Anatomy of South Africa's biggest Esop

Towards the end of 2006 a gargantuan Employee Share Ownership Plan between AngloGold Ashanti, the National Union of Mineworkers and others came to fruition. It will benefit over 31 000 workers. **Alan Fine** describes the two year process to co-determine this scheme.

On 2 October 2006, the leadership of AngloGold Ashanti, the NUM (National Union of Mineworkers), UASA (United Association of South Africa), Solidarity and Izingwe Holdings held a joint media briefing, unique in its purpose. The purpose was to announce the establishment of an Employee Share Ownership Plan (Esop) at the company, and simultaneously a BEE transaction with Izingwe, developed in parallel and which will be linked in the future to the Esop.

The uniqueness lay not, of course, in the BEE transaction, nor even in the Esop, a number of which have been announced over the past year (see SALB 30.3) or so as they gain popularity in South Africa as a form of 'broad-based' empowerment. What was unique about this one was its scope and, more importantly, the lengthy period of consultation and negotiation between the company and the unions which preceded the announcement.

BACKGROUND TO ESOP

The idea of an Esop had been an aspiration for a long time in the vision of the company. It is, and was, the logical extension of the company's overall approach to labour relations. That approach is based, in essence, on a recognition and appreciation of the value to the company of strong collective bargaining processes where potential conflicts of interest need to be dealt with, such as in the distribution of 'surpluses' between shareholders and workers, and co-operative management/labour relationships in areas where employee and employer interests would both be advanced by these. This approach has become well established in the company in the areas, for example, of health and safety, worker accommodation issues, and work processes to some extent. To the extent that employee share ownership could solidify these relationships and enhance an alignment of interests between the company and employees, an Esop appeared to be a functional goal.

More recently, in the South African context, Esops have come to be seen by some as a useful and legitimate form of economic empowerment, particularly as the debate of narrow versus broad-based BEE heated up in the early 2000s. The company is also in the process of establishing Esops at its labour intensive operations in Ghana, and this is likely to be replicated elsewhere.

A backdrop to the establishment of the AngloGold Ashanti Esop was an Esop established by Anglo American in 1988, when the entity which became AngloGold was then the Anglo American gold and uranium division. Solidarity and UASA were comfortable with the idea of an Esop. However, the 1988 Esop became a matter of tension between the company and the NUM, having been established, as it was, the year following the big 1987 wage strike. Though over time individual employees came to enjoy not insignificant financial benefits from that scheme, in those tense times it was seen by the union as an attempt to co-opt workers and weaken, or even destroy, the unions.

The veracity, then and now, of this perception may be debated. Whatever the case, it was clear to AngloGold Ashanti that if a new, 21st century Esop enhanced tension and conflict rather than the opposite, its primary purpose would have failed.

It was further obvious that any attempt to establish an Esop unilaterally in the strongly unionised environment would have precisely this consequence. So, from the outset,

Left to right: Sipho Pityana (Izingwe), Bobby Godsell (AngloGold), Frans Baleni (NUM), Flip Buys (Solidarity) announce the Esop deal.

it was recognised by management that the process of establishing the Esop would be as important to its success as its structure and substance. An Esop that was not embraced by the workforce and its representatives would, it was accepted, be useless or worse. In line with this, from 2003 AngloGold Ashanti management began to broach informally with organised labour the possibility of an Esop.

NUM BUYS INTO ESOP

An early sign that the time was beginning to ripen for the establishment of an Esop was when the subject was placed on the agenda of a pre-congress NUM strategic planning workshop in February 2004, indicating that the 16 years of antipathy could be about to change. AngloGold Ashanti management was invited to participate in that discussion, and did so. The annual NUM congress that year then adopted a position reversing 16 years of opposition to Esops.

That decision did not kill off concerns among some unionists that employee share ownership might lead to co-option and undermine the labour struggle. In the consultative process leading to the establishment of the Esop, the place of an Esop in relation to collective bargaining was regularly discussed. AngloGold Ashanti management, for its part, is clear that an Esop is not a substitute for collective bargaining, and will do nothing to undermine the latter. At the same time, it remains an openly stated management goal to develop a more co-operative relationship between workers and their employer.

