

REPUBLIC OF SOUTH AFRICA

PUBLIC INVESTMENT CORPORATION AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); Explanatory summary of Bill
and prior notice of its introduction published in Government Gazette No 41704 of 15 June
2018)*

(The English text is the official text of the Bill)

(Standing Committee on Finance)

| **[B_ 20182019]**

GENERAL EXPLANATORY NOTE:

{ } Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Public Investment Corporation Act, 2004, so as to insert certain definitions; to determine the composition of the corporation's board of directors and to provide for the progressive implementation of the new composition; to provide for the Minister to be the chairperson of the board; to provide for the Minister to appoint the members of the board in consultation with Cabinet; to provide for specific representation on the board; to require directives regarding the management of the corporation to be tabled in the National Assembly and before the depositors, as well as that it must be published; to require the corporation to consider certain things guidelines when ~~exercising its powers~~ investing deposits; to require the corporation to publish and submit a report on all investments to the Minister for tabling; to provide for annual reporting on requests for approval made in terms of legislation; to provide for a procedure that the Minister must follow before making regulations; to provide that the Minister must table regulations in the National Assembly; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 23 of 2004

1. Section 1 of the Public Investment Corporation Act, 2004 (Act No. 23 of 2004) (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of “financial year” of the following definition:

“Government Employees Pension Fund” means the Government Employees Pension Fund referred to in section 2 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996); and

(b) by the insertion after the definition of “Minister” of the following definitions:

“National Assembly” means the House of the Parliament of the Republic of South Africa referred to in section 42(1)(a) of the Constitution of the Republic of South Africa, 1996; and

“prescribe” means prescribe by regulation contemplated in section 16;

“property” means an immovable permanent residential structure to be owned and used as a primary home by a member of the Government Employees Pension Fund;”

Substitution of section 5 of Act 23 of 2004

2. The following section is hereby substituted for section 5 of the principal Act:

“5. (1) The corporation has all the powers necessary to enable it to realise its objects, including such powers as may be prescribed by regulation, unless expressly excluded or qualified by this Act.

(2) For the purposes of attaining its objects, the corporation must act in accordance with the instructions of the depositors taking into account the following:

Securing fund investment’s financial sustainability and security;

(a) creating and protecting local jobs;

(a) industrialising the economy of the Republic, building the manufacturing sector and boosting exports;

(a) sustainable development;

~~(b) priority investments must be in the Republic and preference should be given to those investments than to the investments outside the Republic;~~

~~the Republic's development objectives;~~

~~(e) building a capacitated development state; and~~

~~(d) transformation of the economy and society;~~

Commented [NM1]: This is moved to the amendment of section 10

~~(3) The corporation may assist with financing the buying of property by the members of the Government Employees Pension Fund.”;~~

Commented [NM2]: It is proposed that the financing of buying of property should be dealt with by the GEPP in terms of the Pension Fund Act which provides as follows:

Commented [NM3R2]: Section 19(5)(a) of the Pension Fund Act - “A registered fund may, if its rules so permit and subject to the regulations, grant a loan to a member by way of investment of its funds or furnish a guarantee in favour of a person other than the fund in respect of a loan granted or to be granted by such other person to a member to enable the member—

(i) to redeem a loan granted to the member against security of, either a pledge by the member concerned to the fund of the benefit contemplated in paragraph (c) (ii), or immovable property which either belongs to the member or his or her spouse or the member and his or her spouse and on which a residence has been or will be erected which is occupied or, as the case may be, will be occupied by the member or a dependant of the member;

(ii) to acquire immovable property on which a residence has been or will be erected, or to erect a residence on immovable property in respect of which, either the member or his or her spouse, or the member and his or her spouse, has or have obtained ownership or the right to ownership through a right of occupation, for occupation by the member or a dependant of the member; or

Amendment of section 6 of Act 23 of 2004

3-2. Section 6 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Minister must, **in consultation with Cabinet,** determine and appoint the following members of the board in accordance with the process contemplated in subsection (2):

(a) Ten non-executive members; and

(b) two executive members as the Chief Executive Officer and Chief Financial Officer of the corporation or a similar designation, respectively.”;

(b) by the insertion after subsection (1) of the following subsection:

“(1A) The Minister, or if so designated by the Minister, the Deputy Minister, is the chairperson of the board.”;

(c) by the substitution for subsection (2) of the following subsection:

(2) (a) The Minister must, when appointing [the board, have due regard to the nominations submitted to him or her by the

depositors] the ten non-executive members and the two executive members, do so in consultation with Cabinet, subject to paragraph (b).

