CHAMBER OF MINES
of South Africa

ADDRESSING INDEBTEDNESS

FACT SHEET 2017

Employee indebtedness is a serious and complex social problem affecting both the employed and unemployed in South Africa at all levels of society. The mining industry is no exception and, for many reasons, miners are often vulnerable to the actions of unscrupulous lenders.

Because of their stable employment, many mining employees are targets of credit providers and have easy access to loans. Often, without understanding the consequences, they tie themselves up in more debt than they can cope with.

Historically, mining companies allowed creditors to apply debit orders directly against payrolls at employees' requests. In recent years this practice has ceased, and only legally-enforced orders, maintenance orders and emolument attachment orders (EAOs) are applied. Employees have also not challenged the legality of EAOs imposed on them partly due to the costs involved, but also because of a lack of understanding.

Not only does indebtedness have a significant impact on employees' ability to thrive and fund their future, but it has a deleterious impact on mineworkers' wellbeing at work and at home. High levels of debt have also been identified as an underlying cause of industrial actions and fractious labour relations, as workers seek very high increases to enable them to better service those debts.

A UNITED APPROACH

An industry-level task team was set up in 2012 to look into the issue of indebtedness of employees. At the outset it was decided that the task team would focus on micro lending and garnishee orders, as these are the most critical problems. The joint effort of the companies and the unions is an integral feature of this task team. By approaching indebtedness together it is hoped that employees feel more comfortable in taking part in initiatives thanks to union support, and that more can be achieved in a shorter period of time.

REAL DEBT SOLUTIONS

The task team decided on key actions that would allow it to thoroughly investigate the reasons for, extent of and remedies to indebtedness.

Understanding the extent of the problem

The first action of the task team has been to understand the extent of the problem so that information is available to them to draw a clearer picture of the debt level employees are in. In some instances, companies contracted independent experts to conduct auditing services.

QUICK FACTS

- **6.5% – 14%** of employees in the mining industry have EAOs against their salary
- **R4.8 million** has been saved by Lonmin employees as a result of the company challenging illegal EAOs
- **7,500** Harmony Gold employees have received financial skills training
- **44,028** AngloGold Ashanti employees received financial skills training from 2014 to date with 17,483 trained in 2016
- **6,519** EAOs have been audited to date at AngloGold Ashanti
- At Sibanye, there has been a significant 83% decrease in the inflow of new EAOs from 97 to 15 as at December 2016

LANDMARK CASE

In a landmark case, the University of Stellenbosch Legal Aid Clinic, Webber Wentzel and Summit launched an application to challenge the legality of EAOs against farm workers in the Western Cape. In July 2015, the Court declared these EAOs unlawful and invalid because they had been issued without consideration to the workers' situation and without following proper procedures. Although this doesn't apply to other provinces in South Africa, it likely offers a strong pointer to the future and a warning to unscrupulous lenders.

MASHONISAS

Whilst the members of the Chamber are working very hard at addressing employee indebtedness, it is important to realise that they can only deal with legitimate providers of credit. The elephant in the room is the mashonisas where the debt is invisible and they act as unregistered credit providers. Because this practice is illegal it is difficult to track and there are no formal processes to arrange debt repayment. Unless this matter is comprehensively dealt with, the problem of indebtedness will not be addressed.

Legality of EAOs

The next step in the process has been to ensure that all payments being demanded are legitimate. To do this, the individual companies are reviewing the legality of judgments against employees and EAOs on their salaries. This is a crucial piece of work. Not only has it come to light that many EAOs are not in fact legitimate, it has also become apparent that very often employees have not understood the terms of their loan agreements and are paying for them longer than they need to, incurring additional costs.

This action has involved the training of members of the companies' human resources teams, so that they can check the costs charged by creditors, and the jurisdiction of the Magistrate Court that has issued the order, to establish that the order is valid and correct. Companies also need to monitor the EAOs to ensure that once the debt has been repaid that the order is stopped. In some cases it has been found that debts continue to be deducted even after the full amount has been paid. Companies have provided the National Credit Regulator with the names of unregistered credit providers.

Additionally, legal proceedings have been launched to challenge the lawfulness of debt collecting methods used within the country. Anglo American Platinum has instituted legal action against HVDM Attorneys and HVDM Administrators. Anglo American Platinum believes that the administer is either exploiting ambiguity in the law or acting contrary to the law, which is not in the financial interest of Anglo American Platinum employees.

Deputy President's Framework Agreement

The Chamber engages with authorities on employee indebtedness at meetings of the Deputy President's Framework Agreement for Sustainable Mining Task Team and at meetings of the Mining Industry Growth Development and Employee Task Team.

The Chamber is also represented on various NEDLAC Task Teams to work on proposals to further assist indebted employees to reduce their debt.

Prevention better than cure

To prevent future debt and indeed to assist employees with current debt levels, the task team committed itself to developing and implementing practical training to improve the financial literacy of mineworkers. By teaching employees how to manage their finances, to budget and to spend responsibly, the industry hopes to change the behaviour of employees and help them to either avoid debt in future or choose payment plans that do not put as heavy a strain on them. In addition, companies will spend time addressing the stress many employees are under due to their financial difficulties, and help them find healthy ways to deal with this. For those already severely indebted, the companies have put in place advisory services that will also assist with debt consolidation and management.

Creating an environment where consumer protection and credit laws are enforced

The task team has been examining relevant legislation, such as the National Credit Act and Magistrates Courts Act, to understand what governs the processes that lead to indebtedness.

The mining industry has a solid history of engaging with government on legislation that affects its business, and believes in these collaborative efforts. As such, the task team endeavours to work with initiatives being driven by government organisations, such as the National Credit Regulator (NCR) and the National Treasury, to address indebtedness and related issues. There has been an important change to regulations in terms of the National Credit Act relating to affordability assessments. People are now required to sign a document in which they declare all their debts, including loans from unsecured lenders. Those making false declarations could be criminally charged and there will be penalties in respect of reckless lending. The NCR has clamped down on many retail businesses in respect of credit insurance and interest rates on unsecured credit transactions.

The task team hopes that the combined effort of these actions will alleviate some of the debt pressure felt by employees. In the long run it is hoped that the programme will bring lasting change, so that debt can be appropriately managed and not have a negative impact on the everyday lives and families of employees.

CONTACT

Chamber of Mines:
Tel: +27 11 498 7100
Email: info@chamberofmines.org.za
Street address: 5 Hollard Street, Johannesburg

Media:
Tel: +27 11 880 3924
Email: chamber@rair.co.za

Join the conversation
http://www.chamberofmines.org.za/
https://www.facebook.com/Mine
@Mine_RSA