This is clearly not an attempt to intensify class struggle, as some might prefer. If a goal of collective worker action is (sole) worker control of the means of production, an Esop may not be the way to go. However, if the goal is enhanced worker control and participation in the management of the means of production, plus improved financial returns for individual workers, an Esop may be seen as a useful means to that end.

There was another practical reason for the company favouring consultation with worker representatives.

The fact was that, though management had taken a principled decision in favour of establishing an Esop, it had very little conception of what such a plan might look like in practice. While Esops are reasonably common around the world, they were more common in smaller companies and/or tended to involve companies with relatively skilled or professional workforces. Our research threw up absolutely no precedents or models anywhere in the world for an Esop that would involve more than 30,000 workers, the bulk of whom were in lower job grades and had very little disposable income and limited savings outside their retirement funds. Hence we found ourselves in need of every bit of guidance and advice we could find, and the representatives of those workers, who might concede that their ideas at the time were as fuzzy as management's, seemed to be among the most logical places to start.

The company also used as advisers two other institutions. A financial institution was needed to assist with such things as the financial architecture of the scheme and to ensure compliance with stock exchange regulations. And The Esop Shop, a consultancy run by former trade unionist Gavin Hartford played an indispensable role too.

Of course, the company's financial, legal, tax, secretarial and other expertise was essential to the process. The key to this process, though, was that it was run and managed primarily as an industrial relations exercise – another unique feature of the AngloGold Ashanti Esop.

Another feature was that Rand Merchant Bank (RMB) experts participated at all stages in the work of the joint union/company task team established in early 2006 to devise the Esop. It was the first instance, certainly in South Africa, of full participation in an Esop consultative process by a merchant bank.

Esop launch at Mponeng mine watched by workers, union leaders and management.

LONG VERSUS SHORT TERM BENEFITS

In this first-time consultative process, what were the key issues determined?

This was not conducted as a collective bargaining process, in that there were no issues where distributive bargaining had to take place. The magnitude of the transaction was pre-determined. In August 2005 AngloGold Ashanti had been assigned its new order mining rights by the Department of Minerals and Energy. A key condition for the acquisition of these rights was that the company finalise within two years the combined Esop/BEE transaction equivalent to 6% of its SA operations. The approximate cost-to-company of this transaction, too, had been pre-determined.

Beyond that, though the company had its own preferences in some areas. There was nothing that was set in stone at the beginning of the process. And while RMB had provided a proposed financial structure as a basis for discussion beyond that both the company and the unions were starting from a basis of very little knowledge. And all participants approached it as a joint problem-solving exercise. One of the key issues debated was long versus short term benefits.

One of the first and biggest questions with which the parties had to grapple related to the kinds of benefits, and their timing, that the Esop would provide to members.

For a start, it was jointly agreed that any share scheme, or empowerment scheme, that does not translate into tangible benefits in a reasonable period of time would, simply, not be empowering. Yet it is a matter of concern to the NUM and to the industry that, particularly for workers in the lower job categories, their retirement fund holdings are inadequate and need to be built. The Esop is potentially a useful source for building long-term savings.

Yet at the same time a scheme that does not provide shorter- to medium term benefits could become a source of tension, both for the unions and the company. Besides, would it not be paternalistic for management and union leadership to decree that benefits must compulsorily flow into retirement funds? Hence, the solution jointly arrived at is that worker benefits will be given in five equal annual tranches between the end of years three to seven. Esop members will be free to use those funds as they see fit, but will be encouraged to employ them in some way as long term savings. The name agreed on for the Esop is Bokamoso, to convey the rationale of the scheme: 'Investing in the future'.

MEMBERSHIP ELIGIBILITY

Another key issue that the parties discussed was membership eligibility. There were a number of issues related to eligibility. It was quickly agreed that Esop membership should apply only to employees not benefiting from a management share scheme at the company.

It was also agreed with little discussion that membership should be open to all workers. Though a number of companies have allocated shares only to black employees, AngloGold Ashanti did not want the Esop to be a source of division in the workforce. Close to 90% of Esop members are, nonetheless, designated as "historically disadvantaged South Africans". A further question related to the distribution of shares between existing eligible employees and future recruits. A formula was devised for the allocation of shares to individuals joining the company in the next four years.

