

Unpacking Employee Share Ownership Plans ESOPs

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1. Introduction

Globally, the empowerment of historically disadvantaged groups, economically, is not uncommon. As such preferential policies geared towards transformation have been a common feature especially towards advancement of historically disadvantaged groups. One such empowerment policy has been that of Employee Share Ownership Plans (ESOPs). Globally, employee empowerment schemes are considered to be part of many public and private companies and despite the availability in various forms of employee ownership programs, ESOPs have proven to be met with much success in comparison. ESOPs have been implemented successfully by many international companies in many different sectors. Construction companies, banks, insurance companies, textile manufacturers, architectural firms, health care providers, hotels and resorts and many other industries have successfully employed ESOPs, (Rosen et al 2005). Despite the availability of many empowerment schemes, ESOPs have received the most universal acceptance and support. However, despite their perceived success in terms of acceptance, how ESOPs have fared internationally has been highly dependent on mainly the various company and country circumstances and as such offer varying accounts of success.

An ESOP is a retirement plan where investments are made primarily in the employers stock, (Pension Rights Centre 2016). However it can also serve as a tax-advantaged management buy-out and ownership transition vehicle, (Butcher *et al* 2012). An ESOP is aimed at keeping the interest of the employees within the company as well as the company's shareholders. Through it, the company as well as the participants get tax benefits. An ESOP is an empowerment tool that can be adapted and designed to achieve the goals of companies, employees and governments. An ESOP is an instrument used to enable employee ownership in private and public companies. An ESOP is also considered to be a retirement plan where investments are made primarily in the employers stock, (Pension Rights Centre 2016). With ESOPs, employees can either purchase shares decided by the employer or the employer can purchase shares on behalf of the employees. These can be purchased on a loan or awarded loan free depending on the employer. Upon vesting period the loan will have to be repaid first before allocating dividends to employees.

The history of the inception of ESOPs traces the creation of the first ESOP to 1957 but states that they only started gaining traction in 1974 with a steady rise in the number of businesses sponsoring

ESOPs in the 1980s, (Reference for Business 2018). The tax advantages that have been aforementioned played a significant role in making ESOPs attractive for business owners. The recession of the 1990s contributed to a decline again in ESOPs but they have since gained more traction since then. One reason for steady growth of ESOPs is in part due to their competitive advantage because they encourage productivity and loyalty within employees.

ESOPs are implemented for a variety of reasons, including broadening ownership, enhancing company performance, and facilitating privatization in previously state owned entities and carrying other reform measures as well as raising money for corporate purposes (Gates and Saghir 1995). A company is required to show a profit of at least three years prior to the implementation of an ESOP. This is due mainly to the fact that in some instances the growth of ESOPs, despite their popularity, is limited owing to the fact that they are expensive to establish and administer, (Reference for Business 2018). If the value of shares increases or more shares are allocated to the employee then this leads to growth of the ESOP account. Alternatively resulting to a lower value of the ESOP account is if the value of the shares decrease or there is an end to any further share allocation. These are ways in which an ESOP account can either increase or decrease in value.

At the core of ESOPs is the idea that workers ought to own a stake in the company they work for. When workers have a stake in the company, their interests are aligned with that of the business and this implies that the employee will take more responsibility for the success of the business. “Companies are likely to support ESOP initiatives if ESOPs are good for business. For any responsible corporate citizen, something will be good for business if it’s good for the entity itself, good for employees and good for shareholders,” (Nomafu 2012).

Moreover, an ESOP can be part of an employee benefits package or a corporate financing strategy. Various companies choose a particular set of employees to be part of the ESOP scheme. In some companies it can be all employees and in others it can be key personnel employees. The share allocation per employee also differs ranging at anything from one percent to 100 percent, (Phillips and Jensen 2015). The logic behind turning employers into owners is anticipated to foster a spirit of hard work resulting in increased productivity for the company.

Whilst the general perception of ESOPs is deemed to be positive, they however cannot be implemented in isolation as they require a combination of factors in order for them to be successful. The advantages of ESOPs, given successful implementation, are considered to be many for the workers and the company itself. Noteworthy is that, despite ESOPs having been popularised as far

back as 1974, they are still not as widely understood by many companies making them far more complex and as such should be approached with caution, (Carberry 1996).

