.

The pre-listing statement describes the company to be listed as creating "an integrated multi-sided platform ecosystem in Africa that knits technology platforms; content creation and distribution and e-commerce into a consolidated value proposition aimed at attracting prime customers for monetisation".

What does this mean?

Senekal de Wet quotes two of the VIP passengers Survé has gathered on the Sagamartha departure platform, Ambassador Harold Doley Junior, 71, and Jim Rogers, 75, both Americans, both involved in investment advisory services and both serving on Sagarmatha's informal "International Advisory Board".

"Sagarmatha is the next emerging markets technology platform growth and success story, with e-commerce, syndicated news and business content, digital media, and technology ventures in one African-owned and managed integrated group," she quotes Doley as saying.

"Sagarmatha's e-commerce offerings are Africa's own Amazon, Tencent and Alibaba. In syndicated news content it is Africa's answer to Reuters and to Bloomberg for business content. In digital news it is an African alternative to Quartz, Daily Beast, and NYT Digital." she quotes Rogers as saying.

(It might irrelevant that Rogers has recently predicted that the next stock market crash would be more severe than in 2008. "When we have a bear market again, and we are going to have a bear market again, it will be the worst in our lifetime," Rogers told Bloomberg on February 18 this year.)

Despite all this hype, the JSE will not list an insolvent company – hence the requirement to raise a minium of R3-billion from private placement investors before the listing of Sagarmatha can go ahead.

Injecting R3-billion in cash would raise the value of the company to a positive R2,58-billion, or R2,43 per share. Notwithstanding this modest improvement, the company has set the price for the private placement at R39.62 per share.

This means that if an investor commits to the minimum investment of R1-million and if the private placement is successful his R1-million will immediately be worth only R61,332 – unless public investors on the JSE are willing to price the shares higher in the hope of investing in an African Unicorn.

The extraordinary price set for the shares is based on an "independent valuation" of Sagarmatha (assuming the merger with SIM) carried out by a California company called Redwood Valuation Partners.

The pre-listing statement makes it clear that this valuation is entirely dependent on forecasts of Sagarmatha's fabulous success going forward, since its current assessed value is negative.

Redwood says that information relied on included "management's budget for the group for the year ending 31 December 2018 and the forecast for the financial years ending 31 December 2018 to 2026; the group's listing investor presentation; and other financial and non-financial information and assumptions made by management".

The pre-listing statement outlines an ambitious but unidentified buying spree across the continent, should Sagarmatha's multi-billion rand war-chest materialise from the private placement.

To sweeten this unlikely proposition, the pre-listing statement identifies five investors who have delivered "irrevocable undertakings" to purchase between R50-million and R100-million worth of shares at the private placement price of R39.62 per share.

One is Nadia Kamies, known to some as Iqbal Survé's wife, who has promised to spend at least R50-million.

Conveniently, if the private placement is successful a company of which the Survé family trust is an 85% shareholder will earn a fee of up to R52,5-million.

Even more conveniently, if the private placement is successful, the Survé family trust will end up owning between 60% and 65% of the joined-up Sagarmtha-SIM conconction, worth at least R1,7-billion in real cash.

Another person in for R50-million is Leonardo Nicolo Altini. That is not surprising as his family trust is already exposed to Sagarmatha via a 9% shareholder. The same is true for Selwyn Lewis, who already holds 7.5%.

The two gentlemen in for at least R100-million each are the Americans, Doley and Rogers.

For them, the amounts may be small change, but it is not clear how they get past the restriction on page two of the pre-listing statement, which notes "the private placement will not be made to or be capable of acceptance by investors outside of South Africa".

If less than R3-billion is raised with the private placement, then there is no JSE listing and the whole scheme falls apart.

In truth, if the PIC does not come to the private placement party, there will be no party at all.

But if the PIC does invest it would be a travesty, given the bloodline of this unicorn – and a betrayal of government employees.

Sagarmatha – the mountain – is known as a treacherous place.

You have been warned.

(http://www.amabhungane.co.za)

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21 Apr 2018 - Sam Sole and Craig McKune

Survé's listing ship

The intended listing of Sagarmatha Technologies was a mirror image of a deal in which the PIC was used to massively underwrite the Survé fortune.

The intended listing of Sagarmatha Technologies was a mirror image of a deal in which the PIC was used to massively underwrite the Survé fortune.

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Friday's extraordinary attack by Independent Media on critics of its executive chair, Dr Iqbal Survé, follows questions amaBhungane sent to Survé on Wednesday about the listing of another company he controls, Ayo Technology Solutions.

Sagarmatha was due to list on the Johannesburg Stock Exchange (JSE) the previous Friday 13 April, but the listing was aborted after the JSE withdrew its approval, based on technical shortcomings in meeting the listing requirements.

AmaBhungane raised concerns ahead of the planned listing, principally about the possibility that Government Employees Pension Fund (GEPF) money, which is managed by the PIC, would be used to artificially boost the value of Sagarmatha.

- **Read Iqbal Survé's mythical beast** (http://amabhungane.co.za/article/2018-04-08-iqbal-surves-mythical-beast)

Now information has emerged suggesting those fears were well founded – including details of an earlier Survé deal, involving Ayo Technology, which was propped up with R4.3-billion of government pension fund cash.

Private placement

Central to both deals was a process known as a private placement, in which an offer of shares is made to selected private investors.

In these two cases (Sagarmatha and Ayo), this was done prior to the stock listing on the JSE to make shares available to the broader public.

The companies both issued pre-listing statements aimed at selected private investors and setting out the historical performance of the companies and a forecast of their positive prospects.

Private placements are more risky for investors – they are asked to buy shares without a broad marketplace assessment of how much the shares are really worth – so companies will usually need to offer an attractive discount to private investors.

That's where these two deals were so remarkable – and troubling.

Both Sagarmatha and Ayo offered the private placement at what were arguably inflated prices.

The captive investor

They could do this, seemingly, only because they had a 'captive' investor: the PIC.

Ayo had requested the PIC to invest approximately R4.3-billion for 99.8 million shares at R43 per share, which amounted to 29.9% of Ayo, and all – 100% – of Ayo's planned private placement.

No one else but the PIC bought these shares at this price prior to the listing.

Who owns whom?

Both Ayo and Sagarmatha were effectively controlled by Sekunjalo Investment Holdings, a vehicle for the Survé family trust.

For Ayo, the cascade of ownership was as follows.

At the time of the pre-listing private placement offer, 80% of Ayo was held by a company called African Equity Empowerment Investments (AEEI).

AEEI – which also owns Premier Fishing – was in fact already listed on the JSE.

AEEI also already owned 30% of BT Communications Services SA, the South African arm of British Telecommunications. Take note of that.

Sekunjalo, whose ultimate ownership and control vests in Survé, through his family trust, held 61% of AEEI.

To recap: before the private placement, Sekunjalo held 61% of AEEI, which in turn held 80% of Ayo, which, combining the percentages, gave the Survé family an effective 48.8% interest in Ayo.

Value for money?

Private placements and listings both usually mean issuing new shares, meaning that existing share ownership is diluted.

