

# BOTSWANA

## ARMSTRONGS ATTORNEYS



### FIRM INFORMATION

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### COUNTRY INFORMATION

Botswana is a landlocked country with a population of about 2 million. The urban population accounts for about 50% of the total population.

### TYPE OF GOVERNMENT

Botswana is a stable multiparty democracy.

### LATEST GDP FIGURES

The Botswana economy had a negative growth of 0.3% in 2016 driven down by a 19.7% decline in mineral revenues. Real gross domestic product (GDP) grew by 3.5% in 2016 and the Government anticipates a growth of 4.1% in 2017. The overall fiscal balance for the 2015/16 financial year was a deficit of P6.63 billion which is higher than the projected P4.20 billion. The liquidation of the BCL Group PTY Ltd will have economic and social implications particularly in the area of employment, exports, Government revenues and overall growth. The negative effects of the liquidation of the BCL Group may reduce the above figures.

### INFLATION RATE

The 2016 domestic inflation rate continued to fall within the Bank of Botswana's target of 3–6%, and in the current financial year the rate fell below the target, averaging 2.7% between April and September.

### INVESTMENT CLIMATE

Botswana is a stable democracy with an open economy. Botswana's potential as a centre for trade and investment was enhanced by the recent signing of the EU-Southern African Development Community (SADC) Economic Partnership Agreement (EPA) which accords duty and quota-free market access for Botswana's exports to the EU market.

The government is making substantial efforts to create a favourable climate for private and foreign investment by imposing minimal restrictions on foreign investors and the privatisation of state entities. Government is considering the enactment of an Investment Facilitation Law, which will establish an investment code and stipulate service standards

and turnaround times for encouraging investors.

The Botswana Investment Trade Centre (BITC) which was established to operate as a one-stop investor service centre. During the 2015/16 financial year it registered investment increases in existing investments worth P377 million, resulting from investor aftercare programme which encourages companies to reinvest locally. BITC further facilitated exports valued at P2.2 billion.

### FORMS OF BUSINESS

- Private or public limited liability company
- External company (branch of foreign company)
- Company limited by guarantee
- Partnership
- Common law trust
- Sole proprietorship
- Societies being associations of persons.

The Companies Act provides a simplified framework for the incorporation of companies and other legal entities (such as close corporations) and imposes strict obligations on corporate governance.

### FORMATION OF A COMPANY

Non-residents may hold shares in a Botswana company. One resident director is required for a private company and two resident directors for a public company. The registered office must be in Botswana. Auditors are required for non-exempt companies who must be certified public accountants practising in Botswana. Company secretarial duties are performed by secretarial services companies, most of which are attached to accounting firms. Companies are usually registered within 4 weeks.

### EXCHANGE CONTROLS

Botswana has abolished all exchange control regulations and foreign investment is welcomed. Dividends and capital gains on equity investments received from a foreign source are, subject to tax being paid, freely remittable out of Botswana in foreign



currency. Interest on and the capital of foreign loans are freely remittable in foreign currency. Upon disinvestment, a non-resident may remit capital in foreign currency. Foreign currency can be held and earn interest with a bank in Botswana.

Botswana securities denominated in a foreign currency may be purchased using foreign currency without converting the foreign currency into Botswana Pula. The proceeds of such Botswana securities may be paid in foreign currency and freely remitted anywhere in the world without notification to the Central Bank.

## TAXATION

Tax is levied on income that is actually derived or deemed to be derived from Botswana sources.

Foreign source dividends and interest are deemed to be from a Botswana source and are taxable on accrual.

There is a single corporate tax rate of 22%. The corporate tax rate for non-resident companies is 30%.

The tax rate for manufacturing and International Financial Services Centre (IFSC) companies is 15% in respect of approved activities. These rates do not apply automatically and must be applied for and approved by the relevant authorities.

## WITHHOLDING TAX

Withholding tax is 7.5% on all dividends paid.

