



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 668

Cape Town
Kaapstad

15 February 2021

No. 44160

THE PRESIDENCY

No. 44 **15 February 2021**

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 14 of 2019: Public Investment Corporation Amendment Act, 2019

DIE PRESIDENSIE

No. 44 **15 Februarie 2021**

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No. 14 van 2019: Wysigingswet op Openbare Beleggingskorporasie, 2019

ISSN 1682-5845



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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.

(English text signed by the President)
(Assented to 9 February 2021)

ACT

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—

- (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

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ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skappings uit
bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder dui invoegings in bestaande
verordenings aan.

(Engelse teks deur die President geteken)
(Goedgekeur op 9 Februarie 2021)

WET

Om die Wet op Openbare Beleggingskorporasies, 2004, te wysig ten einde sekere omskrywings in te voeg; om die samestelling van die korporasie se raad van direkteurs te bepaal en om voorsiening te maak vir die progressiewe implementering van die nuwe samestelling; om voorsiening te maak vir die Minister om die Adjunkminister van Finansies of 'n Adjunkminister in die ekonomiese groep in oorleg met die Kabinet aan te wys om die voorsitter van die raad te wees; om voorsiening te maak vir die Minister om die lede van die raad in oorleg met die Kabinet aan te stel; om voorsiening te maak vir spesifieke verteenwoordiging op die raad; om te vereis dat riglyne aangaande die bestuur van die korporasie wat in die Nasionale Vergadering ingedien word en voor die deponerders ter tafel gelê word, asook dat dit gepubliseer moet word; om van die korporasie te vereis om sekere riglyne te oorweeg wanneer deposito's belê word; om die korporasie te vereis om 'n verslag oor alle beleggings te publiseer en voor te lê aan die Minister vir tertafellegging; om voorsiening te maak vir jaarlikse verslagdoening oor versoeke om goedkeuring ingevolge wetgewing; om voorsiening te maak vir 'n prosedure wat die Minister moet volg voordat regulasies gemaak word; om voorsiening te maak dat die Minister regulasies in die Nasionale Vergadering moet stel; en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 23 van 2004

1. Artikel 1 van die Wet op die Openbare Beleggingskorporasie, 2004 (Wet No. 23 van 2004) (hierna die Hoofwet genoem), word hierby gewysig—

- (a) deur na die omskrywing van “boekjaar” die volgende omskrywing in te voeg:
“**‘Regeringswerknemerspensioenfondse’** die Regeringswerknemerspensioenfondse waarna verwys word in artikel 2 van die Regeringswerknemerspensioenwet, 1996 (Proklamasie No. 21 van 1996); en”

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- (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;” 5

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:
 “(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.”; 10
- (b) by the insertion after subsection (1) of the following subsection:
 “(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.”; 15
- (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).
 (b) The ten non-executive members must include—
 (i) a representative of the department; 25
 (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—
 (aa) two of which must come from the trade union with the majority of the members of the Government Employees Pension Fund; and 30
 (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.”; 35
- (d) by the insertion after subsection (3) of the following subsection:
 “(3A) The Board members appointed in terms of subsection (2)(b) must meet the criteria set out in subsection (3).”; and 40
- (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 10;
 (b) tabled in the National Assembly;
 (c) tabled before the depositors; and 45
 (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: 50
 “(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 55

- (b) deur na die omskrywing van “Minister” die volgende omskrywings in te voeg:

“**‘Nasionale Vergadering’** die Huis van die Parlement van die Republiek van Suid-Afrika na verwys in artikel 42(1)(a) van die Grondwet van die Republiek van Suid-Afrika, 1996; en **‘voorskryf’** voorgeskryf volgens regulasies beoog in artikel 16;”.

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Wysiging van artikel 6 van Wet 23 van 2004

2. Artikel 6 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die Minister moet **[in oorleg met die Kabinet bepaal en]** die volgende lede van die raad aanstel in ooreenstemming met die prosesse beoog in subartikel (2):

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(a) Tien nie-uitvoerende lede; en

(b) drie uitvoerende lede, wat die Hoof Uitvoerende Beampte van die korporasie moet insluit, of ’n persoon met ’n soortgelyke benaming.”;

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- (b) deur na subartikel (1) die volgende subartikel in te voeg:

“(1A) Die Minister moet die Adjunkminister van Finansies of, in oorleg met die Kabinet, enige ander Adjunkminister in die ekonomiese groep as voorsitter van die raad aanwys.”;

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- (c) deur subartikel (2) deur die volgende subartikel te vervang:

(2) (a) Die Minister moet, in oorleg met die Kabinet, die tien nie-uitvoerende lede en die drie uitvoerende lede **aanstel [die raad behoorlik in ag neem op die benoemings wat deur die deponeerders aan hom of haar voorgelê is]** onderworpe aan paragraaf (b).

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(b) Die tien nie-uitvoerende lede moet insluit—

(i) ’n verteenwoordiger van die departement;

(ii) twee verteenwoordigers van die grootste deponeerder;

(iii) een verteenwoordiger van enige ander deponeerder wie se bates onder bestuur van die korporasie 10% of meer uitmaak; en

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(iv) drie verteenwoordigers van geregistreerde vakbonde—

(aa) waarvan twee uit die vakbond moet kom met die meerderheid van die lede van die regeringswerknemerspensioenfonds; en

(bb) een moet van enige ander vakbond kom,

wat deur die vakbonde gekies word deur die Koördinerende

Staatsdiensbedingingsraad, waarna verwys word in artikel 35 van

die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995),

gebaseer op hul eweredige deel-samestelling.”;

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- (d) deur na subartikel (3) die volgende subartikel in te voeg:

“(3A) Die raadslede wat ingevolge subartikel (2)(b) aangestel is, moet voldoen aan die maatstawwe wat in subartikel (3) uiteengesit word.”; en

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- (e) deur die volgende subartikel na subartikel (4) by te voeg:

“(5) ’n voorskrif beoog in subartikel (4) moet—

(a) gebaseer wees op die beleggingsmaatstawwe uiteengesit in artikel 10;

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(b) ter tafel gelê word in die Nasionale Vergadering;

(c) voor die deponeerders ingedien word; en

(d) gepubliseer word op die webwerf van die korporasie,

binne 30 dae vanaf die datum waarop dit uitgereik is.”.