1.1 ESOPs in South Africa's Mining Context

South Africa has a well-documented history of worker exploitation and marginalisation and this has resulted in the uneven distribution of wealth. As such various transformational policies have been adopted that have been aimed at including those that were excluded from participating in the mainstream economy. With its economy plagued by many ills, the South African government is still tasked with the fulfilment of its developmental goals for its people. Part of its initiatives is to implement transformative policies that are intended to elevate Historically Disadvantaged South Africans (HDSA's).

The mining sector in South Africa has a long history of worker exploitation stretching from the 1900s when the first minerals were found in the Witwatersrand. One of the commitments of the post-apartheid South Africa was to put an end to the exploitation of workers in the sector and ensuring that the mining sector in the country was transformed to reflect the demographic characteristics of the country. "Through various legislative instruments, the SA government has endeavoured to reconstruct the economy to better reflect South African society, and to eradicate some of SA's social ills," (Diale 2016). The post-apartheid government took the legislative route to address the mining sector imbalances through promulgation of the Mineral and Petroleum Resources Development Act of 2002 (MPRDA of 2002), as the broad legislation to drive the sector transformation.

The MPRDA gave powers to the minister to introduce specific policies to operationalise the intentions and objectives of the Act. Notable objectives of the Act include equitable access of minerals and petroleum to all people of South Africa. It further seeks to substantially and meaningfully expand opportunities for HDSA's with the inclusion of women to enter and benefit from mineral and petroleum resources, (Government Gazette 2002).

Originating from the MPRDA was the Mining Charter which was intended for use by the government to carry out the objectives of transformation. The Mining charter, after much revision was then put into effect in 2004 with mining charter two and three put in to effect in 2010 and 2018 respectively. Despite revisions in 2009 and 2015, there are notable objects of the charter which are worth mentioning from the Government Gazette (2018:12) and they are but are not limited to:

The recognition of the concept of sovereignty which allows the country to exercise authority and law within its boundaries, over the life of the country, including its mineral wealth.

- The deracialising of ownership patterns in the mining industry through redress of past imbalances and injustices.
- To substantially and meaningfully expand opportunities of HDSA's to enter the mining and minerals industry and to benefit from exploitation of the nation's mineral resources.
- To utilise and expand the existing skills base for the empowerment of Historically Disadvantaged Persons.
- To promote sustainable growth and competitiveness of the mining industry.

A key element of the charter most central to this research is that of ownership which is anticipated to give meaningful economic participation and integration into the mainstream economy to HDSA's. The element of ownership is addressed through legislation pertaining to Black Economic Empowerment (BEE). In the first mining charter, there was a stipulated 26% BEE requirement. And though there was no percentage allocated to ESOPs, they were a feature in the charter in the 26%, and their key objective was to encourage worker ownership through allocation of shares which were to be held in trusts.

A revised Broad-Based Socio-Economic Empowerment (BBSEE) was again published in 2010. Despite some levels of compliance with the first charter, more was needed to be done to fast-track transformation intended by the charter through meaningful ownership of the country's mineral wealth. This new revised charter addressed the issue of ownership once more stipulating BEE at 26% once more with 5% of that 26% being allocated equitably to employees in the form of ESOPs, (Government Gazette 2010).

Given their complicated nature and varying levels of success it is arguable that ESOPs have not been adequately explored especially in South Africa's mining context. There have been various criticisms pertaining to progress made by mining companies in yielding meaningful benefits that are of value and contribute towards wealth for employees. Many ESOPs that have been implemented have failed to meet stakeholders' expectations. In addition, they are drafted in complicated and often difficult language that is not easy for workers to easily access and understand to their benefit. "These ESOPs are inconsistent, complicated and mostly opaque to employees; whilst delivering modest returns to employees," (Diale 2016:7).

However, despite this, another arising argument is that ESOPs are considered as a fairer way of implementing BEE, as it relates to ownership of capital. As an experienced, former executive at Anglo and one of the original proponents of BEE, Sunter believes ESOPs are a better alternative to the BEE deals that have been concluded. These deals he proclaims, make a few well-connected individuals wealthy whilst not being sure of the value addition these individuals make to the company as passive investors. Often their knowledge of the industry is rather limited, (Sunter 2012).

