SPECIAL REPORT

The colour of money ...

At the May meeting of the CEC, Cosatu general secretary Zwelinzima Vavi warned that if unions did not begin to manage their union investment companies properly, then 'we will end up meeting on the floor of the stock exchange'. This emerged during debate on the behaviour of the various unions in relation to the Old Mutual deal. The role of union investment companies is part of an ongoing debate, but recently received more attention because of a number of black economic empowerment (BEE) deals, which caused some embarrassment for Cosatu. The Labour Bulletin revisits the debate on union investment companies especially in relation to how they are being used to legitimise BEE deals.

BEE recipient Dali Mpofu (and newly appointed head of SABC) argued recently that the debate by the left on BEE is inconsistent, incoherent and unsustainable. He added that, at times, it was not always clear whether attacks on BEE came from the left or the right as they sounded the same. In response, Cosatu president Willie Madisha (see p8) said the issue of BEE had never been in question for Cosatu as the federation understood that such an initiative was necessary in the context of SA post-apartheid. The problem, he said, was the extent to which legislation around BEE, or for that matter, employment equity was transforming SA or merely facilitating a black elite. 'BEE has been usurped by a few – the elite'. We cannot accept the enrichment of a few. All that does, he said, is replace the old white elite with a black elite. BEE, Madisha said, had to be broad-based. During discussion, Numsa's former education coordinator Dinga Sikwebu posed the question: 'we can get into a debate on how broad-based BEE is, but how black is BEE'. He said 'if you look at all the first generation BEE companies, what has happened to them? A number have migrated and merged with white capital.'

The SA Municipal and Allied Workers Union (Samwu) seeks to deepen the debate on BEE. A discussion document on BEE (see p10) prepared for the union's CEC in April argues that BEE is presented as a necessity for post-apartheid South Africa. As a result, 'BEE is unchallenged from the right or left, from bosses or workers, from political parties or civil society. Our need for BEE is seen to be so self-evident that explanations are superfluous. Cosatu's only concern seems to be that BEE is too narrowly focused. Fortunately, our government agrees with Cosatu. This is why BEE is now required to be broad-based. So everyone ought to be happy once again. Yet the rumbles continue'.

Recent rumbles do not necessarily revolve around BEE per se but rather the role union investment companies have been playing in legitimising BEE deals. This is not a new phenomenon and began as early as 1994/5 when the first phase of deals got underway. However, over the years, union investment companies have become part of deals, which have undermined various policy positions adopted by Cosatu. These deals have publically embarrassed Cosatu and neutralised their opposition to fundamental aspects of economic policy such as privatisation. Whilst some of the more high profile deals have been made public, there are a number of smaller deals which reveal some of the inherent contradictions and conflicts which exist in relation to how union investment companies operate.

One such example emerged recently within a company organised by Samwu. The union found out last year that Cosatu's investment arm, Kopano Ke Matla had, through an empowerment deal, obtained a 50% stake in MicroMega, a company which provides metre reading services to local authorities. Problems emerged when the company began to

Cartoons by Zapiro

retrench workers who were informed that Cosatu was a shareholder in the company, through its investment arm (see p13). As mentioned in the editorial of *Labour Bulletin* 29 (1), Kopano itself has been the subject of a forensic report, which found a number of irregularities in relation to various transactions. In view of the problems and tensions which have existed around it's operation and its establishment, it is questionable how sustainable it is.

INVESTMENT COMPANIES – COMPROMISING COSATU

Cosatu's pension fund coordinator Jan Mahlangu argues that many of the problems which have emerged in relation to union investment companies result from a lack of control of union investment companies. 'You cannot wish them away'. However, if they are to remain and provide some benefit for its beneficiaries – union members and in some cases the union itself – then proper controls need to be put in place. An attempt was made to 'wish them away' when a recommendation was made to shut them down during the May CEC. This was, of course, strongly rejected by the unions who argued instead that investment companies should be strengthened and sufficient controls put in place.

Why has this not happened to date? Is this approach realistic when union leaders themselves have argued that they are overburdened and do not necessarily have the capacity to ensure proper oversight? The Naledi report, commissioned by Cosatu on investment companies (see p14) also points to the issue of capacity which is a critical factor in ensuring that the unions are able to play an oversight role: 'If Cosatu and its affiliates intend to use investment companies strategically and effectively, then capacity within the unions to oversee investment company issues must be built. Failure to do this will guarantee poor oversight of the investment companies, in practice, and expose the union movement to grave financial, socio-political and reputational risks,' the report says.

Madisha himself argued (his union was at the centre of some controversy around its involvement in the Telkom deal) that there has been a growing awareness that the unions are not controlling investment companies. 'We as unions said we did not have the capacity to control these companies. We did not develop the capacity and as a result the investment companies began to move ahead without proper mandates.'

