



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 467

Cape Town, 20 May 2004
Kaapstad, Mei 2004

No. 26383



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GENERAL NOTICE

NOTICE 851 OF 2004

NATIONAL TREASURY

PUBLICATION OF PUBLIC INVESTMENT CORPORATION BILL, 2004

The Minister of Finance intends tabling the Public Investment Corporation Bill, 2004 in Parliament during the current Parliamentary term. The Bill is published in accordance with Rule 241(1)(c) of the Rules of the National Assembly. Interested persons and institutions are invited to submit written representation on the Bill to the Secretary to Parliament by no later than 18 June 2004.

All submissions must be addressed to:
The Secretary to Parliament
c/o Messrs A Hermans or J Michaels
Committee Section
Parliament of the RSA
P.O. Box 15
CAPE TOWN 8000

You can contact Messrs A Hermans or J Michaels at:
Fax: (021) 462 2141
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BILL

To provide for the establishment of a juristic person known as the Public Investment Corporation and for the transfer of rights, obligations and assets of the commissioners to the corporation; to provide for the investment by the corporation of certain money received or held by, for or on behalf of the Government of the Republic and certain bodies, councils, funds and accounts; to regulate certain activities of the corporation relating to the management of investments; to repeal the Public Investment Commissioners Act and to terminate the term of office of all the commissioners; and to provide for matters connected therewith.

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

Definitions and interpretation

1. (1) In this Act, unless the context indicates otherwise—
 - “**board**” means the board of directors of the corporation; 5
 - “**commissioners**” means the public investment commissioners referred to in section 2 of the Public Investment Commissioners Act (Act No. 45 of 1984);
 - “**Companies Act**” means the Companies Act, 1973 (Act No. 61 of 1973);
 - “**corporation**” means the corporation established by section 2(1);
 - “**department**” means the National Treasury established in terms of section 5 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); 10
 - “**deposit**” means an amount of money other than that forming part of the National Revenue Fund as contemplated in the Public Finance Management Act, 1999 (Act No.1 of 1999)—
 - (a) which is received or held by, for or on behalf of— 15
 - (i) the Government of the Republic, including the provinces; or
 - (ii) any body, council, fund or account established by or under law which may, or is required to, pay, in terms of that law, such amount of money to the corporation for investment in terms of this Act; and
 - (b) which is not required for immediate use or as a reasonable working balance; 20
 - (c) which is not invested or otherwise utilised, in terms of any law, otherwise than in terms of this Act; and
 - (d) which is not invested with the corporation referred to in section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984), 25
 - and, except for the purposes of section 11(1), includes an amount of money received or held by, for or on behalf of a person or body referred to in that section;
 - “**FAIS Act**” means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);
 - “**financial year**” means, in relation to the corporation, a year ending on the last 30 day of March;
 - “**Minister**” means the Minister of Finance;
 - “**Public Investment Commissioners Act**” means the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984);
 - “**the Registrar**” means the Registrar or deputy registrar of financial services 35 providers referred to in section 2 of the FAIS Act;
 - “**state**” means the National Government.

(2) (a) Subject to paragraph (b), any reference in any law to the commissioners must be construed as a reference to the corporation.

(b) Any provision in any law requiring or authorising the investment of an amount of money not required for immediate use or as a reasonable working balance, with the commissioners, must be construed—

- (i) if such amount of money is a deposit, as a reference to a provision requiring or authorising the payment of such amount of money to the corporation for investment in terms of this Act;
- (ii) if such amount of money may or is required to be invested in such a manner that it is required to be repaid on demand, as a reference to a provision requiring authorising, as the case may be, the investment of such amount of money with the corporation referred to in section 3 of the Corporation for Public Deposits Act, 1984 (Act 46 of 1984).

(3) (a) Subject to paragraph (b) the provisions of the Companies Act which are not in conflict with this Act, apply to the corporation.

(b) A provision of the Companies Act does not apply to the corporation in circumstances where—

- (i) such a provision is clearly inappropriate or incapable of being applied because of a special or contrary arrangement by this Act; and
- (ii) the Minister declared a particular provision not to be applicable to the corporation.

Establishment of Corporation

2. (1) There is hereby established a juristic person, an institution outside the public service, to be known as the Public Investment Corporation Limited.

(2) The Registrar of Companies must enter the name of the corporation in the register kept in terms of the Companies Act and shall issue to the corporation a certificate to that effect.

