OECD Investment Policy Reviews

BOTSWANA

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OECD Investment Policy Reviews: Botswana 2014

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Foreword

The OECD Investment Policy Review of Botswana *is one of five reviews carried out in member states of the Southern African Development Community (SADC) on the basis of the OECD Policy Framework for Investment (PFI). Undertaken by the NEPAD-OECD Africa Investment Initiative in the context of the "Unlocking Investment Potential in Southern Africa" programme with the support of Finland, it reflects the growing co-operation between the OECD and its African partners.*

The Review is the result of a self-assessment undertaken by a national task force composed of government agencies, the private sector and civil society established by the government of Botswana and headed by the Ministry of Trade and Industry (MTI). The Review process was launched during an inter-agency workshop hosted by MTI in July 2011 in Gaborone. Nineteen different government agencies were involved in responding to the PFI questionnaire and participated in all-stakeholder meetings as well as bilateral fact-finding sessions in May 2012. The findings of the Review were presented to all stakeholders and discussed in depth at the Gaborone International Conference Centre in November 2012, under the chairmanship of Boniface Mphetlhe (Deputy Permanent Secretary, MTI) and Peggy Serame (Deputy Permanent Secretary, Economic Diversification Drive Unit). The next phase in the programme will involve follow up on the implementation of the Review's recommendations and regional co-operation on investment policy within the Southern African Development Community (SADC).

This Review has been prepared by Carole Biau under the supervision of Karim Dahou, Executive Manager of the NEPAD-OECD Africa Investment Initiative. The report has benefited from inputs by Hélène François, Mike Pfister, Stephen Thomsen, Dambudzo Muzenda and Mi-Hyun Bang in the Investment Division of the OECD Directorate for Financial and Enterprise Affairs. The secretariats of several OECD bodies, including the Investment Committee, the Committee on Fiscal Affairs, and the Committee on Corporate Affairs contributed to various chapters of the Review. The views contained within do not necessarily represent those of NEPAD member governments.

Table of contents

Tables

Figures

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Preface by Ministry of Trade and Industry, Government of Botswana

Botswana's robust growth and the sustained improvement of social indicators over the past decades have been commended on many occasions, and our country has even been celebrated as an "African Economic Miracle". GDP per-capita has increased more than ten-fold since independence in 1966, when Botswana was among the poorest countries on the continent. However today it has become apparent that this is not enough. Our track record in terms of economic diversification has not been as exemplary; nor have we been as successful as several of our Southern African neighbours in attracting foreign investment beyond the extractive sector.

Botswana needs investment in order to boost promising non-mineral industries, to reduce the private sector's dependence on government support, and to address critical gaps in infrastructure and human resources. We are eager to catalyse private investment from our citizens and from abroad, and have taken many steps to strengthen investor protection and to create a more open environment in which foreign and domestic businesses can grow. Especially since 2011, Botswana has made efforts to tackle these challenges and to put our economy on a sustainable growth and investment path that will outlast the depletion of our diamond resources, and create more jobs and income for the population at large.

We are proud to highlight two efforts in particular. In 2010 government launched the Economic Diversfication Drive, a strategy which guides the majority of current economic policy planning and which is anchored on a vibrant and globally competitive private sector. In 2011, we began the merger of the Botswana Export Development and Investment Authority (BEDIA) and the Botswana International Financial Services Centre (IFSC). Since April 2012 the successor organisation, the Botswana Investment and Trade Centre (BITC), is fully operational and has established a Business Facilitation Services Centre for qualifying investors wishing to do business in Botswana. The Business Facilitation Centre was launched on 18 February 2014, following BITC's succesful launch of its Corporate Brand and Strategy, "GO Botswana", on 6 May 2013.

The Ministry of Trade and Industry is excited to take part in the evolution of this national branding strategy, which will be fully aligned with our diversification objectives. Yet we, together with our colleagues across government, are fully aware that bringing the aims of the Economic Diversification Drive and of GO Botswana to fruition will require a results-oriented approach and a stronger focus on investment promotion and export development. It is in this context that we requested the OECD to support Botswana's government in self-assessing its investment policy framework against global best practices. This candid evaluation has taken place over the past two years in a very interactive manner, engaging stakeholders across government and private sector in reform-oriented dialogue.