For example, if there are 100 shares in a company and I own 100%, then if I issue 100 new shares to other investors, my shareholding will drop to 50% and this will normally also dilute the value of my shares.

One way of assessing the value of a company is the net asset value per share. The net asset value is the difference between a company's assets and its liabilities – although companies are also valued based on their earning potential going forward.

According to the pre-listing statement for Ayo, the net asset value prior to the restructuring was 15 cents per share, as of August 2017.

In December 2017, the PIC agreed to inject R4.3-billion of GEPF money at R43 per share (for 29% of Ayo).

Ayo then also issued 31.96-million shares to a black economic empowerment (BEE) consortium for R1.50 per share, raising another R48-million.

The injection of all that cash raised the net asset value from 15 cents per share to R12.47 – an increase of more than 8000%.

Iqbal's windfall

Most of that benefit went to the Survé family.

Given the issue of new shares to the GEPF and to the BEE consortium, the effective interest of the Survé family in Ayo dropped from 48.8% to 29.9%, however the net asset value of their interest in Ayo rose from about R16-million to R1.3-billion.

Yes, that is R1.3-billion.

We put it to both Survé and the PIC that this appeared to be a massive and unjustifiable enrichment of one family at the expense of government employee pensions.

Survé did not respond to questions at all, except through his publications, effectively labelling his critics as apartheid agents and comparing himself to Winnie Madikizela-Mandela.

The PIC didn't answer specific questions either but noted: "Ayo Technology Solutions is a listed entity and the PIC wishes not to make comments or put into the public domain information that may affect the stock. It is, however, sufficient to point out that the investment in Ayo Technology Solutions, as with all the investments, followed the necessary internal investment approval processes."

Unrealistic valuation

The value to Survé from the PIC investment does not even take into account the unrealistic valuation of R43 per share that the stock trades at – or doesn't, seeing as the share hardly trades at all.

The listing price was set by the R43 per share paid by the PIC, but other investors are not biting at all at that price.

The only major movement of the share price since the JSE listing on 8 January 2018 shows how thin the trade in Ayo is.

On 26 February, a sale of just 1 139 shares (out of a listed total of 343-million shares) led to a price drop in one day of 43%.

We put it to PIC and Survé that this demonstrated how unrealistic the valuation of R43 per share was. They did not respond.

Extracting cash?

This makes it hard for the Survé family to sell shares to realise the benefit of the PIC's cash injection, but that is not the end of the story.

The main rationalisation for the private placement was for Ayo to acquire the 30% stake in the South African arm of British Telecommunications for approximately R1-billion.

But, as we have seen, that was already owned by another Survé family-controlled company, AEEI.

In effect R1-billion in GEPF cash was used to transfer an asset from one company controlled by the Survé family, AEEI, to another, Ayo.

We put it to the PIC: "We are struggling to understand the benefit to the GEPF of the way in which transaction was structured, given that AEEI itself was listed and the PIC could have accessed these same assets on a significantly cheaper basis via an investment directly in AEEI."

This was because AEEI, which owned the 30% of BT and 80% of Ayo, was already trading on the JSE at a much lower price than R43 per share.

For example, on 13 December 2017, shortly before the PIC made its decision, AEEI was trading at R5.30 per share.

The PIC did not respond.

We put it to Survé: "We are given to understand that much or all of this R1-billion windfall for AEEI shareholders is likely to be distributed in the form of dividends to AEEI shareholders, of which the Survé family trust, via Sekunjalo Investment Holdings, holds a 61% majority. Please comment."

He did not respond.

The PIC's role

The rest of the GEPF cash – a war-chest of some R3-billion – is to be used to build the relationship with the British multinational, to buy up other companies and to leverage Ayo's BEE credentials to gain a bigger slice of the South African technology market.

The PIC has given Ayo a massive boost in relation to competitors, such as EOH – so the basis on which the state-owned investor creates winners and losers in the market demands scrutiny.

Information emerging from the PIC is not reassuring.

The investment proposal for Ayo was tabled at the last moment: on December 20, the day before the due listing date, creating a risk of undue pressure on the investment committee – although the listing eventually happened only on January 8.

Some of the PIC's top brass were on holiday, though the influential PIC chief executive, Dr Dan Matjila, is said to have returned from leave specially to preside over the meeting.

Concerns

Documents from the investment committee meeting, seen by amaBhungane, disclose several concerns about the Ayo deal.

The comprehensive due diligence approval process was waived.

Assessment team members were concerned that a number of Ayo's board members were closely linked to AEEI and were not truly independent, possibly leading to a conflict of interest.

The tight timeframes to raise R4.3-billion might have forced the PIC to sell shares in other companies to raise the necessary cash, which might have meant getting weaker prices for the shares, especially in low liquidity markets during the holiday period.

Nevertheless the investment was approved, subject to the assessment teams performing a complete due diligence and providing feedback to the committee.

Further, the committee clearly had some concern about the validity of the R43 price per share, because it placed another condition, namely that the PIC and Ayo enter into a put option to protect PIC's clients against a share price decline.

A put option is a kind of insurance, which, at a cost, ensures that shares can be sold at a fixed price, should the share price drop.

We asked the PIC if these conditions were met. They did not respond.

Sagarmatha Technologies

Some of the concerns around Ayo were already known to amaBhungane when the pre-listing statement for Sagarmatha was issued at the end of March.

Sagarmatha, the “African unicorn” which was to house Survé's media and online shopping interests, seemed to be following the same script, with a private placement being touted at R39.62 per share, for a company with a negative net asset value.

Despite the presence of several prominent named investors who were advertised as being committed to invest at that price, the suspicion was that PIC money would again really sweeten the deal.

Those fears proved well-founded.

AmaBhungane has confirmed that the same pressured timetable was followed and the PIC investment committee met on Wednesday 11 April 2018 to decide whether to fund Sagarmatha – just two days before the revised listing date of Friday 13 April.

The bid ultimately failed, to Survé's evident fury, but once again there are questions about the procedures followed by the PIC.

Sources with knowledge of the 11th hour meeting said that one of the loudest voices lobbying for the PIC to buy an undisclosed stake in Sagarmatha was chief executive Matjila.

It is alleged that Matjila went so far as to deliver letters of support from trade unions who stood to benefit from the investment.

Sources with knowledge of the PIC’s meeting allege Matjila offered to arrange a meeting between the the investment committee and Sagarmatha executives in a bid to change their mind.

One source described Matjila's attempts to push through the deal as "suicidal" in that it raised serious questions about his independence and his ability to act in the best interests of the PIC and its clients.

The PIC's response

PIC head of corporate affairs Deon Botha told amaBhungane: “The Public Investment Corporation was requested to participate in the private placement of shares in anticipation of the public listing of Sagarmatha Technologies…

“Following the deliberations by the Investment Committee, it was decided that the PIC will not participate or invest in Sagarmatha’s private placement…”

Botha would not confirm whether Matjila had gone to bat for Sagarmatha or the quantum of the proposed investment, saying that both the proposal and the discussions that followed were “confidential”.

