

ELEVEN

Return-to-workers

*Trade union investment companies and  
ESOPs*

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INTRODUCTION

Workers as owners. The very idea of workers as business owners suggests a contradiction. On the one hand, the distinction between workers and capitalists, based on their relationship to the means of production, is a core assumption in Marxist and neo-Marxist texts. On the other hand, South African trade unions participate in the economy as owners or part-owners of companies. Trade union investment companies and employee stock ownership plans (ESOPs) are the vehicles for worker ownership and are regarded as central to Black Economic Empowerment (BEE) in South Africa. The central question is: Can these companies be both profitable and attain a wider goal? It's not clear what exactly that wider goal is, and even if it is defined more precisely it remains difficult to measure. For example, how does one measure creating an alternative to capitalism, or challenging market dominance using the concept of workers being owners? Alternatively, should one focus purely on financial aspects, namely how much money is returned to workers and unions?

In the absence of a standard measure of the socioeconomic impacts of union involvement in firm ownership, literature on this matter in South Africa has focused on case studies and polemics. This chapter advances the concept of 'return-to-workers' as a heuristic device that assesses how partial worker ownership impacts on BEE and broader employee socioeconomic development. It discusses the understudied BEE vehicles, namely, trade union investment companies and ESOPs. The chapter thus widens the lens through which BEE is conceptualised and debated in South Africa. In so doing, it engages with the question of BEE being broad-based, and moreover the possibility of BEE shifting the trajectory of capitalism in South Africa.

The chapter argues that the performance of trade union investment companies on reaching this wider goal has been mixed, with both positive and negative outcomes. ESOPs similarly have – less contentiously – had good and bad experiences. Overall, the chapter is sceptical that either trade union investment companies or ESOPs in their current form will produce changes in the structure of capitalism. However, there are ample possibilities for employing interventions from both trade union investment arms and ESOPs for the benefits of union members, family dependants and non-unionised employees. The chapter begins with a literature overview on worker ownership debates in both research and trade union literature. Then it proceeds to outline and explain the theoretical framework used, based on the return-to-workers principle. The subsequent sections use this return-to-workers as a heuristic device to examine ESOPs and trade union investment companies in South Africa. In the conclusion, some recommendations to expand the return-to-workers are proposed.

Demanding questions arise from the concept of return-to-workers and include the following:

- Is there an alignment between the policies of trade unions and their investment companies?
- Are trade union investment arms' policies on economic reforms, socioeconomic justice and climate change similar to generic trade union strategies?
- To what extent are trade unions using their investments to build socioeconomic alternatives?

- What impact do union investments have on the functioning of the trade union? Are the activities of the union being supported? Does involvement in trade union investment vehicles demobilise activism?
- Do workers benefit directly from the investments?

The answer to these questions assumes that union investments and ESOPs are (a) profitable, and (b) serve a wider goal than simply financial success. To this end, the chapter starts by explaining the concept, ‘return-to-workers’. The discussion then explores the background and experiences of worker-owned companies. The term ‘return-to-workers’ is counterposed against the conventional measure of return on investments (ROI). While ROI is a purely financial measure, the return-to-workers concept requires measuring the meaning of investment decisions to workers and to the broader working class.

#### COMPETING CONCEPTIONS OF WORKER OWNERSHIP

A wide range of literature advances arguments in support of worker ownership. One school of thought argues that the future of capitalism is more stable and secure when workers are included in decision-making, profit sharing and ownership in firms. This idea informs the bases for supporting ESOPs. It was developed in the modern era by Kelso and Adler (1958) in a publication entitled *The Capitalist Manifesto*. The book provides a philosophical argument, with supporting practical arrangements, for a different form of capitalism based on shared ownership and contrasts it with an economy concentrated in a few hands.

The authors argue for a shared ownership capitalist model through ESOPs, and in later writings Kelso & Hetter (1967) build on this idea to argue for a Consumer Stock Ownership Plan (CSOP). The idea of a CSOP is an innovative one, as it provides poor households with shares in public companies in regulated industries (Kelso & Hetter, 1967). The profits from these public enterprises would be shared among the poor, with the aim of creating an asset base. These writings underline both

the unsustainable and volatile nature of existing capitalism, and that greater sharing of ownership would support a more equal outcome.

The Nobel prize-winning economist James Meade developed a more elaborate system of worker ownership. Meade (1993) argues for a form of worker ownership which he calls discriminating labour-capital partnership or DLCP (see Wadhvani, 1987 for an informative discussion on the idea of a DLCP). In a DLCP workers are offered shares in a company and paid via dividends. The approach is jarring as workers would be required to shift from earning a wage to being paid through dividends from the company. The proposal should be read in the wider context of what is proposed, which includes other forms of income that are provided to workers, including from a citizens’ trust. The works of Kelso and Meade are important in that they seek a better outcome within the confines of capitalism.

A different set of literature attempts to create an alternative to existing capitalism through establishing worker-owned companies. The term ‘micro socialism’ – socialism within a company – is used to describe this (Nutti, 1988). However, the advocates often imagine a much wider impact than in relation to the firm. This literature shares the common goal of creating an alternative to existing capitalism, seeking to utilise the market for more equitable distributional outcomes. The success stories of cooperatives, specifically the Mondragon, are widely cited as example of such an alternative (Whyte & Whyte, 1991).

The Mondragon Corporation is one of the largest companies in Spain and a cooperatives federation. Other examples of worker-owned and managed companies include various success stories of Amsted Industries and Brookshire Brothers in the United States of America (Blasi et al., 2014). In the United Kingdom, the John Lewis Partnership, which owns popular hypermarket Waitrose, is a much cited example (Basterretxea & Storey, 2018). In these models, collective ownership supports the distribution of surplus to a wider range of participants (Freeman, 2007). Critiques argue that, despite the success of these examples, they remain small and not significant enough to herald a march to socialism or even the development of an alternative. In the South African context, the early ESOPs were criticised for displacing trade unions and introducing flexible work arrangements (Fine, 1997).

