RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
The relevant legislation that governs the system of mining law in Botswana is the Mines and Minerals Act Cap 66:01 and the Mines, Quaries, Works and Machinery Act Cap 44:02.

Which Government Bodies administer mining law?
The Department of Mines administered under the Ministry of Minerals, Energy and Water Resources.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?
All Minerals in Botswana vest in the state. No person may prospect, or mine minerals save in terms of a licence issued by the Minister for Minerals, Energy and Water Resources under the Mines and Minerals Act Cap 66:01 ("MMA").

Prospecting license
Prospecting licences are issued for 3 years with 2 options to renew, each period not exceeding two years and the licences cover such area as provided for by a licence which area shall not exceed 1,000km² under the terms of the MMA.

The Minister may renew a prospecting licence for additional periods where a discovery has been made and evaluation work has not, despite proper efforts, been completed. This means that a licence is renewable beyond the 3 + 2 + 2-year periods. For example, if at the end of the 7-year period the holder informs the Minister that a discovery has been made but evaluation work has not been completed, an additional extension may be granted.

Alternatively, the holder could apply for a retention licence and/or mining license. Generally, retention licences entitle the holder to keep the area to which the licence relates for future mining operations and to carry on prospecting within the retention area. They are granted for two periods not exceeding 3 years each.

In terms of the MMA the holder of a prospecting licence is entitled to enter onto any land to which its prospecting licence relates and may prospect thereon for the mineral to which the prospecting licence relates, drill bore holes, make excavations, erect camps and put up temporary buildings for machinery necessary for prospecting purposes.

The rights of a holder of a prospecting licence are more restrictive and narrow compared to the rights under a mining licence. The MMA obliges the holder of a prospecting licence to:
- Commence prospecting operations within three months or such further period as the Minister may allow, of the date of issue of his licence;
- Carry on prospecting operations in accordance with the programme of prospecting operations as set out in the prospecting licence; and
- Notify the Minister of the discovery of the mineral to which his prospecting licence relates within a period of 30 days of such discovery or discovery of any mineral deposit of economic value.

The holder of a prospecting licence shall not without the written permission of the Minister, remove any mineral from a prospecting area except for the purpose of having such mineral analysed, valued or tested in Botswana.

The Minister is empowered to monitor compliance with the programme of prospecting operations as specified in a prospecting licence however, in practice we note that compliance is reviewed at the time of licence renewal or transfer. A licence may not be cancelled, even in the event of non-compliance unless the notice has been given to a holder to rectify the default.

The holder of a prospecting licence can notify the Minister of proposed amendments to the programme of prospecting operations. Unless the Minister objects within 60 days of such notification, which in practice the Minister does not do if the proposed amendments are reasonable, the amendments take effect automatically.

The holder of a prospecting licence may at any time not later than three (3) months before the expiry of the licence apply
to the Minister for renewal thereof, submitting a report on prospecting operations carried out so far and the costs incurred and a proposed programme of prospecting operations to be carried out and the estimated cost thereof. The holder shall be entitled to a renewal provided that:

- It is not in default under the terms of the MMA or the licence; and
- The proposed programme of prospecting operations is adequate.

At the end of the period of the prospecting licence the rights granted to the holder thereof under the terms of the MMA and the licence cease, and the holder is required to vacate the area to which the licence relates, taking such measures as are necessary to restore the land substantially to the condition it was in prior to the commencement of prospecting operations, the holder being obliged to make adequate on-going financial provision for compliance with such obligations.

Retention Licence

The holder of a prospecting licence may apply to the Minister for a retention licence in respect of the area and mineral covered by the prospecting licence.

A retention licence - for which an application must be made no less than three months before the expiry of the prospecting licence - is designed to bridge the gap between (i) the expiry of a prospecting licence and completion of the prospecting programme and (ii) the time when, subject to the feasibility study, mining can proceed on a profitable basis.

Retention licences are granted for two periods, not exceeding 3 years each and entitles the holder to:

- To retain the retention area to which the retention licence relates, for future mining operations;
- To carry on prospecting operations in the retention area in order to determine from time to time the prospects of mining any mineral to which the retention licence relates on a profitable basis;
- To remove any mineral or sample of a mineral for any purpose other than sale or disposal, from any place where it was found or incidentally won in the course of prospecting operations to any other place within Botswana or, with the permission of the Director of Mines, outside Botswana; and
- To carry on, in order to determine, from time to time, the prospect of mining any mineral to which the licence relates, on a profitable basis, such other investigations and operations, including erection of necessary equipment, plant and buildings, in the retention area as may be reasonably necessary for, or in connection with, any future mining operations or any prospecting operations.