Payments of rent to a resident or non-resident for the use of any land or building or both are subject to withholding tax at the rate of 5% unless:

- the rent is paid by an individual and it is not claimed or will not be claimed as a business expense by such person
- the payment of rent is less than P36 000 during any tax year
- the rent is paid in respect of accommodation in a hotel, motel, guest house or lodge
- the recipient of the rent is a person exempt from taxation.

Any surplus amount paid by a mine rehabilitation fund to a person who contributed to the fund is subject to withholding tax of 10%. The withholding tax represents a final charge to tax and the amount paid by the mine rehabilitation fund will not form part of the recipient's assessable income.

Payment of commission or brokerage for or in connection with the procurement of goods or services is subject to withholding tax at the rate of 10%. Such withholding tax will only apply to payments in excess of P36 000 in any tax year.

The exemption from withholding tax on commercial royalty payments made to non-residents in respect of the leasing of aircraft has now been withdrawn.

## CAPITAL GAINS TAX

Tax is payable on capital gains at the income tax rate of the particular tax payer in respect of immovable property on 100% of the gain. The gain is calculated by deducting from the sale price the cost of acquisition and the cost of any improvements. A prescribed escalation factor is applied to other movable

property, including shares in a company, on 75% of the gain which is calculated by deducting from the sale price the cost of acquisition of the property sold.

Capital gains tax is not payable on the sale of shares in a public company, as defined in the Income Tax Act, if the shares, units or debentures were held by the tax payer for a period of at least one year prior to the date of disposal.

## DOUBLE TAXATION AGREEMENTS

Botswana has entered into a number of double taxation avoidance agreements with Barbados, France, Namibia, Russia, Seychelles, South Africa, United Kingdom and Northern Ireland, Zimbabwe, India, Mozambique, Ireland, China, Swaziland, Lesotho and is currently negotiating with Zambia, Belgium, Malawi, Tanzania, China, Luxembourg, Kenya, Angola, Nigeria, Uganda and Japan.

## VAT

Value Added Tax (VAT) is levied at 12%.

## IMPORT / EXPORT INCENTIVES / SUPPORT

The Botswana Investment Trade Centre facilitates the establishment of export-oriented enterprises and selected services.

## MONETARY POLICY

Implementation of monetary policy is entrusted to the Central Bank of Botswana. Price stability is the main goal of monetary policy using indirect policy instruments and a framework for forecasting inflation.

## LEGAL SYSTEM

The legal system of Botswana is a mixture of Roman-Dutch and English common law principles. There are also local systems of tribal law and custom in rural districts, which govern everyday disputes and property relations but are subordinate to statutory law. The superior courts in Botswana are the Court of Appeal, the High Court and the Industrial Court.

## INTELLECTUAL PROPERTY

Intellectual property is protected by the Industrial Property Act which gives effect to various international conventions, treaties and protocols to which Botswana is a party.

## FINANCIAL SERVICES/INSURANCE

Banking services are regulated by the Banking Act, the Bank of Botswana Act and the National Clearing and Settlement Systems Act with the Central Bank as the regulatory authority.

Efforts to improve the efficiency of this sector include the expansion of electronic payments. In this respect, the relevant



systems, such as the Electronic Clearing House and Botswana Interbank Settlement System, are monitored by the Bank of Botswana to ensure that they meet the important public policy objectives and attributes of safety, efficiency, stability and integrity.

Non-bank financial services are regulated by the Non-Bank Financial Institutions Regulatory Authority.

### KEY STRATEGIC GROWTH INITIATIVES BY GOVERNMENT / PRIVATE SECTORS

An Economic Stimulus Programme (ESP) was unveiled as a holistic action plan for achieving the goals of stimulating economic growth, accelerated employment creation and the promotion of economic diversification. The following have been identified as key sectors that will drive the programme: infrastructure, agriculture, tourism and manufacturing and services, enabled by the establishment of Special Economic Zones (SEZs) and the Economic Diversification Drive (EDD). In addition to stimulating inclusive economic growth, a key ESP objective is to re-boot Government to ensure the urgent delivery of existing national priorities.