Will that situation change in view of recent developments? Union leaders can continue to hide behind claims that they have no control over their investment companies. This implies an arms length approach, and absolves them of any responsibility in the event a potential investment leads to a conflict of interest or an 'embarrassing moment'. Aside from claims of no controls, how often do union leaders openly talk about their investment companies? Whilst Cosatu at a federation level complains that Kopano has been treated as the 'illegitimate child' of the federation by the affiliates, there is a sense that many treat their own investment companies in that way in public. What happens in internal discussions or behind closed doors is of course a different story.

The Naledi report attempts to explore the extent to which they are accountable to their unions. The perception is created in the report that basic principles of corporate governance are in place and that board decisions are supposed to be fed back into the unions. This is aside from the fact that union leaders are on the majority of investment company boards. The report was however, not able to access documentation which indicated how investment company's communicate decisions back to unions and whether senior structures in the unions discuss investment decisions.

Before addressing the question of controls, it is important to explore some recent experiences in relation to union investment companies and the behaviour of the unions:

- Cosatu found itself in a bit of hot water when it criticised the sale of Telkom shares by the Public Investment Corporation (PIC) to Elephant, an black empowerment consortium – headed by former communications director general Andile Ngcaba and Women's Investment Portfolio Holdings (Wiphold) head Gloria Serobe. Having criticised the deal and calling for its renationalisation, it emerged that a number of its affiliates, including SA Democratic Teachers Union (Sadtu), formed part of the deal through its involvement in Wiphold. Cosatu was made aware last year that some of its affiliates might be involved but when discussed at a CEC earlier in the year only one union clarified their position. Following the various media reports, Sadtu announced that it was withdrawing from the deal. The union leadership (who includes Cosatu president Willie Madisha) claimed that this decision was not discussed in the union structures and went directly through the CEO of the investment company who did not have a mandate. In the interim the CEO has resigned and left the investment company amid speculation that he had run up unaccounted expenses to the tune of R100 000, which he had to pay back.
- The failure to disclose details of an empowerment deal emerged yet again in the case of Old Mutual. Cosatu sought to coordinate discussions with the company so as to realise the 'collective strength in our numbers'. This CEC decision was ignored by the affiliates and refused to divulge details to Cosatu on the basis that they had signed confidentiality clauses with Old Mutual. At the May CEC, a heated discussion emerged around this issue and the fact that most of the affiliates kept the federation in the dark. 'The leadership of the federation was humiliated in public whilst its affiliates negotiated a deal and signed confidentiality clauses with Old Mutual.' This example reveals how easy it is for capital to divide the unions with Cosatu not being able to get the affiliates to work together and approach Old Mutual as a united bloc.
- The refusal to act together or adopt a coordinated approach to investments and the activities of the union investment companies is yet again revealed in the failure of the unions to set up a single administration company to manage union controlled retirement funds. In the late 1990s a decision was taken to create a single administration company so that unions and members could directly benefit instead of continuing to support the likes of Old Mutual, Sanlam and the rather controversial NBC. A report to the May CEC reveals that most of the affiliates continue to defend their service providers who yield a lot of power in the unions and the investment companies. A number of these service providers have entered into arrangements with the unions directly or the investment companies to provide financial products to members.
  This can be a money-spinner for all concerned. What about the members? Defending service providers was also evident in the case of NBC, despite a resolution to sever ties with the company. A number of affiliates have withdrawn their funds while others have not. Cosatu's own fund has yet to meet to take a decision on this.

CAN COSATU CONTROL INVESTMENT COMPANIES?

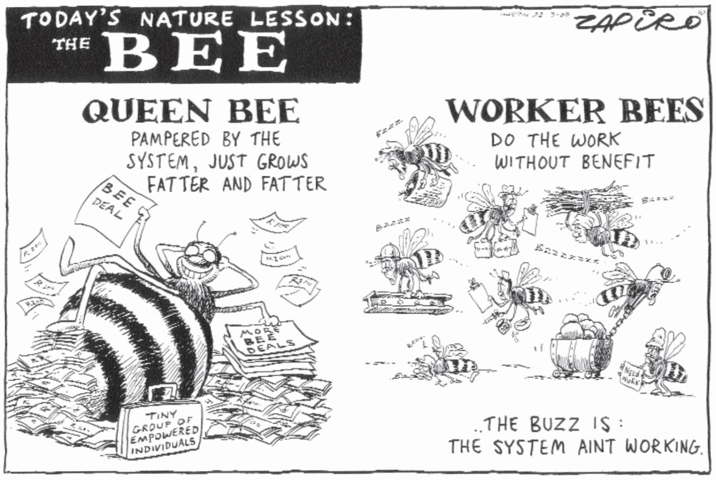
If the answer to the problem of investment companies is to pull in the reins and ensure that they are controlled, practically, how can this be made possible? Various recommendations in the Naledi report talk to this problem while a view exists in Cosatu that the federation should control investment companies. It is questionable as to whether this will receive support from the affiliates. Firstly, it might be seen as a move to ensure greater centralisation from the centre and secondly, affiliates have already shown their disregard of resolutions and decisions endorsed in Cosatu structures in which they participate. This disregard is partly based on an attempt to protect their own investment interests. Yet, when problems arise, 'everyone runs to Cosatu for help'.