The reasons advanced for the adoption of ESOPs in other parts of the world are to varying degrees relevant to circumstances currently prevailing in South Africa. In fact there are added reasons why, in South Africa, the encouragement of employee share ownership have an even greater significance. Firstly there is concern, which has been voiced by numerous public authorities and others, about the high degree of concentration in the South African economy and about the importance of taking steps to encourage de-concentration. Secondly, and closely linked to the foregoing factor, there is a desire to democratise, to a greater extent, the ownership of assets, which entails the spreading of ownership among a greater number of individual shareholders in the private sector. Thirdly, there is the desire to promote employee economic empowerment.

For the mere fact that, to date, Kumba Iron Ore's Envision ESOP is still cited as the mining industries most successful go to ESOP is problematic given the number of mining companies in South Africa. In 2011 more than 6 000 non-management employees received 3% of Kumba's equity which was around R2.6bn after their five year vesting period. Each of the 6 000 employees received over R500 000 each in pre-tax dividend pay-outs, (SAIIA 2016). In another instance, more than 9,600 below-management employees of Exxaro each received dividends of R135,000 at the end of the five-year vesting period in 2011 (SAIIA 2016).

A drastic move to instituting ESOPs marks a significant departure from previous versions of the charter that imposed no specific obligations on companies to include ESOPs in BEE transactions. The public narrative has been critical of BEE for disproportionately benefiting a small elite, despite the ostensible shift towards broad-based BEE. The insistence on ESOPs seems to be a direct response to this concern, and thus represents a step towards more broad-based reforms in conventional empowerment models (SAIIA, 2016). Though some ESOP deals pay out dividends continuously, these are too modest to effect any tangible change and create any form of substantial wealth. However, the majority of the deals in the mining industry have been problematic in that,

whilst ESOPs are geared towards ownership, most of the participants are merely just beneficiaries and an ownership culture is barely encouraged.

2. Types and Structures of ESOPs

ESOPs come in different forms but in most cases there is no upfront amount paid by employees in order to gain shares. The shares allocated to employees are kept within a trust for both safety and growth purposes until the employee retires or takes a decision to resign. In some instances, employees can also choose to, after vesting period, either sell their shares or continue to manage them personally outside of the trust. For workers who are not well informed on ESOPs this may prove challenging and costly as they now have to manage the shares on their own.

2.1 Types of ESOPs

Technically ESOPs are considered a formal stock equity plan which offers employees the chance and option to buy stock. Phillips and Jensen (2015) thus extensively distinguish between three common types of ESOPs; stock equity, stock options and phantom stock.

The different types of ESOPs include 1) stock equity where ownership of a share of stock is legally transferred to an employee by a company and this may come with or without additional rights, i.e. voting in meetings, especially shareholder's meetings. The additional rights however are not compulsory and may differ from company to company. Employees are required to pay for a stock and take investment risks within the company just as the original owners would. Due to the fact that the employee has to pay for the stock, a culture of ownership is thus strongest in stock equity type ownership as the employee already is taking a risk. This places to some extent the initial owners and the new employee owners who have just purchased stock on a similar level.

The second type of ESOP is the 2) stock options and in this type of ESOP, the company and the employee come to a contractual agreement to sell shares to the employee in the future at a price agreed upon in the present day. Should a company's share value increase, the employee stands at a gain. However, if a company's share value goes down, the employee does not stand to lose anything since he or she does not take the option of stock purchase. While stock options may encourage the acquiring of ownership, it does present itself as an effective means of actually having the ownership.

3) Phantom stock also form part of the types of ESOP. This stock reflects a real stock equity accompanied with certain rights besides the voting rights. However, there is no legal transfer of ownership in Phantom

stock and this means that employees have no true ownership of the company's assets. Phantom stock is usually used by ownership groups that are not willing to transfer real equity ownership to employees and do not want employees to take part in voting. In the event where the company displays reluctance to transfer real equity ownership to its employees because they do not want them to have votes, phantom stocks are used. Due to the term phantom implying 'non-existent' many phantom plans are termed participation or value-added plans or anything equivalent.

2.2 How ESOPS Are Structured

The above literature has highlighted the complex nature of ESOPs given their often technical nature however, should an ESOP be properly structured, the employer, employees and the company are likely to derive monumental wealth from it. Due to the various ESOPs schemes available, ESOPs can be structured in many ways. Most companies usually create a trust for employees which then becomes the holding structure of the ESOP. The company will either subsidise in part or whole the purchase of shares for employees or will directly contribute shares to the plan. In other instances, the trust is used to borrow money for the purchase of shares.

