Trustee Guidance Note on Pension Fund Investment in Infrastructure

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About Us

With over 400 participants from 25 different countries, the Committee on Workers' Capital (CWC) is an international labour union network for dialogue and action on the responsible investment of workers capital.

We connect labour activists and asset owner board members from around the world to promote information sharing and joint action in the field of workers' capital. We are a joint initiative of the International Trade Union Confederation (ITUC), the Global Unions Federations (GUFs) and the Trade Union Advisory Committee to the OECD (TUAC).

Preamble

Across the globe, governments see investment in infrastructure as a major priority, not least as part of the shift to a low-carbon economy. At the same time, public finance levels have deteriorated as debt to GDP ratios have increased. In these circumstances, one of the best options for public financing of public infrastructure remains borrowings and loans, either by way of regular bonds or specially created infrastructure bonds. The latter are considered attractive because they can be tailored to specifically fit the needs of the parties, i.e. the lender and borrower.

There will be circumstances where government loans and borrowings are not available and governments will seek partnerships with institutional investors to fully or partly finance infrastructure. In such cases and where a pension fund intends to become a partner in such infrastructure investments, trustees need to consider carefully how infrastructure may fit within their fund's investment strategy, remembering that beneficiaries' interests are paramount.

In cases where a government seeks to access institutional capital to deliver an economic or social outcome and the benefits of accessing that capital are demonstrated to outweigh the costs, it needs the capability to identify and prioritise a pipeline of infrastructure projects that are suitable (or could be made suitable) for institutional investor financing participation where this is considered appropriate.

There are some specific issues for trade union nominated trustees regarding investment in infrastructure.

Pension funds should be responsible investors when it comes to infrastructure, and ensure that their investments are both financially and socially beneficial. Too often, the transfer of control and ownership of public assets to the private sector, especially in areas of monopoly provision such as ports, airports and utilities, has resulted in rent seeking by the new owners, some of them pension funds, under poorly constructed regulatory regimes that leave users and consumers worse off.

There has to be a balance, and trustees must be the architects of that balance.

In general, we encourage pension funds to ensure that the Global Unions-endorsed Guidelines for the Evaluation of Workers Human Rights and Labour Standards covering labour standards and human rights performance are applied in all investments, including in infrastructure in which the pension fund has or is considering a direct or indirect holding.

In terms of infrastructure specifically, trade unions and trade union linked pension fund trustees should be seeking to ensure that governments intending to tender for the sale or lease of a brownfield asset or to build/operate/maintain a greenfield asset include in the tender documents a set of minimum requirements relating to ESG performance. In addition there should be a requirement to consult with stakeholders, including trade unions with representational rights for the workforce engaged by the current asset owner, and of contractors/suppliers of the asset owner.

In addition, where trustees become aware that their pension fund intends to bid through a tender process for a brownfield infrastructure asset, we encourage them to talk to interested parties, to the extent that this is allowed by national law and regulation. Where possible, they should advise their trade union, who in turn should inform the national trade union centre in the nation of the asset about the intention of the pension fund to bid, either alone or as part of a consortium. The purpose of such collaboration is to provide the opportunity, within the tender requirements, to minimise pension funds bidding against each other to the detriment of fund members and the workforce in the operating company.

Considerations before investment is undertaken

Before any investment in infrastructure is undertaken (both direct and indirect), trustees should ensure that they understand how the asset class fits into the pension fund's investment strategy, and what expectations there are in terms of risk and return. Where external managers are to be employed this should include an assessment of costs and charges to be incurred.

Before any investment in a greenfield infrastructure public private partnership, there should be a full and open review by an independent agency, with a cost/benefit analysis, a comparative cost analysis of direct public financing vs. private financing, and a social/economic impact study. The project needs to be openly and demonstrably a good deal for taxpayers, not just for investors and pension fund members.

In this context, it is the view of the CWC that pension fund investment in infrastructure should only be considered under the following conditions or principles.

