

A review of mineral development and investment policies of Botswana

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Abstract

Botswana's mineral policy objective is primarily to maximize the national economic benefit from the development of mineral resources. In 1999, the government replaced the old mining code of 1977, which was out of tune with prevailing economic philosophies with a new mining code. Although, the old act had its shortcomings it served the country reasonably well for 20 years, during which time the country was transformed from being one of the poorest of the world's poor to a middle income country. One of the cornerstones of the new and old mining codes is that government does not subscribe to privately owned minerals rights. The Botswana government attempts to provide a fair balance between the various stakeholders. There are, however, areas in the mineral policy and mining codes that need to be critically reviewed as outlined in this paper.

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Keywords: Mineral development; Mining investment; Mineral resource; Mineral policies; Mining codes

Introduction

The mining sector makes a significant contribution to the economy of Botswana. During the last National Development Plan 8 (1997/1998–2002/2003) the sector contributed about a third of the Gross Domestic Product, over 70% of export earnings and over 55% of total government revenues (Mining Development Plan 9, 2003/2004–2008/2009). Since, diamond mining began in the early seventies the country has posted commendable economic growth. Although, the country has made significant progress since independence, economic diversification has not been well rooted. This is a major concern to Botswana especially against the fact that no significant growth impetus is expected to originate from the mineral sector in the near future.

This paper reviews the mineral development and investment policies of Botswana. The paper focuses on the impact of mineral and fiscal legislation in attracting investors. It highlights the information most crucial to the investor during the exploration and exploitation phases including mineral potential, mineral legislation, fiscal regime, business environment and political risk. Mining involves an element of speculation and is particularly susceptible to risk. Investors would normally carry out a risk analysis of prospective

countries prior to making investment decisions. There are many types of mining project risks including management, political and security risks, ore reserves, production (technology), construction, commodity (price and market) and environmental risks. This paper however confines itself to political and security risks since government authorities may influence them.

Investment environment in Botswana

Botswana has created a reasonably acceptable environment for private sector investment in the mineral sector. The government has allowed a mixed economy to flourish and has offered a liberal exchange control regime, which has permitted relatively free repatriation of dividends and profits and virtually unrestricted freedom to import goods and services. Botswana has been pragmatic and maintained high levels of foreign exchange reserves. The government of Botswana continues to actively encourage private sector development through an attractive tax system and ensuring macroeconomic stability. The government actively encourages the development of the private sector, through various investment incentives. The general infrastructure in the country is fairly well developed. However, the distance to the coast sometimes hampers business, as the country is landlocked.

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Table 1
Investment environment of Botswana

Category	Rate/rank	Remarks
Risk		
Political security	Low insignificant	Member of the Multilateral Investment Guarantee Agency. Both the Political and Security Risk in the country are rated as low and insignificant respectively. Botswana offers a democratic and stable political framework
Corruption	Low	Low corruption levels
Mineral potential	Good	Although Botswana has good mineral potential there is a limited variety of prospective minerals. Mineral deposits include diamonds, gold, copper/nickel/cobalt, soda ash, gemstones and coal
Mineral legislation		
Mineral ownership	State	Government is entitled to participate in companies undertaking mining
Institution		Department of Mines and Geological Survey under the Ministry of Mineral Resources, Energy and Water Affairs
Equity	15–25%	The level of equity participation is a function of the specific nature of a project
Mining policy		The key objective is to maximize the mineral sectors benefit to the country
Licensing system	Act of 1999	This Act governs the disposition and regulation of mineral development in Botswana The law provides for the acquisition of mineral rights including reconnaissance permit, prospecting licence and a mining lease
Environmental management		It is Botswana Government's policy to safeguard the environment. However, the Mining Act of 1976 vaguely covers environmental protection during mining operations
Fiscal regime		
Corporate tax	25–35%	There is a two-tier tax system for company tax. Companies pay at the rate of 35% of their taxable income but this is broken down as company tax 25% of taxable income; additional company tax 10% of taxable income, linked to withholding tax; non-resident company tax 35% of taxable income
Royalty	3–10%	Royalty is payable on building and industrial minerals—3%; coal—5%; precious stones—10%; semi-precious stones—5%; precious metals—5%; and 3% for other minerals. Royalty is determined as a percentage of the gross market value
Infrastructure	4 ⁺	The country has good infrastructure including all weather roads, railway and telecommunication system

Sources: Control Risk Group; The Africa Competitiveness Report; Mining Journal, 1999; Botswana Mines and Minerals Act, 1999; Mining Journal, 1995; www.mines2000.com.