(3) Despite the Companies Act, the Minister, on behalf of the state, must sign the memorandum of association and the articles of association of the corporation.

(4) On signature of the memorandum of association and the articles of association in terms of subsection (3), such memorandum and articles must be regarded as complying with the requirements of the Companies Act for registration in terms of the said Act.

(5) On receipt of the signed memorandum and articles, the registrar of companies must register the said memorandum and articles as contemplated in section 63 of the Companies Act and endorse thereon a certificate to the effect that the corporation is incorporated.

(6) No fees are payable in terms of the Companies Act in respect of the checking of documents, the reservation of name, the registration of the said memorandum and articles and the issue of a certificate to commence business.

(7) Sections 32, 54(2), 66, 92, 190 and 344(d) of the Companies Act do not apply to the corporation as long as the state is the sole or majority shareholder of the corporation.

Share Capital of Corporation

3. (1) The state is the sole holder of the shares in the corporation.

(2) The rights attached to the shares in the corporation, of which the state is the holder, must be exercised by the Minister on behalf of the state.

(3) The Minister, in consultation with Cabinet, may at any time dispose of all or any part of the shares held by the state in the corporation.

Object of Corporation

4. The main object of the corporation is to be a financial services provider in terms of the FAIS Act.

Powers of Corporation

5. 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.

Board of Directors

6. (1) The Minister must, in consultation with Cabinet, determine and appoint the members of the board.

(2) The members of the board must be appointed on the grounds of their knowledge and experience, with due regard to the FAIS Act, which, when considered collectively, should enable the board to attain the objects of the corporation. 5

(3) The Minister may issue directives to the board of directors regarding the management of the corporation.

Board Committees

7. (1) The board may establish such committees, consisting of directors, as it considers necessary. 10

(2) The board must determine the functions of the committees and the procedure to be followed when the chairpersons of the committees are elected.

(3) Any person with expert knowledge of a function of a committee may be co-opted by such committee on such terms as the board may determine. 15

Management of Corporation

8. Subject to the provisions of this Act, the board must control the business of the corporation, direct the operations of the corporation and exercise all such powers of the corporation as are not in terms of this Act required to be exercised by the shareholders of the corporation at a meeting of shareholders. 20

Registration as Financial Services Provider

9. (1) The Registrar must, notwithstanding any provision to the contrary in the FAIS Act, on a date to be determined by the Minister, register the corporation as a financial services provider, as contemplated in section 7 of the FAIS Act.

(2) No fee, as contemplated in section 41 of the FAIS Act, is payable in respect of the registration of the corporation as a financial services provider. 25

(3) Neither the registrar nor the corporation may terminate the registration of the corporation referred to in subsection (1) without the consent of the Minister.

Investment of Deposits

10. (1) The corporation may invest every deposit or portions of a deposit, regard being had 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. 30

(2) The board must adopt an investment strategy with guidelines to regulate the investment of deposits and other money referred to in section 11. 35

Amounts of money other than deposits

11. (1) The Minister may, if it is in the public interest, authorise generally or in respect of a particular case, any person or body receiving or holding within or outside the Republic, amounts of money other than deposits to pay those amounts of money or portions thereof to the corporation for investment as if those amounts of money were deposits. 40

(2) The corporation may receive for investment amounts of money other than deposits and those amounts contemplated in subsection (1).

Transitional provisions

12. (1) (a) With effect from a date to be determined by the Minister by notice in the *Gazette*, the commissioners cease to exist and the term of office of each commissioner terminates. 45

(b) With effect from the date contemplated in paragraph (a), all of the assets, liabilities, rights and obligations of the commissioners are transferred to the corporation.

(c) The board must ensure that the necessary formalities to give effect to paragraph (b) are complied with.

(2) The value of the assets and liabilities referred to in subsection (1) must be determined by the Minister after consultation with the commissioners.

(3) If any doubt arises as to whether any assets, liabilities, rights or obligations for purposes of this Act pertains to or is connected with the commissioners the department or anyone else, the Minister must make a determination in this regard. 5

(4) The corporation must be substituted for the commissioners, as contracting party in respect of all contracts transferred to the corporation in terms of subsection (1), without such substitution bringing about novation of such contract. 10

(5) The corporation must, as consideration for the transfer of assets, liabilities, rights or obligations in terms of subsection (1), issue to the state fully paid up shares in the corporation to a value determined by the Minister, after consultation with the corporation, and such value must be regarded as being reasonable consideration for such transfer. 15

(6) No duty, charge, levy or any other tax is payable in respect of the transfer contemplated in subsection (1) and the issue of shares to the state in terms of this Act.