Principles to guide pension fund investment in infrastructure

1. Trustees should require that any allocation of capital to infrastructure, whether greenfield (particularly public private partnerships, or “P3s”) or brownfield, direct or indirect, unlisted or listed, should be brought to the full board for approval. Trustees should also require that they are made aware of bids for major assets.

2. Where the pension fund is, or intends to be, a direct investor or co-investor in infrastructure it should commit to undertake a quarterly assessment of performance on ESG issues, and to make an annual report covering all infrastructure assets. Where the pension fund is an indirect investor via an asset manager, trustees should ensure that the manager reports quarterly on ESG performance and produces an annual report. In addition, trustees should ensure that asset managers are aware of their pension fund’s own ESG commitments, in order to ensure an alignment of interests. Reports should include a description of any ESG controversy.

3. Where a pension fund is proposing to invest capital as a direct investor or co-investor in unlisted infrastructure, trustees should require fund staff to engage with the representatives of organised labour covering the workforce in the asset it intends to invest in at the early stages of a market offer process. Such a process will provide the opportunity to discuss the expectations of both the pension fund bidder or potential bidder and of organised labour. This might include issues such as employment, safety, labour relations, technological change and other determinants of productivity performance that are material considerations in assessing risk, and hence yield.

4. Where a pension fund is proposing to invest in unlisted infrastructure through an asset manager, it must require the asset manager to engage with the representatives of organised labour covering the workforce in any asset it intends to invest in.

5. Trustees should require the management team and asset managers to report their involvement in public policy advocacy in support of privatisation or P3s, including formal funding and support for advocacy organisations and/or trade associations engaging in the public policy process.

6. Pension funds intending to invest in monopoly assets must engage with stakeholders, including government, to ensure that there is appropriate economic regulation in place that fairly balances the needs of the investor and the fund members it represents with the stakeholders who use (users) or operate the asset (workers).

7. The governance boards that oversee infrastructure asset operating companies in which pension funds have invested must appoint independent directors with competency and experience in ESG generally and in particular include an independent director with expertise and experience in labour relations, safety and workforce development.

8. Any company operating an infrastructure asset on behalf of a pension fund owner must establish a stakeholder advisory body to the operating company Board that includes each of the unions operating within the company’s new asset. The role of such a body is to enable an exchange of views, data, trends and performance on key strategic issues, and to provide advice to the Board and management team on strategic issues including such matters as master planning, asset productivity, investment planning and execution, implementation strategies for new technologies, security and safety.

9. The infrastructure asset operating company must commit to:

   - A labour rights and labour standards protocol based on the CWC Guidelines for the Evaluation of Workers Human Rights and Labour Standards, supplemented by best practice labour standards (in the nation of the infrastructure asset);
   - A responsible contractor policy covering both upstream and downstream contractors and suppliers;
   - Maintenance of existing Collective Agreements for their duration;
   - For brownfield infrastructure assets, maintenance of existing employment levels and workforce composition for the first 6 months following the transition to non-public sector lessee/operator and that any reviews of future workforce levels and composition, including the mix of permanent, part time and casual labour, be addressed through consultation mechanisms established under the collective agreement;
   - Develop, in consultation with the workforce and unions, a workforce development and training strategy;
   - Establishment of a standing consultative committee on technological change and productivity.

Public infrastructure

In addition to the principles 1-9 above, certain policies apply specifically to public infrastructure.

10. Throughout the project (either at the construction and/or operational phases), the costs must be fully transparent and subject to review by public authorities including Auditors General or equivalent bodies;
11. The ownership of the infrastructure asset must revert fully to the public at the end of the financing or lease period;
12. There must be no loss of public control over the design, uses and maintenance, of the asset;
13. User fees for the asset should be subject to economic regulation by an independent Government regulator.

For more information on the CWC Infrastructure Working Group:

Tom Powdril, International Transport Workers' Federation, Chair of the CWC Infrastructure Working Group, powdrill_tom@itf.org.uk

Hugues Létourneau, Senior Program Officer, CWC, hletourneau@share.ca

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