Another set of literature argues that workers are able to direct and shape the economy through company share purchases and creating democratic firms (see Bowles et al., 2008 for a key theoretical contribution on these issues). This is presented as the core distinction between capitalist and labour-managed firms. The firms are also differentiated by ownership structure, distribution of profits and strategic business intent. Writings in this literature suggest that supporting labour-managed firms requires public policy interventions through the introduction of either start-up or tax subsidies (Groot & van der Linde, 2017). The proposition is developed from empirical work on a Uruguayan data set that challenges conventional neo-liberal firm models (Burdín & Dean, 2009; 2012).

However, criticism levelled at the literature supportive of worker-owned companies or ESOPs is often crystallised around the term ‘business unionism’ (Buhlungu, 2010: 117–123). The juxtaposition of the terms ‘business’ and ‘unionism’ is deliberate, as it indicates obviously contradictory roles that trade unions play when being company owners. The term ‘business unionism’ is used in many senses, including unions seeking a better accommodation within capitalism and not seeking revolutionary structural change. This usage is prominent in the United States and the United Kingdom (Hattam, 1993; Taplin, 1990).

In South Africa, the term is used more specifically to refer to unions investing in companies. This thread in the literature draws on Marxist texts, specifically the writing of Lenin and Antonio Gramsci. Critics argue that trade unions are inherently reformist, and with the advent of trade union investment companies they have become increasingly co-opted into a capitalist system. The emphasis is on contradictions between representing workers and being owners. This dilemma, according to detractors, narrows the strategic and tactical options of unions to those that are reformist in nature (Faulkner, 1999).

Those responding to these views cite empirical evidence on ESOPs. Their studies show that ESOPs contribute to improved financial performance. The research compares companies with and without ESOPs, and seeks to find statistical trends in similarities or differences (Iqbal & Hamid, 2000; Kruse et al., 2008). The investigations find that

ESOPs improve performance in terms of profitability and a wide range of other business performance measurements. A 50-year retrospective publication on *The Capitalist Manifesto* provides a summary of these studies, finding empirical substantiation for ESOP models (Stumpff, 2009). Most of these studies are based in developed countries. In African and Asian markets, the case is less emphatically stated but the positive relationship between ESOPs and profits is still plausible (see Wright et al., 2000 for a discussion on these issues.).

Union investment companies are sometimes cast in that same mould but differ greatly from cooperatives or even ESOPs. The investment companies are set up as commercial entities with a mandate to provide returns to the union and workers. In this sense, the trade union investment company is the same as other investment companies (Iheduru, 2001). A key distinguishing feature is that the union, usually via a trust, is the sole shareholder. The trade union thus has an arm’s length relationship with the day-to-day running of its investment companies. This structure is informed by corporate governance precepts, explored in the following section.

#### TRADE UNION INVESTMENT COMPANIES AND CORPORATE GOVERNANCE

Trade union investment companies are set up as conventional firms. Therefore, it is important to examine three corporate governance developments, which influence their operations. The focus is on the relationship between the firm’s profitability and broader good governance criteria. First, many conventional companies have adopted the triple bottom line: profit, people and the planet. The term ‘triple bottom line’ was coined by John Elkington (1997) over twenty years ago, with the aim of shifting beyond a myopic focus on profits. His conception is implemented widely today and used as a standard measure of good corporate governance.

In South Africa, companies provide not just a financial report but rather an integrated report that requires accounting for the company’s impact on the environment and people. This augmented mandate for conventional firms transcends the notion of reducing transactions

and labour costs. One may argue that these reports often conceal bad corporate practices. But the point made here is a narrower one – firms have moved beyond a simple profit measure. In addition, companies in South Africa must report on training, employment equity and BEE. This shift raises a question: What makes trade union investment companies different?

Second, the relationship between economic inequality and the size of firms has received attention recently. Most notably are arguments around the emergence of ‘superstar firms’ (Autor et al., 2017a; 2017b). The burgeoning literature on ‘superstar firms’ is divided on many issues, but a concern about large firms creating obstacles for new entrants and crushing competition is emerging as an area for policy action (Culpepper & Thelen, 2019; Haucap & Heimeshoff, 2014). In South Africa, the presence of large companies in virtually every sector of the economy is a given. In fact, the South African economy is routinely called oligopolistic. Inserting a firm – owned by workers – into such a situation holds both the promise of a challenge and the danger of incorporation.

Third, the broad criticism of BEE is that it has benefitted few and that BEE beneficiaries have insufficient control over business operation, and are often limited to passive investing (Gqubule, 2006; see Southall, 2007). These themes are discussed throughout this book (see Chapters 4, 9 & 10) but one point requires emphasis here. The involvement of workers in BEE potentially resolves both criticisms, as having worker beneficiaries widens the number of beneficiaries and supports productive investments (as workers require work). Some of these chapters show that the latter opportunity (productive investment) has been largely ignored in BEE transactions. In a developing and unequal country like South Africa these attempts at widening participation, however, occur in a context where the labour share of the economy has declined (Burger, 2015; Makgetla, n.d.). Moreover, economic models of developing countries consistently indicate that the distribution of profits tends toward supporting capital over labour (Taylor, 2001). These are the governance parameters that guide the economic context for achieving the return-to-workers discussed below.

COMPONENTS OF RETURN-TO-WORKERS

This section develops a conceptual framework that seeks to incorporate the tensions discussed in previous paragraphs into a simple matrix, which serves as a heuristic device.

