

TO: The State Attorney

ATTENTION: Dikeledi Molepo

FROM: Nazeer Cassim SC and Mias Mostert

DATE: 31 May 2016

IN RE: **SASSA: NEW DEVELOPMENT PURSUANT TO REPORT
FILED WITH THE CONSTITUTIONAL COURT ON 15
NOVEMBER 2015**

MEMORANDUM

BACKGROUND

1. On 17 April 2014 the Constitutional Court granted an order declaring invalid the contract for the payment of social grants entered into between SASSA and Cash Paymaster Services (Pty) Ltd ("CPS").
2. The declaration of invalidity was suspended pending SASSA's decision to award a new tender after completion of a new tender process as ordered by the Court.
3. In the event of the tender not being awarded, the declaration of invalidity would be further suspended until completion of the five year period for which the contract was initially awarded. Should this happen, SASSA was ordered to, within fourteen days of the decision not to award the tender,

lodge a report with the Registrar of the Constitutional Court setting out the relevant information on whether and when it will be ready to assume the duty to pay social grants itself.

4. SASSA went through a new tender process, but decided not to award the tender.
5. Consequently, on 15 November 2015, SASSA filed a report with the Registrar of the Constitutional Court, as prescribed in the April 2014 order.
6. In the report:
 - 6.1 SASSA indicated that it would be in a position to itself take over the payment of all social grants from March 2017. This was in line with what SASSA stated in all its affidavits previously before Court.
 - 6.2 SASSA detailed the relevant deliverables, time frames, and project milestones pertaining to each phase of the drive towards taking over the payment of social grants.
7. On 17 May 2016 junior counsel consulted with the relevant client representatives, who informed him as follows pertaining to the relevant deliverables as detailed and referred to in the report:

- 7.1 Deliverable 1, the integration of systems through web-based applications, is on track. In this regard SASSA already has terms of reference and foresees no delay.
- 7.2 Deliverable 2, the verification and authentication (biometric enrolment of beneficiaries and system users) is on track, and SASSA expects to be advertising by the end of May for the acquisition of equipment.
- 7.3 Deliverable 3, the payment processing control account process is still to happen, the projected timeframe being January 2017. SASSA has met with the SARB, and has a next meeting scheduled for the end of May or beginning of June 2016.
- 7.4 In respect of Deliverable 4, payment reconciliation and real time reconciliation process, SASSA would require a two year extended period and need to liaise with a banking partner in respect hereof. The reason for this delay is as follows:
- 7.4.1 SASSA, as yet, does not have the required infrastructure, and will need a further two years, from March 2017, to build same up. In the interim, SASSA would need a bank to back it up from a processing point of view. Payment reconciliation etc would be performed by this banking partner, with SASSA having

access to the information in real time. The payment infrastructure will however remain with the bank whilst SASSA builds its own infrastructure.

7.4.2 In this regard SASSA will be advertising a tender for a bank to perform the banking partner functions whilst SASSA is building its own system.

7.5 Deliverable 5, payment infrastructure, is linked to deliverable 4. SASSA is in the process of putting its own process in place, but foresees certain delays as highlighted in 7.4 above.

7.6 Deliverable 6 relates to cash distribution and security thereof. These services will be outsourced (as indicated in the report to the Constitutional Court) and all timeframes in respect of this deliverable is still on track.

7.7 Lastly, in respect of Deliverable 7, being card issuance and special bank accounts, SASSA indicated that the migration of BIN numbers might impact negatively on the proposed timeframes relating to delivery. This might necessitate CPS having to stay on as provider for a limited time period (estimated at approximately 6 months) until such time as this is streamlined. This further ties in with the deliverable in sub 3 above namely payment processing on control unit. The next SASSA meeting with the SARB might

provide more guidelines herein. The relevant considerations are the following:

- 7.7.1 Cards expire when the CPS contract expires. SASSA plans on issuing new cards in January 2017.
- 7.7.2 Whichever bank gets the two year contract will have to work with CPS during a phase-in, phase-out period. SASSA expects glitches during this time.
- 7.7.3 This may necessitate CPS being “in the background” for approximately six months from April 2017.
- 7.7.4 If CPS is required to stay on as a safety net, SASSA would need to request the SARB to extend the BIN numbers pertaining to the current cards.

QUESTIONS TO BE ANSWERED

8. We have been requested to advise on a number of issues flowing from the report filed with the Constitutional Court on 15 November 2015 and the current status of deliverables as dealt with above, most notably:

- 8.1 Whether SASSA will be in contempt of Court if it does not itself take over in full the payment of social grants upon expiry of the current agreement with CPS.

- 8.2 Whether the Constitutional Court can be approached, notwithstanding the fact that the Court discharged its own supervisory jurisdiction over the matter, and be informed of SASSA's unreadiness to take over the function of paying all social grants by the end of the CPS agreement, and whether SASSA should request leave to have this assignment deferred to a specific date in 2019. During the transitional period the services of CPS will still be utilised.
- 8.3 Whether SASSA will find itself in contempt of Court if it extends its current agreement with CPS pending SASSA taking over in full the social grant payment functions.
9. In our view SASSA will not be acting in contempt of the Constitutional Court Order if it does not take over the payment of social grant functions by the end of the contract with CPS. The reason for this view is that the Court did not order SASSA to take over the payment functions itself. SASSA's failing to do so, is therefore not in breach of a provision in a court order ordering it to do so.
10. Similarly, extending CPS's tenure to facilitate a phase-in, phase-out process will not leave SASSA in contempt of Court. The reason for this is that SASSA was not ordered or interdicted by way of court order from further contracting or working with CPS.

11. We are however of the view that the Court will have to be informed of the change in status pertaining to project deliverables as well as the possibility of CPS' tenure being extended. The reason for this is that the very basis upon which the Court discharged its supervisory jurisdiction, namely the SASSA report dated 15 November 2015 in which the Court was expressly informed that SASSA was on track to, upon expiry of the CPS agreement, itself take over all the payment functions, has now materially shifted. Further, SASSA has throughout legal proceedings indicated by way of affidavit that it will, itself, take over the payment of all social grants in 2017.
12. The Court will be especially sensitive, in our view, to the continued involvement of CPS.
13. Our concern is that the impression may be created that SASSA has, all along, been pulling the wool over the Court's eyes. To prevent this impression from being created, our suggestion is that the change in proposed time frames relating to deliverables be coupled to the new information emerging from the meeting with SARB pertaining to BIN numbers.
14. The way forward:
 - 14.1 SASSA is to liaise with the SARB in respect of the BIN number issue. Whatever transpires at such a meeting, can form the basis

of an approach the Court in order to inform the Court of the change in circumstances, and the varied time frames in respect of Deliverables 4 and 7.

- 14.2 The most prudent approach, in dealing with the Court, will in all likelihood be to approach the Court, on notice of motion supported by affidavit, for directions as to whether the Court wishes to resume its supervisory jurisdiction in respect of the matter in light of the new developments and adjusted time frames.

15. We await your further instructions.

Nazeer Cassim SC

Mias Mostert

Chambers

Sandton