We believe that this process and the recommendations that follow from it will allow us to better identify necessary investment policy reforms. It has also positioned us within regional efforts for investment policy-making, in particular the forthcoming Regional Investment Policy Framework of the Southern African Development Community (SADC) on which the OECD is partnering with SADC member states. Together, the off-shoots of this review exercise will help Botswana build the momentum it needs for taking critical steps towards fulfilling its ambitions of diversified development and global competitiveness.

Ministry of Trade and Industry,
Government of Botswana

Preface by Mr. Rintaro Tamaki, Deputy Secretary-General, OECD

Botswana is currently one of the strongest performers on the African continent in terms of GDP per capita and social indicators. The number of people living under the poverty line dropped from 30.6% in 2003 to 20.7% only seven years later. Over the past two decades, Botswana has also steadily improved its investment environment and striven to increase opportunities for foreign and domestic investors. The regulatory framework for investment has been strengthened through a series of laws, and the government has consistently taken care not to introduce undue restrictiveness on foreign investors.

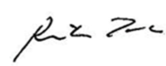
While the economy has long benefited from its bounty of diamond resources, the need for diversifying into other sources of growth and to expand exports is high on the government agenda. The Botswana Excellence Strategy for a "post-diamond economy" was launched in 2008, and has been relayed by the Economic Diversification Drive since 2011. Both of these national development strategies grant the private sector a crucial role in accelerating the transition towards sustainable diversification and growth.

This *Investment Policy Review* illustrates the important progress made by the government of Botswana in improving its investment climate over recent years. It highlights major initiatives and specific policy measures undertaken, as well as areas that need further reforms to attract more and better investment, both domestic and foreign. While numerous policy advances have been achieved, including the enhancement of the regulatory framework for doing business and the establishment of a streamlined and empowered investment promotion and facilitation authority in 2011, the Review identifies remaining challenges. These include the need to enhance the clarity and accessibility of investment related policies, review the rationale of available tax incentives, and level the playing field for private investment in infrastructure sub-sectors. The Review makes recommendations on policy options which can respond to these challenges.

The commitment and ownership demonstrated by the government of Botswana throughout the review process has been remarkable. While the OECD is responsible for the content of the Review, it reflects contributions from many levels of the government of Botswana, from conception to completion. It also further illustrates Botswana's commitment to reform, which the OECD and its partners will continue to support at both national and regional levels.

In addition, as the 15 SADC member states have requested the NEPAD-OECD Africa Investment Initiative to assist the Southern African Development Community (SADC) in developing a Regional Investment Policy Framework, the results of the *Investment Policy Review of Botswana* should feed into this regional process. The government of Botswana can play a key role in sharing its specific experiences on investment policy design and implementation, and thereby help work towards co-ordinated improvement of investment policy across SADC member countries.

As a landlocked economy with a small domestic market, Botswana particularly stands to gain from increased regional co-operation on investment policy. This can notably facilitate cross-border investment projects, where cost efficiency and economies of scale can be reached, and where there is more space for attracting private investors to compete in catering to consumer needs. By adding to the momentum for investment policy reform in Botswana, this *Investment Policy Review* should help increase the competitiveness of the country – and of the SADC region as a whole – for attracting investment.



Mr. Rintaro Tamaki,
Deputy Secretary-General, OECD

Acronyms and abbreviations

ADR	Alternative Dispute Resolution
BDC	Botswana Development Corporation
BEAC	Botswana Economic Advisory Council
BEDIA	Botswana Export Development and Investment Authority
BIDPA	Botswana Institute of Development Policy Analysis
BIH	Botswana Innovation Hub
BIT	Bilateral Investment Treaty
BITC	Botswana Investment and Trade Centre
BNPC	Botswana National Productivity Centre
BOCCIM	Botswana Confederation of Commerce, Industry and Manpower
BOCRA	Botswana Communications Regulatory Authority
BOTA	Botswana Training Authority
BPC	Botswana Power Corporation
BTC	Botswana Telecommunication Corporation
BURS	Botswana Unified Revenue Service
CEDA	Citizen Entrepreneurial Development Agency
CEE	Citizen Economic Empowerment programme
CPI	Corruption Perceptions Index
DCEC	Directorate on Corruption and Economic Crime
DPSM	Directorate of Public Service Management
DTC	Diamond Trading Company
DTT	Double Taxation Treaty
EDD	Economic Diversification Drive
EPZ	Export Processing Zone
ESAAMLG	Eastern and Southern Anti-Money Laundering Group
FAP	Financial Assistance Policy
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
GFCF	Gross Fixed Capital Formation
HRDC	Human Resource Development Council
HLCC	High-Level Consultative Council
IFSC	International Financial Services Centre
IPA	Investment Promotion Agency
ISB	Investment Strategy for Botswana