Wysiging van artikel 10 van Wet 23 van 2004

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3. Artikel 10 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die korporasie mag, onderworpe aan subartikels (3) en (4), elke deposito of gedeeltes van ’n deposito [, **met betrekking tot die tydperk, indien enige, na verstryking waarvan sodanige deposito of gedeeltes van sodanige deposito mag weer benodig word vir gebruik,**] namens die betrokke deponeerder belê ooreenkomstig die beleggingsbeleid van die korporasie”; en

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(b) by the addition after subsection (2) of the following subsections:

“(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;

(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) deur na subartikel (2) die volgende subartikels by te voeg:

“(3) Die korporasie moet, wanneer ’n deposito namens deponeerders belê word, belê tot voordeel van die lede of begunstigdes van die onderskeie deponeerders.

(4) Vir die doeleindes van subartikel (3) moet die korporasie ooreenkomstig die instruksies van die deponeerders optree, en sodoende moet die korporasie, so ver as moontlik, poog om te belê om—

(a) sy sekuriteit en finansiële volhoubaarheid te verseker;
 (b) plaaslike werksgeleenthede te skep en te beskerm;
 (c) die ekonomie van die Republiek te industrialiseer, deur die vervaardigingsektor te bou en uitvoere te bevorder;

(d) volhoubare ontwikkeling te bevorder;
 (e) in ooreenstemming met die Republiek se ontwikkelingsdoelwitte te wees;

(f) poog om ’n bevoegde ontwikkelingstaat te bou;
 (g) die ekonomie en samelewing te omvorm; of
 (h) beleggings in die Republiek voorkeur te laat geniet.

(5) ’n Verslag wat alle beleggings van deposito’s, hetsy gelys of ongelys, weerspieël, moet jaarliks—

(a) aan die Minister voorgelê word vir tertafellegging saam met die jaarverslag van die departement; en

(b) gepubliseer word op die webwerf van die korporasie.”.

Invoeging van artikel 11A in Wet 23 van 2004

4. Die volgende artikel word hierby ingevoeg na artikel 11 van die Hoofwet:

“Tertafellegging van versoeke 25

11A. (1) Die korporasie moet jaarliks verslag doen oor die algehele getal asook besonderhede van versoeke wat aan die Minister gedoen is vir die goedkeuring van enige beduidende transaksies wat sodanige goedkeuring vereis ingevolge die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), of ingevolge enige ander wetgewing, tesame met ’n aanduiding van watter van daardie versoeke toegestaan is. 30

(2) Die korporasie moet die verslag soos beoog in subartikel (1) aan die Minister voorlê om saam met die departement se jaarverslag ter tafel gelê te word.”.

Wysiging van artikel 12 van Wet 23 van 2004 35

5. Artikel 12 van die Hoofwet word hierby gewysig deur na subartikel (11) die volgende subartikel by te voeg:

“(12) Die Minister moet die nodige stappe doen om toenemend te voldoen aan die prosedure soos beoog in die Wysigingswet op Openbare Beleggingskorporasie, 2019, vir aanstelling van die lede van die raad, met inagneming van enige bestaande regte van die huidige lede van die raad.”. 40

Vervanging van artikel 16 van Wet 23 van 2004

6. Artikel 16 van die Hoofwet word hierby deur die volgende artikel vervang:

“Regulasies

16. (1) Die Minister kan deur kennisgewing in die *Staatskoerant* regulasies maak ten opsigte van enige aangeleentheid wat nodig is om voor te skryf vir die behoorlike inwerkingstelling of administrasie van hierdie Wet. 45

(2) Alvorens enige regulasies uitgevaardig word, moet die Minister—

(a) ’n konsep van die voorgestelde regulasies saam met ’n verklaring wat die behoefte aan, beoogde werking en verwagte uitwerking van daardie regulasies in die Nasionale Vergadering vir parlementêre ondersoek ter tafel lê terwyl die Nasionale Vergadering in sitting is, minstens 30 dae voor die uitvaardiging daarvan; en 50

(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.”

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Short title

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7. This Act is called the Public Investment Corporation Amendment Act, 2019.

(b) enige kommentaar oor die voorgestelde regulasies wat van die Nasionale Vergadering ontvang is, oorweeg.

(3) Die Minister mag nie regulasies uitvaardig nie wat in subartikel (1) beoog word en wat wesenlik verskil van die voorgestelde regulasies wat in die Nasionale Vergadering ter tafel gelê is sonder om die Nasionale Vergadering oor sodanige veranderinge te raadpleeg ooreenkomstig die prosedure beoog in subartikel (2).

(4) Die Minister moet die regulasies wat in subartikel (1) beoog word in die Nasionale Vergadering ter tafel lê.”.

Kort titel

7. Hierdie Wet heet die Wysigingswet op Openbare Beleggingskorporasie, 2019.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065