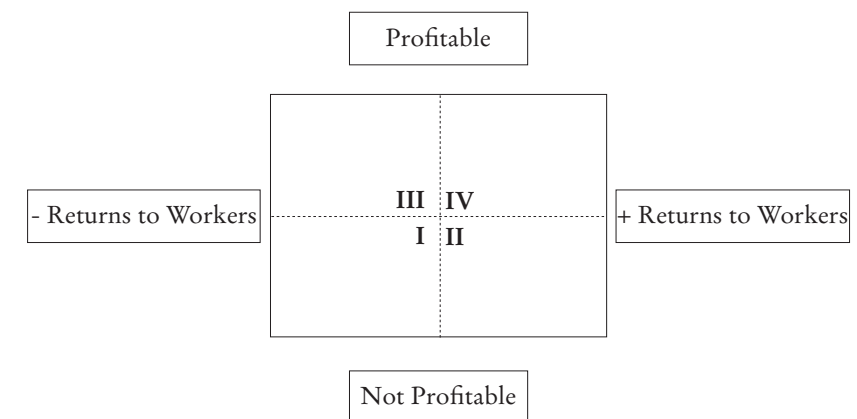
Trade union investment companies have the following rationale:

1. Opportunities for profitable investments emerged in the democratic arena.
2. These presented an opportunity to provide continued reinvestments into trade unions, primarily through dividends.

Simply stated, trade union investment companies needed to be (1) profitable and (2) adhere to the prescripts of the trade union, which includes socioeconomic factors informing investments and distribution of dividends.

One can plot these outcomes on a 2x2 matrix, as shown in the diagram below. The diagram shows four possible combinations of possible trade-offs between being profitable and adhering to an ethical mandate.

Figure 11.2: return-to-workers quadrant description



The matrix shows that there are four possible outcomes that are briefly summarised below.

	Profitable	Returns to Workers
Quadrant I	-	-
Quadrant II	-	+
Quadrant III	+	-
Quadrant IV	+	+

This serves as a heuristic device to understand the different outcomes for trade union investment companies and ESOPs. This framework is now discussed and explored below.

#### PROFITABLE INVESTMENTS

Trade union investment companies and ESOPs are required to run profitably before a distribution to workers is possible. For trade union investment companies, ensuring profitability means identifying the correct investments and ensuring that the investments are well managed. For this reason, most trade union investment companies are described as ‘investment holding companies’. The selection of an investment holding company as the preferred vehicle of choice is premised on a separation between ownership and control. The trade union investment companies are primarily involved as owners, or more precisely as part-owners of the business. The day-to-day running of the business is undertaken by an executive team in each business. Similarly, ESOPs can make a distribution only if there are profits. Workers in this arrangement are incentivised to perform better and ensure business improvements are undertaken.

#### RETURN-TO-WORKERS

The concept of return-to-workers, aims to understand what the impact of instruments such as trade union investment companies and ESOPs have on workers. Creating an alternative capitalism, or more modestly

ensuring a fairer distribution from firms, is foundational to activities of trade unions in South Africa. Translating this stance into practice covers a range of investment-type activities that include the following:

- **Challenging dominance:** South Africa has a highly concentrated economy and investing in companies that challenge this dominance could be perceived as creating an alternative.
- **Forms of ownership:** Supporting the creation and proliferation of cooperatives is a policy position advocated by COSATU, SAFTU and NACTU. In addition, supporting smaller and emerging companies is seen as broadening ownership in the economy.
- **Commons:** Similarly, efforts to invest in the communal systems of ownership would be part of creating an alternative.
- **Protecting and creating jobs:** Unions would bailout failing companies and attempt to return them to profitability.
- **Supporting trade union activities:** Support for trade union activities is another reason advanced for trade union investment companies. These activities include supporting research, training institutions and financial pay-outs to members.
- **Supporting members:** The proceeds from trade union investment companies can be directed to specific members in the union and their families. This is primarily through the bursary schemes that are run by unions.

For ESOPs the return is less complicated because workers receive a dividend or profit on the investments that have been undertaken. In South Africa, some of the schemes are structured to compete at a defined point with shares being sold, and the resulting profit distributed among members of the ESOPs.

#### BEE AND ESOPS IN SOUTH AFRICA

ESOPs have been part of the BEE scorecard since inception. Importantly, the BEE points received encourage companies to work primarily with government. Under the BEE Codes of Good Practice, ESOPs can contribute up to 40 per cent of the total points available on the ownership scorecard. The ESOP must however meet the following criteria:

- the trust deed must define the participants and the proportion of their claim to distributions (and the trustees ‘must have no discretion’ in relation to these);
- the participants must take part in appointing at least 50 per cent of the fiduciaries;
- participants must be able to take part in managing the scheme – their role should be as significant as the one played by other shareholders; and the trust deed must be available, on request, to any participant in an official language with which that person is familiar;
- the trustees must present the financial reports of the scheme to participants at each annual general meeting of the trust; and
- participants must be paid interest at a date specified in the contract or on winding up of the scheme, whichever is sooner.

The need to broaden participation in BEE has motivated changes in policy. The most notable alteration was the enactment of the Broad-Based Black Economic Empowerment (B-BBEE) Act No 53 of 2003. It represented an admission from South Africa’s government that it needed a stronger role and more precise instruments to support many people, as opposed to the few who were benefitting from BEE. Another significant change was that the 2003 scorecards reduced the points being awarded to ESOPs. Yet, the number of ESOPs being established has grown significantly.

Two prominent examples of ESOPs that have run for a long time and benefitted workers are the Kumba Iron Ore and Clicks ESOPs. They are prominent due to both ESOPs paying out large amounts to their members. In 2011, the ESOP at Kumba Iron Ore paid out up to the equivalent of over half a million rand (some reports provide the precise figure of R576 045) to each member participating in the scheme. Since that time, the scheme called the Kumba Envision ESOP has continued to provide dividends to members. A new ESOP scheme for Kumba Iron Ore has been voted on in 2018, as Envision ESOP has come to an end. Clicks continues to provide its workers with good returns from its ESOP. Clicks established its ESOP in 2010, and the share price had grown four-fold by 2018. In 2018, the first 50 per cent pay-out to staff was processed, with workers in total receiving R1.3 billion.