LAPCAS	Land Administration Procedures, Capacity and Systems
LEA	Local Enterprise Authority
LMO	Labour Market Observatory
NDBC	National Doing Business Committee
NBC	National Business Conference
NDP	National Development Plan
NES	National Export Strategy
NGO	Non-governmental Organisation
NHRDS	National Human Resource Development Strategy
OECD	Organisation for Economic Co-operation and Development
PPADB	Public Procurement and Assets Disposal Board
PEEPA	Public Enterprise Evaluation and Privatization Agency
PFI	Policy Framework for Investment
PPP	public-private partnership
SADC	Southern Africa Development Community
SME	Small and Medium-sized Enterprises
TEC	Tertiary Education Council
TLIMS	Tribal Land Information Management System
WTO	World Trade Organization

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Executive summary

Starting in the late 1990s Botswana has made concerted efforts to attract FDI into export-oriented manufacturing and services, so as to reduce reliance on diamond exports and to diversify its supply-side capacities. Given that indications are that Botswana's diamond mines will be depleted within the next 20 years, diversification is becoming indispensable to safeguard growth, development and fiscal sustainability. Today the reform efforts of the authorities are consolidated under the Economic Diversification Drive (EDD), which emphasises the critical role to be played by the private sector in stimulating balanced and sustainable growth.

The government has been closely engaged in improving the business climate for both foreign and domestic investors. Most recently, formerly distinct bodies responsible for financial and business services and for investment promotion have been merged into a single investment and export promotion agency, the Botswana Investment and Trade Centre (BITC). While Botswana also has sound laws providing for adequate investor protection these laws are not referred to in a single document and many investors are insufficiently aware of their rights. Likewise remaining restrictions on foreign investment, including preferences for citizen-owned companies, remain dispersed across different policies and regulations. This lack of clarity, which may underlie some of the recent declines in business climate rankings, should be comprehensively addressed.

Channels for public-private dialogue on investment policy could be rendered more efficient. While Botswana has an elaborate structure of public-private consultation, the Botswana Confederation of Commerce, Industry and Manpower (BOCCIM) is put under heavy strain to undertake the majority of policy advocacy on behalf of the business community. This may explain why the EDD Strategy is largely focused on public interest objectives such as job-creation and citizen empowerment, while private sector priorities like export promotion and investment attraction have initially taken more of a back-seat. In close consultation with private investors, Botswana could benefit from elaborating a dedicated national investment strategy geared towards the long-term investment attractiveness of "niche" economic sectors.

Several markets remain heavily dominated by the public sector – particularly infrastructure sub-sectors where the playing field for private operators *vis-à-vis* public enterprises is often uneven. Moreover price rigidities complicate cost recovery for public utility providers, which are growing dependent on costly government subsidies as a result. Yet Botswana's infrastructure financing gap cannot be met through the public purse alone – especially in the energy sector, where further private participation, together with regional co-operation on cross-border power projects, will be necessary in order to tackle the energy generation challenge. Attracting and structuring private participation in infrastructure will also require more independent regulation of infrastructure markets, and a strengthened legal and institutional framework for public procurement and PPPs.

A labour force with specific and specialised skills will also be crucial in order to diversify the economy away from mining and attract investment into the services sectors. Unemployment remains high (at 17.8%), and takes a particularly heavy toll on the young – even at higher levels of education. The rate of graduate unemployment reflects a mismatch between skills and industry demand. This hampers the ability of domestic entrepreneurs to tap into business linkages with larger firms. Alongside infrastructure development, better-targeted human resource investments are a pre-condition for addressing Botswana's supply-side constraints and ensuring that investment generates spill-overs across the economy. Such challenges are increasingly being taken on board by government notably through the Citizen Economic Empowerment policy (see Chapter 3).

Key policy recommendations

Clarifying the legal framework for investment

- Group and streamline all sector restrictions on FDI within a regularly updated negative list. This rationalisation exercise should include regular assessments of the rationale behind each restriction, verifying whether the associated economic empowerment or employment goals could not be better met through alternative means.
- Consider putting together an Investor's Guide or Investment Code, which would group all relevant legal instruments for investment in Botswana (including laws granting protection provisions for investors and available systems of commercial dispute resolution, among others).
- Undertake a nation-wide assessment, broken down by geographic area and sector of investment, to diagnose barriers to land access across Botswana's different localities. This should notably aim to facilitate transfer of land titles and accelerate transformation of land type.