Key to developing an ESOP is the assessment of its feasibility and Butcher et al (2012) highlight five steps that a business owner needs to heed:

- Firstly, a business owner is to scrutinise the financial impact of the ESOP on themselves personally.
- Secondly is a step often not heeded, which is, the establishment of an appropriate corporate governance structure. This should highlight how the business will operate once it has transitioned into an ESOP.
- Another commonly missed step is the mapping out of the structure from a financial, benefit and a corporate cash flow standpoint.
- Fourth is the structuring of the ESOP transaction in such a manner that it works within the estate planning structure of the business owner.
- Lastly, once these above steps have been taken then the structure can be presented to the bank and the ESOP trustee.

Once the company has undergone the above steps pertaining to feasibility, they would have decided during that process, in which way to structure the ESOP. There are two basic types of ESOPs structures; leveraged and non-leveraged. In a leveraged ESOP, the company will first create a trust to establish the ESOP. The bank then lends money to the ESOP trust so it can

purchase company stock or shares. In the event that there are existing shareholders, the company can purchase stock from them as well. The company then makes tax deductible contributions to the ESOP which in turn pays the bank. Thereafter employees receive stock or cash when they leave the company or retire, (The ESOP Association n.d.). Some stocks are put in a trust and have a vesting period attached to them. Beneficiaries then receive a cash pay-out upon vesting period. They then have the option of keeping the shares or selling them back to the company. Diale (2016:26) notes that usually employees are exempt from paying taxes on their contributions until they receive shares or proceeds from the ESOP. It is upon sale of shares or should they leave or retire that they then become liable for tax. It is the tax incentives that make borrowing through an ESOP attractive to most companies as financing costs can be cut. However it is still noteworthy that ESOPs are still quite expensive to finance which is why these tax breaks are favourable.

With a non-leveraged ESOP, it is the company that contributes stock or cash to the ESOP to purchase the stock. Here employees normally do not pay anything and the company continuously notifies them of how much stock they own and its worth. The employees then receive stock or cash upon retirement or when they leave depending on the company's vesting schedule, (The ESOP association n.d.). Similarly as with a leveraged ESOP, the employee has the option to sell their shares to the company or keep them should they wish.

Despite the above most common types and structures of ESOPs, there are various other ways in which to structure them and each model is dependent on the goals that the company seeks to achieve. According to Hunt (2013), companies introduce ESOPs to increase their productivity for higher quality returns or to get a labour force that is more responsive. Lower operating costs and increased dividend flows are some of these reasons.

Diale (2016:37-41) lists these ESOP models as; Share Appreciation Rights, Share Performance Plans, Forfeitable Share Plans, Deferred Annual Bonus Plans and Broad-Based Share Ownership Plans. The latter is noteworthy because it serves, amongst other purposes, as a regulatory measure. Within South Africa's mining context, companies are required to afford 5% to employees in the form of ESOPs as part of their regulatory framework in ensuring HDSA's ownership. This provision is per mining charter two.

As Postlethwaite et al. (2005) established, those ESOPs that have prospered combine three critical factors that ensured the success of the scheme. These comprise financial incentives, employee-involvement mechanisms, and the instilling of a culture of ownership. Most companies with employee share-ownership schemes already possess these attributes as single entities. The best