PRICE VOLATILITY

A further key issue to determine was the question of share price volatility. AngloGold Ashanti's share price ranged between about R260 and R370 during the course of the consultative process, highlighting the potential impact of share price volatility, common to the metals market, on Esop members.

Initially, the scheme was designed so that it would be based only on benefits which would depend on the share price increasing after the

In terms of the Anglo Gold Ashanti Esop, each eligible employee becomes the outright owner of 30 of the company's ordinary shares, currently worth just over R10 000. The employee will benefit from the dividends paid on these shares, and will be required to hold them for three years, following which they will vest in five equal annual tranches. Each employee will also benefit from the value uplift on another 90 shares, which will vest in the same proportions over the same period. A full description of the scheme and its rules may be found at http://www.anglogoldashanti.com/NR/rdonlyres/8B28D1B0-86EF-41A7-B2DE66DE3257DF47/0/2006Oct02_ESOP01.pdf

launch of the scheme, similar to the case of a share option scheme. In this kind of scheme, if the shares are issued at, say, R100 each and they reach R150 at the point that the shares are cashed in, the owner makes R50 per share (subject to tax and other deductions).

However, in the middle of the process the AngloGold share price rose sharply due to a sudden increase in the gold price. This forced the union and the company to consider scenarios where the share price might be very high at the time of the launch, and thus limit the potential benefits workers might receive during the life of the scheme. The task team was prompted to consider various options to deal with this. Two solutions were found.

First, half the proposed "loan shares" as they are called, were converted into a lesser number of "free" shares (on the basis of the equivalent cost to company). Second, a mechanism was found to postpone vesting by six months, should the loan shares be "under water" (that is, valueless, on the due vesting date). The vesting dates are the dates when workers can "cash in" shares which become due, or "vest" on that date. There are five annual such dates during the life of the scheme, the first on the third anniversary and the last on the seventh.

Of course, it is the nature of any share investment that there is no cast iron guarantee that share value will always improve, and Esop members share that risk. However, the structure of the scheme ensures and guarantees that no worker will ever be worse off due to Esop membership.

MANAGEMENT OF ESOP

Another key issue was management of the Esop.

The Esop is run by a board of trustees comprising two nominees of the NUM, the largest union, one nominee from Solidarity, UASA and the company, and four individuals not affiliated with any of the parties but nominated by agreement between them.

The trustees will exercise the voting rights of the shares allocated to the Esop, probably in a joint bloc with Izingwe (see below). This bloc is one of the largest holders of AngloGold Ashanti shares, with only Anglo American, the government of Ghana and one major institutional fund manager holding significantly more. The first chair of the board is May Hermanus, director of the Wits Centre for Sustainability in Mining and Industry and formerly Chief Inspector of Mines at the Department of Minerals and Energy. During consultations, the company indicated it did not think it needed to nominate a board member, since it was essentially a workers' trust. However, the unions expressed a preference that it do so, in order to share responsibility for the Esop in the future.

BEE PARTNER

A final important area of discussion was a BEE partner. The unions were offered a veto over the partner, and they negotiated with Izingwe the terms of the relationship between the Esop Trust and Izingwe. Again, consensus was reached that the leadership of Izingwe, whose chair, Sipho Pityana, has joined the AngloGold Ashanti board, was an appropriate partner both for AngloGold Ashanti, for the Esop board and for the workers.

Regarding the role of Izingwe, a detailed agreement is still being discussed. However, it may help to represent worker shareholder interests on transformation initiatives, be involved in human resource issues, and provide skills and assistance to the Employee Trust.

The overall terms of agreement between the company and the unions have been captured in a collective agreement between them. Just one matter has been left unresolved between the company and the unions: what happens when the period of operation of this Esop expires in seven years time? This is a matter that will have to be dealt with in the years ahead. Doubtless the value of the scheme, to both workers and the company, will shape their respective views on this question over the next seven years. LB

Alan Fine was a member of the AngloGold Ashanti team which worked on the Esop.