



4 September 2017

Compliance Advisor/ Ombudsman (CAO)
International Finance Corporation (IFC)
2121 Pennsylvania Avenue NW
Washington, DC

Per email: cao-compliance@ifc.org

Dear Sir / Madam

Complaint: IFC \$107 million Investment in Net1 UEPS Technologies Inc.

1. We refer to the above matter which relates to the [investment](#) of \$107 million by the IFC in Net1 UEPS Technologies Inc. ("Net1").
2. Corruption Watch, The Black Sash and Equal Education file this complaint as interested and affected parties as well as in the public interest in respect of the investment. All three organisations are South African non-profit organisations, which have at the core of their work, a commitment to social justice, accountability and transparency, as well as the realisation of human rights for all those who live in South Africa.
 - 2.1. Corruption Watch is a non-profit civil society organisation. As an accredited Transparency International Chapter in South Africa, our mandate is the promotion of transparency and accountability within the private and public sector with the aim of ensuring that corruption is addressed and reduced through the promotion and protection of democracy, rule of law and good governance.
 - 2.2. Equal Education is a membership-based organisation, including learner and parent members across 5 provinces in South Africa, many of whom are also affected by the unlawful and unethical conduct of Net1's subsidiaries.

- 2.3. The Black Sash works with social grant beneficiaries directly affected by the unauthorised, fraudulent and unlawful deductions by Net1's subsidiaries, some of whom have authorised the bringing of this complaint in their interest and in the broader public interest.
3. We request the CAO, in terms of section 4 of the CAO Operational Guidelines to conduct a compliance appraisal and investigation into the circumstances under which the International Finance Corporation (IFC), a member of the World Bank Group, and funds managed by IFC Asset Management Company (AMC), made a combined equity [investment](#) of \$107 million in Net1 UEPS Technologies Inc.
4. We submit that this investment, as more fully explained below, was made despite the existence of overwhelming evidence of unlawful and unethical practices involving Net1 subsidiaries. Our reference to Net1 as reflected in Net1's company [organogram](#) include reference to Cash Paymaster Services (Pty) Ltd ("CPS") and its subsidiaries as well as all other Net1 subsidiaries which offer and provide financial services and financial products to those living in South Africa.

Background

5. In 2012, the South African Social Security Agency ("SASSA") awarded a tender for the payment of social grants to Net1 subsidiary, CPS for a period of five years. The tender was [declared unlawful and invalid](#) and set aside by the Constitutional Court of South Africa in 2013, however the Court ordered CPS to continue to distribute social grants until the expiry of the five year period, in order to provide SASSA the opportunity to find a new grants payment provider or take over the payments itself.
6. It is important to note that while CPS provides social grants to beneficiaries, other Net1 subsidiaries have access to the confidential information of grant beneficiaries. These Net1 subsidiaries, which have access to such information, in turn offer and provide financial products to grant beneficiaries.
7. Both prior to and after the award of the unlawful contract, several difficulties arose in relation to the conduct of CPS as well as other Net1 subsidiaries operating in South Africa. As will be more fully described below, these relate to:

- 7.1. Unauthorised and fraudulent deductions from the social grants of beneficiaries to the benefit of Net1 subsidiaries as well as unlawful and unethical use of social grant beneficiary data and information;
 - 7.2. Persistent allegations of corruption and other unethical business practices concerning CPS and other Net1 beneficiaries;
 - 7.3. Findings by the Constitutional Court of South Africa implicating Net1 subsidiaries in unethical business practices;
 - 7.4. A legal challenge by Corruption Watch to a decision taken by a state entity in relation to and involving CPS, a Net1 subsidiary;
8. The above issues were widely known both in South Africa and in other jurisdictions prior to the IFC's investment however the IFC nevertheless proceeded with its \$107 million investment in Net1 in April 2016. We regard this investment as contradictory to and in breach of several provisions of the IFC Policy on Environment and Social Sustainability (["Policy"](#)). In particular, paragraph 12 of this policy states that:

"the IFC recognises the responsibility of business to respect human rights, independently of the state duties to respect, protect, and fulfil human rights. This responsibility means to avoid infringing on the human rights of others and to address adverse human rights impacts business may cause or contribute to... consistent with this responsibility, IFC undertakes due diligence of the level and quality of the risks and impacts identification process carried out by its clients against the requirements of the Performance Standards, informed by country, sector, and sponsor knowledge."