The success of Kumba and Clicks in providing good returns

for workers is indeed impressive. In both cases, the workers have benefitted from large increases in the value of shares. This might be partly attributable to greater commitment of workers to the company they partially own. However, the wider context of the economy played a significant role, with both companies benefitting from expanded access to markets: Clicks through malls, largely owned by finance capital, and Kumba Iron Ore through increased demand for steel and improved logistics to ship products out of South Africa.

ESOPs have, however, not been universally successful, as shown in the case of Omnia. Omnia introduced its Sakhile BEE vehicle in April 2007. By March 2018, 1 896 black employees were part of the scheme, which holds 10 per cent of Omnia. The group estimated in its 2018 Annual Report that each participant would receive in the region of R227 970, with the share value estimated to be R155.65. The company, however, has fallen on tough times, reflected in its share price dipping to as low as R35 a share in 2019. This trend correlates with the findings discussed in Chapter 9 regarding the relationship between empowerment deal performance and financial variables such as share prices and company dividend policies.

As noted earlier, the international literature points to a relationship between the presence of ESOPs and good financial performance at firm level. No such relationship can be established in South Africa without further empirical work. Moreover, the examples cited above indicate a salient feature of ESOPs in South Africa: Workers in ESOPs hold shares but are often separated from decision-making. This is different from the worker-owned and -managed company envisaged in the works of Meade and Kelso. The trend raises a fundamental concern about improving employee or broad-beneficiary operational control in BEE transactions and subsequent management participation (see NEC deal interviews in Chapter 9). Recent reports from both the Broad-Based Black Economic Empowerment Commission and financial journalists suggest that operational control remains a challenge in BEE (Dlamini 2019; Mahlaka, 2019). The other challenge related to ESOP implementation is determining the demographic and socioeconomic profile of beneficiaries. This is important because ESOPs often only benefit the upper echelons of management. Thus, it is essential to

ascertain which employees are participating in ESOPs so that these programmes do not reproduce existing income and socioeconomic disparities among employees. In following sections this chapter provides a brief historical account of trade union investments. It then proceeds to examine them using the three return-to-workers elements discussed above, namely: alternatives to capitalism, supporting trade unions and supporting members.

#### HISTORICAL CONTEXT: BEE AND TRADE UNION INVESTMENT COMPANIES

The contradictions between unions arguing for socialism or social democracy and at the same time taking up ownership in various companies reflected a choice made by COSATU. On the one hand, an investment proposal was presented in the early 1990s for the trade unions to purchase office blocks in the Johannesburg Central Business District and other cities. The purchases would be funded through union provident funds, which would invest in a cooperative bank (Bell, 2019). The model would thus see the unions create an alternative banking system and investing in office buildings that – once converted – would provide low-cost housing for workers in the city centre. In retrospect, the proposal was revolutionary and promised to challenge the spatial engineering of the apartheid city.

However, it was rejected, perhaps partially because opportunities for unions to be part of existing and emerging companies were many. Unions opted for these opportunities, with the most prominent being (see Cargill, 2010; Chapter 9 in this publication):

- Participating in the formation of cellular phone companies: MTN and Vodacom. Trade unions received shares in these companies as part of BEE consortiums.
- Participation in the National Empowerment Consortium (NEC) that led to the purchase of Johnnic, at the time a large conglomerate. Johnnic itself was offloaded from a larger conglomerate Anglo-American. This deal was inked in 1996 (see Chapter 9 in this publication).
- Efforts to consolidate and coordinate union investment companies,

primarily through the establishment of Union Alliance Holdings (UAH).

- Establishment of union investment companies in all the larger trade unions in COSATU.

Trade unions overwhelmingly chose – and continue to choose – the model of buying into existing companies through BEE deals over creating alternatives like the one cited above, such as establishing a cooperative bank and creating working class accommodation close to the city. The contradictions were palpable, as trade unions purchased shares in companies that contributed to a highly concentrated economy, while adopting a fighting posture against government's economic policies. Even before the democratic elections, the processes around BEE had begun, with the licenses for cellular phones being particularly important. The cellular phone industry would prove to be particularly relevant to trade union investment companies. Investment companies linked to the National Union of Mineworkers (NUM) and the South African Clothing and Textile Workers Unions (SACTWU) secured interests in the licenses of Vodacom; SACTWU also acquired the license of MTN.

In 1996, SACTWU Investment Group (SIG) and the Mineworkers Investment Company (MIC) placed their combined interests in cellular phone provider Vodacom and radio broadcaster Highveld Stereo, into Hosken Consolidated Investments Limited (HCI). This was an important move by the trade unions, which sought to build something bigger than the individual holdings of these companies. The arrangement between NUM and SACTWU in HCI was, however, fleeting. In a period of four years the alliance disintegrated, with MIC selling its position in HCI, with the majority of the transaction being completed in 2000 (Cargill, 2010).

The personalities behind MIC and SIG were Marcel Golding and Johnny Copelyn respectively. Golding was an ex-deputy general secretary of NUM and Copelyn an ex-general secretary of the clothing union (SACTWU). They played a crucial role in the formation of investment companies in South Africa. At times, they took to the pages of the *South African Labour Bulletin* (SALB) to defend their positions

(Copelyn, 1997; Golding, 1997). In later years, there would be a much-publicised fallout between Golding and Copelyn, with Golding leaving HCI. The reason for this dispute, according to reports, centred on the editorial independence of media assets under HCI.