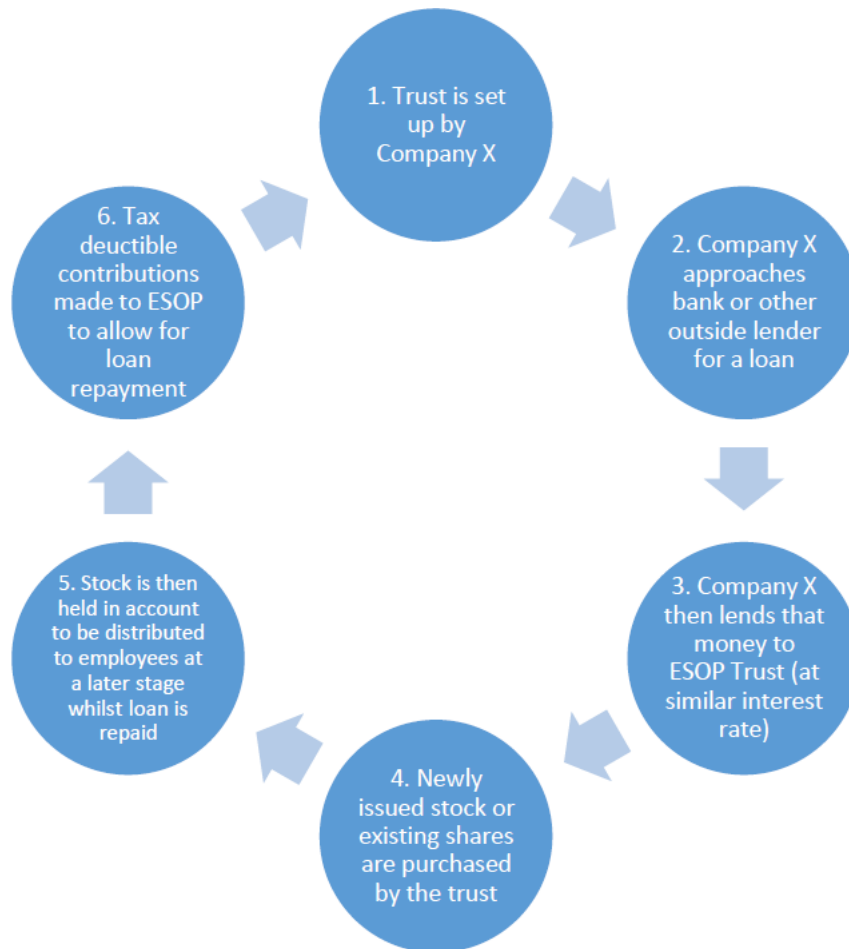
results are achieved through the combination of all three virtues. Where the company is completely owned by employees these attributes exist (Postlethwaite et al, 2005).

3. Financing ESOPs

Having distinguished from the different types and structures of ESOPs above, the financing of an ESOP is closely linked to the manner in which the ESOP is structured. Due to their widespread popularity, ESOPs have attracted favourable financing options over the years. However despite these favourable financing terms, this does not make ESOPs financing in some instances any less complicated. In fact, even borrowers who are exploring financing options still have not grasped the ESOP concept fully.

What allows ESOPs as an ownership plan to stand out are the favourable tax advantages that are attached to them. ESOPs have become so widespread that in some countries governments have implemented funding programs specifically for ESOP transactions. In other instances companies experiencing failure are likely to opt for ESOPs as debt becomes easier to pay given the favourable financing options (Dealy 2013). In essence, worker ownership is increasingly being viewed as a tool aimed at reversing increasing economic inequality through fostering a culture of ownership amongst employees.

Most ESOPs are financed through conventional means, i.e. bank loans. Leveraged ESOPs are the most common type to follow this type of financing. With most ESOP schemes, the employees barely spend any money purchasing shares or stock as the company does it on their behalf. The company normally sets up an ESOP trust and then approaches the bank for a loan. They use that loan to purchase shares or stock from the company and put them into the trust. Often the company uses its assets as surety should the transaction not come to fruition. Upon vesting (depending on the vesting period), employers then pay back the loan and offer the remainder of benefits accrued to workers. Below is graphic representation of how leveraged ESOP financing works:



Figure

of how a Leveraged ESOP is financed, (Kelly et.al. 2016)

1. Basic Process

3.1. Other forms of financing ESOPs

Despite leveraged ESOPs being the most common ESOPs used, Kelly et.al (2016) offer more diverse financing options that are and can be used in ESOP transactions. Most of the ESOPs structures within SA mining either opt for evergreen schemes (where there is no vesting period) or leveraged ESOPs and finance the transaction as highlighted above. It is important to note that a variety of factors could lead to a transaction not accruing the desired benefits for employees. These factors include poor market conditions, a poorly financed deal, performance of both the company and the global economy as well as health and safety measures and future projections about the company.

