**PUBLIC INVESTMENT CORPORATION AMENDMENT BILLS**

**NATIONAL TREASURY’S COMMENT**

**19 APRIL 2018**

**1. BACKGROUND**

1.1 The Public Investment Corporation Amendment Bill was submitted by Mr D Maynier, MP for the DA (**“PM Bill”**).

1.2 A draft Bill (**“draft Committee Bill”**) was also prepared for the Standing Committee on Finance (SCOF) in view of its resolution of 18 October 2017.

1.3 The key amendments in both Bills and comments are dealt with below.

1.4 The comment incorporates inputs from the Public Investment Corporation SOC Limited (“PIC”) and the Principal Officer of the Government Employees Pension Fund (“GEPF”).

**2. OBJECTS OF PIC (Clauses 1 and 3 of the draft Committee Bill)**

2.1 The current Act (i.e. Public Investment Corporation Act, 2004 (Act No. 23 of 2004”) provides in section 4 that the main object of the PIC is to be a financial services provider in terms of the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act).

2.2 The draft Committee Bill proposes that the objects of the PIC include the promotion, facilitation, support and assisting in the financing of buying the property for depositors, economic growth, job creation and development of infrastructure and the reduction of social inequalities and the interests of the poor and lower income earners.

2.3 **This is a client mandate matter and should not be included in the PIC Act.** **The PIC must act as investment manager in accordance with the instructions of the client**, such as for example, the GEPF and other clients such the Unemployment Insurance Fund and the Compensation Fund.

2.4 The PIC clients, such as the GEPF, mandate the PIC as an investment manager with the authority to act as its agent in managing and administering its portfolio in accordance with the Investment Management Agreement.

**3.** **BANKING LICENCE FOR PIC (Clauses 1, 2, 3 and 8 of the draft Committee Bill)**

3.1 The draft Committee Bill proposes that-

(a) the PIC be enabled to conduct the business of the bank to finance the buying property for depositors and exempted from the provisions of the Banks Act; and

(b) the Minister, in consultation with the SARB Governor, must make regulations pertaining to the PIC operating as a bank.

3.2 This amendment was seemingly made to enable the PIC to provide a housing loan scheme for public sector employees who do not qualify for loans from commercial banks, and not depositors, i.e. clients of the PIC, such as the GEPF.

3.3 **Granting a banking licence to the PIC is not recommended since it will change the nature of the PIC as an asset manager regulated by the Financial Sector Conduct Authority (FSCA) (previously Financial Services Board) under the FAIS Act and Financial Sector Regulation Act.** It will codify the nature of investments and will also not accord with the PIC receiving its mandate from the client. If the purpose of this proposed amendment is to enable the PIC to provide a housing loan scheme, this is a client’s mandate matter, and in any event, providing a housing loan scheme does not require a banking licence.

3.4 However, should the Committee decide to enable the PIC to obtain a banking licence, the PIC should be subject to all the requirements of the Banks Act, and it not be exempted from compliance with the Banks Act.

**4. BOARD (Clauses 4(a) and 8 of the draft Committee Bill & Clause 2(a) of the PM Bill)**

4.1 The current Act in section 6 provides that the Minister in consultation with the Cabinet determines and appoints the members of the Board. The Minister must consider nominations by the depositors when appointing the Board.

4.2 In the Committee Bill (clause 4(a)) and the PM Bill (clause 2(a)) the composition and number of Board members are set out, provision is made for-

(a) a Chairperson;

(b) ten non-executive members and two executive members (the CEO and the CFO);

(c) the Chairperson to be appointed by the Minister on the recommendation of the National Assembly and the remaining members in consultation with the Cabinet;

(e) the non-executive members to include a representative of the National Treasury; each major depositor and a registered trade union or more than one whose members are the majority of members of the GEPF.

4.3 Chairperson:

(a) The PIC is a company subject to the Companies Act and as an asset manager, subject to the FAIS Act. The PIC does not own the assets it manages, and must manage assets in accordance with the clients’ mandates and not the instructions from its Board or its Chairperson or the Minister or the Deputy Minister of Finance.

(b) Taking the appointment of the Chairperson to the National Assembly may make the process too protracted which may affect investment decision-making and the operations of the PIC.