(7) All persons who were in the employ of the department immediately before the date contemplated in subsection (1) and who rendered their services exclusively for and on behalf of the commissioners, are regarded as having been transferred to the corporation with effect from such date, without any interruption of their service, on terms and benefits not less favourable than those enjoyed by them immediately prior to their transfer. 20

(8) Despite the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996) or any other law, all persons referred to in subsection (7) remain members of the Government Employees Pension Fund referred to in section 2 of the Government Employees Pension Law, 1996. 25

(9) For purposes of the Income Tax Act, 1962 (Act No. 58 of 1962) or any other law in terms of which a tax or levy may be imposed—

(a) it is regarded that expenses incurred by the corporation in acquiring the assets transferred to it in terms of subsection (1) including the costs of the assets, are equal to the value determined in terms of subsection (2); 30

(b) the assets contemplated in subsection (1) are, for purposes of sections 11(e) and 12C of the Income Tax Act, regarded as having been brought into use for the first time at a cost equal to the value determined in terms of subsection (2); 35
and

(c) it is regarded that no change of employer took place in respect of an employee referred to in subsection (7).

(10) Any legal proceedings that were pending or could have been instituted by or against the commissioners prior to the establishment of the corporation, may be continued or instituted by or against the corporation, subject to any law governing prescription of debt. 40

(11) Despite the repeal of the Public Investment Commissioners Act in terms of section 18, anything done in terms of that Act which may be done under or in terms of this Act, continues to be valid and of full force and effect. 45

Reporting and Accountability

13. As long as the state holds shares in the corporation, the corporation is subject to and must comply with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

Dividends

14. The declaration of dividends must be authorised by the board and approved by the Minister. 50

Winding Up of Corporation

15. The corporation may not be wound up except in terms of an Act of Parliament.

Use of name of corporation

16. No person, association, corporation or other statutory body or company shall carry on business or be registered under an Act of Parliament, with a name identical to that of the corporation, or resembling the name of the corporation to such an extent that it is deceptive.

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Regulations

17. 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.

Repeal of Law

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18. The Public Investment Commissioners Act, 1984 (Act No. 45 of 1984), is hereby repealed.

Short Title and Commencement

19. This Act is called the Public Investment Corporation Act, 2004, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

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MEMORANDUM ON THE OBJECTS OF THE PUBLIC INVESTMENT CORPORATION BILL, 2004

1. BACKGROUND

1.1 The Public Investment Commissioners ("the commissioners") were appointed in terms of section 2 of the Public Investment Commissioners Act, 35 of 1984 ("the Act"). The commissioners are responsible for the investment of certain monies received or held by, for or on behalf of the Government and certain bodies, councils, funds and accounts. The Act does not provide for the creation of any juristic body and the activities of the commissioners are therefore curtailed.

1.2 The activities of the commissioners, were similar to those of any other investment manager although they are not registered in terms of the Financial Markets Control Act, 1989 (Act No. 55 of 1989) and the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985). The Bill seeks to provide that the Financial Advisory and Intermediary Services Act (Act No. 37 of 2002) ("the FAIS Act") regulates the said activities.

2. OBJECTS

2.1 The object of the Bill is to establish a statutory corporation to be known as the Public Investment Corporation Limited.

2.2 The entire operation of the commissioners, comprising the assets, liabilities, rights and obligations, will be transferred to the corporation on a date to be determined by the Minister of Finance. The Minister of Finance shall also determine a date on which the Registrar of Financial Services Providers shall register the corporation as a financial services provider, as contemplated in the FAIS Act.

2.3 The corporation will, after registration as a financial services provider, manage deposits received from Government and other public institutions as well as money received from any other person. The board of directors of the corporation shall determine all policies and investment guidelines of the corporation.

3. FINANCIAL IMPLICATIONS FOR STATE

There are no financial implications for the state. The state stands to gain from tax collections as well as dividend payments from the establishment of the corporation.

4. DEPARTMENTS/ORGANISATIONS CONSULTED

The Commissioners
The National Treasury

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by Section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.

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