A review of mineral development policies of Botswana

Botswana has enjoyed rapid economic and social development since diamond mining began in the early 1970s. Despite its phenomenal economic growth, the country has not seen a positive cascading down in terms of job creation and expansion of mining associated industries. There has been little diversification from mining. The country needs to diversify the economy and move away from its reliance on diamonds. The Act (Mines and Minerals Act, 1976), although reasonably modern, had features that required revision in order to provide investor-friendly laws and policy and to reduce bureaucracy. These features principally pertained to the following:

- (1) The casting aside of ministerial discretion in favour of more transparent procedures for acquiring and transferring mining properties;
- (2) The revision of the taxation regime;
- (3) The inclusion of environmental policies;
- (4) The ease of transition from a prospecting licence to a mining licence, dependent on meeting the necessary work schedule.
- (5) The introduction of a retention licence

The government made a number of revisions to its investment codes to attract foreign investment into the country. A new Act (Mines and Minerals Act, 1999) reflecting the changed policies of mineral development and disposition in Botswana was promulgated in 1999 after extensive consultation with other role-players and after studying of the policies of successful mining nations. The government addressed aspects of property tenure and ministerial discretion that were not investor friendly in the previous legislation. The main feature of this new legislation is that it seeks to address the shortcomings of Mines and Minerals Act of 1976 by

streamlining it to encourage investment. Furthermore, ministerial discretion has been cast aside in favour of more transparent procedures for acquiring and transferring mining properties; taxes and royalties have been revised, and environmental policies have been included in the legislation for the first time (Mining Journal, 1999).

Outlined below is a review of the new mining investment environment in Botswana.

Institutional framework

The ministry of minerals, energy and water resources (MMEWR) is responsible for developing and implementing the fiscal, legal and policy framework for mineral exploration and exploitation. MMEWR also administers various mineral agreements, carries out mineral investment promotion activities and liaises with bilateral and multilateral partners on mineral related matters (Mining Development Plan 9, 2003/2004–2008/2009). MMEWR is supported by two technical departments, which have statutory responsibilities for various technical and operational matters in the mineral sector.

Geology and mineral potential

The country has a fairly good geological database and the exploration effort is reasonably effective. Exploration activity in Botswana has been fluctuating for the period 1997–2001 (Table 2). Diamond exploration has attracted the most attention for the said period. Exploration for energy minerals, precious metals, and industrial minerals continued to be subdued for the period under examination.

In the late 1990s, the Department of Geological Survey continued with the program of gathering basic geological information for mineral investment promotion. This entailed

Table 2
Number of prospecting mineral concession per mineral group during NDP 8

Year/mineral	1997	1998	1999	2000	2001
Diamonds	338	530	495	556	464
Various minerals	233	313	215	132	126
Sand and gravel	0	0	0	0	106

Source: Botswana Department of Geological Survey Reports, 2003.

mapping, geo-chemical and geo-physical surveys in various parts of the country during the period 1997–2001. It is without a doubt that the availability of up-to-date and easily accessible geological information from the Geological Survey Department has gone a long way in making it easier and quicker for exploration companies to get started and at a reasonable cost.

Security of tenure

To tackle the concern that prevailed in the Mines and Minerals Act of 1976 with regard to security of tenure and automaticity in the award of licences the Act of 1999 made improvements. The Act of 1976 provided that companies should explore at their own risk and after making a discovery should negotiate terms for a mining lease. In the Act of 1999, the whole process is more automatic and predictable.

Mineral rights

There were three basic mineral rights under the 1976 Mining Act, namely the reconnaissance, prospecting and mining licenses. Holders of prospecting licenses could only obtain mining licenses. The new Act amended this code, removing the discretionary clauses and allowing for progression from one licence to another. The reconnaissance and prospecting license were merged into a prospecting license, which will allow automatic progression to a mining license. This is a deviation from the previous policy of 'use it or lose it' where a license could be terminated if work was stopped or not started. The reconnaissance permit, restricted prospecting licence and restricted licence were abolished. The holder of a prospecting licence, retention licence or a waiver may apply for a mining licence in accordance with the Mines and Minerals Act, 1999. Furthermore, the Act of 1999 sets out all criteria, which are to guide the Minister of Minerals, Energy and Water Resources actions and decisions. Instead of various clauses saying that the 'Minister may, in his discretion, do *a, b, c*' the new Act now stipulates that the 'Minister shall, unless *y* or *z* applies, do *a, b, c*'. To this end the new act effectively removed some of the uncertainty and eliminated the stage of negotiation, which existed between the discovery and mine development stages as inferred in the act of 1976. The Act of 1999 removed the possibility of unreasonable behaviour by the Minister. Investors are protected by modern principles of good administrative law in which the Minister is required to act reasonably and to state reasons for his decisions.