9. A summary of our concerns are dealt with under four headings below in order to illustrate the lack of due diligence by the IFC in investing in Net1 as well as a failure to ensure that sufficient measures were put in place monitor the conduct of Net1.

Financial Inclusion vs Negative Impact on Social Grant Beneficiaries

10. In announcing its investment, the IFC explained its goals in respect of financial inclusion stating that:

"IFC promotes financial citizenship to the world's poorest by backing innovative companies that have proven, scalable and sustainable business models and suitable technology solutions with the intent to reach millions of previously excluded customers."

11. Former CEO of Net1, Serge Belamant was cited in the same announcement as saying:

“We are proud to have been recognised by the IFC as a company that makes a difference to the life style of millions of the most vulnerable...the investment endorses our management’s integrity, transparency and focused drive towards making a positive difference to the disadvantaged citizens of the world.”

12. These were the sentiments of the IFC and CPS despite awareness of significant public outrage over unauthorised and fraudulent deductions from grant beneficiary bank accounts and the unlawful use of beneficiary data for the marketing of financial services by Net1 subsidiaries. In fact, in February 2016, prior to the investment being made, the [extensive advocacy efforts](#) of The Black Sash and others dating as far back as 2013, led the Department of Social Development to issue [Regulations](#) aimed at preventing unauthorised, fraudulent and unlawful deductions from social grants. These draft Regulations as well as [previous statements](#) by the Minister of Social Development should have raised alarm bells in respect of the conduct of CPS especially given that it was the only social grants payment provider in the country with unfettered access to beneficiaries and their personal information. In this regard, on 11 September 2014, the Minister stated the following:

“In my Budget Vote speech to Parliament in July this year, I indicated that I had received many complaints from beneficiaries about deductions that they had not authorised. These include loan repayments, prescribed debt, multiple funeral schemes, advance electricity and airtime, often without their knowledge or consent. Our investigation found cases of multiple deductions involving Old Age Grant. In one case, a beneficiary’s account was debited for “airtime” by different network companies...”

“Since 2012 when the contract to pay social grants, was awarded to Cash Paymaster Services (CPS), a wholly owned NET 1 subsidiary, the rate of debit deductions from grant beneficiaries appeared to increase significantly. These deductions were made from SASSA-branded Grindrod bank accounts into which the social grants are paid.”

13. Detailed examples of the unlawful and unethical use of beneficiary data and information as well as unauthorised, fraudulent and unlawful deductions, which should have been known to the IFC prior to making its investment appear as annexures to this complaint.

14. According to the Black Sash, a number of grant beneficiaries whom they work with experience the following:

- 14.1. when they seek out a loan from Net1 subsidiaries, they are forced to open an Easy Pay Everywhere (“EPE”) bank account and obtain an EPE bank card which results in the value of their social grants being diminished by additional bank charges. In this regard,

Annexure “C” records the experiences of four individuals from the Gauteng Province and Annexure “D” records the experience of an individual living in the Western Cape.

14.2. they are forced to sign up for Smartlife funeral policies and there is often more than one deduction for funeral policies. This is in violation of the Social Assistance Act 13 of 2004 which only allows one (1) deduction per grant for a funeral policy up to a total value of 10% of the social grant. In this regard, confidential data of grant beneficiaries are shared between CPS and various other Net1 subsidiaries, including Moneyline, Manje Mobile and Smartlife. Furthermore, deductions for funeral policies from child grants and temporary grants are prohibited but deductions from these grants do occur. Annexures “A” - “F” all detail various aspects of practices in relation to deductions for funeral policies.

14.3. More than one loan is granted in respect of a single bank account, often without any affordability tests being conducted, resulting in reckless lending to grant beneficiaries. This has resulted in long term indebtedness for many grant beneficiaries, causing widespread food insecurity for grant beneficiaries. These practices may also amount to reckless lending in terms of sections 80 and 81 of the National Credit Act 34 of 2005. Annexure “D” records the experience of an individual living in the Western Cape.

