



HELENSUZMAN FOUNDATION

Submission in response to the Public Investment Corporation Amendment Bill (B4-2019)

8 March 2019

For attention: Mr Zolani Rento

Per email: zrento@parliament.gov.za

Portfolio Committee: Finance

Below please find the written submission of the Helen Suzman Foundation on the Public Investment Corporation Amendment Bill.

Francis Antonie

Director

Director: Francis Antonie

Trustees: Cecily Carmona • Max du Plessis • Cora Hoexter • Nick Jonsson • Daniel Jowell • Temba Nolutshungu
• Kalim Rajab • Gary Ralfe • Rosemary Smuts • Richard Steyn • Phila Zulu

Patrons: Prof. Thuli Madonsela • Lord Robin Renwick



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1. Introduction

The Helen Suzman Foundation (“HSF”) welcomes the opportunity to make a submission on this Bill. We see this opportunity as a way of fostering critical, yet constructive, dialogue between civil society and government in terms of the legislative process.

Our mandate is to promote and defend South Africa’s constitutional democracy. The HSF’s interest in The Public Investment Corporation Amendment Bill (‘the Amendment Bill’) arises from our on-going research and analysis on issues of transparency, accountability and the proper functioning of the Public Investment Corporation.

We are available to make oral submissions during the public hearing phase of this Bill before the Portfolio Committee on Finance (“the Committee”), should the Committee request us to do so.

2. Background

The strategic role that the Public Investment Corporation (“the PIC”) plays within the South African economy, and by extension the African economy at large, is not something that can or should ever be downplayed:

- with assets under management of R2,08 trillion, investments in the JSE contribute to approximately 12.5% of its market capitalisation.
- 876 million US dollars have been approved for investments in the rest of the continent.

The PIC is a parastatal which, as a result of its role as fund manager of assets incomparable in size in South Africa, holds great potential to assist our country and its citizens in turning the economic wheel – which will help to lift our fellow South Africans out of poverty, and further the shared goals enshrined in our Constitution.

We therefore thank you for the steps that you have taken in order to try and address the current issues plaguing the PIC.

3. Core concerns

With regards to the Bill as it stands, the Helen Suzman Foundation (HSF) raises the following areas of concern in the Amendment Bill;

1. The proposal in Section 2 (*b*)
2. The proposal in Section 2 (*c*)
3. The proposal in Section 3 (*b*)
4. HSF proposal regarding the disclosure of investment expenses, as well as consultant and professional services expenses.

3.1 The proposal in Section (2)(b)

The proposed new Section 6(1)(A) calls explicitly for the Deputy Minister of Finance, or any other Deputy Minister in the economic cluster, to be chairperson of the PIC board. On this matter we are in agreement with the findings of a recent official governance report on the PIC,¹ compiled at the request of the PIC itself, by the former executive director of the PIC, Mr Vuyo Jack.

Mr Jack's report was presented to the commission of enquiry into the PIC on Monday, 4 March 2019. Speaking to the report, which was formulated after having visited other major public pension fund managers around the globe, Mr Jack argued that there is no legal or economic principle that supports the provision that the chairperson of the PIC board should be a political office bearer, and that it would exacerbate risk.²

Not because a political appointee would be a shareholder chair, nor that he or she would not have the requisite skills, but rather because of, as Mr Jack puts it, the fluid nature of politics³ should mitigate against a party political office bearer even if he or she would have the requisite skills. The HSF therefore supports Mr Jack's call for the chair of the PIC board not to be a political office bearer.

Should the Committee proceed with the amendment as envisaged in the Bill, the HSF strongly urges that provision be made for a non-political deputy chairperson. This provision should also stipulate that the non-political office bearer deputy chairperson must take over chair duties when real or perceived conflicts of political interest arise

¹ Annexure 1.

² Annexure 2 at 53.

³ Op cit note 1 at 25.

for the political chairperson. Not only will this help to avoid conflicts of interest, but it will also ensure continuity should the political appointee be replaced.⁴

In line with the constitutional jurisprudence which the HSF has helped to develop over the last decade, it is vital that the senior members of the PIC board not only act in an independent way, but are seen to be acting in an independent way

This initiative will enhance the governance of the continent’s most important fund manager.