The holder of a retention licence is obliged to:

- Demarcate and keep demarcated the retention are in the prescribed manner;
- Obtain consent of the Director of Mines to any amendment of his intended work programme;

Unless the Director of Mines otherwise stipulates:

- Back fill or otherwise make safe excavations made during the course of his prospecting operations to the satisfaction of the Director of Mines;
- Permanently preserve or otherwise make safe any borehole in the manner directed by the director of geological survey and Director of Mines; and
- Remove within 2 months of the expiry of his licence, any camp, equipment, plant or building erected by him in the retention area, and repair or otherwise make good any damage to the surface area of the grant occasioned by such removal, to the satisfaction of the Director of Mines,
- Furnish the Director of Geological Survey and to the Director of Mines a quarterly report;

Furnish to the Minister by submitting to the Director of Mines, as soon as they become available:

- The results of all studies, surveys and tests including but not limited to analytical, metallurgical, mineralogical, and geophysical work incidental to those prospecting operations;
- The interpretation and assessment of such studies, surveys and tests; and
- Submit annually to the Director of Mines an updated feasibility study and an audited statement of direct expenditure if any, incurred in the retention area during the year.
Mining Licences
A person wishing to obtain a mining licence is entitled to apply to the Minister and the Minister shall grant a mining licence if he is satisfied that the applicant is the holder of a prospecting licence, retention licence or a waiver issued (if the area over which a mining licence is required has been sufficiently prospected and that no other person has exclusive rights over that area).

Under the terms of the MMA the holder of a mining licence, may enter upon any land to which his mining licence relates and take all reasonable measures on or under the surface to mine the mineral to which his mining licence relates, erect the necessary equipment, plant and buildings for the purposes of mining, transporting, dressing, treating, smelting or refining minerals recovered, dispose of any mineral product recovered, prospect within his mining area for the mineral for which he holds a mining licence and for any other mineral and stack or dump any mineral waste product in a manner approved by the Director of Mines.

The mining licence once granted is valid for a period as is reasonably required to carry out the mining programme but not exceeding 25 years.

The Minister shall grant a mining licence if satisfied that:
• The proposed programme of mining operations will ensure the most efficient and beneficial use of the mineral resources in the proposed mining area;
• The proposed mining area is not the same as nor does it overlap an existing mining area or retention area unless the holder of that area consents to the grant of a mining licence, or in the case of a retention licence,

Has failed to make an application;
• The proposed mining area extends to cover only that area reasonably required for surface mining and treatment facilities and also to cover the proved, indicated and inferred reserves;
• The applicant has or has secured access to adequate financial resources, technical competence and experience to carry on effective mining operations;
• The proposed financing plan submitted as part of the feasibility study is in accordance with good financial practice, and provides for a debt to equity ratio of no more than 3:1 unless the minister otherwise agrees;
• The parent company guarantees the performance of the obligations of the relevant company; and
• The applicant is not in default under the terms of the MMA.

The holder of a mining licence has the following obligations:
• To commence production on or before the date referred to in the proposed programme of mining operations in the mining licence application as the date by which he intends to work for profit;
• Develop and mine mineral covered by his mining licence in accordance with the programme of mining operations as adjusted from time to time in accordance with good mining and environmental practice;
• Demarcate and keep demarcated the mining area in such manner as may be prescribed and within three months submit to the Minister a diagram of the mining area;
• Keep and maintain an address in Botswana, full particulars of which shall be registered with the Minister to which all communications and notices may be addressed; and
• Notify the Minister as soon as he begins to work his mining area for profit.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?
There are two pieces of legislation that are relevant to the production of Gas, one is the Industrial Development Act, Chapter 43; 01 and the Petroleum (Exploration and Development) Act, Chapter 67:01.

The Industrial Development Act relates to the manufacture (means to subject physical matter to any process which materially changes it or its packaging in substance, character or appearance and includes the assembly of parts), for sale, any product. Product is defined as any article, thing or substance produced by any manufacturing enterprise to which the Industrial Development Act applies but excludes any immovable structure at any place in Botswana.

The Industrial Development Act provides that no person shall manufacture any product at any place in Botswana unless he is in possession of a licence to manufacture such product, issued by a licensing committee. The application for a licence to carry on a manufacturing enterprise shall be made in the prescribed form to a licensing committee.

The Industrial Development Act does not list the types of products that will require a licence under the Act therefore an enquiry has to be made to the licensing committee as to whether the product falls under the Industrial Development Act.