He added: “If amaBhungane wishes to place reliance on leaked information from a closed meeting by (an) anonymous source(s), and present allegations arising from such leaks as fact, it would be very unfortunate.”

In response to follow-up questions about Ayo, Botha said: “It is clear from the list of your questions that you are insinuating wrong doing on the side of the PIC and that PIC chief executive officer, Dr Daniel Matjila, is behind these transactions.

“This is unfortunate. The PIC processes are such that no one individual takes investment decisions. All investments are taken by specific investment committees in line with the approved delegation of authority and due diligence is a key component of the investment process.

“Investment in Ayo is no different. We also note that you keep on referring to PIC documents in your possession, which according to our knowledge, were never officially given to you. The only conclusion we can draw from this is that the documents were obtained fraudulently and are part of a concerted effort to undermine and cast aspersions on the PIC.”

Indicative commitments

Sagarmatha was required to secure R3-billion through the private placement of shares by the close of business that Wednesday if it wished to proceed with the listing. In a written statement Sagarmatha said it received “indicative commitments” of more than R4-billion, “therefore comfortably meeting the minimum listing requirements of the JSE”.

Although Sagarmatha was informed of the JSE’s decision on Tuesday 10 April, it waited a full 24 hours – until after the PIC rejected the investment – in order to make the announcement to the market.

Sagarmatha explained the delay, saying it “was hopeful it could resolve this issue with the regulator” and that only when its request was denied did it make the news public. The company remains vague about whether it plans to reapply for a new listing date.

However, the delay raises suspicions that Sagarmatha’s failure to secure PIC funding also played a role in the company’s decision.

Despite the company saying it had R4.2-billion in commitments from other investors, the failed bid for PIC investment appeared to rankle.

Attack

On Friday, Independent Media launched an unprecedented co-ordinated attack (https://www.iol.co.za/news/south-africa/western-cape/stratcom-2018-exposed-14551588) on fellow journalists in which it complained: "The PIC was unduly pressured by journalists from Tiso Blackstar, *Daily Maverick*, and amaBhungane. The PIC eventually caved in to pressure and declined to invest in Sagarmatha Technologies".

It claimed to have evidence, without disclosing it, which "pointed to a dirty tricks campaign similar to those employed by Stratcom during the apartheid era to demonise struggle activists like Winnie Madikizela-Mandela – but in this instance, the campaign was aimed at Independent Media and its executive chairman, Dr Iqbal Survé".

While these unsupported allegations have been condemned by the South African National Editors Forum (Sanef), they are atmospheric and serve to create a platform for Survé to drum up support among any friends he may still have at the PIC.

Whether Sagarmatha will make another run at getting GEPF money, or whether other deals are at stake, is an open question. Watch this space.
- Additional reporting by Susan Comrie

- ***Click here (http://politicsweb.co.za/news-and-analysis/a-response-to-amabhungane--ayo-technology-solution) to read Ayo's response.***

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06 Jun 2014 - Stefaans Brummer

Zuma's oil crony lands R1.5bn more

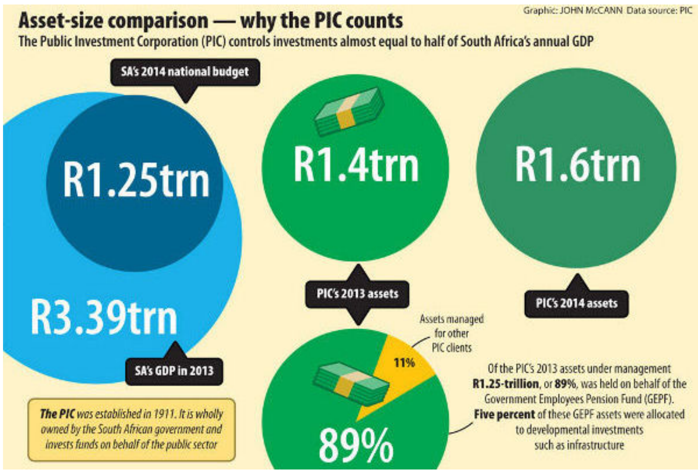
Did the PIC boss's opposition to a risky deal, completed on the eve of the polls, force him to go?

Did the PIC boss's opposition to a risky deal, completed on the eve of the polls, force him to go?

The Public Investment Corporation (PIC) has quietly handed over another R1.5-billion of civil servants' pension savings to Texas oilman Kase Lawal, despite saying repeatedly that it would hold off until his loss-making company tapped significant new oil in Nigeria, proving its viability.

The second tranche of the PIC's $270-million (almost R3-billion) investment in Camac Energy was paid on May 6, the day before the national elections.

The PIC's first tranche in February staved off Camac's possible liquidation. The state-owned corporation's decision to risk so much on the Houston-based oil company has reinforced perceptions that it is being guided by political considerations rather than by the interests of public servants, whose pension savings it manages.



Lawal, Camac's chief executive and largest shareholder, has attracted repeated controversy over his business practices but remains politically connected on both sides of the Atlantic. In South Africa, he has cosied up to the ANC and President Jacob Zuma.

The Business Times reported on Sunday that PIC chief executive Elias Masilela's sudden, unexplained departure last Friday followed clashes between him and chief investment officer Daniel Matjila, "in particular" over Camac.

Matjila has been the PIC's point man on the deal and took up a seat on Camac's board last Thursday to represent the PIC's now about 30% shareholding.

The Business Times wrote that Matjila and "others regarded as close to … Zuma" had put pressure on Masilela to go. If accurate, this suggests that the latter was not being pliable enough, including over Camac.

Masilela did not return repeated calls and the PIC said it "will not comment on baseless allegations".

The Mail & Guardian revealed in mid-February how risky the investment was. Camac is a penny stock, with its primary listing on a New York junior exchange.

It has exploration acreage in four African countries but its oil production is only marginal, and it was in so much trouble last September that a regulatory filing admitted "substantial doubt about the company's ability to continue as a going concern".

The PIC's agreement in October to buy 30% of Camac gave it the chance to dig itself out of the hole by putting together a package that included buying the two-fifths it did not yet own of Oyo, its only producing oilfield, and contracting to complete the partly drilled Oyo-7 well in the hope it would augment the field's 2000 barrel-a-day trickle. Oyo is off the Nigerain coast.

Camac agreed to put $170-million in cash from the PIC's investment towards buying the two-fifths oilfield stake. It would be sold by a Nigerian company, owned privately by the Lawal family.

The PIC's investment remained under water this week. Camac's $0.61 share price close on Wednesday valued the PIC's stake at $228-million, or $42-million below what the PIC paid.

The M&G first exposed Lawal in 2003 for appropriating discount Nigerian crude meant to benefit South Africa. He had the help of leading figures in the ANC and a letter then-president Thabo Mbeki had written his Nigerian counterpart. Lawal denied wrongdoing.

Lawal has grown close to Zuma, too, making R1-million annual donations since 2010 to his education trust and accompanying Zuma in 2011 to get an honorary doctorate from his alma mater, the Texas Southern University.

