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OUTA

ORGANISATION UNDOING TAX ABUSE

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OUTA submission on the Draft National State Enterprises Bill

Submitted to the Deputy Director-General,
Department of Public Enterprises

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INTRODUCTION

1. The Organisation Undoing Tax Abuse (“OUTA”) hereby makes its submission in response to a call for public comment on the National State Enterprises Bill (“the Bill”) by the Department of Public Enterprises.
2. OUTA is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. We envision a prosperous country, with an organised, engaged, and empowered civil society that ensures responsible use of tax revenues.
3. Part and parcel to OUTA’s mission is the challenging of legislation and regulatory environment, this includes participating and engaging with government on various levels such as participation in public consultation / comment processes on draft legislation.

GENERAL

4. Although the Bill is certainly a move in the right direction and an acknowledgment of the Minister of Public Enterprises (“the Minister”) that our country’s state-owned entities (“SOEs”) desperately require reform, the Bill falls short of the required reforms needed.
5. The Bill proposes unfettered centralised power over our SOEs – the primary object of corruption, state capture and maladministration.
6. Unfortunately, the Bill construes SOEs simply as assets controlled by the state without acknowledging the importance of SOEs in the broader societal sense such as service delivery and economic growth. In its current form, the Bill favours Presidential control over of SOEs as opposed to their actual roles.

HOLDING COMPANY

7. It is noted that section 2 proposes long term sustainability purportedly free from political interference. It is unclear exactly how the Bill will insulate State Asset Management SOC Limited (“SAM”), SOEs and its subsidiaries against corruption and maladministration.
8. We believe that much needed independence will not be achieved through the Bill in its current form. Aside from the legal nature of the holding company, section 3(3) makes SAM no different from the current DPE. This situation is worsened by the fact that the President may transfer powers to another member of Cabinet in accordance with section 97 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”). Although this provision proposes a trigger to prevent autocratic decision-making, it has the opposite effect. Improper utilisation and abuse of this power can still amount to a circumvention of accountability and a passing-the-buck mentality.
9. We contend that SAM will be nothing more than an extension of control over public funds, enforced by centralisation of power. The backlog of accountability measures following an era of state capture has yet to be properly followed through and the Bill in its current form does nothing to enhance accountability.
10. We further believe that the holding company could maintain the culture of cadre deployment if professionalisation of the public sector is not incentivised or properly implemented. We do however commend the fact that the holding company is not exempted from the Public Finance Management Act, 1999 (“PFMA”) or the Companies Act, 2008 and trust that it would remain so.
11. Notwithstanding the above, the holding company will undoubtedly be an entity with the public interest at its core. However, the appointment of directors to the Board by the President in terms of section 5, fails to acknowledge the separation of powers, public participation, gross political interference and cadre deployment. The appointment of the Board becomes a process to be followed purely in terms section 68 of the Companies Act, excluding any form of public consultation and/ or input or a transparent nomination process.

12. The legislator should clarify the extent to which the public will be able to participate in the appointment/ nomination process of SAM Board members and centralise the power in parliament. It is also suggested that the Board should not hold any political positions.
13. Unfortunately, the Bill overemphasises the interest of the government and not the shareholder it ought to represent – the South African public.

REGULATIONS

14. It appears that a lot of the details, concerned with the effective administration of SAM, is left out and will be dealt with in regulations. Regulations should supplement the effectiveness of legislation and not create effective legislation.
15. Section 17 provides the shareholder with the power to make appropriate regulations. We fear that this may leave room for potential abuse and unfettered decision-making.
16. It is suggested that promulgation of any regulations in terms of the Bill be subjected to the concurrence of the Minister of Finance. Therefore, regulations ought only to be enforceable when the President (shareholder) has consulted with the Minister of Finance (Cabinet member) and the latter has concurred and given his or her approval.

CONCLUSION

17. Although the Bill is a step in the right direction, we believe that more meaningful consultation with the private sector and business representatives will result in or lead to a sound legislative framework, based on proven business and economic principles.
18. We will continue to support the reform of the legislative framework governing our country's SOEs in an attempt to combat corruption and strive for the prosperous South Africa.