

Formalise the zama-zama?

Earlier this year, police recovered the bodies of 25 suspected illegal miners from a disused Harmony Gold mine shaft. They were found near the site of one of South Africa's worst mining disasters to date – where 76 illegal miners died in 2009. In response to the growing number of zama-zamas working in mines, trade union federation Saftu has called on government to legalise their trade, train them and provide illegal miners with the same rights and conditions all workers are entitled to.

Warren Beech, partner and head: Mining, Hogan Lovells, believes the most important thing is collaboration between big mining companies, government and the informal business of illegal mining.

Illegal gold mining has plagued the industry for decades and the current economic climate and high unemployment rates have attracted even more people to these disused mineshafts. This underground economy has robbed the industry and state of billions of rand through small-time pilfering, as well as larger networks run by organised crime. With output dwindling by the day and minerals proving harder to extract, mining companies have become increasingly frustrated.

Big business

Illegal mining is essentially a multibillion-dollar transnational business empire with its own financial targets, line managers, security personnel and CEOs. The playing field is spread over 6 000 disused gold, diamond, chrome and platinum mines across South Africa. Beech says this empire is bigger than many can even fathom.

"From my perspective, it is relatively simple – the most recent deaths have once again highlighted the socio-economic

"You cannot start talking about formalisation or legalisation unless you acknowledge how big a parallel industry this actually is."

The South African Federation of Trade Unions (Saftu) has called upon government to legalise the illegal mining trade, train illegal miners and provide them with the same rights and conditions all workers are entitled to. **Mpinane Senkhane** explores the available options.

position the country is in. It places people in such desperate positions that their way forward is to place themselves in one of the most difficult positions, working underground in this dangerous environment. So I think it is a representation of where our socio-economic situation is," says Beech. Locally, illegal gold mining costs government and industry more than R20 billion a year in lost sales, taxes and royalties, the Chamber of Mines estimated in an unpublished document submitted to Parliament in March.

"After extraction and refinement underground, that gold does not go through our formal gold systems; or, if it does, it is getting mixed with our 'legal gold' and when SARS loses out, we lose out as a country on that value," Beech states.

Formalisation

"I have been a very big advocate of formalising the trade, but of course you cannot start talking about formalisation or legalisation unless you acknowledge how big a parallel industry this actually is. If we can formalise it, we mitigate the risk for the industry and also for the man underground," he explains.

We increasingly see media reports about illegal miners killed underground but, for the most part, the media hasn't acknowledged the socio-economic implications and causes, or the communities that sustain this economy. "Legalisation is just a component of formalisation, in

my view. A good example of this is Ecuador, which has one of the biggest gold deposits in the world. Historically, the industry was made up of mainly small-scale artisanal miners – in other words, illegal miners – but now they've gone towards mature, large-scale mining – legally. They put in place financial incentives and a programme of easier licensing, from both a mining and environmental perspective, as well as training on safety and so on. In South Africa, we don't need to reinvent the wheel. This is the model we need to adopt," opines Beech.

However, he believes the most important thing is that there needs to be an acknowledgement of what is now a reality for the South African mining industry – especially considering that it has a paramount impact on legal mining. So, formalise or legalise? The bottom line is that this 'industry' can no longer be swept under the rug. **35**

Warren Beech, partner and head:
Mining, Hogan Lovells