(c) **It is proposed that the current arrangement in the Act that the Minister appoints the Chairperson and other members of the Board in consultation with Cabinet be retained.** **It is further proposed that the Act be amended to stipulate that the Chairperson and the Deputy Chairperson of the Board must be independent persons – Principle 7[[1]](#footnote-1) of King IV read with Recommended Practices 31 and 32.**

4.4 Trade Union representation:

(a) The proposed direct trade union representation on the Board will undermine the framework governing the relationship between the employer and employees through the Public Service Co-ordination Bargaining Council (PSCBC). Members and pensioners of the GEPF and the employer have equal representation on the Board of the GEPF.

(b) The current Act allows for depositor representation on the PIC Board.

(c) **It is proposed that depositor representation be made compulsory by stipulating at least one representative of a depositor (such stating the largest by value of assets).**

4.5 National Treasury representation:

**The inclusion of a representative of the National Treasury on the Board is supported since the Minister administers the PIC Act and is the Executive Authority of the PIC, in terms of the Public Finance Management Act**.

4.6 Number of non-executive Members:

(a) It is proposed that the number be left to the Memorandum of Incorporation (MOI) of the PIC (determined by the State’s shareholder representative).

(b) **A sufficient number of Board members are necessary to ensure independence and to accommodate the different Committees of the Board.**[[2]](#footnote-2)

(c) **It is proposed that the Act provides that the Chief Executive Officer and at least one other executive be appointed to the Board but the identity of the second executive and the total number of executive members be determined by the MOI.**[[3]](#footnote-3)

4.7 Process for appointing non-executive Members:

**It is proposed that the Act be amended to-**

**(a) provide for a transparent process[[4]](#footnote-4) for appointing the Chairperson, Deputy Chairperson and non-executive Board members through a requirement to advertise vacancies for applications and/or nominations;**

**(b) replace the current criteria for appointment to the board, i.e. on the “grounds of their knowledge and experience, with due regard to the FAIS Act, when considered collectively, should enable the board to obtain the objects of the corporation” with the following:**

**“with due regard to any applicable fit and proper requirements envisaged in the FAIS Act, the appropriate balance of knowledge, skills, experience, diversity and independence for the board to discharge its governance role and responsibilities and to attain the objects of the corporation objectively and effectively”;[[5]](#footnote-5) and**

**(c) require that (i) the majority of the members of the Board must be non-executive members[[6]](#footnote-6) and (ii) a quorum for a Board meeting is a majority of the non-executive members.**

**5. PUBLICATION OF MINISTERIAL DIRECTIVES (Clause 4(b) of the draft Committee Bill and clause 2(b) of the PM Bill)**

5.1 Both Bills propose that a directive of the Minister on the management of the PIC if in the public interest or reasonably necessary to do so must be tabled in the National Assembly and published on the PIC’s website.

5.2 **This is supported but is proposed that the provision makes it clear that the management of the PIC excludes investment decisions in accordance with clients’ mandates.**

**6. TABLING OF REPORTS (Clause 5 of the draft Committee Bill & Clause 3 of the PM Bill)**

6.1 Both Bills propose that a report listing all investments of deposits, whether listed or unlisted, must annually be submitted to the Minister for tabling in the annual report of the National Treasury and be published on the website of the corporation.

6.2 **This proposal is not supported. 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.**

**7. TABLING OF REQUESTS TO MINISTER FOR APPROVAL ON SIGNIFICANT TRANSACTIONS (Clause 6 of the draft Committee Bill & Clause 4 of the PM Bill)**

7.1 Both Bills propose that the PIC must annually report on the number and detail of requests made to the Minister for approval of significant transactions required to be approved in terms of the Public Finance Management Act or in terms of other legislation and whether the requests were granted.

7.2 **This provision is not supported since it is operational in nature. It may also create the incorrect impression that the Minister may approve significant investment transactions which relate to the assets of a client.**

**8. REGULATION-MAKING PROCESS (Clauses 1 and 8 of the draft Committee Bill & Clauses 1 and 6 of the PM Bill)**

**The submission of the draft regulations for parliamentary scrutiny as proposed in both Bills is supported.**

1. The governing body should comprise the appropriate balance of knowledge, skills, experience, diversity and **independence** for it to discharge its governance role and responsibilities objectively and effectively. [↑](#footnote-ref-1)
2. See Principle 7 of King IV, Recommended Practice 7 c [↑](#footnote-ref-2)
3. See Principle 7 of King IV, Recommended Practice 9 [↑](#footnote-ref-3)
4. See Principle 7 of King IV, Recommended Practice 15 [↑](#footnote-ref-4)
5. Principle 7 of King IV quoted in footnote 1 [↑](#footnote-ref-5)
6. See Principle 7 of King IV, Recommended Practice 8 [↑](#footnote-ref-6)