14.4. Grant beneficiaries struggle to obtain bank statements for their EPE bank account, and are therefore unable to monitor their account activity; find it difficult to obtain assistance with complaints about unauthorised and fraudulent deductions and to close their bank accounts or make contact in relation to general enquiries and complaints. Annexures “A” to “D” represent particular experiences of beneficiaries. In this regard:

14.4.1.1. there are no accessible walk-in centres despite promises by Net1 subsidiaries that there would be EPE branches;

14.4.1.2. the call centres are inaccessible as call centre operators do not respond timeously and grant beneficiaries have to make calls at their own cost;

14.5. Clauses in the terms and conditions for the EPE bank account violate the right of social grant beneficiaries to receive social assistance with dignity and in a manner which is free from intimidation by armed security guards and staff. All annexures reflect these circumstances with Annexure “E” representing particular incidents in respect of intimidation.

15. According to Equal Education, learners and parents from schools across South Africa face similar difficulties in relation to their SASSA grants. Equal Education may be contacted directly for information relating to these difficulties.
16. It is submitted that the IFC should have known, prior to having made its investment that Net 1 was conducting business in South Africa in an unethical manner and that some of its business practices were alleged to have been unlawful and in violation of beneficiary rights to privacy and dignity.
17. A recent example, which points to the conduct of a Net1 subsidiary, is the finding of the Constitutional Court in the matter of the [Black Sash v Minister of Social Development and Others](#). This finding was made after the investment in April 2016 but remains relevant because of the IFC's commitment to monitoring and supervising the business activities it finances.
18. This matter primarily concerned SASSA's duty to ensure the uninterrupted provision of social grants beyond the expiry of the five year period for which CPS distributed social grants, however The Black Sash made additional submissions on the necessity for SASSA to safeguard the personal privacy, dignity and autonomy of grant beneficiaries. These submissions were made because of the unethical and potentially unlawful manner in which social grant beneficiary information was being used by Net1 subsidiaries. The Court, in recognition of these unethical practices, declared CPS' sharing of grant beneficiaries' confidential data with other Net1 subsidiaries to be unlawful. The following order was made:

“6 SASSA and CPS are directed to ensure payment of social grants to grant beneficiaries from 1 April 2017, for a period of 12 months, on the same terms and conditions as those in the current contract between them that will expire on 31 March 2017, subject to these further conditions:

“6.1 The terms and conditions shall:

- (a) Contain adequate safeguards to ensure that personal data obtained in the payment process remains private and may not be used for any other purpose other than payment of the grants or any other purpose sanctioned by the Minister in terms of section 20(3) and (4) of the Social Assistance Act 13 of 2004; and*
- (b) Preclude anyone from inviting beneficiaries to “opt-in” to the sharing of confidential information for the marketing of goods and services.”*

19. Another recent example of unethical and unlawful conduct relates to, Smart Life Insurance Company Limited, another subsidiary of Net 1 (“Smart Life” and “FSB”). We confirm that on 24 June 2017, Smart Life was [fined](#) R150 000 by the Financial Services Board (FSB) for not notifying policyholders of their rights when claims were rejected.

Allegations of Corruption

20. In 2012, the amaBhungane Centre for Investigative Journalism [reported](#) that a member of SASSA's Bid Adjudication Committee (BAC), for a social grants tender, was approached by an individual claiming to represent CPS, in order to offer him an "open chequebook bribe" for the tender relating to the distribution of social grants.
21. In this regard, SASSA issued its first tender for the distribution of social grants in 2008 under Tender No. 19/06/BS. This tender was later [cancelled](#) by SASSA.
22. The Chairperson of the BAC, senior advocate, Norman Arendse said that he had been approached by a representative of CPS who indicated that "*he did work and lobbying for CPS, that they have got lots of money and he has got access, a chequebook and authority to issue a cheque.*" These allegations have never been investigated however; they should have raised significant red flags in relation to the potential involvement of CPS. This should have prompted the IFC to conduct its own investigation, including interviews with those who made the serious allegations.
23. In July 2016, after the investment had been made, the statement of [Advocate Norman](#) Arendse and the confirmatory statement of his [secretary](#) were made public. We reiterate that these statements and the allegations therein should have been followed up by the IFC as part of ongoing monitoring and supervision of Net1 subsidiaries.

