

CREATING A DIVIDEND YIELDING ESOP MODEL FOR MINE WORKERS

Sinenhlanhla Sithole, 2019, Sam Tambani Research Institute, Johannesburg South Africa

1. BACKGROUND

Employee Share Ownership Plans (ESOPs) are an empowerment tool for workers and have been a common feature in South Africa's mining industry policy since mining charter one of 2004. They serve the purpose of transformation by allowing employees to own shares in the mining companies which they work for. Despite notable efforts by mining companies in setting up ESOPs trusts for their employees, many ESOPs deals concluded in the mining industry have not yielded tangible dividends for employees. Many ESOPs that have been implemented have failed to meet stakeholders' expectations in terms of dividend yields. ESOPS schemes have come across various criticisms, as they are considered "inconsistent, complicated and mostly opaque to employees whilst delivering modest returns to them," (Diale 2016:7).

Given that ESOPs are still a relatively new phenomenon within South Africa's mining industry could explain in part their poor performance in terms of dividend yields for beneficiaries. The focus of ESOPs is to encourage a culture of ownership mainly for Historically Disadvantaged South Africans (HDSA's). This is another way of implementing Broad Based BEE and encouraging meaningful economic participation for HDSA's. Intricacies regarding implementation have not been well navigated which could in part also explain why they have not been able to produce meaningful dividend yields for employees.

The origins of ESOPs in the mining sector go as far back as the Mineral and Petroleum Resources Development Act (MPRDA) of 2002. Section 100 (2) (a) empowers the minister to develop the mining charter with targets and timelines to ensure compliance, (Government Gazette 2002). One of various targets in the mining charter is ESOPs. The Mining Charter has been reviewed twice and the prescriptions for ESOPs have changed in 2010 and 2018 respectively. The first charter had a generic prescription for ESOPs whilst charter two and three came in with more details. As this research focuses on ESOPs deals conceived in the first two charters, the key provision of the second charter is that of the 26% BEE requirement where 5% free carried shares must be allocated to ESOPS. This means that employees must be given these shares free of charge by the mining companies. Whilst employees do not pay for these shares, employers take out loans to acquire said shares. Before paying out dividends, loan repayment has to happen first which often results in lesser yields for beneficiaries. This, amongst various

other factors, can be one of the reasons attributed to the lack of dividend yielding ESOPs within the sector.

Whilst ESOPs have been acknowledged as a progressive and empowering tool by trade unions, trade unions have also acknowledged the challenges that come with them. The National Union of Mineworkers (NUM) is one of the major unions in the sector and is not only concerned but has an interest to ensure that members benefit from ESOPs. To ensure that members benefit, the union came up with the NUM ESOP Guidelines. Despite these attempts, there has been mounting criticisms from trade unions pertaining to the performance of ESOPs as they have been constantly yielding modest benefits for workers thus hindering transformation.

This research aims to not only look at those factors behind ESOPs yielding and not yielding benefits, but looks to use that information to come up with a generic model that can be used to ensure that workers continuously benefit from dividend yields.

2. Problem Statement

ESOPs are intended to be an empowerment, value creation tool designed to facilitate worker ownership of shares for intended beneficiaries within the mining industry. However despite a few notable cases, employees have had very modest returns from ESOPs or have not been benefitting at all. A combination of factors affect the yield (either positively or negatively) of an ESOP. Without understanding the factors that contribute to ESOPs yielding or not yielding dividends, ESOPs will remain ineffective in yielding dividends for workers and as such continue to be an ineffective empowerment tool in the mining sector. This research aims to look at understanding how ESOPs can be structured in a manner that is more beneficial for intended recipients.

3. Purpose

The purpose of this research is to document factors critical to an ESOP yielding dividends and based on the findings develop a generic ESOP model with a high likelihood of yielding dividends for workers. Such a model could be used by a trade union such as the NUM to improve its current generic ESOP model. The research seeks to answer the following questions:

- a. What are the key provisions of the NUM ESOP model?
- b. What is the motivation behind each of the NUM provisions?
- c. What are the fundamental factors that determine whether an ESOP yields or doesn't yield dividends?
- d. Under whose control are these factors?
- e. What aspects of the current generic NUM ESOP model need to be changed if it were to increase the likelihood of workers getting dividends from ESOP schemes?

4. Objectives

The main objective of this research was to identify those factors that are critical to an ESOP yielding dividends and then recommend a generic ESOP model that has a high likelihood to yield dividends for workers.

Other objectives include:

- I. Documenting the key provisions and the motivation behind the NUM ESOP model.
- II. Determining which factors control whether an ESOP yields or does not yield dividends. Determining the fundamental structures of an ESOP.
- III. Assessing which aspects of the current generic NUM ESOP model need to be changed if it were to increase the likelihood of workers benefitting from ESOP schemes.

5. Methodology

This research will employ a purposive sampling methodology. This methodology is based on the characteristics of a population and the objectives of the study. It is also known as judgemental, selective, or subjective sampling, (Crossman 2019). Therefore this study will select individuals deemed best suited to respond to the objectives of the study. Interviews will be conducted in three phases as follows:

Phase One

The first phase is aimed at achieving objective one and two of the research which looks to document the provisions and motivations behind the NUM ESOP model as well as factors believed to control an ESOP yielding and not yielding dividends. It will therefore look to interview those NUM members that were either responsible for the conception of NUM guiding principles or those that have been involved in negotiating ESOPs deals on behalf of workers using those guiding principles. It will also look to understand, from their perspective, which are the factors that they have found to control whether an ESOP yields or does not yield dividends. This is to ascertain their experience of the performance of ESOPs within the mining industry.

Phase Two

For a more balanced response, phase two will look to achieve objective two and three of the research. It is important to hear from various actors what the fundamental factors that lead to an ESOP yielding or not yielding dividends are. This phase looks to interview those companies that have or had ESOPs deals conceived in the first two charters (whether concluded or not) and find out how they have performed. Upon receiving the number of ESOPs deals recorded at

the DMR during the first two mining charters, a representative sample of companies will then be considered for interviews.

Phase Three

For even more balanced information the final phase looks to respond mainly to objective three and four and will guide responses towards objective four. This phase looks to interview various experts on ESOPs from relevant financial sectors to gauge their experience on ESOPs. It will seek their input towards better understanding what they consider to be factors that lead to an ESOP yielding or not yielding dividends as well as the fundamental structure of an ESOP.

6. Expected Outcomes

Research report stating the cause of some ESOP schemes not being able to yield dividends for employees.

The factors of what constitutes a good ESOP Findings to be presented to the NUM

References

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