Red flags

Lawal's closeness to the ruling party and the president and his habit of making political donations – at least in the United States, where they are transparent by law – has raised the question whether the PIC bet on Camac might have been motivated by the ANC's need for election funding.

The PIC's precipitous decisions about a risky investment raises red flags. When the PIC signed the share purchase agreement on October 21 last year, it was in the dark on two key points:

The terms of Camac's purchase of the rest of the Oyo field from the Lawals were not finalised. This means the PIC could not know how much of its investment would stay productively in Camac and how much would flow privately to the Lawals; and

The preliminary drilling of the Oyo-7 well was not yet complete and full results were not known. This means the PIC signed without having the full facts about Camac's first best hope for profitability.

A week after the M&G's February article, the PIC released a statement in Masilela's name, defending the investment. It claimed that the second tranche depended on Camac completing Oyo-7 and it producing over 7000 barrels a day.

When amaBhungane questioned the PIC claim, as the share purchase agreement reflected no such condition, Matjila repeated the claim.

In March, City Press reported that Matjila had confirmed to it, too, that the PIC "won't pay the next $135-million until the oil is actually flowing".

The assurances did not last. No further drilling was done and there was not even the gurgle of oil when the money flowed.

Unlike the first tranche, which Camac trumpeted, neither party made an explicit announcement about it. But Camac's first-quarter financials, filed with the US Securities and Exchange Commission on May 9, disclosed that the $135-million "second closing" was on May 6.

It also said that Camac had, within two days, paid a second $85-million to the Lawals' private Nigerian company to complete the $170-million purchase consideration for the Oyo field stake.

Did any of this flow to the ANC?

In February, Camac and Lawal denied having made donations to the ANC, but did not answer whether they might do so in future. Camac this week said it "has never made any donation to any political party anywhere in the world" but did not say anything about Lawal.

ANC spokesperson Keith Khoza said: "If there was a donation, the ANC would know something. If there was a promise, the ANC would know something. But we do not know anything about the allegation."

Meanwhile, Camac appears to be struggling to dig itself out of the hole. There has been no drilling on Oyo-7 since last year. Camac announced in late April that the Energy Searcher, a drill ship it had contracted, would drill a new Oyo-8 well before completing Oyo-7.

But drilling on Oyo-8, which Camac said was planned for mid-May, has not started and this week the Energy Searcher was still in Lagos harbour, tracking data showed. At best, the first oil, if found, may flow towards the end of the year.

Camac said in response to questions: "Drilling is commencing on Oyo-8 and the company is confident that first production from Oyo-7 and Oyo-8 will be achieved this year, with combined production expected to be around 14000 barrels a day by year-end."

What remains of the PIC's $270-million after $170-million flowed to the Lawals privately – and after more is burnt month after month to cover operating losses – is not enough to sustain the drilling.

Camac went on a road show in January to promote a high-yield bond to raise up to $300-million more. These efforts have yet to show results.

The proposed bond is rated CCC+, which is well below "investment grade". But if the bond issue is successful, the PIC will stand behind bondholders in the creditors' queue. This in effect ranks the PIC's investment as worse than CCC+, illustrating the extent of risk it assumed.

This week, the PIC did not respond to the question about why the second tranche was paid. It said: "Generally exploration companies require some time before they can show some viability and Camac is no exception.

"From an operational perspective, Camac is already producing. Drilling is well underway and drilling of Oyo 7 is complete and now drilling of Oyo 8 is commencing, the combined production of these is expected to be around 14 000 barrels per day by the end of the year."

But Camac's own literature states explicitly that the existing production from two earlier Oyo wells is not economically viable – and that only "phase one" drilling was done on Oyo-7 last year, which has to be completed. Oyo-8 drilling has yet to start.

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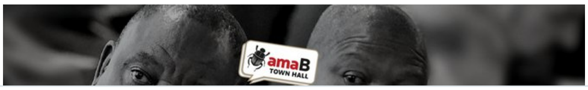

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HOME (HTTP://AMABHUNGANE.CO.ZA/) / PIC'S DODGY OIL INVESTMENT GOING DOWN THE TUBE

26 Apr 2018 - Craig McKune

PIC's dodgy oil investment going down the tube

A R4-billion Public Investment Corporation investment could be wiped out as Texan oil firm files for bankruptcy

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Another politically connected, multibillion-rand Public Investment Corporation (PIC) booby trap has blown up in state pensioners' faces.

The threats that lead to this might have been evident to PIC for years, but it threw good money after bad, and now it faces a good chance of losing roughly R4-billion.

This underscores concerns that, for years, the PIC might have been used as a piggy bank to support cronies, distorting its investment decisions. The PIC manages assets worth nearly R2-trillion, mainly for the Government Employees Pension Fund.

Houston-based Erin Energy's New York and Johannesburg listed stocks went into freefall on Wednesday, following a hurried, after-hours statement from it the day before – and this came just three hours after we sent Erin our questions for this article.

Our questions explained how Erin was in the process of losing its only cash-generating asset – a Nigerian oilfield –, that this risk had been evident for years and that Erin had failed to tell investors about it.

- **Read our correspondence with Erin, PIC and other parties here (https://www.dropbox.com/sh/ggi1yfv2zyh4446/AAAD4M53wfJ89MXkZcD8bLRba?dl=0).**

The failure appeared to constitute securities fraud under US law, we suggested.

Erin did not respond. Instead it issued an evidently rushed regulatory disclosure to the US Securities and Exchange Commission, explaining its position.

This included how, one day in January, a naval helicopter had landed on the ship that receives, stores and transfers Erin's Nigerian oil. Nigerian soldiers and police emerged from the helicopter, weapons drawn to protect the Lagos court sheriffs who proceeded to chain and lock the vessel's main oil export valve, effectively plugging Erin's entire business.

Then, the Nigerian government refused "indefinitely" to give Erin the permit it needed to uplift oil.

Late yesterday, Erin faced the inevitable and filed for bankruptcy with a Texas court.

We rang the alarm bells (http://link: http://amabhungane.co.za/article/2014-06-05-zumas-oil-crony-lands-r15bn-more) in 2014, when a dubious PIC process unfolded to enrich a friend of then-president Jacob Zuma and the ANC.

At the time, Erin (it was then named Camac Energy) was led by its founder, Texan-Nigerian Kase Lawal, who was its chairman, CEO and controlling shareholder.

He was already infamous for various business deals.

Among others, the *Mail & Guardian* exposed in 2003 how Lawal had appropriated discount Nigerian crude meant to benefit South Africa. He was assisted by leading ANC figures and by a letter from then-president Thabo Mbeki to his Nigerian counterpart. Lawal denied wrongdoing.

In 2010, Lawal began donating millions to Zuma's education trust, and he accompanied Zuma in 2011 to get an honorary doctorate from his *alma mater*, the Texas Southern University.

By 2013, when the PIC was considering investing in Erin, Erin was on the verge of bankruptcy.

But none of this appeared to concern the PIC investment committees and its then chief investment officer (CIO) Dan Matjila (today its CEO and CIO). They handed Erin $270-million (nearly R3-billion) in 2014 and took a 30% stake and a seat on the board.