Constitutional Court Findings

24. As already indicated, SASSA awarded the contract for the distribution of social grants to CPS in 2012 and the Constitutional Court [declared](#) the award of the tender to CPS to be constitutionally invalid in December 2013.
25. The Court found that there were material irregularities relating to SASSA's adjudication of the tender but also found that CPS did not provide sufficient information to SASSA for purposes of determining CPS Black Economic Empowerment credentials. The Court found in paragraph 69 of its judgment that:

"Cash Paymaster claimed that its equity partner would manage and execute over 74% of the tender. Its tender did not substantiate this. All it did was to provide particulars of the

management capabilities of its workforce, which included previously disadvantaged people. On the face of the information provided by Cash Paymaster in its tender, it was not possible to determine whether its claimed empowerment credentials were up to scratch or not.”

26. It is clear from the Court’s finding that CPS did not provide adequate information to SASSA for purposes of adjudicating the award of the tender. The extent of CPS role was the subject of a criminal investigation by the US Department of Justice as evident from US Security and Exchange Commission (SEC) filings made by Net1 on [4](#) and [5](#) December 2012. In the SEC filing dated 4 December 2012, Net1 states the following:

“On November 30, 2012, we received On November 30, 2012, we received a letter from the U.S. Department of Justice, Criminal Division (the “DOJ”) informing us that the DOJ and the Federal Bureau of Investigation have begun an investigation into whether Net 1 UEPS Technologies, Inc. and its subsidiaries, including their officers, directors, employees, and agents (collectively, “Net 1”) and other persons and entities possibly affiliated with Net 1 violated provisions of the Foreign Corrupt Practices Act and other U.S. federal criminal laws by engaging in a scheme to make corrupt payments to officials of the Government of South Africa in connection with securing a contract with the South African Social Security Agency to provide social welfare and benefits payments and also engaged in violations of the federal securities laws in connection with statements made by Net 1 in its SEC filings regarding this contract. On the same date, we received a letter from the Division of Enforcement of the Securities and Exchange Commission (the “SEC”) advising us that it is also conducting an investigation concerning our company. The SEC letter states that the investigation is a non-public, fact-finding inquiry.”

27. In addition, judgment on the remedy arising from the Court’s order in *AllPay 1* is contained in *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (No 2)* [2014] ZACC 12 (*AllPay 2*). In this [judgment](#), CPS was ordered by the Court to continue to make social grant payments with the caveat that any profits made from 2014 onwards, would be subjected to the scrutiny of the Constitutional Court. It was found in paragraph 67 of the judgment that

“It is true that any invalidation of the existing contract as a result of the invalid tender should not result in any loss to Cash Paymaster. The converse, however, is also true. It has no right to benefit from an unlawful contract. And any benefit that it may derive should not be beyond public scrutiny...”

28. In light of its finding, the Court ordered that CPS file an audited statement of expenses incurred, the income received and the net profit earned under the completed contract. It was clear then, at the time the IFC made its investment, that there was a risk of CPS being ordered to pay back a portion of its profits.

29. In March 2015, Corruption Watch approached the High Court for an order setting aside the decision of the CEO of SASSA to pay CPS, an amount of R317-million for the “re-registration” of beneficiaries without following prescribed supply chain management procedures. In this regard, Corruption Watch submitted that the decision to pay the amount should be declared unlawful and set aside in which case, CPS should be ordered to pay back the R317 million.
30. It is important to note that SASSA and the CEO of SASSA are no longer defending Corruption Watch’s application and that CPS is the only remaining respondent in the matter, which is set down for hearing on 6 November 2017.

Conclusion

31. It is quite clear that evidence of unethical and potentially unlawful conduct by CPS existed at the time at which the IFC made its investment and that there were several pieces of pending litigation involving CPS. The decision of the IFC to make the investment in spite of such overwhelming evidence of impropriety and potentially unlawful conduct calls into question all due diligence measures taken by the IFC at the time.
32. It also does not appear that the IFC have taken sufficient steps to supervise and monitor the conduct of Net1 and its subsidiaries or to ensure that such conduct is addressed and rectified.
33. We therefore request the CAO to conduct a compliance appraisal and investigation into the IFC’s investment into Net1.

Yours sincerely;

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Corruption Watch

Lynette Maart
The Black Sash

Yoni Bass
Equal Education