A board for the Special Economic Zone Authority has been appointed and a technical advisor for the rollout of the zones has been appointed, priority is being given to the development of the mixed use Special Economic Zone at Selebi-Phikwe. Selebi-Phikwe Economic Diversification Unit (SPEDU) has engaged with communities in the SPEDU region to resuscitate and support development projects in such areas as piggyery, fish and farming.

The government is employing sector specific strategies to promote local industries. A statutory instrument to restrict importation of salt in small quantities has been introduced to promote market access for locally packaged salt.

The government realises that sustainable employment creation will require local and foreign investment, concentrating on Southern Africa and development in key niche areas where Botswana has a natural advantage (for example tourism).

The government continues to implement programmes that enhance citizen participation in economic activities and business ventures. A large share of government expenditure goes towards education, training and health.

Botswana Development Corporation (BDC) has recorded profits for the two years up to June 2016. Since mid-2015, just over P400 million worth of new investments has been approved with an additional P800 million expected to be approved for funding in the next few months..

Botswana's Industrial Development Policy aims to promote highly productive and efficient export industries integrated with foreign markets and technology, develop competitive manufacturing and service sectors able to compete internationally, grow supporting services and component manufacturers, create links between small and medium enterprises with foreign firms and develop small and medium enterprises for the domestic market.

### TREATIES AND BILATERAL AGREEMENTS

Botswana is a signatory to the Lome Convention with the European Union and has duty free or preferential access to the US market under the General System of Preferences with no quota restrictions.

The African Growth and Opportunity Act (AGOA) of the United States Government provides duty-free and quota-free entry of garments produced in Botswana from yarn or fabric of African or American origin (to be increased to yarn of any origin).

There are bilateral agreements with China and regional countries (through SACU and SADC) allowing preferential or limited duty free trade.

### MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANISATIONS

Botswana is a member of the World Bank, the United Nations (UN), SACU, SADC, the International Monetary Fund (IMF), the African Union (AU) and the AU's New Partnership for Africa's Development (NEPAD). Botswana is a member of the World Trade Organization (WTO) and a signatory to the Multilateral Investment Guarantee Agency (MIGA), which protects investments from nationalisation or expropriation. Botswana continues to play an active and influential role in shaping the global agenda in line with its national priorities and international norms. Botswana further remains committed to the International Criminal Court (ICC) and international criminal justice system. The domestication of the Rome Statutes is at an advanced stage and was recently brought before Parliament.

### ROAD AND TRANSPORT

There has been measurable progress in the completion of mega road projects. In regard to the Kazungula Bridge Project, temporary works on the Zambian side is now complete whilst on the Botswana side it is 86% complete. Construction has also commenced on the Charleshill-Ncojane road in June 2016. ESP implementation in the road sector's primary goal is to decongest public highways, especially the A1.

Botswana Railways is currently implementing its turnaround strategy to address current and future environmental dictates. Botswana Railways is refurbishing its station buildings in line with the passenger train service. Aged rolling stock continues to be a challenge in meeting the demand of BR services.

The new Air Traffic Control Tower and Technical Block construction at Maun Airport was completed and handed over in May 2016 with the Kasane Terminal building project expected to be completed in April 2017. The International Civil Aviation Organisation conducted a validation mission, which affirmed that Botswana had risen from 53.78% to 71.58% of effective implementation of ICAO standards.



## WATER

The efforts to maintain water supply security are challenged by recurring drought. The government continues to undertake measures, including the development of water infrastructure such as dams and water pipelines and exploit alternative water sources.

Government has established a Programme Management Office to oversee the implementation of major energy and water projects.

The extension of the North South Carrier from Moralane Break Pressure Tank to Palapye is complete and is under trial. This should improve water supply to the Greater Gaborone catchment area.

The infrastructure of Dikgatlong and Lotsane Dams have been completed while the associated infrastructure component for the Thune Dam which includes the construction of a Water Treatment Plant and distribution pipelines to ten villages in the Bobirwa Sub District is progressing.