Targeting investment towards "niche" sectors

- Create a national investment strategy, with a greater focus on sectoral competitiveness and export potential than currently exists in the EDD Strategy.
- Build on existing institutional structures for investment policy to ensure that such an investment strategy is aligned with human resource and infrastructure development strategies and targets.
- Introduce more transparency and coherence in the national system of investment incentives, possibly by listing all available incentives within a common document (see above). Alongside, ministerial discretion in awarding incentives should be reduced, notably by providing clear guidance concerning investor eligibility.
- Establish a mechanism for systematic cost-benefit analysis of tax incentives for investment, which would consider alternative uses of fiscal revenue (such as structural policies to enhance infrastructure and human resources) for investment attraction.

Creating a level playing field in infrastructure markets

- Engage in a gradual attempt to open the electricity market to companies other than Botswana Power Corporation, including by making space for more independent power provision.
- Support and accelerate efforts towards establishing the Botswana Energy and Water Regulatory Authority (BEWRA) as an autonomous agency tasked with regulating tariffs and overseeing the competitive functioning of the water and energy markets. A Botswana Energy and Water Regulatory Authority Bill has been drafted and is currently being considered by Cabinet, which is a positive first step.
- Develop a PPP Act and Regulations in coherence with the broader public procurement framework. This will require nurturing government capacity within relevant parts of the public administration (particularly the Ministry of Finance and the Public Procurement and Asset Disposal Board), and reinforcing Botswana's PPP Unit with experienced, full-time staff.

Encouraging employment and business linkages

- Build analytical and statistical capacity for human resource development, notably by capacitating the HRD Advisory Council to conduct sector-specific surveys of "skill gaps". Moreover elaboration of the Education and Training Strategic Sector Plan presents an opportunity for Botswana to adopt a more deliberate sectoral approach to HRD, geared towards available business linkage opportunities.

- Clarify BITC's role in promoting business linkages between small and large investors, in relation to similar responsibilities for other agencies (such as the Local Enterprise Authority or the EDD Unit). The rationalisation exercise between LEA and the Citizen Entrepreneurial Development Agency (CEDA) would deserve effective implementation in this regard.

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Chapter 1

Overview of investment policy challenges and recommendations for Botswana

This chapter highlights Botswana's economic trajectory since independence, and the liberalisation process engaged in recent decades. It demonstrates that Botswana has made vast progress in terms of improving its business climate, and is recognizing the need for a modernisation of public sector roles and responsibilities vis-à-vis *the private sector. The chapter then takes stock of Botswana's latest investment policy reforms and of the economy's recovery after the impacts of the global financial crisis – including through recent national growth and development strategies, such as the Economic Diversification Strategy (EDD) for 2011-16. Lastly, persisting development and investment climate challenges are emphasised. This overview helps to uncover options for Botswana to channel new investment flows which can foster the growth of novel industries. It also proposes means for increasing investment linkages in the local economy, among large and small enterprises both domestic and foreign – including through investing resources in human resource development. Challenges and opportunities for channelling private sector participation towards the infrastructure sector are also addressed. Altogether, these policy recommendations strive for strengthening the legal and regulatory framework for investment in Botswana, in order to more coherently attract the FDI and local investment needed to realize the country's growth and diversification objectives.*

The first part of this chapter provides a short description of the **macroeconomic environment and investment policy context** in Botswana. This is followed by an overview of **investment and growth trends** over the last two decades, including an analysis of the evolving **sectoral composition** of Botswana's economy. Botswana is currently one of the strongest performers on the African continent in terms of GDP per capita and social indicators. Although poverty levels remain quite high for a middle income country, the number of people living under the poverty line dropped from 30.6% in 2002-03 to 20.7% in 2009-10.[1] Over the past two decades and following the guidance of the **Botswana Excellence Strategy** (since 2008) and of the **Economic Diversification Drive** (since 2011), Botswana has moreover made significant progress in improving its business climate and increasing opportunities for foreign and domestic investors. However Botswana's doing business performance (as calculated by the World Bank Doing Business indicators) has declined over 2009-13, only rising again (to 56th place out of 189 economies) in 2014. In the aim of diagnosing the causes behind this deterioration, and of avoiding a repeat of such a scenario, going forward, the government is now seriously examining remaining investment climate shortfalls.