However, this was not the only effort to combine investment companies to create bigger players. Unions aligned to the Congress of South African Trade Unions (COSATU) and the National Council of Trade Unions (NACTU) formed Union Alliance Holding (UAH). The intention was to create an entity that spanned many unions and that could take advantage of the many BEE deals that were on offer. Union Alliance Holding listed an entity called Union Alliance Media on the JSE. Union Alliance Media subsequently delisted from the JSE because it was unable to meet payment obligations to various creditors. The institutional mechanisms chosen by unions mimicked those of other BEE companies seeking to be broad-based by establishing a trust, and separating day-to-day investment decisions from the trust. Most unions adopted a structure that consisted of three levels:

1. **Union** – The union would provide guidance and an investment mandate to its investment vehicles (in this case a trust). The trustees would undertake their work with reference to this union mandate, especially congress resolutions.

2. **Trust** – A trust was created by the trade union, with the trustees usually being the national office bearers (NOBs) of trade unions. The beneficiaries of the trusts would be the union, or entities aligned to the union.

3. **Investment company** – The trust in turn established an investment company and was the sole shareholder of the investment company. The investment company would have its own board and management. Usually, the board and management were made up of professionals linked to the trade union movement. In practice, however, unions shied away from appointing union members to the boards of the investment companies.

The model was designed this way in order to allow trade union members and the NOBs to keep the investment companies at an arm's length. From a legal perspective, however, the arrangement provided

protection for the trade union in the case of the investment companies going insolvent. At a political level, it shielded NOBs from scrutiny, as they could always proverbially pass the blame to the investment company's management. As an alternative, some unions have adopted a simpler structure, where office bearers serve directly on the board of the investment vehicle. In this case, other board members are drawn from outside the union, based on the skills required by the board. A significant number of COSATU unions established investment companies during the first five years of democracy. These included large unions such as the National Union of Mineworkers (NUM), South African Clothing and Textile Workers Union (SACTWU) and the National Health and Allied Workers Union (NEHAWU).

#### EXPERIENCES IN EMPOWERED TRADE UNIONS INVESTMENTS?

This section discusses the experiences of worker ownership under the three headings:

- Alternatives to capitalism
- Supporting trade unions
- Supporting members

#### *Alternatives to capitalism*

A review of investments made by trade union investment companies is summarised in an appendix to this chapter. This review shows that trade union investment companies do not invest in firms seeking an alternative to capitalism; rather, they invest in conventional companies, often listed on the Johannesburg Stock Exchange (JSE). The review indicates that even if a less stringent criterion than an alternative to capitalism were used, union investment companies would fall short. This section substantiates the view of unions having failed to create investment vehicles that challenge the status quo. Before substantiating that, a couple of examples of union attempts to construct alternatives are discussed.

In a few cases, unions have developed alternatives to capitalism. These examples include:



- The National Health and Allied Workers Union (NEHAWU) runs the NEHAWU Savings and Credit Co-op (NEHAWU SACCO), which provides banking services, dominated by savings products that are offered to its members. Even here, the NEHAWU SACCO is a different entity from NEHAWU Investment Holdings (NIH). It is the only cooperative run by trade unions; the idea for it had been unearthed by the union's own research.
- SACTWU played an active role in saving jobs in the Seardal company. Hosken Consolidated Investments (HCI) bought the struggling Seardal business in 2006 and acquired a majority stake. Seardal was a major clothing and textile manufacturer. Several processes to save Seardal were undertaken, including SACTWU guaranteeing a loan to ensure the survival of loss-making entities.

The opposite, however, is sadly also true – that trade union investment companies have perpetuated current forms of capitalism. This can be seen in three types of investments:

- **Linking with dominant players** – Trade unions have invested with the larger companies in the pharmaceutical and tourism industries. In the pharmaceutical sector, CEPPWAWU (Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union) Investments is a major shareholder in Aspen Pharmaceutical, South Africa's largest pharmaceutical company. Similarly, in the tourism sector, MIC has a stake in the Peermont Group and HCI in Tsogo Sun. Peermont Group and Tsogo Sun are among the largest hotel chains in the industry.
- **Gambling** – The investments by MIC and HCI in Peermont and Tsogo Sun meant that trade union investment companies invested heavily in gambling. This despite the fact that the unions represented by those two investment vehicles are affiliated to COSATU, which has a clear and consistent policy of not supporting gambling.
- **Extractive industries** – Several unions are invested in companies that are part of extractive industries. For example, companies such as MIC invest in marine mining supply companies, and HCI invests in coal, oil and gas enterprises.
- **Financial services** – Unions are heavily invested in financial

services, including in passive investments in companies providing financial services. For example, many unions invested in companies offering schemes in the funeral sector. In addition, unions are directly involved in the marketing of financial services to members. Importantly, unions have a stake in companies offering these services in many instances. Examples include NUMSA, POPCRU (Police and Prisons Civil Rights Union) and SADTU. In other instances, unions enter preferential relationships with a service provider and receive a commission on members signing up. In this case, the union does not have an ownership stake in the company.

The lack of an alignment between a union's political orientation and sector investment choices is deeply concerning. However, it is less concerning than the deeper and more devastating tales of corruption and capture in trade unions and consequently in their associated investment companies. The two most prominent examples relate to CEPPWAWU investment company, and the involvement of trade unions in attempts by Ayo Technologies to receive funding from the Public Investment Commission.

The CEPPWAWU case is particularly interesting as the union faces deregistration for not producing financial reports for five years, but its investment company has assets that are estimated to be between R3–6 billion, according to different reports. The linkage between the investment company and the dysfunctional union has been made in several places, including in a report to a COSATU congress. At the root of the problem is the relationship between Letsema (a private company), CEPPWAWU Investments, and CEPPWAWU itself. Letsema has a contract to manage CEPPWAWU Investment; in return it receives a retainer and 27.5 per cent of any shares acquired. Intellidex, a research company, tells the story of CEPPWAWU Investments as follows (Intellidex, 2018):

Initially, Shongwe registered Ceppwawu Investments (Pty) Ltd to his and Thomas' names. He then entered a deal with Aspen. After then being reregistered under a different name, the result was that the fund legally had no investment in Aspen but had

merely advanced a loan to Ceppwawu Investments. Shongwe had also appointed his consultancy, Letsema Investments (Pty) Ltd, as the advisors for the trust's investments at a 27.5 per cent management fee. The union through the trust regained control of their investment vehicles but appears to remain stuck with Shongwe's Letsema Group as managers of their investments at the structured 27.5 per cent fee.