When a company purchases stock using its own contributions, so as to avoid repaying a loan as with a leveraged ESOP, this is referred to as a non-leveraged ESOP. The company still sets up a trust but instead of seeking outside finance, they contribute their stock directly to the ESOP trust. At an agreed upon vesting period, or at retirement the proceeds are distributed amongst employees. Below is a graphic representation of how a non-leveraged ESOP is financed:

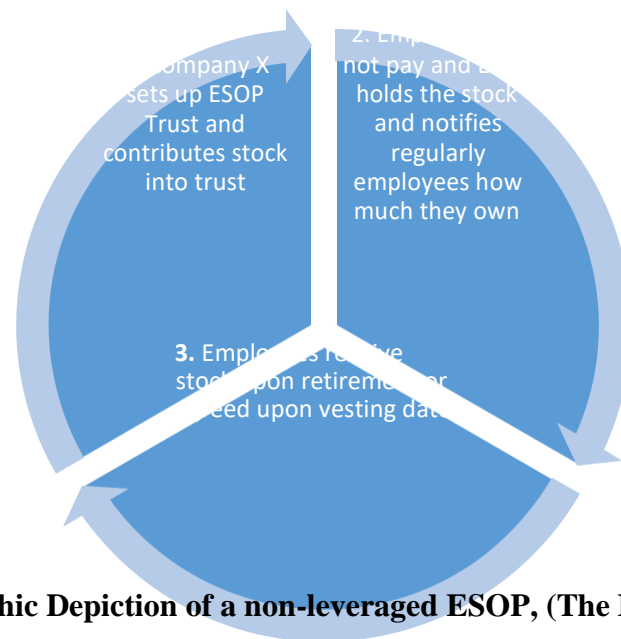


Figure 2. Graphic Depiction of a non-leveraged ESOP, (The ESOP Association n.d.)

Both leveraged and non-leveraged ESOP financing fall under traditional financing where depending on country circumstances, there are established ESOP lenders designed specifically for ESOP transactions. Another attractive form of ESOP financing is when the owners lend money from the business as opposed to taking a loan or in addition to a loan. This is known as seller financing whereby the owner, in the event of a successful transaction is able to enjoy the interest without having to worry about loan repayment. In the event that employers who want to encourage worker ownership are uncertain on how to finance their ESOP, there are firms that advise on the correct structuring and financing of ESOP transactions. The ESOP Association serves as a good guide in highlighting which organisations those are, this however is not available in all countries. Lastly a financing route through the bond market whereby ESOPs issue bonds to raise capital can be explored as a financing option, however it is not very popular, (Kelly 2016:8).

Given, these financing combinations can encounter challenges. ESOPs already require large sums of money meaning that, financing, regardless of the structure can prove problematic for those companies opting for worker ownership. Moreover ESOPs require administration and management fees which do not come cheap. For the company that chooses a leveraged transaction, generating enough money into the ESOP so as to make consistent contributions into the ESOP can prove difficult. With a leveraged ESOP, should the business not perform well, making loan repayments may prove difficult resulting in rather modest to no dividends at all for employees.

Seller financing also has its own issues which include price competition. The buyer, even if it is the owner still has to purchase shares at market value at a similar price they would be prepared to sell to other buyers. Also sellers looking to liquidate their assets by looking to sell immediately may find difficulty in securing the necessary finance timeously.

Lastly, how an ESOP is financed is closely related to the structure of an ESOP. If an ESOP transaction is not clearly aligned with the company's objectives and strategic goals then even an ideal financing plan may still not ensure success of the ESOP transaction.

4. ADVANTAGES AND CHALLENGES OF ESOPs

Despite being widely accepted and championed worldwide and in various companies, ESOPs are not without disadvantages in a similar way they have advantages. The main idea behind ESOPs is that they contribute positively to business performance and are good for productivity. Vast literature has also shown that in comparison, employee owned businesses seem to outperform non-employee owned businesses hence the logic behind the increasing preference for ESOPs. Various literature (Carberry 1996, Nomafu 2012, Butcher *et.al* 2012) concedes that ESOPs improve business performance as well as increase economic resilience and this is alluded to the commitment of employees who are now shareholders and drivers toward innovation.

This is not to say that ESOPs are not without challenges and these according to Christensen (2018) include but are not limited to; potential for dilution in the deals value, an additional cost to the company where a company may experience a cash flow drain and employees may be required to make cash flow sacrifices. However, given that each ESOP takes on a different structure, market factors may affect the ESOP either negatively or positively. This section will explore both the advantages and the challenges that have been experienced with ESOPs.