The second legislation is the Petroleum (Exploration and Development) Act which relates to the exploration and the production of petroleum. Petroleum under the Act is defined as any naturally occurring, hydrocarbon; mixture of hydrocarbons; or mixture of one or more hydrocarbons and any other substance, whether in gaseous, liquid or solid form, and includes petroleum which has been returned to a natural reservoir, but does not include coal or a substance which may be extracted from coal.

Under the Petroleum (Exploration and Development) Act, two licences can be issued, the first one being the exploration licence, which from reading the Petroleum (Exploration and Development) Act has to be issued prior a development licence is issued (the licence to produce petroleum from the discoveries made by the exploration licence).
A development licence may be issued to a person who is not the registered holder of an exploration licence if he is satisfied that the area in which he intends to retrieve the petroleum does contain a petroleum reservoir or part of a petroleum reservoir and that area is not subject to any exploration or development licence.

**INDIGENISATION REQUIREMENTS**

**Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?**

No.

**Are there any special rules or restrictions applicable to foreign applicants?**

No.

**Identify any rights that the State may have. Does the State have any rights to equity in mining projects?**

Upon the issue of a mining licence, the Government shall have the option of acquiring up to 15% working interest participation and shall inform the applicant as to whether or not it is exercising its option.

If the Government does decide to exercise its option, it shall be issued a single P1.00 special share at par, which shall carry the right to appoint up to two directors, with alternates, and to receive all dividends or other distributions in respect of its working interest percentage and shall be obliged in the same manner as other shareholders to contribute its working interest percentage.

**PROCESSING AND BENEFICIATION**

**Are there any requirements to beneficiate minerals mined?**

No.

**Are there any restrictions on the export of minerals?**

There are no restrictions in the export of minerals nor are we aware of any export permits or levies. We are aware in practice that the Department of Mines is required to issue a supporting letter to the exporter confirming that they have no objection to the export of the minerals mined.

**DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS**

**Are there any statutory consents required to dispose of rights to explore and mine?**

A prospecting licence or an interest therein or any controlling interest in the holder thereof may be transferred from one person to another, with the prior approval of the Minister. For the avoidance of doubt, a change in shareholding of a company that holds a licence which does not result in a change in controlling interest in that company does not require approval of the Minister. Approval is subject only to the Minister being provided with such details of the proposed transferee as would be required in the case of an application for a prospecting licence and the transferee not being disqualified under any provision of the MMA from holding a prospecting licence.

No retention licence or any interest therein shall be transferred, assigned, encumbered or dealt with in any other way without the approval of the Minister.

In any application to the Minister for his approval the applicant gives such particulars concerning the proposed transferee, assignee or other party concerned as would be required in an application for a mining licence.

The Minister shall grant his approval to the transfer, assignment or other dealing with any retention licence or interest therein provided the transferee is not disqualified under any provision of the MMA from holding a retention licence and the Minister is satisfied that the application is not in breach.

No mining licence or any interest therein shall be transferred, assigned, encumbered or dealt with in any other way without the approval of the Minister.

**Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?**

The restrictions on disposals of controlling interests in entities holding exploration or mining rights are capable of two possible interpretations, namely a wide and a narrow interpretation.

The narrow interpretation holds that no approval from the Minister is required for a change of control in the parent or ultimate parent of a license holder. The basis for this interpretation is the definition of “interest” in section 50 (4) of the MMA. More particularly the fact that “interest” is defined as meaning “in the case of a holder who is private company, a controlling interest in such holder”.

It has been interpreted as being limited to circumstances where there is a transfer in the shares of the licence holder and such transfer has the effect of changing the control in such entity.

The wide interpretation holds that the transfer of any interest, whether direct or indirect in a mining licence. To date no Court in Botswana has determined which of the aforementioned interpretation applies and consequently this is unsettled under Botswana Law.

Our approach in dealing with this issue has been to address a letter to the Minister notifying him of the change in control at the parents (or ultimate parent level) but informing him that there is no requirement for such notification under the Act or for his consent or approval to the transaction.

To date we have not had any objection from the Minister to such approach. We should however caution that recently the Department of Mines and Minerals has indicated that in its view...
the wider interpretation of Section 50 has application and that it will advise the Minister accordingly. We cannot thus warrant or guarantee that the Minister will not adopt the wide interpretation and insist on his consent for a change of control at the parent company level.

**USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES**

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?