The CEPPWAWU case is exceptional given the value of the investments. It is, however, not the only case of allegations of corruption in trade union investment companies. Other allegations include investments being pushed through pension funds; excessive payments for serving on investment company boards; and appropriation of shares earmarked for trade unions.

The Ayo Technologies case was, at the time of writing, before a commission into the workings of the Public Investment Commission (PIC). A final determination on this matter is thus forthcoming. However, what evidence exists indicates a worrying picture of trade union investment companies being involved in a case of corruption. Ayo Technologies is accused of receiving investment from the PIC, without the PIC following the required processes. Moreover, there are allegations that the PIC overpaid for its share, paying R43 a share when the shares were valued at a paltry 15 cents a share. In total, the PIC paid R4.3 billion. The Police and Prisons Civil Rights Union's (POPCRU) investment arm PGC; the Federation of Unions of South Africa (FEDUSA); COSATU's Kopano ke Matla; and ex-general secretary of FEDUSA (Dennis George), through an entity listed in his name called Difeme Holdings Group, were all listed as shareholders at the listing of Ayo. These entities all received shares at a discount. Furthermore, they are implicated in pressuring the PIC to take this erroneous decision.

The data also provides examples of a turnaround in approach to trade union investment companies by two unions, NUMSA and NEHAWU. A review of these two cases reveals how quickly union investment companies can be turned around.

NUMSA and NEHAWU would self-identify as socialist unions,

although with different variants of socialism being advocated. NIC tells the story as follows:

Although started in 1997, NIC was taken to the Cape High Court for liquidation by the Public Investment Corporation (PIC) in 2008 as a result of failure to service its debt. In addition to the PIC there were other creditors who were pursuing NIC. The total liability of NIC was in excess of R250 million. Due to this burden, NIC was unable to invest in its growth. Through balance sheet and business re-engineering, and negotiations with creditors, the business was rescued from liquidation by a new management team.

The approach taken by NUMSA was to restructure debt, and drive sales primarily in its funeral business. It succeeded spectacularly well in returning the company to profitability. The success of this exercise has seen NUMSA float the idea of listing 3Sixty Global Solutions Group (3Sixty GSG) a subsidiary of its investment company, on the JSE. From a financial perspective, it looks a spectacular success. Investments by the 3Sixty Group, however, are not only limited to financial products; it has investments in healthcare, biotechnology, information technology and in the administration of medical aids and pensions funds. Some of the investments, especially those in the cannabis industry, reflect an innovative selection of investments.

The one focus area that has emerged in this turnaround story relates to the role of the NUMSA Investment Company in the internal politics of NUMSA, and more broadly in the African National Congress. Media reports indicate that NUMSA is increasingly dependent on NIC for cashflow, and that NIC has an influence over union policies. NUMSA's expulsion from COSATU, for instance, resulted in NUMSA not supporting the ANC and in fact establishing its own political party. Yet, there is consistent reference in media reports to connections between NUMSA, its investment company and factional politics in the ANC. Whatever the truth around the politics, the restructuring was conventional. The union invested in companies and products that it could deliver to its members, primarily in the financial sector. This

is a conventional source of recurring income, and in this sense a good business. It has since diversified into several sectors and is poised to list on the JSE in 2020.

NEHAWU adopted a different approach to its investment company. The union membership pushed for reform of the way that the investment company operated. Over a period of three congresses, the union resolved to make the investment company accountable, and provided direction for the investment company to support a cooperative and create provincial structures for NEHAWU SACCO. The turnaround has seen the union begin to develop a financial cooperative and to make investments in strategic sectors.

The language from its 10th National Congress in 2013 is instructive. The union resolved to:

Mainstream and align various NEHAWU Investment and Member Benefit Initiatives (Tshedza Trust and its investment companies including but not limited to NEHAWU Investment Holdings (NIH), NEHAWU SACCO and the NEHAWU National Provident Fund) and maximize their collaboration and dynamic partnership towards common objectives towards worker-owned and controlled businesses, as part of our quest to transform the South African economy.

And,

Mandate the CEC to develop processes and systems of ensuring that all members of the union belong [to] and participate in the NEHAWU SACCO as a basis of creating a workers' cooperative bank.

#### *Supporting trade unions and members*

Trade unions in South Africa are no longer growing rapidly. This is understandable given the context of the economic slowdown and high levels of unemployment. Many new forms of work are atypical, and they decrease union density and exacerbate job precariousness. Furthermore, the new formal full-time jobs created are largely

white-collar jobs, typically in financial and business services. The data indicates that the number of unionised workers across the economy has remained consistent over long periods of time, even though changes have occurred at a sectoral level. In part, this is due to the growth of public sector unions. Unions in this context face a significant challenge of remaining viable not only from a financial perspective, but also in finding a meaningful role.

In this context, one route to growing membership is through cannibalisation by breakaway unions. The Association of Mineworkers and Construction Union (AMCU) is an example of this, having grown through recruiting members from other unions. Another reason for the slow growth of trade unions is the proliferation of temporary employment services, which make unionisation difficult because workers are no longer employed directly but rather via agencies. Without a growing membership or reasonable increases in subscription fees, trade union investment companies have become a major source of funding for union activities. Nattrass and Seekings (2016) calculate that subscription fees received by workers affiliated to SACTWU are approximately the same as dividends received from its investments in HCI. These authors (Nattrass & Seeking, 2016) overlook the fact that SACTWU has foregone these dividends to support loss-making textiles companies, with the broader aim of saving jobs. The most sophisticated approach to using investment companies to support the union is exemplified by the NUM and its investment company, MIC. NUM created a trust that is the sole shareholder of MIC. The union funds several union-based activities via proceeds from MIC. These institutions are listed in the box below.