The second part of the chapter accordingly identifies **dominant policy challenges** faced by Botswana in attracting investment across all economic sectors. This sheds lights on several strategic policy priorities that the country has to address in coming years, in order to bolster investor confidence and promote innovation and growth – including outside of the mining industry. The analysis contained in the subsequent chapters of this Review suggest that it remains particularly important to: clarify the existing legal and regulatory framework for investment; review the rationale behind remaining sector restrictions on foreign investment; simplify procedures for access to land; devise better-targeted development strategies that align investment objectives with human resource and infrastructure development plans; and level the playing field for private investors in infrastructure markets.

To a large extent these identified challenges match those highlighted by Botswana's last **National Business Council** (NBC 2012). The NBC, Botswana's largest forum for public private dialogue which is jointly hosted by private sector and government on a biennial basis, identified the following as key bottlenecks to business expansion and economic competitiveness: the availability of land for business; the quality of education and training; the

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quality of infrastructure project implementation; and the slow pace of privatisation to date, including in infrastructure sub-sectors. This chapter ends with several **recommendations** to address these different obstacles, in view of assisting Botswana in enhancing foreign and domestic investment in the economy and maximising their development benefits.

Investment policy context

Increased engagement for attracting foreign investment

Botswana drafted a Foreign Investment Code in 2001-02, which was intended to provide a uniform body of rules on investment. As the draft Code was however found too restrictive to foreign investors both by the Foreign Investment Advisory Service (FIAS, of the World Bank) and by UNCTAD, it was dropped in the interest of retaining a more open investment regime. Over the past two decades Botswana has therefore made significant progress for improving its business climate through other means. The **regulatory framework for investment** has been strengthened through a series of laws which: guide business establishment (such as the Companies Act); cater to investor protection (such as the Industrial Property Act, the Copyright and Neighbouring Rights Act, and the Acquisition of Property Act); and clarify modalities for investment in different economic sectors (such as the Mines and Minerals Act or the Public Procurement and Asset Disposal Act). Although some sectors of the economy – outlined in Chapter 2 – remain restricted to foreign ownership or continue to provide preferences to citizen-owned companies, the government has thus been closely engaged in improving the business climate for both foreign and domestic investors.

On the institutional front, to support this legal framework the **Botswana Export Development and Investment Agency** (BEDIA) was set up in 1997 (and since replaced by the Botswana International Trade Centre, BITC, as detailed further below). In 2003 the Botswana International Financial Service Centre (IFSC) was in turn established with the aim of "developing Botswana as a world-class hub for cross border financial and business services into Africa".[2] Vision 2016 indeed upholds the **banking and financial service sector** as a promising opportunity through which Botswana can establish itself as a gateway for investment in the rest of Africa, and many efforts have been made in this regard: the banking sector is well-developed and non-banking financial institutions (NBFIs, including pension funds and social security industries) are making headway – with pension funds growing by 15% between 2011 and 2012.[3] Botswana has also made strides in following international best practices for banking supervision, via a National Basel II Implementation Strategy which will be rolled out until 2017.[4] To further support the integration of financial services within the country's overall investment attraction activities, in 2012 IFSC and BEDIA were merged into the **Botswana Investment and Trade Centre** (BITC), which is today the main body for promoting and facilitating investment in Botswana.[5]

A growing imperative for diversification: The Botswana Excellence Strategy and the Economic Diversification Drive (EDD)

This evolution in investment policy design and implementation has been accompanied by an increasing emphasis on **attracting investment outside of the diamond mining industry**. Botswana is today the largest producer of diamonds in the world by market value, and the mining sector is the biggest source of foreign direct investment (FDI), export revenues and GDP growth (see figures in next section).[6] One of Botswana's central development challenges and priorities has long been to diversify its economy away from this reliance on diamonds, particularly as the mining sector generates fewer backward linkages and high-wage domestic employment than most other industries.[7] Furthermore as Botswana's diamond resources are being depleted diversification becomes indispensable to guarantee a source of government revenue and fiscal sustainability.