4.1. Advantages

Whilst the advantages of employee owned businesses are many this is not to say that all businesses experience these advantages as setting up an ESOP structure within a business can be complicated. The most echoed advantage for employee ownership is that it enhances business performance and productivity. This is because employees either purchase or are awarded shares by the employer within a company and then their increased stake in the business allows them to become more involved in the performance of the business. "Share ownership in particular has the most discernible impact on productivity and its impact increases when combined with other forms of pay," (Nomafu 2012). Such an incentive is said to stimulate an employee towards increased

productivity because when employees feel they are owners then they behave like owners. When they are made to feel like owners they become more aligned with organisational goals and values thus motivating them to contribute to not only the success of the company but personal well-being as well. This is because the more they produce the more they are rewarded, making ESOPs form part of an employee benefits package. Noteworthy however is that ESOPs alone cannot account in increased productivity for the company but require a combination of factors to achieve their increased productivity and growth targets.

Research by Lampel et al (2012:5) which compared employee owned businesses to non-employee owned businesses in the United Kingdom (UK) highlighted numerous advantages of ESOPs. These highlighted how Employee Owned Businesses (EOBs) have a stronger long term focus thus placing focus on forward growth planning. Whilst not all ESOPs allow employee participation in board meetings or afford voting rights to employees, research shows that increased employee representation at board level can improve performance of the company. Affording shares to employees can result in difficulties when it comes to raising capital however establishment of ESOPs imply an increased investment in human capital. Because of a stronger focus on internal growth over external growth, EOBs tend to enjoy a more positive media image especially in the manufacturing and processing sectors.

Further research by Lampel et al (2012:6) states that where employees have a stake in the business through a trust, they are more resilient and deliver more stable performance over business cycles. Michie and Sheehan (1999) also correlate innovation to companies with ESOPs because if employees are positively actively involved in the business that allows room for the sharing of innovative ideas to enhance performance and growth of business. This implies that companies with ESOPs allow their employees to have their voice heard on some of the key management decisions that affect the company. Employee owned companies experience lesser absenteeism in comparison to non-employee owned companies due to the understanding that the employees are now shareholders and have a stake in the business.

The tax benefit to stakeholders is also another great advantage of ESOPs. Depending on the type of ESOP, tax benefits vary and may affect employer, company and participants differently. Employees are often exempt from paying tax until they get their dividends from an ESOP. However upon sale of shares then they are liable for taxation, resignation or retirement also have similar effects, (Diale 2016:36). Robinson et al (2005) in fact highlights that one of the key reasons behind extensive support for ESOPs in the UK are the tax incentives that come with implementing ESOPs. In South Africa ESOPs implemented for BEE purposes also offer favourable tax breaks

for employers, should they meet specific regulatory requirements. Because most ESOPs are often held in trusts, the ESOP trust is thus exempt from paying taxes on its income and as aforementioned only employees are liable to pay the tax should they opt to sell their shares or resign or retire from employment.

Lastly, companies that are known to be in favour of ESOPs exude similar traits. Employees are found to be more innovative with an entrepreneurial mind-set and the turnover is said to be higher when compared to companies without ESOPs.

4.2. Challenges

Despite numerous advantages having been stated above for ESOPs, it is noteworthy that ESOPs are not a good fit for every company or situation. One of the major and foremost disadvantages of ESOPs is the issue of financing due to their risky nature. This is why there are restrictions such as ensuring that a business needs to show profitability for at least three years before applying for an ESOP due to lack of willingness to finance ESOP initiatives by banks and other financing institutions. Literature also states that government approved share plans prove more challenging for EOBs than non EOBs, (Lampel et al 2012:14) and that could be attributed to the rate of failure in some of the plans that are imposed on employers.

Another key concern of ESOPs is that of the appointment of independent trustees and the cost factor associated with their services towards management of the trust. They are paid from the gains made from the ESOP trust resulting in lesser dividends for employees/participants. Staloch (2015) warns that these issues should be tended to in the conception of the ESOP to deduce feasibility.

Failure of treating beneficiaries as owners and shareholders is another strong disadvantage of ESOPs especially in bigger companies. Rosen et al (2005) refers to it as the lack of excitement generated within the company at different levels. Those often tasked with implementing ESOPs often treat it as another benefits package. Often participants are seen as just beneficiaries and a culture of ownership is not encouraged. Moreover willingness to educate participants on what being a shareholder and having a stake in the company entails is not encouraged.

Wormley (2012) also notes the difficulty in selling or raising outside capital for a firm with ESOPs. ESOPs that offer voting rights to shareholders may face problems when making some key decisions as not all shareholders may be in agreement with a decision taken. Such contentions may prove difficult in concluding either sales or capital acquisition for companies.