**Table 11.2: Beneficiary institutions from the Mineworkers Investment Company**

JB Marks Education Trust Fund	Provides bursaries to NUM members and their dependents.
Sam Tambani Research Institute (SATRI)	Provides research and policy services to NUM. The union describes the purpose as follows: SATRI was conceptualised and established in 2012 to answer a need for consolidation of NUM efforts in ensuring that workers receive a fair share of what they produce in their various fields, which, in turn, empowered them in improving their livelihoods.
Elijah Barayi Memorial Training Centre (EBMTC)	The centre provides a space for training and runs educational programmes.
Mineworkers Development Agency (MDA)	The MDA was set up to support retrenched mineworkers. NUM describes the MDA as a project that builds self-reliance and supports food security.

One of the areas that could potentially be funded is a strike fund. Strike pay is payments made by the trade union to workers who are on strike. There is no evidence of any of the investment companies' dividends being channelled into a strike fund. In fact, the opposite might be true. NUMSA is one of the few unions, and possibly the only one, that has a functioning strike fund. However, even in the case of NUMSA, there is no direct linkage between its investment company and the strike fund.

Across unions one of the most direct impacts that investment companies have is in providing bursaries for the children of the working class to undertake tertiary studies. Unions such as NUM and SACTWU have successful programmes providing bursaries to union members and their children. The first batch of recipients of bursaries from SACTWU were treated to a ceremony hosted in the Carlton

Hotel in Johannesburg in 1997. At this event, unionists reflected on how far the trade union movement has come. In 2019, the bursary schemes for NUM and SACTWU continue to grow. In terms of SACTWU, the SACTWU Educational Trust is ringfenced and has separate shares in HCI.

In some instances, union members have access to discounts on commercial rates. The Public Service Association (PSA) provides cheaper rates to its members who holiday at its resort in the Eastern Cape. This resort is linked to a nearby mine, which the PSA owns as well. However, the major area for discounts is financial service-related products. These include various insurances and funeral products. Union members receive tailored packages.

#### FINDINGS AND ESSENTIAL FACTORS

This survey of investment companies has shown that there are instances when union investment companies are meeting the goals of profitability and providing a return-to-workers. The returns most frequently mentioned are related to five essential social development areas: training of members; job-saving initiatives; education finance; post-employment support; and lowering living costs through discounts. However, the overarching picture is one of passive investments in large companies, with limited returns to members. This section describes six salient factors that determine the outcomes of participation by trade union investment companies in empowerment deals and ESOPs.

The first is worker control, oversight and participation in shaping the mandate of trade union investment companies. A good example was the debate within NEHAWU regarding the company's operations and investment strategy. NEHAWU members severely criticised the investment company at its congress. This subsequently led to a review of the NEHAWU investment company's mandate and the organisation established a savings and credit cooperative (NEHAWU SACCO).

A second factor involves clarifying who exercises control over assets. There have been contests over this in several unions. This emerged most strongly in the case of CEPPWAWU. Several legal processes have been undertaken to determine who the trustees are,

and what percentage of the company is owned by parties outside the union. The sordid story has had major internal impacts, with the union being threatened with deregistration.

A third factor relates to choices about which sector to invest in. Trade unions have traditionally stated that they will not invest in the sector that they organise in, as this would heighten the contradiction between representing workers and running a company. SACTWU with its investment company bought Seardal to save jobs and the industry. This company is the largest textile manufacturer in South Africa. This raises a question regarding the flexibility of this sector principle. The SACTWU case shows that it might need to be applied flexibly in order to resuscitate sectors and retain employment.

The fourth issue is the ideological orientation of trade unions. The debate on unions has referenced union investment companies extensively. Unions have been accused of practicing 'business unionism' and in so doing placing emphasis on profits and not worker issues. In fact, the critique runs deeper with the argument that unions are being demobilised through participation in the sector. This raises serious tensions within unions and, in some cases, delegitimises the organisation.

Fifth, corruption allegations have surfaced. In a couple of instances, union leaders have been accused of appropriating the shares destined for unions. This includes allegations against Dennis George, the general secretary of FEDUSA. Over the years, leaders in NACTU and COSATU have also been accused of corrupt dealings with union investment companies. This corruption feeds into the dogmatic perceptions and criticisms levelled against union participation in empowerment deals. This is especially the case in instances in which there are no tangible returns for workers.

A sixth and final factor is that ESOPs have proven less contentious and their institutional structures are less susceptible to corruption. More importantly, in some cases workers have benefitted substantially from ESOPs.

But there are some shortcomings with ESOPs in the South African context. The returns are largely determined by exogenous factors outside the control of employees, e.g. share prices, company dividend policies, sector performance (see Chapter 9 in this publication).

Participation in ESOPs does not guarantee access to operational control or strategic management decision-making. This is a substantial flaw because, as ESOP supporters point out, this model is intended to support workers' strategies to transform the internal workings of firms and to make them more democratic. However, the evidence presented in this chapter suggests that employees (both unionised and non-unionised) have not had a significant influence on the development of ESOPs. It is also not clear whether ESOPs factor in employee income differences. The literature largely focuses on pay-out values and provides minimal evidence on employee demographics in ESOPs. In sum, all these observations lead to a fundamental question: How should trade union investment companies and ESOPs expand return-to-workers?