In Botswana, the grant of a prospecting licence, a retention licence, a mining licence, an exploration license or development license issued in terms of the MMA or Petroleum (Exploration and Development) Act does not give exclusive surface rights in the area to be subject of the concession.

Section 62 of the MMA and section 70 of the Petroleum (Exploration and Development) Act provide that where the license holder requires exclusive use of the whole or any part of the license area, he may obtain from the owner or lawful occupier of the area, a lease for the exclusive use thereof. The rental to be paid, the duration of the lease and the extent or area to be covered may be agreed upon by the parties and failing such agreement, the said Acts provide for the rental to be determined by arbitration. During prospecting operations, it is not usual for leases to be entered into with holders.

In addition, both the MMA and the Petroleum (Exploration and Development) Act contain restrictions on the use of surface rights in certain places without obtaining appropriate consent, including sensitive land (e.g. places of burial, monuments or government land), within proximity of buildings, agricultural land or land used for water purposes, national parks, railways, roads, land the subject of mining and any other restricted land specified by the Minister.

**ENVIRONMENTAL**

What legislation governs environmental protection of exploration and mining sites?

Sections 55 and 56 of the Petroleum (Exploration and Development) Act imposes certain environmental obligations upon a license holder when exploring, extracting or storing petroleum including inter alia an obligation not to pollute underground water sources.

Section 65 of the MMA obligates the license holder to undertake prospecting and mining operations with minimum impact on the environment and further requires the holder to rehabilitate its license areas from time to time as well as at the end of prospecting and mining operations.

There is the Environmental Assessment Act Cap 65: 07 which is used to assess the potential effects of planned developmental activities; to determine and to provide mitigation measures for effects of such activities as may have significant adverse impact on the environment; and to put in place a monitoring process and evaluation of the environmental impacts of implemented activities.

The Environmental Assessment Act requires authorisation prior to any holder of an exploration right or mining right to conduct activities or an activity where there is an unanticipated irreversible adverse environmental impact.

**NATIVE TITLE AND LAND RIGHTS**

Is there any native title which has any implication for the exploration and mining industry?

Where the license area falls within tribal land, this may have implications for a license holder in the sense that unless such license holder acquires exclusive rights under section 62 of the MMA or section 70 of the Petroleum (Exploration and Development) Act, occupiers of land in the license area will continue to have customary and tribal land use rights with respect to the license area. Where a license holder requires exclusive use rights under the above sections, it will need to negotiate not only with the tribal authority but also with each of the relevant occupiers for exclusive use rights.

**HEALTH AND SAFETY**

What legislation governs health and safety in mining?

The Mines, Quarries, Works and Machinery Act Cap 44:02 regulates and governs health and safety and welfare of persons engaged in prospecting, mining and quarrying operations including any works which part of a system and ancillary to mining and quarrying operations and to make provision with respect to the inspection and regulation of mines, quarries, works, and of machinery used in connection therewith.

**CONSTITUTIONAL AND ADMINISTRATIVE LAW**

Is there a constitution which has an impact upon rights to prospect and mine?

No.

Are there administrative appeals in the mining law?

No.

**ROYALTIES AND TAXES**

Are there special rules applicable to taxation of exploration and mining companies?

Yes, the Income Tax Act Cap 52:01 has a designated Schedule for mining (Schedule Twelve).

Are there any royalties payable to the State over and above any taxes?

The holder of a mineral concession shall be liable to pay royalties to the Government on any mineral obtained by him in the course of the exercise of his rights thereunder at the rates and in the manner prescribed.
The royalty's payable shall be the following percentages of gross market value:

<table>
<thead>
<tr>
<th>Mineral Type</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Precious stones</td>
<td>10%</td>
</tr>
<tr>
<td>Precious metals</td>
<td>5%</td>
</tr>
<tr>
<td>Other minerals or mineral products</td>
<td>3%</td>
</tr>
</tbody>
</table>

Royalty shall be paid on a mineral or mineral product on receipt of each payment or other consideration for such mineral or mineral product, and each royalty payment shall be accompanied by full particulars of the mineral or mineral product sold or disposed of and the terms of payment therefor. Provided that any disposal for other than monetary consideration or consideration deferred for a period beyond industry practice shall be referred to the Minister for determination of royalty.

Where it appears to the Minister that minerals have been disposed of otherwise than in an arm’s length transaction, the Minister shall determine the royalty payable based on prices ruling in the industry, and the royalty so determined shall be payable on demand: Provided that the royalty so determined and paid may be varied by court review or arbitration and the sum of any such variation shall thereupon become payable or repayable as the case may be.