

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 4—2019]

ISBN 978-1-4850-0579-7

No. of copies printed800

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 designate the Deputy Minister of Finance or any Deputy Minister in the economic cluster, in consultation with Cabinet, 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 guidelines when 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— 5
- (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 10
- (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;” 15

Amendment of section 6 of Act 23 of 2004

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

- (a) by the substitution for subsection (1) of the following subsection: 5
 “(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) three executive members, which must include the Chief Executive Officer of the corporation, or a person with a similar designation.”;
- (b) by the insertion after subsection (1) of the following subsection: 10
 “(1A) The Minister must designate the Deputy Minister of Finance or, in consultation with Cabinet, any other Deputy Minister in the economic cluster, as the chairperson of the board.”;
- (c) by the substitution for subsection (2) of the following subsection: 15
 (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).
 (b) The ten non-executive members must include— 20
 (i) a representative of the department;
 (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.”;
- (d) by the insertion after subsection (3) of the following subsection: 30
 “(3A) The Board members appointed in terms of subsection (2)(b) must meet the criteria set out in subsection (3).”; and 35
- (e) by the addition after subsection (4) of the following subsection: 40
 “(5) A directive contemplated in subsection (4) must be—
 (a) based on the investment criteria set out in section 10;
 (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

3. Section 10 of the principal Act is hereby amended

- (a) by the substitution for subsection (1) of the following subsection: 45
 “(1) The corporation may, subject to subsections (3) and (4), invest every deposit or portions of a deposit[, with regard to the period, if any, after the expiration of which such a deposit or portions of such a deposit may again become necessary for use,] on behalf of the depositor concerned in accordance with the investment policy of the corporation.”; and 50
- (b) by the addition after subsection (2) of the following subsections: 55
 “(3) The corporation must, when investing a deposit on behalf of depositors, invest to the benefit of the members or beneficiaries 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, as far as possible, seek to invest to—
 (a) ensure its security and financial sustainability;
 (b) create and protect local jobs; 60

- (c) industrialise the economy of the Republic, by building the manufacturing sector and boosting exports;
 - (d) promote sustainable development;
 - (e) be 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.
- (5) 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

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

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, 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

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

Short title

7. This Act is called the Public Investment Corporation Amendment Act, 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.

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. The Bill also amends the Act to require the PIC to invest in accordance with the instructions of the depositors, and in so doing the PIC must seek investments that will meet certain guidelines. The Bill further provides for greater transparency in the operations of the 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 substitutes section 6 of the Act to determine how the board of the PIC is constituted and to provide for the appointment of the members of the board. The clause seeks to empower the Minister to designate the Deputy Minister of finance or any other Deputy Minister in the economic cluster, in consultation with Cabinet, as the chairperson of the board. The clause further provides that the board should consist of a representative of the department, two representatives from the largest depositor, one representative from any other depositor whose assets under management of the corporation are 10% or more and three representatives of registered trade unions, two of which must come from the trade union with the majority of the members of the Government Employees Pension Fund and one from any other trade union, to form part of the group of non-executive members. The clause lastly provides that directives must be tabled in the National Assembly; before the depositors and published on the website of the corporation.

3.3 Clause 3 amends section 10 by requiring the PIC to invest to the benefit of the members and beneficiaries of the respective depositors and to, acting in accordance with the instruction of its depositors, as far as possible, seek to make investments that will meet the listed guidelines. The clause further requires an annual report reflecting all investments of deposits, whether listed or unlisted, to be submitted to the Minister for tabling, and to be published.

3.4 Clause 4 inserts section 11A into the Act. This section requires the corporation to annually report on the total number of requests made, and details thereof, to the Minister for approval of any significant transactions requiring such approval in terms of legislation, and for the Minister to table that report with the annual report of the National Treasury.

3.5 Clause 5 amends section 12 of the Act and provides for progressive implementation of the new manner in which the board is constituted.

3.6 Clause 6 substitutes section 16 of the Act so as to provide for a procedure that the Minister should follow before making regulations, and requires tabling of those regulations in the National Assembly.

3.7 Clause 7 provides for the short title.

4. FINANCIAL IMPLICATIONS FOR THE STATE

None.

5. PARLIAMENTARY PROCEDURE

- 5.1 The Standing Committee on Finance (“Committee”), proposes that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedures set out in section 74 or 76 of the Constitution apply.
- 5.2 The Committee is of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

Printed by Creda Communications

ISBN 978-1-4850-0579-7