With the money, Erin bought what it called the "economic rights" (we will return to this, too) to Nigerian oil mining licenses 120 and 121, which included the productive Oyo oil field.

Erin had bought the rights from companies owned by Lawal and his family, who walked off with most of the PIC's cash.

Three months after the deal, the PIC’s then CEO Elias Masilela departed suddenly and without explanation. According to a *Business Times* report, this followed clashes between him and Matjila, “in particular” over Camac.

Oyo turned out not to be as productive as Erin had forecast, and Erin shareholders sued its directors over the deal. They argued that Erin had paid Lawal far too much and that the directors were culpable. Their arguments were heard by a Delaware court, which dismissed them as there was not enough evidence to prove culpability.

However, the judge reserved devastating criticism for Lawal.

“Lawal appeared on all three sides of the transaction: as sole point of contact for [the] PIC, as controller of [Allied Energy, from which Erin bought the oil rights], and as controller of Erin,” she wrote. “In practice, his behaviour gave rise to a very real appearance that, by seeming to speak for all three counterparties in the transactions, Lawal really was negotiating with himself in shifting around assets for his own benefit.”

But it was worse than that.

Lawal’s Allied Energy had in 2012 bought 40% of the oil rights from a subsidiary of Italian oil major ENI – but Allied only paid $100-million of a $270-million purchase price, according to court records.

Obviously, this posed a risk to Erin, which relied almost entirely on its ability to pump and sell the Nigerian oil, but it never disclosed this to investors.

Did the PIC know about ENI’s dispute with Lawal when it invested in Erin? It did not answer our question about this.

ENI’s subsidiary fought for its money, and in February 2017 the London Court of International Arbitration found in its favour, ordering that Lawal’s Cayman Islands-registered holding company Camac International owed ENI $200-million.

This finding was recognised and enforced by Nigeria’s courts (leading to the oil seizure this January) and a Cayman Islands court issued a winding up order for Lawal’s Camac International.

But Lawal had by then sold the “economic rights”, so ENI’s dispute had nothing to do with Erin or the PIC, right? Apparently not.

Last month, Erin coyly described a previously undisclosed problem in its annual report. While it had bought the “economic rights” to the oil license in 2014, the oil license was actually still formally assigned to the seller, Camac. Erin disclosed that it had “no control” over Camac’s “ability to retain the [oil] rights”.

Erin said: “If [Camac] is unable to retain and hold rights to [the Nigerian oil license], … it could have a material adverse effect on our results of operations and financial condition and the value of our securities.”

What Erin did not disclose was that this was its only cash-generating asset and ENI was busy liquidating the company that owned it, Camac.

We wrote to the PIC earlier this month to ask if it was aware of the problem. Its response appeared to be a long way of accusing Erin of securities fraud.

It said: “It is a requirement of [the New York and Johannesburg stock] exchanges that companies listed on their platforms should disclose information that is necessary for the shareholders to make informed investment decisions. This requirement extends to information that could have a material impact on the company and for the shareholders.

“To the contrary, [Erin] did not disclose the issue of the [Nigerian oil] contract in its [Johannesburg] prelisting statement and prior to PIC acquiring its shares. This disclosure was only made public in Erin Energy’s annual report for the financial year ending 31 December 2017.

“As a matter of fact, the company and its management did not disclose this issue to its board members. PIC’s representatives on the Erin Energy board became aware of the production sharing contract matter about the same time when the disclosure was made public.”

A financial analyst (wishing to remain anonymous) summarised this for us as “an implausible ‘mushroom defence’; meaning: ‘Erin fed us shit and kept us in the dark.’”

We pressed PIC to explain how its due diligence had failed so badly. How did it not know precisely how Erin owned its single cash-generating asset?

PIC said: “Regarding whether the PIC has conducted due diligence before investing in Erin Energy, please note that due diligence is a prerequisite for all investments that the PIC undertakes. Internal documents and discussions that inform investment decisions are confidential.”

But it was even worse.

In 2016, as ENI was suing Lawal’s Camac, the PIC’s investment committee agreed to secure a $100-million bank guarantee so that Erin could borrow for drilling and other expenses at the Oyo oil field.

Erin’s loan was finalised in January 2017, and it pledged its assets as security – essentially the oil rights that were ultimately owned by Camac.

Should Erin not be able to repay the loan, and should the oil well happen to be locked up, the banks could ultimately turn to the PIC for the cash.

As it happened, just days after Erin finalised its loan, the London arbitration court found that Camac must pay ENI $200-million, leading through various courts to the day in January this year, when the helicopter landed on Erin’s ship.

According to Erin: “On January 31, 2018, [the ENI subsidiary], in conjunction with armed personnel from the Nigerian navy and police force, and sheriffs of the court, and under the guise of a routine naval inspection, landed a helicopter on the [floating production storage and offloading vessel (FPSO)] Armada Perdana.

“Once on board, [ENI’s] entourage, including armed personnel with weapons drawn, forced their way into safety restricted areas of the FPSO and chained and counter-locked the vessel’s main export valve.

“[ENI’s] use of weapons and flash photography in this area was a significant violation of industry safety procedures.

“[ENI] asserted that the [Erin] crude oil stored on the FPSO was being seized pursuant to the [Nigerian court] writ.”

Erin sought an order setting aside the writ. It said: “[Erin] is the owner of the crude oil on the FPSO, the writ did not authorize [ENI] to attach [Erin’s] crude oil, and the attachment of Erin’s crude oil interfered with its constitutionally protected property rights, among other things.”

Erin did not describe the outcome of its court application, but it said Nigeria’s department of petroleum resources had declined to give it a permit for its scheduled oil offtake at the end of March. According to Erin, this was “due to [ENI’s] improper use of the writ and its interference with [Erin] operations, as well as its court proceedings”.

It said the government then suspended Erin’s oil processing indefinitely and, as of Tuesday, “the first quarter crude oil offtake is still delayed, the Oyo field production operations, including the FPSO, are still suspended and [Erin] is continuing to work to resolve these matters".

Last night, Erin filed its voluntary petitions with the US bankruptcy court.

Considering the PIC's $270-million equity investment and the fact that Erin had drawn $65.6-million against the $100-million PIC-backed loan but held $9.1-million in cash security, we calculate that the PIC could lose roughly R4-billion.

The PIC was not immediately available for comment.

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Cronies score in R1.7bn PIC deal

NEWS

Susan Comrie

2016-02-01 10:15

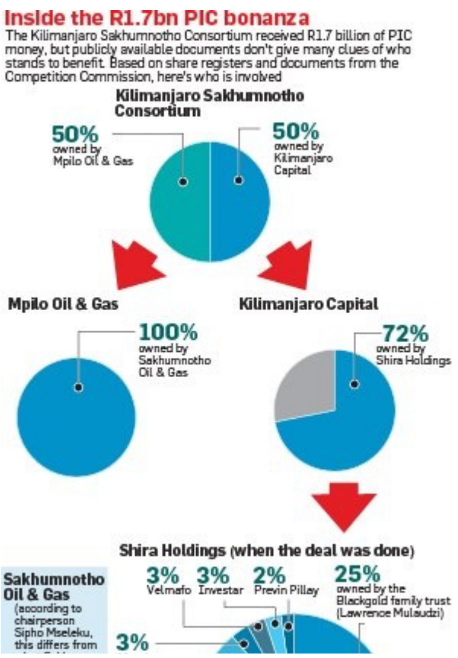
A City Press investigation has established how a close confidant of President Jacob Zuma's landed a significant stake in a controversial R1.7 billion deal – and then had his shareholding doubled shortly before the deal was signed.

