



The American Chamber of Commerce in South Africa^{NPC}

Public Hearings on the Promotion and Protection of Investment Bill

15 September 2015

A Short History of American Investment in South Africa

- 1983 to 1989 : 185 US Companies disinvested from South Africa
- 1986 : US passed the "Comprehensive Anti-Apartheid Act"
- 1991 : Sanctions were lifted by the US
- 1994 : Most companies returned

1982 : Sullivan Principles implemented
Precursor to broad-based BEE



US Bequests to South Africa

PEPFAR:

- Since 2004, PEPFAR invested more than \$4.6 billion in South Africa's HIV and TB response
- PEPFAR, with the support of the South African government, provides ART to more than 2.6 million South Africans

AGOA:

- AGOA provides duty free access to the US market
- Last year, \$8.5 billion entered duty free
- Goal – to develop and expand markets in South Africa, e.g. auto industry



US Business Contribution to South Africa

600 US Companies in South Africa
Survey of 89 companies in 2014

- Contributed R278 billion
- Employed 221 400 South Africans – “decent work”
- Spent R400 million on skills development
- Spent R144 million on training
- Spent R500 million on CSI





United States of America

Morocco

Nigeria

Kenya

South Africa

Dubai

Mauritius

The increasing competition in Africa for American Foreign Direct Investment

Fair and Equitable Treatment

- US did not have BIT with SA
- Government does have the right to regulate in public interest BUT
- “Fair and Equitable” treatment for investors must be available – international law

Protects against: arbitrariness of decision making,
abuse and coercion in decision making,
denial of justice when decisions are made

FOREIGN INVESTORS NEED CLEAR, TRANSPARENT AND STABLE POLICY



Example: Private Security Industry Bill (PSIRA)

Clause 11.2 of the Bill - SA government must protect security interests of SA ...

PSIRA - Clause 20 requires 51% of international companies are transferred to South Africans

DESPITE legislation that requires that management of international security companies are South Africans

If promulgated:

- A dispute is declared. Minister can prescribe criteria/Minister must prescribe information that must be supplied to court.
- Section 8 - "The Republic must provide security subject to available resources and capacity"
- If international security companies lose case, then they must persuade their governments to get involved?



Confidence in South Africa is at its lowest ever: The first expropriation will result in a flight of investment out of SA. Already happening



Conclusion

1. Investors cannot expect compensation that is “fair” from the Bill in its current form
2. Fair and equitable treatment, a fundamental tenet of international law, is not evident
3. Promotion of investment is not evidenced anywhere in Bill

R1.35 trillion is available for expansion/investment in South Africa¹ – WAITING FOR POLICY CERTAINTY