3.2 The proposal in Section (2)(c)

The proposed new Section 6(2) applies to the provisions of the Act that deal with the Minister of Finance’s appointment of the PIC’s board of directors reads as follows:

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

(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 three executive members, do so in consultation with Cabinet, subject to paragraph (b). 15

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

- (i) a representative of the department; 20
- (ii) two representatives from the largest depositor;
- (iii) one representative from any other depositor whose assets under management of the corporation constitute 10% or more; and
- (iv) three representatives of registered trade unions— 25
 - (aa) two of which must come from the trade union with the majority of the members of the Government Employees Pension Fund; and
 - (bb) one must come from any other trade union, who are to be selected by the trade unions at the Public Service Co-ordinating Bargaining Council, referred to in section 35 of the Labour Relations Act, 1995 (Act No. 66 of 1995), based upon their proportional composition.”; 30

The amendment deals with the appointment of directors, and the omission removes the duty on the Minister to consider nominations submitted by depositors. We strongly urge that Committee retain the omitted part of the Section.

It is appropriate for the depositors to make nominations to the Minister regarding the appointment of board members given the mandate of the PIC.

⁴ Op cit note 3.

3.3 The proposal in Section 3(b)

This amendment seeks to create two-tiers of consideration that the PIC must undertake when making decisions about investments on behalf of depositors.

Our concern regarding this amendment is two-fold:

3.3.1 We suggest the following omission in 3(b) (this relates to a new section 10(4) in the principal Act):

[and in so doing, the corporation must, as far as possible, seek to invest to- ... (h) prioritise investments in the Republic.]

The section as amended should therefore read as follows:

(4) For the purposes of subsection (3), the corporation must act in accordance with the instructions of the depositors.

3.3.2 Our principle objection to the proposed 3(b) as worded is the equivalence between the instructions of depositors and external considerations, in some instances emanating from state objectives.

We caution that ascribing objectives to depositors through legislation, that do not arise directly from their instructions, creates the risk of depositors choosing a different asset manager to the PIC. The GEPPF, for instance, is not obliged to use the PIC as its asset manager. The amendment therefore creates a disincentive for depositors to choose the PIC if they believe that their instructions may be circumscribed by the factors listed under 3(b).

Moreover, some of the factors such as (e), (f), and (g) are so vague and broad that, over and above the concern raised above, they would not assist the PIC in its decision making process. In addition, phrases such as “capacitated developmental State”, and “transform the economy and society” are so vague as to create problems in interpreting legislation.

3.4 Disclosure of investment expenses, as well as consultant and professional services expenses

The HSF proposes that provision be made for the mandatory disclosure of investment expenses, as well as consultant and professional services expenses.

Such a provision will:

- Bring the PIC’s investment performance reporting standards closer into line with what can be described as best practice.

- Help to bolster Parliament’s oversight role.
- Improve public confidence in the parastatal.

Disclosures of this kind do occur in large public pension funds globally. In the United States for example, The California Public Employees’ Retirement System, or CalPERS for short, is legally required to disclose investment expenses and related items. The statute laying down the rule reads as follows:

As soon as practicable after the close of each fiscal year the board shall file with the Governor and the Legislature a report of its financial statements and investments for the fiscal year. The report shall be submitted in printed or electronic form and shall include, but not be limited to, each of the following:

(e) The use of outside investment advisers and managers, including costs and fees.⁵

If one looks at the CalPERS Annual Report,⁶ which is freely available online for the public, itemised lists are set out regarding the total fees paid during the financial year to each and every fund manager that has done work on behalf of the parastatal.

The itemised lists include investment management fees, performance fees, other investment expenses as well as consultant and professional services expenses.

It is worth noting is that the consultant and professional services expenses also include a description of nature of the services rendered.

4. Conclusion

While we support efforts to improve the Act, and by extension, the ability of the PIC to fulfil its mandate, our key concerns with the proposed amendments in this Bill can be summarised as follows:

- At all times, the PIC must act in accordance with its mandate which is primarily derived from the instructions of its depositors.
- Any broader considerations in so far as they concern social, economic or political objectives must always be balanced against the risk of decisions detrimentally affecting returns on investment.
- If the objectives described above are to be pursued, then these must be part of the instructions from depositors, as directives taken from elsewhere create the danger of depositors considering alternative asset managers.

⁵ Annexure 3.

⁶ Annexure 4 at 84 to 94.

- We have sought, through the suggestions made in this submission, to promote greater transparency and accountability in terms of all external fees, including the disclosure of fees for consultants and the use of professional services.

We thank you for the opportunity to provide input.

Charles Collocott
Economic and Financial Researcher

Anton van Dalsen
Legal Counsellor

Francis Antonie
Director

Director: Francis Antonie

Trustees: Cecily Carmona • Max du Plessis • Cora Hoexter • Nick Jonsson • Daniel Jowell • Temba Nolutshungu
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