Sizwe Shezi has served as a trustee of two of Zuma's trusts – the Friends of Jacob Zuma Trust and the Jacob Zuma RDP Children's Trust – and has been described as "one of Zuma's most committed backers".

His company, TheMan Investments, received shares worth an estimated R122.4 million courtesy of a generous loan from the Public Investment Corporation (PIC), which makes investments using government workers' pension money.

The lucrative deal, to buy a 22.95% stake in oil company Total SA, was one of the deals that United Democratic Movement opposition leader Bantu Holomisa red-flagged in his letter to Public Protector Thuli Madonsela last week.

Holomisa said he had "anonymously received serious allegations [of] possible corruption" at the PIC, including allegations that the governing party had benefited from PIC funds.



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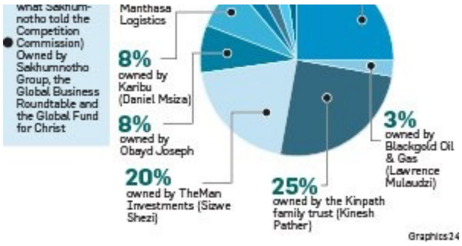

City Press' investigation raises several red-flags the Public Protector may wish to consider:

The deal

During mid-2015, a company called Kilimanjaro Capital approached the PIC with a request for funding to acquire a 25% stake in Total's South African operations from its BEE partner, Tosaco.

Consortium chairperson Lawrence Mulaudzi said: "We approached the PIC, Standard Bank and Nedbank. Standard Bank and Nedbank offered us term sheets – the PIC said they could not give us term sheets until we were selected as the preferred bidder, but they gave us an expression of interest."

Although Kilimanjaro Capital was only registered in February last year, it asked the PIC to fund 100% of the acquisition.

Apart from Mulaudzi, Kilimanjaro Capital's directors included businessman Kinesh Pather, MD of the politically connected Bataung Group.

It is not clear why the PIC did not bid directly for the shares but chose to work through a middleman. However, Mulaudzi claims theirs was not the only consortium the PIC was negotiating with.

The PIC denies that they had any involvement at this stage. In a written response, PIC chief executive Daniel Matjila said "the consortium approached the PIC after being awarded the status of being the preferred bidder", which was only in early August.

However, this is contradicted by various sources, including Mulaudzi himself.

City Press understands that by early June, Matjila had already informed Tosaco that the PIC was interested in giving Kilimanjaro Capital 100% of the funding necessary to buy their shares in Total.

Matjila declined to comment on most of the detailed questions City Press sent through, but said the Kilimanjaro bid was put through all PIC's internal processes and – despite Holomisa's allegations regarding a lack of scrutiny – the bid had been subject to "thorough due diligence".

Although there is no trace of Shezi's involvement in the deal in publicly available records, share registers provided to City Press by Mulaudzi show that he holds his stake through a company called Shira Holdings.

Share registers show that when Kilimanjaro initially approached the PIC, he and Pather each held 31.5% of Shira, while Shezi held just 10%.

However, on July 10, Shezi's stake was inexplicably doubled when Pather and Mulaudzi transferred some of their shares to Shezi's TheMan Investments.

The change in shareholding ultimately increased TheMan's stake from R61.2 million to R122.4 million. City Press tried to speak to Shezi, but Mulaudzi said he was unavailable and all questions should be directed to him.

Enter Sakhumnotho

Days before the final bid was made, the consortium changed again when a new partner, Sakhumnotho, came into the deal. Not long after, the new consortium – Kilimanjaro Sakhumnotho – made a binding offer to Tosaco.

None of the parties involved on either side of the transaction would confirm the final figure, but City Press has established that a generous R1.7 billion was paid for a smaller 22.95% stake in Total SA, short of the full 25%.

Although Kilimanjaro Sakhumnotho will have to repay the PIC's R1.7 billion loan, there is substantial value in the shares: Tosaco was able to repay a R1 billion loan from Total in less than 10 years thanks to the dividends.

Matjila says the PIC had no involvement in picking the final bidder and the decision was made by Tosaco.

None of the participants was willing to discuss what terms the PIC had offered, but Mulaudzi confirmed these were generous: "The financial institutions were willing, but their money doesn't come cheap," he told City Press. "You need cheap money, and the PIC's terms were favourable compared with commercial banks."

The Global Fund for Christ

Some of the major beneficiaries of the PIC's largesse are Sakhumnotho's charismatic chairman, Sipho Mseleku, and the two not-for-profits he heads up – the Global Fund for Christ and the Global Business Roundtable.

Mseleku described the Global Business Roundtable as "a forum focused on the holistic development of people" while the Global Fund for Christ supports "projects in health, education, job creation and enterprise development".

The Global Fund for Christ was launched in 2010 after Mseleku received a divine mandate, telling him: "Arise, set up a global fund for Jesus." Mseleku encourages businesspeople to donate money, shares, property and even bequeath their estates to the charity. But despite R122 million in assets, it appears no charitable projects have been started yet because Mseleku says the charity is "still in a collection phase".

Their most recent financials show the Global Fund received R4.3 million in donations but spent R3.6 million of that on conferences and glitzy gala dinners.

They have attracted prominent figures, including Chief Justice Mogoeng Mogoeng, the late minister of public service and administration Collins Chabane. On more than one occasion, Matjila himself spoke at their events.

The PIC's boss was a speaker at the Global Business Rountable's Men of Integrity Imbizo for two years in a row and is listed as one of the key speakers at the five-day Global World Congress scheduled to be held at the Sandton Convention Centre in April, which costs R5 000 to attend for just one day.

"[Matjila] is not an official of the Roundtable or the Global Fund," said Mseleku. "There's nothing sinister about inviting any CEO to come to present … I know what a conflict of interest is, and this is not a conflict of interest."

Asked about his connection to Mseleku and whether this influenced the PIC's decision to grant it such a generous funding arrangement, Matjila said: "The PIC uses different platforms to create its brand awareness as well as to educate its stakeholders about its product offering and role in the economy. Speaking at conferences is just one of the many platforms we use."

He added that the PIC would cooperate with any investigation by the Public Protector: "The [transaction] is being considered by the Public Protector for possible investigation … should the Public Protector decide to proceed with the investigation, the PIC will offer its full cooperation."

investigation, the PIC will offer its full cooperation."

The connected cohort

ANC treasurer in Limpopo Daniel Msiza stood to get a R50 million stake in the R1.7 billion deal.