Retention licence

The Mines and Minerals Act of 1999 introduced the retention licence, which accommodates those committed prospectors who, on making a discovery, may find that it cannot immediately be turned to economic account and that, under the old regime, they had to 'use it or lose it'. However the retention licence should be contingent on the level of prospecting activity within the area held under the licence. Botswana should guard against a situation whereby big companies freeze out small operators. The retention licence provides for two retention periods of 3 years each, the first of which will remain exclusive, subject to confirmation that viable development remains impossible, while the second period will provide for limited rights of access by third parties to re-assess the prospect. The challenge will be in striking the right kind of balance. Amendments to the existing mineral legislation allow prospecting licence holders to retain rights to a deposit for up to 6 years after expiry when the immediate development of a mining operation has been economically or technically impractical. Licensees would also be granted guaranteed mining rights, provided they have the necessary technical and financial capability and submit an acceptable mining plan.

Transfer of mineral rights

An important feature of this legislation is that it offers exclusive rights to concessionaires who are prepared to exploit the mineral resource without undue delays. Furthermore, the Act seeks to discourage the use of the country's mineral resources for speculative purposes. The transfer or assignment of mining licence cannot be done without the approval of the Minister. This system does not allow investors to hold property rights but merely a licence, which is revocable, albeit under rare circumstances. Hence the system offers less security and continuity of tenure. More transparent procedures for transferring mining rights/properties are a necessity. Restrictive mining legislation will not have a broad appeal to investors. Botswana could learn from Chile, which incorporates a system in which mineral rights are vested in the state but are held as property rights. In the case of Chile, mining rights, once granted, are virtually inalienable under the constitution and are freely transferable and mortgageable (Latin America–Trade and Investment Opportunities, 2000).

Environmental obligations

The government expects the mining industry to carry out its activities in an environmentally responsible manner. However, Botswana does not have comprehensive environmental protection legislation except for a short outline in the Mines and Minerals Act (1999), which is lacking in detail. Other legislation with some relevance to mining are the Pollution Act (Atmospheric Pollution Prevention Act, 1971), Machinery Act (Botswana Mines Quarries Works and Machinery Act, 1978) and the Waste Act (Waste Management Act, 1998). The

country needs to adopt an all inclusive explicit and comprehensive environmental protection act that covers all environmental issues as a matter of urgency. Furthermore, the Atmospheric Pollution Prevention Act is outdated and needs revising. According to a recent survey, mining companies prefer to assess beforehand, the reasonableness, practicality and cost of meeting environmental requirements before investing (Matshediso, 2002).

Small scale mining

Botswana has a limited small-scale mining industry and needs to introduce structures to revitalize the sector. Procedures for small-scale mining are lacking in detail and need to be accorded the necessary attention. The Mineral Policy should make a distinction between small- and large-scale mining and address issues relevant to the small-scale mining sector. Legislation relevant to large-scale mining is not necessarily appropriate for small-scale mining and procedures for small-scale mining sector need to be outlined.

Mineral agreements

The Mining Act has provision for a mineral agreement and would serve to supplement the mining code.

Fiscal policy

Botswana maintains a fiscal policy towards mineral development consisting of three major elements: equity, taxation and royalties.

Equity

Up until the introduction of the new Mines and Minerals Act in 1999 the government was entitled to free equity. The unpopular right to free equity participation has been abolished in favour of acquisition of shares in commercial terms. Although, the Botswana Government has the option of acquiring up to 15% working interest participation in the mining company, management and control of the company is normally left to the investor. This does not seem to have discouraged multinational companies from investing in the country, possibly because of Botswana's good track record in dealing fairly and transparently with investors and because management is left to the private sector partner. Government participation was normally limited to Board and Management Committees. The private partner generally operates under an investment agreement, which provides the private investor with explicit guarantees against unreasonable government interference. The state seems to be an adequate regulator of the mining sector. The private sector has operated all mining ventures. This has underpinned the proper and efficient running of the mining industry in Botswana.

Taxation

A comparison of the effect of different tax regimes in the 12 SADC countries, Canada and Chile clearly showed that other

countries, including Lesotho, South Africa, Swaziland, Tanzania, Zambia, Canada and Chile, offer better returns for the investors compared to Botswana. Furthermore, the survey reveals that mining investors preferred mining taxations, which complied with taxes in other sectors of the economy (Matshediso, 2002). The system of taxation in Botswana prescribes a formula for Variable Rate Income Tax, which will meet Governments' taxation objectives without creating a disincentive to investors. The tax regime automatically applies very low tax rates to marginal mining projects, with higher rates applicable to very profitable projects.