Recent events reveal that centralised control of union investment companies is highly unlikely in the current climate where unions appear to be protecting their own interests. This is not new and was evident when Cosatu's investment arm Kopano Ke Matla was set up in 1996/7. A Cosatu CEC decision elected its first board, which included the likes of former NUM general secretary Kgalema Motlanthe, former Numsa general secretary Enoch Godongwana and former Nehawu president Vusi Nhlapo. Former Alexander Forbes director Max Maisela was appointed chair of the board. He apparently raised the initial capital to get the company going. In a twist to this tale, Maisela and others set up the M syndicate to be the main beneficiary of Kopano. In practice, this resulted in a situation where the majority of the proceeds of deals would by-pass Kopano and go into the M syndicate. A report to the CEC correctly indicated that most affiliates did not support Kopano, which was seen as 'an illegitimate child of the federation.'

After its formation, a union investment company – Union Alliance - comprising a number of affiliates was set up as a rival to Kopano. Following some unfortunate investments, Union Alliance fell apart. But by that stage, the majority of unions had set up their own investment companies as revealed in the Naledi report.

Fedusa general secretary Chez Milani argues that his federation did investigate the feasibility of setting up an investment company at a federation level. However, 'we realised that we would land up alienating affiliates who had similar structures in place.' He adds, there would be a clear conflict of interest, as the federation would find itself in a position where it was competing with its affiliate in a potential deal or other transaction. In hindsight, he says, Fedusa's original decision was 'simple and clean', especially considering developments in other federations. A number of Fedusa affiliates have set up investment type companies but the focus has really been in setting up structures, which provide a range of financial services to members.

How can the federation hope to control the activities of investment companies and are there sufficient resources in place to do so? More importantly, is their political will on the part of union leaders to ensure proper control of their investment companies?



CONCLUSION

Union investment companies have been the subject of debate since their inception after 1994. However, was there an overall vision about how to strategically use such vehicles to begin to change investment patterns?

This special report raises a number of critical issues, which unions need to consider:

- How can unions properly analyse the role and potential power of investment companies within the current structure of capital? What potential impact can they have? The way deals have been structured have not provided real benefits for members. The Naledi report talks to this issue and reveals that aside from the two main investment companies linked to NUM and Sactwu, the others are an unremarkable collection of small companies.
- How should investment companies operate? Should union investment companies be guided by the principle: the business of business is business? (This issue is explored in the Naledi report.)
- A critical issue is the lack of disclosure on all fronts. How can Cosatu and the unions hope to deal with problems if there is a total lack of transparency and accountability? Who is ultimately answerable if everyone claims ignorance? The Naledi report concludes: 'The lack of disclosure to documents (even on a confidential/edited basis), while expected of normal unlisted companies, seemed out of place for union investment companies (and, indeed, affiliated unions) responding to a Cosatu CEC mandated assessment project. This lack of disclosure and substantive information sharing is another crucial deficit that must be addressed and hence placed certain limitations on assessing their success'.
- Have unions sufficiently explored how they can utilise their investment companies or different entities to benefit their members and promote a broad-based approach to empowerment, if that is what they believe? Unions have opportunities as a result of the various BEE charter processes to ensure there is not just enrichment of a few. Are they taking advantage of this? One such option is employee share ownership schemes (Esops), which is again in vogue and is being vigorously pursued by employers to reflect their commitment to broad-based empowerment. Has a position been taken on Esops? Edcon, holding company that owns Edgars, Jet and others, recently announced an Esop type scheme. (The same company which refused to sign a declaration on its commitment to buying 75% of its products locally.) In terms of the scheme an employee trust will be set up to house shares to the value of R445m. The trust will distribute the dividends that accrued to its 18 000 beneficiaries in an empowerment payment twice a year.

Unions have to make some strategic choices here. Some unions such as Samwu have yet to establish an investment company because of ideological and other concerns. The vast majority of Cosatu affiliates (15 out of 21) and unions linked to other federations have set up investment companies. That being the case, unions need to decide whether they are going to remain a source of embarrassment or potential conflict with their own members or begin to take ownership of them. The decision of whether to work together collectively or not is as problematic as the idea of unions merging to form 'super unions'. Unions will be decimated on the floor of the stock exchange and elsewhere if they fail to find strategic direction for their investment companies – the editor. LB