But days before it was finalised in September, Msiza disposed of his shares in Shira Holdings, partly because of "ethical" concerns.

Whether he sold them or gave them away for free, he won't say.

"I've disposed of my shareholding and that was done before the transaction could even be completed…

"And I did that for commercial as well as ethical considerations," he said yesterday.

Asked what ethical concerns he had, Msiza said: "There's absolutely nothing wrong [with the deal] but as South Africans we all know the contemporary narrative.

"You have multiple consortiums that go into transactions; one wins, others lose. And those who have lost, what is it they do?

"They either run to journalists or to politicians from the opposition and say something has gone wrong, simply because they've lost.

"That's how these things play themselves out."

Msiza claimed he received "no benefit whatsoever" for the shares, but also declined to confirm whether the company that now holds the shares, Impendulo Mega Traders and Projects, and whose sole director shares the surname Msiza, is connected to him.

"Is it that when you are affiliated to a particular political party your rights as a South African are limited?" he asked.

"It can't be a sin for me as an entrepreneur to explore economic opportunities that are there in the country."

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The Big Read Public Investment Corp Ltd

Investment: South Africa rising

The $150bn Public Investment Corporation is making its presence felt across the continent

New gold: the CEO of the PIC sees cement as the next gold as his fund pursues African infrastructure projects

Andrew England and Javier Blas FEBRUARY 11, 2014

The nondescript building housing the South African Public Investment Corporation in a business park in Pretoria gives little indication of its power. Yet from his office inside, Elias Masilela controls nearly $150bn that he is increasingly channelling into investments across Africa.

When the Sovereign Wealth Fund Institute, a US-based consultancy, published a list of the world's "most significant and impactful public investor executives" last year, the usual names filled the top rankings.

Sandwiched between the heads of SWFs from oil-rich Norway and Abu Dhabi were the heads of Chinese and Kuwaiti state-owned funds. But there was one standout: Mr Masilela. The chief executive of the PIC ranked 14 out of 100.

The PIC's ascendancy marked the rapid rise of an entity that for most of its 103-year history was little known outside its home country. But it has become by far Africa's largest asset manager and can claim to match the firepower of the best-known Middle Eastern SWFs, such as the Qatar Investment Authority.

Mr Masilela bristles at the state-owned PIC being lumped into the SWF category, pointing out that it is a pension fund manager for public employees, rather than a classic sovereign vehicle funded by state surpluses. Instead, the South African corporation bears a closer resemblance to the big public pension funds in North America, including the giant California Public Employees' Retirement System and the Canada Pension Plan Investment Board.

Unlike its American peers, which are seen as unambiguously private enterprises managing public pension money, the PIC at times struggles to shed the perception that political considerations as much as financial ones guide its investment decisions.

Until recently, there was little interest in the PIC outside South Africa, because it invested all its money in the local market. But the body is now flexing its muscles abroad, looking particularly for opportunities in Africa. The change in focus is being closely watched by other asset managers, bankers and companies.

"They are seeing the sub-Saharan African region as a big target," Amadou Sy, a fellow at the Brookings Institution, says. "Africa is suitable for patient money; they have a long- term horizon."

The new strategy is already making a powerful impact in the region: its acquisition of a 1.5 per cent stake in Dangote Cement for $289m was the single biggest deal registered on the Nigerian Stock Exchange in 2013.

Elias Masilela, CEO of the Public Investment Corporation

As the PIC expands its footprint in sub-Saharan Africa, it can expect greater scrutiny, particularly from neighbouring governments, and probably greater challenges in a region where few companies are listed and markets are fairly illiquid.

The fund will also need to be particularly sensitive to the country's mixed image across the continent, where some South African companies have earned a tag for arrogance.

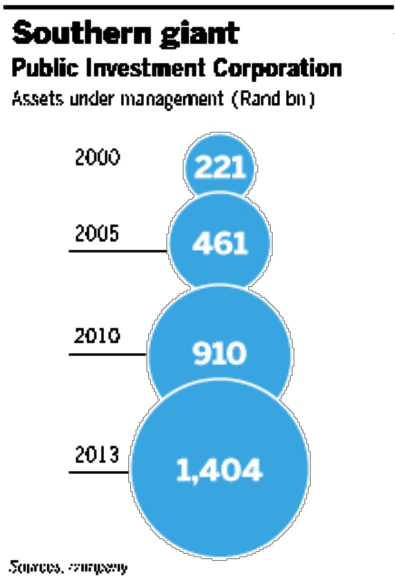
The challenges mean it is taking a gradual approach on its foreign journey, following a 2010 decision to alter its mandate to invest up to 10 per cent of its assets outside South Africa. Half of that $15bn is being spread across global equities and bonds with the help of asset managers including BlackRock. But it is with the other half that the PIC intends to get its hands dirty, as it specifically targets investments in sub-Saharan Africa.

The size of the investment vehicle, which has nearly doubled over the past five years and in 2013 posted nearly 20 per cent growth, means that any acquisition in Africa is likely to have a ripple effect, as was the case with the stake in Dangote Cement.

So far, the push beyond its borders has been modest. Mr Masilela says the fund has invested "about 6 and a half to 7 per cent" of its assets offshore – far below the foreign investment levels of other public pension funds and SWFs. But over time the offshore target may grow, allowing the fund to deploy more dollars outside its home.

"We have a huge appetite for the continent," says Mr Masilela.

The PIC is following in sub-Saharan Africa a trail already blazed by South African businesses such as rite, a retailer, MTN, the mobile phone operator, and Standard Bank.



According to the UN, South Africa is the biggest developing country investor in Africa after Malaysia, well ahead of both China and India. South African companies have amassed $18bn in assets in the region, with big investments in mining, telecommunications, retail and banking.

Two pillars support the push into Africa. First, spreading the risks, with the managers aware that the fund is concentrated at home. Second, benefiting from African peers' strong economic performance during a period some have dubbed "Africa Rising".

But there is another element: the notion that fostering stronger economic growth through investments across the sub-Saharan region ultimately benefits South Africa and its companies. "Our view is that if we invest properly and grow African markets we will be generating new business for South Africa Inc," Mr Masilela says.

Herein lies one of the vital factors that sets the PIC apart from public pension fund managers in North America, and makes it more closely related to state-owned investment vehicles such as SWFs: an emphasis on economic development.

On one hand it is charged with managing the Government Employee Pension Fund, which accounts for about 90 per cent of its assets.

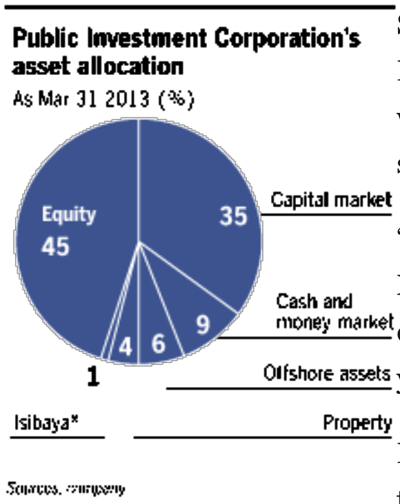
On the other, the PIC has a mandate to contribute to economic development as the South African government seeks to redress the huge economic imbalances created by decades of white rule and discrimination under apartheid and colonialism.