Other initiatives to improve water supply and sanitation in the country include Maun Water Supply and Sanitation Phase II project, Kanye and Molepolole Sanitation project, Seronga / Gudigwa water supply project and Shakawe Water Treatment Plant project.

Government is also exploring the potential water transfers with neighbouring states such as Lesotho and South Africa and the feasibility of drawing water from aquifers along our border with Namibia and South Africa.

## ENERGY

The new Botswana Energy Regulatory Authority is expected to be fully operational this year. Independent Power Producers are being procured for the development of an additional 300MWs by extending Morupule B with units 5&6 and the existing Morupule plants are undergoing remedial works. There has been a greater emphasis on the expansion of solar power and other green technologies to meet the energy demands. A tender for a 100MW Sola Power Station is being prepared.

With respect to the petroleum sub-sector, a quality monitoring program of petroleum products to protect consumers and the environment is in place. The construction of the Tsele Hills and expansion of the Francistown strategic reserves are progressing and it is expected that they will supply 42 day's worth of additional stock.

The National Energy Policy has been submitted for Cabinet approval and tentatively for forward submission to Parliament. This policy document will guide the energy sector going forward.

## TELECOMMUNICATION

The listing of Botswana Telecommunications Corporation Limited (BTCL) was successfully implemented. Government has introduced a Postal Infrastructural Development Programme

to upgrade existing and develop new Post Offices in all major villages, towns and cities. The Botswana Communications Regulatory Authority (BOCRA) continues to monitor the performance of the telecommunications networks. Through Botswana Fibre Networks, the government is extending the national fibre backbone network which is expected to be completed by August 2017.

## BOTSWANA STOCK EXCHANGE

The Botswana Bond Market Association is due to begin formal implementation of its mandate in collaboration with the Botswana Stock Exchange to resolve structural issues with impending bond market development, with a view to promote efficiency and liquidity of the bond market.

Furthermore the Botswana Stock Exchange Listing Requirements are still being considered with the introduction of the new Securities Act, there will be clearer transparent rules, under which securities exchanges and other players may operate.

## TRADE AND INDUSTRY

Efforts by agencies such as Botswana Investment Trade Centres (BITC) continue to promote domestic and foreign direct investment into the sector and provide targeted fiscal incentives to major manufacturing projects to enhance the value addition and competitiveness of their products.

## INFORMATION AND COMMUNICATIONS TECHNOLOGY

The government continues to leverage Information and Communication Technology (ICT) to improve the quality of life for Botswanans, while positioning the country as a regional ICT hub.

BOCRA continues to monitor the performance of the telecommunications networks and the concerns raised by the general public relating to the unsatisfactory quality of service of some of the networks.

## MINING

Botswana is renowned for its diamonds but also has deposits of copper, nickel, cobalt, gold and soda ash which are currently being mined or developed. While the minerals sector remains a principal source of revenue and primary sector for economic growth and diversification, it is currently challenged by depressed markets. The market demand for rough diamonds improved slightly in 2016. Carat sales and revenue for this year are forecast to be 65% and 27% respectively above 2015 sales and revenue. Copper and nickel prices, however, remained depressed in 2016. The downturn put BCL and Tati Nickel Mines under severe financial constraint which resulted in the provisional liquidation of the BCL Group.

The ownership of minerals in Botswana vests in the government and all mineral concessions can only be acquired in accordance



with the licence regime under the Mines and Minerals Act. There are three main mineral concessions that may be issued in terms of the Act, namely prospecting licences, retention licences and mining licences.

Mining licences (except in respect of diamonds) are granted for periods of up to 25 years. The government has the right to acquire an equity interest of up to 15% in a company that applies for a mining licence. A 5% state royalty is payable in respect of precious metal production, 3% for base metals and 10% for precious stones (including diamonds).