(b) The ten non-executive members must include—

(i) a representative of the department;

(ii) a two representatives of from each major the largest depositor;

(iii) one representative from any depositor whose assets under management of the corporation constitute 10% or more; and

(iv) two or more, but not more than three representatives of registered trade unions—

(aa) whose two members of which must come from the trade union with are the majority of the members of the Government Employees Pension Fund;

(bb) one must come from any other trade union; -and

(cc) who are to be selected by the trade unions at the PSCBC based upon their proportional composition.”

(d) by the insertion after subsection (3) of the following subsection:

“(3A) The Board members appointed in term of subsection (2)(b) must meet the criteria set out in subsection (3).”; and

(e) by the addition after subsection (4) of the following subsection:

“(5) A directive contemplated in subsection (4) must be—

(a) based on the investment criteria set out in section 5-10 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.”

Amendment of section 10 of Act 23 of 2004

4-3. Section 10 of the principal Act is hereby amended by the addition after subsection (2) of the following subsections respectively:

“(3) The corporation must, when investing a deposit on behalf of depositors, invest in projects that will benefit the members of the respective depositors.

(4) For the purposes of subsection (3), the corporation must act in accordance with the instructions of the depositors, and in so doing, the corporation must seek to invest in projects that—

(a) ensure its security and financial sustainability;

(b) create and protect local jobs;

(c) industrialise the economy of the Republic, by building the manufacturing sector and boosting exports;

(d) promote sustainable development;

(e) are in line with the Republic’s development objectives;

(f) strive to build a capacitated developmental state;

(g) transform the economy and society; or

(h) prioritise investments in the Republic.

(6) 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.”.

Insertion of section 11A in Act 23 of 2004

5.4. The following section is hereby inserted after section 11 of the principal Act:

“Tabling of requests

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.”.

Amendment of section 12 of Act 23 of 2004

6.5. Section 12 of the principal Act is hereby amended by the addition after subsection (11) of the following subsection:

“(12) The Minister must take the necessary steps to be progressively compliant with the procedure contemplated in the Public Investment Corporation Amendment Act, 2018:2019, for appointment of the members of the board, taking into account any existing rights of the current members of the board.”.

Substitution of section 16 of Act 23 of 2004

7.6. The following section is hereby substituted for section 16 of the principal Act:

“Regulations

16. (1) The Minister may, by notice in the *Gazette*, make regulations with regard to any matter which is necessary to prescribe for the proper implementation or administration of this Act.

(2) ~~Before making any regulations, the Minister must—~~

~~(a) table a draft of the proposed regulations together with a statement explaining the need for, intended operation of, and expected impact of those regulations, in the National Assembly while the Assembly is in session for parliamentary scrutiny at least 30 days before their promulgation; and~~

~~(b) consider any comments on the proposed regulations received from the National Assembly.~~

~~(3) The period allowed for scrutiny of the regulations by the National Assembly as contemplated in subsection (2), must be at least 30 days while the Assembly is in session.~~

~~(4) The Minister may not make regulations contemplated in subsection (1) that materially differ from the proposed regulations tabled in the National Assembly, without having consulted the National Assembly on such changes in accordance with the process contemplated in subsection (2).~~

~~(5) The Minister must table the regulations contemplated in subsection (1) in the National Assembly.”~~

Short title

8.7. This Act is called the Public Investment Corporation Amendment Act, ~~2018~~2019.

MEMORANDUM ON THE OBJECTS OF THE PUBLIC INVESTMENT CORPORATION AMENDMENT BILL

1. INTRODUCTION

The Public Investment Corporation ("PIC") is a key component of the financial services sector and as a financial services provider for the government of the Republic and bodies, councils, funds or accounts established by law, plays an important role in the financial security of South Africa. ~~It is thus of the utmost importance that its management structures and reporting be subject to effective checks and balances. The current mechanisms are overly centralised and may lessen investor confidence.~~

2. OBJECTS OF THE BILL

The Bill amends the Public Investment Corporation Act, 2004 (Act No. 23 of 2004) ("the Act"), in order to promote transparency and good governance within the PIC. ~~To achieve this, appointment of the chairperson to the board is made subject to parliamentary scrutiny, and the remainder of the board is to be structured so as to incorporate key stakeholders. The Bill also amends the section dealing with the powers of the PIC to require the PIC to invest in accordance with the instructions of the depositors, and in so doing the PIC must seek to invest in projects that will meet certain guidelines.~~ ~~invest in projects that seek to enhance the listed goals, by placing a duty on the PIC to consider certain things when fulfilling its objects and exercising its powers. The Bill further provides for greater transparency in the operations of the corporation PIC through the publication or tabling of various directives, regulations and reports.~~

3. CONTENTS OF THE BILL

3.1 Clause 1 amends section 1 of the Act by inserting certain definitions.

~~3.2 Clause 2 amends section 5 of the Act by requiring the PIC, in the exercise of its powers, to consider certain things when fulfilling its objects. This clause also empowers the corporation to finance the buying of property for the members of the GEPE.~~

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