In fulfilling this latter part of its mandate, the PIC has invested heavily in infrastructure. It is the biggest investor in the country's road network and has poured funds into shopping malls, affordable housing, power and health.

Mr Masilela promises to pursue a similar strategy as the PIC gradually builds up its exposure north of its borders, with one eye on returns and another on the continent's development.

"For us, going into the rest of the continent is not driven by what your traditional asset manager would be looking for," he says. "For us we're driven by something over and above that. We're driven by our ability to help grow African markets."

As their domestic economy stumbles along, hampered by labour issues, policy uncertainty and rising costs, South African companies are leading the charge of foreign groups investing in Africa. While South Africa grew by about 2 per cent in 2013, the continent enjoyed expansion of 5 per cent, according to the International Monetary Fund – and the PIC is eager to play an integral part in that development.



So far, the PIC has splashed out $250m for a 20 per cent stake in Ecobank, a pan-African group with operations in 34 countries. As well as its investment in Dangote, it paid R2.4bn for a majority stake in Tanga Cement, a Tanzanian company.

"We think cement is going to be the next gold in Africa," Mr Masilela says. "You develop airports, you develop pipelines, you develop telecommunications, you develop dams, you develop rail, you develop road. Which of these does not include cement?"

It is a long way from the PIC's humble roots, which it traces back to the 1911 establishment of a "Public Debt Commissioners". Its mandate was to manage trust funds placed in the care of the government. During the decades of apartheid, its role was largely confined to funding government budget deficits buying sovereign debt.

But just as the country has gone through a dramatic transformation since the first democratic election in 1994, so too has the PIC been thoroughly remodelled. It first began acquiring equities in the mid-1990s. In 2003, they accounted for 32 per cent of its assets. Last year, the share of equities grew to 45 per cent. By contrast, the proportion of the assets invested in fixed income securities such as government bonds has dropped from 51 per cent in 2003 to 35 per cent last year.

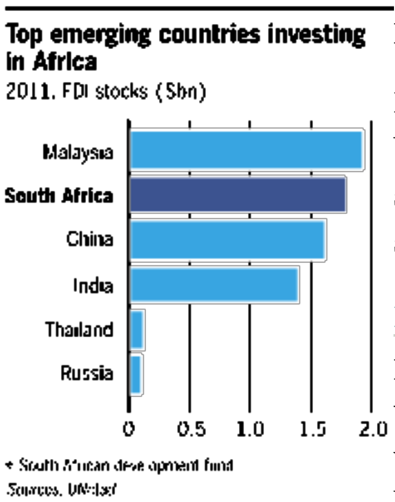
Its shift towards equities has given the PIC a more powerful voice in South African corporate circles. It is difficult for investors to avoid the PIC's presence, with the fund manager a top shareholder in virtually every listed South African company.

The PIC has raised eyebrows at home, with its activist stance sparking controversy, and, in some instances, its decision making and motives being questioned.

"They hold themselves out to be independent but there is scepticism as to whether they are truly independent of government," says a senior South African executive. "I don't think they are a completely neutral, commercially objective institutional fund manager that acts completely independently of policy trends in the country."

Brian Molefe, Mr Masilela's predecessor, won a reputation for using the PIC as a platform to chastise South African companies for the slow pace of racial transformation. Investors can be sure that the PIC will not be afraid to stand up for what it deems is in the best interests of the country.

It is a view with which Cynthia Carroll, the first non-South African executive of mining group Anglo American, would probably concur. Few have felt the PIC's wrath so publicly. When she announced her resignation under investor pressure in 2012, the PIC, the mining company's largest single shareholder, took the opportunity to deliver a public and withering critique of Ms Carroll's



performance.

More recently it courted controversy with opposition to an attempt by CFR Pharmaceuticals, a Chilean group, to buy Adcock Ingram, a struggling South African firm, for R12.8bn ($1.2bn) – helping to scupper the deal.

In the middle of a bitter battle CFR placed an advert in the local press in which Alejandro Weinstein, its chief executive, complained that the “criticisms levelled at our offer by the PIC have little to do with the commercial merits and are instead intended to allow a local buyer to succeed over a foreign buyer”.

Proponents of the acquisition said the PIC’s resistance sent out a dangerous message to other potential foreign investors. The PIC countered that it supported foreign investment as long as it has “predictable long-term benefits for the South African economy”, citing as examples Barclays’ acquisition of Absa bank and Walmart’s deal to buy a majority stake in Massmart, a South African retailer.

CFR dropped its bid this month after a local rival, Bidvest – in which the PIC has a large holding – secured more than a third of Adcock’s shares.

The controversy was not the first time the fund’s actions have come under scrutiny. A decade ago the PIC was forced to defend its role in the acquisition of a stake in Telkom in a deal that benefited Elephant Consortium, a group that included politically connected people.

“Their decision making is not always transparent and it’s not obvious,” another executive says.

What is clear is that any foreign company looking to do business in the South African corporate sector – and increasingly in the rest of Africa – would ignore the PIC at its peril.

State intervention: Commodities fund sovereign wealth

The Public Investment Corporation of South Africa may be the largest state-owned investment vehicle on the continent but it is not alone. More and more African countries are creating their own public pension fund schemes and setting up new sovereign wealth funds.

“This is a huge development of the [African] economy,” says Diana Layfield, chief executive for Africa at Standard Chartered, who adds that the pension fund industry is becoming “more formally” developed in Africa.

The growth in state-owned pension funds and the launch of several new sovereign wealth funds in Africa is creating an opportunity for advisers and asset managers, including UBS, Investec, BlackRock, Goldman Sachs and Credit Suisse.

On the pension funds front, diamond-rich Botswana is the only country that has launched a vehicle similar in ambition to South Africa's PIC. The Botswana Public Officers Pension Fund manages nearly $4bn in assets on behalf of public employees. The fund, created in 2001, is already investing offshore, with more than 60 per cent of its assets targeting international investments.

The biggest trend in Africa remains the launch of new SWFs, including vehicles in Nigeria, Ghana and Angola.

The largest SWFs are in north Africa. The Revenue Regulation Fund of Algeria has $77bn in assets while the Libyan Investment Authority has $65bn under management. In sub-Saharan Africa, the largest is the Pula Fund of Botswana with almost $7bn in assets, which the country's central bank handles with the help of eight external managers.

Several other countries operate much smaller sovereign vehicles, including the $300m National Fund for Hydrocarbon Reserves of Mauritania and the $80m Fund for Future Generations of Equatorial Guinea.

Over the past three years, oil producers Angola, Nigeria and Ghana have established SWFs, managing $5bn, $1bn and $100m respectively.

Other countries are likely to follow over the next decade, according to Mthuli Ncube, chief economist at the African Development Bank.

"Recent big oil and gas discoveries in east and west Africa are likely to give new opportunities for more African SWFs in the midterm to foster management of revenues from these new resource discoveries," Mr Ncube said in a recent report.

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