The Diamond Cutting and Precious and Semi-Precious Stones Amendment Bills, aimed at adapting to current downstream industry developments for improving business conditions and enabling growth have been finalised. The amendments are expected to facilitate the policy on further beneficiation and citizen empowerment among other key issues.

## AGRICULTURE

The Agricultural Sector implemented initiatives to improve access roads to production centres, use of treated sewage water for irrigation, electricity connection to production clusters, improvement of infrastructure at horticulture production areas and commissioning of a National Agro-Processing Plant. These initiatives have contributed to food security and employment creation.

Crop production was affected by periods of extended heat waves and low moisture levels. The national cereal production for 2015/2016 was 54 374.20 metric tons which is 18.1% of the National Cereal requirement of 300 000 metric tons. Botswana was declared drought stricken. In response to changing climatic conditions, government is promoting Climate Smart Agriculture technologies such as Conservation Agriculture.

Government is also strengthening its efforts to exploit sewage water for irrigation for example at Glen Valley where 203ha have been allocated to 47 farmers. The Serowe grey water re-use project is also progressing well and should be completed by early 2017.

The Botswana Meat Commission (BMC) has increased its revenue from 2013 through 2015 by about 20.4%. The BMC has also grown its export to Europe from about 6 000 tons in 2013 to just over 9 000 tons in 2015 while hoping to further increase exports in 2016 to over 10 000 tons. The Dairy Development Strategy adopted last year is beginning to bear fruit as Sunnyside farm near Lobatse has been leased to a dairy company. Production in 2016 was 4.9 million litres compared to 3.4 million litres the previous year when only 8.1% of the national milk demand was met.

Government continues to implement the agricultural support schemes such as ISPAAD, LIMID, ASS and the National Agricultural Research and Development Institute (NARDI) which was launched in June 2015 following the decision to merge the Department of Agricultural Research with the National Veterinary Laboratory and the National Food Technology Research Centre (NFTRC). This establishment will focus in areas of promoting research, innovation and training. The

Botswana University of Agriculture and Natural Resources is also carrying out research in the utilization of indigenous plants for medicinal and food purposes.

## LABOUR RELATIONS

Botswana has a reputation for stability at all levels, including labour relations. The government has a low level of ratification of International Labour Organisation (ILO) treaties which indicates a reluctance to commit to or adopt a pro labour movement agenda. However the government continues to review labour laws so as to align them with changing needs. The Trade Disputes (Amendment) Act of 2016 came into effect in November 2016 whilst amendments to the Employment Act and the Trade Unions and Employers' Organisations will commence during the last quarter of 2016/2017 financial year.

To further stimulate job creation the government has adopted an accelerated programme for job creation focused on key areas that have a high potential for labour intensive economic growth. In addition to EDD and the ESP targeted areas of Agriculture, Tourism and Infrastructure our efforts to stimulate the economy will be given additional impetus through the establishment of Special Economic Zones (SEZs) as geographically defined economic areas providing investor friendly business environments.

A special economic zone for Kasane-Kazangula will, for example, cater for the expanded tourism, construction, transport services and market access for local agriculture that will result from the construction of the road and Rail Bridge at Kazangula and the water pipeline to Pandamatenga, along with associated infrastructure.

The Botswana International Trade Centre (BITC) continues to promote the country as a competitive location for investment. Business start-ups will also continue to receive critical support from the Citizen Entrepreneurial Development Agency (CEDA), which since 2008 has funded 2,288 enterprises with a total value of nearly P2.1 billion, in the process creating over 11 000 jobs. During the 2015/16 financial year, CEDA assisted 418 new enterprises with a total monetary value of P400 million, collectively generating 2,952 new jobs. The Local Enterprise Authority (LEA) is also playing its role in nurturing a culture of entrepreneurship.

## COMPETITIVENESS

The Competition Authority has overseen merger applications involving foreign investors, among other transactions. The cross border transactions can strengthen the capacity of local companies as well as empower citizens through ownership of shares in the merged business. A total of P800 million was injected into the economy in the 2015/16 year as a result of merger transactions.