Lastly whilst ESOPs are considered in some instances ideal for small businesses, they are not ideal for every situation given their complexity. However, disadvantages of ESOPs should not altogether discourage firms from implementing ESOPs which is why it is important for firms to do their homework prior implementation. Before inception of an ESOP it is imperative that businesses consider not only the advantages but the disadvantages they are likely to face and consult on how they can avoid some of the pitfalls associated with ESOPs.

4. Perceptions from Organised Labour

There is a huge gap in the literature when it comes to accessing literature on organized labour pertaining to ESOPs. Whilst the literature is able to glean over various country circumstances and how they came to have ESOPs, the stance on organised labour is missing.

The NUM, looking to empower workers economically, has always been engaged in rigorous debate towards endorsing the establishment of ESOPs. Historically, an attempt at implementing ESOPs did not fare well in the 1980s and in their 2003 congress the union brought this up again, (SA Labour Bulletin 2007). Three mining charters later and the issue of ESOPs save for a few cases is still one of the unions major challenges. Whilst the union endorses ESOPs as a manner to economically empower workers by boosting their earnings and enhancing their savings, it would appear most companies are not benefiting their workers significantly. Despite guiding principles on how the union would prefer companies to structure their schemes, there is still a real challenge on how to establish ESOPs in a manner that they create the desired value and wealth for workers.

What could prove a major challenge towards the establishment of a dividend yielding ESOP is the fact that from their inception, there have been no case studies, especially from the South African mining space for mining companies to borrow from. Whilst the cases of Kumba Iron Ore and Exarro can be cited as some of the success stories of ESOPs, they too have failed after their successes. Companies such as Anglo Gold Ashanti went through consultation with unions in an attempt to establish what they hoped would be a beneficial ESOP. The NUM, Solidarity, AGA and UASA were all part of the Anglo Gold task team adopting a set of guiding principles which led to some shares being free shares and others as part of a loan.

Another challenge organised labour may want to look into is that of worker involvement in ESOPs. Unions needs to decide whether it is the mandate of the company or union to educate workers on ESOPs. As it stands workers only view ESOPs as yet another benefits plan and not as a value creation tool. There is no culture of ownership encouraged from the employer side either. ESOPs

in most mining companies are implemented because they are law and not necessarily as a way of perceiving workers as owners.

To date, the NUM has embraced the idea of ESOPs as a reformist value creation tool. The union has been very vocal on their need to align ESOPs in such a way that they are seen to bring value not only to their members but more to Historically Disadvantaged South African's (HDSA's). They believe this should happen through gleaning over the Freedom Charter as well as the MPRDA of 2002 which stipulates that the mineral wealth of the country should be transferred to the people as a whole. Despite the challenges in negotiating ESOPs that yield dividends, the union has offered ESOPs guidelines which they believe should assist towards better implementation, by mining companies, to ensure the success of the schemes in place.

6. Conclusion

Despite ESOPs being a worldwide concept, some countries have been able to grasp and understand it better than others. Whilst developed countries have come to view ESOPs more as a retirement benefits package for their employees, most developing countries have come to embrace it as reformist. It is viewed and implemented as a transformational tool aimed at bettering the lives of Historically Disadvantaged Persons. ESOPs are intended to foster a culture of ownership amongst workers and in turn enhance business performance but for most part they have been employed as yet another benefits package within the mining space.

ESOPs are also very complicated and that can in part explain why they have not attracted much success here at home and more specifically within South Africa's mining sector. Whilst it is not always easy to ensure that trusts will not be at the mercy of the stock market, an ESOP aligned with the strategic objectives of the company has a better chance at success. Therefore structuring and financing are key to an ESOP in terms of yielding desired benefits.

Both organised labour and mining companies concede that despite some successes, ESOPs have been met with many challenges. These are in part due to the fact that the ESOP concept is still fairly new within the mining space and comes as an imposition (law) rather than a choice to mining companies. This might lead to reluctance in investing in methods that will ensure that the schemes in most part are successful in that they yield meaningful benefits for workers. These challenges need redress and as such require ESOPs to be approached with better understanding and caution. In understanding the nature of the challenges, one can proceed to attempt to formulate a generic working model which has potential to produce dividend yields for workers.

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