Royalties

Royalty charges have been revised downwards from 5 to 3% for all minerals except precious stones and precious metals, which have not changed. The fiscal regime has also seen some changes, such as the introduction of a generalized tax regime of 25% applicable to all minerals except diamonds. Some of the other changes that have been introduced involve 100% capital write off in the year of investment with an allowance for unlimited carry forward of losses and introduction of a variable income tax rate. Although, royalty charges have generally been reduced in Botswana they are still high when compared to countries, which attract a lot of foreign direct investments, such as Chile, where there are no royalty charges (Moori, 1999). Botswana has favoured imposing royalty charges as they represent a rent on mineral resources. These royalty charges do not seem to have deterred investors—reinforcing the idea that fiscal regimes should not be treated in isolation but in conjunction with other investment criteria.

Investment environment

A combination of good mineral potential and a stable investment environment has enabled Botswana to not only attract investors but also extract more revenue from its mining industry than most SADC countries. The mineral policies and political stability of Botswana, together with good mineral potential, have resulted in the country attracting considerable mining investment. For instance, about US\$275,000 was invested in the Orapa expansion project and US\$76 million in Jwaneng Mine Aquarium Project recently (SADC Mining, 2000/2001). Botswana has enjoyed relative peace, rule of law and a democratically elected government since independence in 1966. The aforementioned factors have had a positive impact on the internal stability of the country making Botswana a good destination for investors.

Conclusions

Botswana has clear and transparent legal and fiscal legislation backed by efficient administration structures. Botswana has a track record of fair and equitable dealings with international investors spanning 30 years. This has enabled the government to get away with measures such as holding shares in mining companies and drawing royalty payments. However, the country cannot afford to be

complacent. Botswana should make an effort to enhance its position as an investor friendly country. Not only is exploration expenditure in the country focused primarily on diamonds but it has also been fluctuating as seen in Table 2. The country is also massively dependent on diamonds, which account for 80% of exports and 50% of government revenue (Official SADC Trade, Industry and Investment Review, 2003). This does not augur well for the country. It is therefore, crucial for the government to attract more exploration activity for other minerals to the country. The mineral policy should seek to encourage the development of other sources of mineral wealth. A potentially limiting feature of Botswana's mineral industry has been that very few shares in Botswana mining companies have been available on the local stock exchange. The ownership has been either in private hands or jointly owned by government and private companies. This legal investment limitation has prevented the ordinary citizen or pension funds from effectively investing and participating in the extraction of the nation's resources after more than 30 years of mining history. This is an indictment of the policies of the country. Botswana should consider strengthening its investment agency, BEDIA. The agency should be truly a one-stop-centre responsible for co-coordinating, promoting and facilitating investment in the country. Botswana's Embassies, High Commissions and Consulates abroad should play a more important and noticeable role in promoting the country's mineral potential and mineral investment environment. The Botswana Mineral Policy is well defined but is still lacking in detail. It would be useful if the policy document included mineral taxation, mineral rights and prospecting information,

mineral beneficiation, minerals marketing, research and development, mine health and safety, human resource development, migrant labour, downscaling and regional co-operation. It is however, noted that some of these issues are addressed in the mining laws and other laws of the country. It would however, make life easier for the investor if the relevant issues were contained in one policy document.

References

- Botswana Atmospheric Pollution Prevention Act (1971).
- Botswana Department of Geological Survey Reports, 2003.
- Botswana Mines and Minerals Act (1976). Cap. 66:01.
- Botswana Mines and Minerals Act (1999). Chapter 66:01.
- Botswana Mines Quarries Works and Machinery Act.
- Botswana Waste Management Act (1998).
- Control Risk Group Report.
- Latin America-Trade and Investment Opportunities, 2000.
- Matshediso, I.B. Strategy for Mining Development in the SADC Region. PhD Thesis. 2002.
- Mining Journal. Botswana. Improving Competitiveness: Promoting Diversification. Supplement to. Mining Journal, London, December 1999.
- Moori, K., 1999. Reformas Economicas Ia Inversion en el Sector Menero Argentino, 50 Reformas Economicas, Cepal.
- Official SADC Trade, Industry and Investment Review, 2003. Published by Southern African Marketing Co. (Pty) Ltd.
- REPUBLIC OF BOTSWANA Mining Development Plan 9 (2003/04-09), p. 203
- REPUBLIC OF BOTSWANA National Development Plan 8 (1997/98-03) p. 270
- The Africa Competitiveness Report.
- www.mine200.com.