#### CONCLUDING REMARKS AND RECOMMENDATIONS

Workers are indeed owners in a wide range of companies. During the initial phases of BEE, trade unions explored the potential to generate additional resources through pension funds. While this was never realised in practice, several unions were able to scoop lucrative stakes in companies. Today, the investment companies associated with NUM, SACTWU and CEPPWAWU have all made substantial investments and returns from different sectors. Furthermore, the financial services companies associated with NUMSA have the capabilities to list on the JSE. These larger trade union investment companies demonstrate that a strategy of passive shareholding can yield large dividends. The outcomes of ESOPs have been mixed, with some plans producing substantial income returns for employees while others have had limited success. The return-to-workers objective, expressed in preceding sections, requires innovative thinking that considers past experiences and essential factors described earlier.

As illustrated in the MIC example, developing autonomous institutions to receive dividends is important. MIC transfers funds into various institutions set up by the NUM. Each of these institutions constitute a legal entity that can receive funds according to the terms laid out in their founding documents. This is an important

arrangement, which ensures that dividends are not depleted by the daily operations of the union. Furthermore, improving worker control and transparency in trade union investment governance is crucial. The steps that should be taken to realise this include ensuring documents articulating the company mandate must be freely available; such documents include trust deeds, and company memorandums of association. This would be in addition to the publication of annual financial statements. Following from this, union structures – especially the union treasurer and financial departments – would be enabled to undertake monitoring.

In addition to the above, union investment companies' participation in BEE must be guided by clear political economy and socioeconomic goals. The primary one should be the expansion or sustenance of employment. South Africa's economy is characterised by persistent unemployment and low job retention. Trade unions participated in the Presidential Jobs Summit (2018) and committed to support employment creation. The investment companies can be used as vehicles to help implement these commitments. This is besides the issues pertaining to transformation of the structure of the economy, propositions linked to the political economy of structural change in South Africa, which are articulated in this publication. Evidence presented in this chapter illustrates that some union investments are entrenching the structural economic challenges identified in earlier Chapters of this publication. Some prominent examples include oligopolistic market structures, financialisation, decline of manufacturing and a path dependency premised on extractive resources. Therefore, it is essential that unions align participation in BEE transactions to productive economic structural change so that the companies the unions are investing in do not reproduce these challenges.

Furthermore, a broader strategy of supporting cooperatives would provide the much-needed experimentation to understand the possibilities of social ownership. Setting up a portfolio of experiments, which build on existing cooperative case studies, would provide trade unions with the space to understand the limits and possibilities of this ownership. Specifically, trade unions could start with combining initiatives around cooperative banks and dedicate a share of proceeds

from trade union investment companies to funding cooperatives and other social ownership schemes.

The return-to-workers concept also provides incentives for non-monetary benefits. The NUM and SACTWU examples illustrate this through education finance, research, training and post-employment support. However, it should be acknowledged that these successes are built on effective internal institutional capacity, design and infrastructure. Furthermore, these are limited to a few instances, including the NUM and SACTWU cases. Trade unions need to augment non-monetary benefits and develop the institutional capacity to sustain these important socioeconomic interventions. This shift would require an analysis of how to transcend the income-biased paradigm in ESOPs participation. Trade unions are encouraged to investigate how BEE ESOPs are designed to enhance benefits and worker influence in companies. Non-monetary aspects of ESOPs deserve equal attention, especially operational control and socioeconomic profiling of employee participants in ESOPs. In addition, the trusts governing ESOPs will need to start thinking longer term by not simply transferring dividends to workers but rather retaining portions for future, long-term investments. This review of ESOPs must be aligned to fiscal policy debates such as on increasing tax incentives for good ESOP performance and returns.

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APPENDIX

List of investments by trade union investment companies

Investment Company	Union	Stake in which company	Share of stake (%)
Mineworkers Investment Company	NUM	African Marine Solutions (AMSOL)	18
Mineworkers Investment Company	NUM	Opton	27
Mineworkers Investment Company	NUM	Multiknit	27.8
Mineworkers Investment Company	NUM	General Electric South African Technologies (GESAT)	27.8
Mineworkers Investment Company	NUM	Torre Industries Ltd	12.95
Mineworkers Investment Company	NUM	Puregas	25
Mineworkers Investment Company	NUM	Universal Industries	25
Mineworkers Investment Company	NUM	Metrofile	34.7
Mineworkers Investment Company	NUM	Peermont	25
Mineworkers Investment Company	NUM	Ascendis Health	
Mineworkers Investment Company	NUM	Tracker	30
Mineworkers Investment Company	NUM	Westcon	40

Mineworkers Investment Company	NUM	FirstRand	6.5
Mineworkers Investment Company	NUM	Primedia	21.7
Nehawu Investment Company	NEHAWU	Exxaro	?
Nehawu Investment Company	NEHAWU	Sanlam	?
Nehawu Investment Company	NEHAWU	African Rainbow Minerals Limited	?
Nehawu Investment Company	NEHAWU	MTN	?
Nehawu Investment Company	NEHAWU	Santam	?
Nehawu Investment Company	NEHAWU	Novare	?
SIIHOLD	SADTU	Sanlam	?
SIIHOLD	SADTU	Phakama Funeral Society	?
SIIHOLD	SADTU	ARM's Chairman's Fund?	
SIIHOLD	SADTU	SASOL	
SIIHOLD	SADTU	SADTU Property	?
SIIHOLD	SADTU	C&R Business Systems	?
SIIHOLD	SADTU	Northwest FM	?
SIIHOLD	SADTU	NeoTel	?
SIIHOLD	SADTU	Media24	?
SACTWU Investment Group (SIG)	SACTWU	Hosken Consolidated International	32.3
Numsa Investment Company	NUMSA	360 Financial Services Group	100
WIP Investment 40	NUMSA	WIP Investment 40	100
Numsa Investment Company	NUMSA	Mofaya Beverage Company	30
Popcru Group of Companies (PGC)	Popcru	Shishangeni Lodge	100
Popcru Group of Companies (PGC)	Popcru	Protea Hospitality Holdings	6.89
Popcru Group of Companies (PGC)	Popcru	Riskcon Security Services	100
Popcru Group of Companies (PGC)	Popcru	Workerslife	?