The government is fully aware of this timeline. Starting in the late 1990s it began concerted efforts to attract FDI into export-oriented manufacturing and services, so as to reduce reliance on diamond exports and to diversify its supply-side capacities. In the aim of positioning Botswana as a preferred domicile for international investment flowing into Africa, government also established the IFSC and enacted legislation bringing the management and jurisdiction of Botswana's financial services in line with international practices.[8] In 2005 the **Botswana Economic Advisory Council** (BEAC) was created to identify constraints hindering economic diversification. This led to the elaboration of a Strategy for Economic Diversification and Sustainable Growth, the 2008 **Botswana Excellence Strategy**, which aims to "build sustainable diversification for a foreseeable post-diamond industry".[9]

The Excellence Strategy feeds into the country's guiding framework for long-term socio-economic growth (namely the **National Development Plan** (NDP) 10 and **Vision 2016)**, and commits government to reducing bottlenecks to private sector growth, including by simplifying procedures for obtaining land, licenses and permits.[10] As part of the Excellence Strategy, over 2008-10 Botswana developed a wide range of export and business facilitation strategies: the National Export Strategy; the Trade Policy; the Private Sector Development Strategy (PSDS); and the Investment Strategy for Botswana (ISB).

Since 2011, the structure for co-ordination of national investment policy has been quite thoroughly re-thought: the above sectoral economic development strategies are now incorporated within a new over-arching framework: the **Economic Diversification Drive** (EDD). The central agencies for design, implementation and co-ordination of the EDD Medium-Term and Long-Term Strategies (the **EDD Unit** and **National Economic Diversification Council**, NEDC) therefore form the focal points of investment and development policymaking in Botswana today.

The EDD was motivated by government's commitment to promote local production and consumption of goods and services, as well as the need to develop new sources of growth and to expand exports. As reiterated in the resolutions of the 2012 National Business Conference, "the development of **export competitiveness is paramount in the light of the small domestic market**". Indeed small market size means that domestic producers cannot reach economies of scale and expand their industrial capacity if they cater to domestic consumers alone. Botswana therefore has "no alternative to openness".[11]

High priority placed on infrastructure development

Adequate physical and financial infrastructure is instrumental to the growth and competitiveness of Botswana given its strategic geographical location at the centre of Southern Africa. By developing good enabling infrastructure, the government aims to transform the country into a regional hub for FDI seeking to tap into neighbouring markets; this would also facilitate the consolidation of export niches in financial services and business process outsourcing. Infrastructure quality is significantly above average for the region, and attracts considerable government attention: by 2011 in the third year of NDP10 implementation, much of the Plan's budget had been taken up by water, power and roads projects as well as maintenance of existing infrastructure.[12] The largest share (26.82%) of the development budget for 2013-14 has likewise been allocated to the Ministry of Minerals, Energy and Water Resources, in view of projects in emergency power supply, rural electrification and renewable energy, and water planning and development. The Ministry of Transport and Communications received the second-largest budget share (16.62%) for upgrading of airports, road and bridge networks, as well as development of ICT facilities. Meanwhile, the Ministry of Local Government and Rural Development received 9.52%, a large part of which was for village infrastructure and village water provision.[13]

Privatisation is rising on the reform agenda

Despite the strong priority placed on infrastructure development however, private participation in most infrastructure sub-sectors remains low and private operators often face an **uneven playing field relative to public enterprises**. Following a period of initial openness to foreign investment at independence in 1966, for close to a decade Botswana indeed embarked on a trend of nationalisation, creating parastatals which were intended to complement FDI and to build local industrial capabilities which could later expand into manufacturing and services. While over-proliferation of these parastatals was avoided and the number of their control boards limited, most utilities and services (electricity, water and sanitation, fixed telecom, airline, and rail) today remain State-owned and closed to private investors.

While the large role of the government has thus been long unquestioned in Botswana, a key objective of the EDD Medium-to-Long-Term Strategy is that of "weaning" Botswana's private sector from public support, and NDP 10 aims to cut government expenditures to 30% of GDP by 2016 (from a peak of 42% in 2008-09). Privatisation reforms have gained in prominence over the past two decades. Parliament approved a privatisation policy in April 2000,[14] which established the **Public Enterprise Evaluation and Privatisation Agency** (PEEPA) under the Ministry of Finance and Development Planning. Following unsuccessful initial privatisation attempts, the first **Privatisation Master Plan** was launched in 2005, and has since been updated with the Draft Privatisation Master Plan II for 2012-2017. The latter identifies services and public enterprises that are suitable for outsourcing and divestiture, including the Botswana Telecommunications Corporation (for which the first phase of privatisation was completed in November 2012).[15] There is thus growing recognition that a substantial change is necessary if further private sector involvement and economic diversification are to be achieved.[16]

Macroeconomic environment

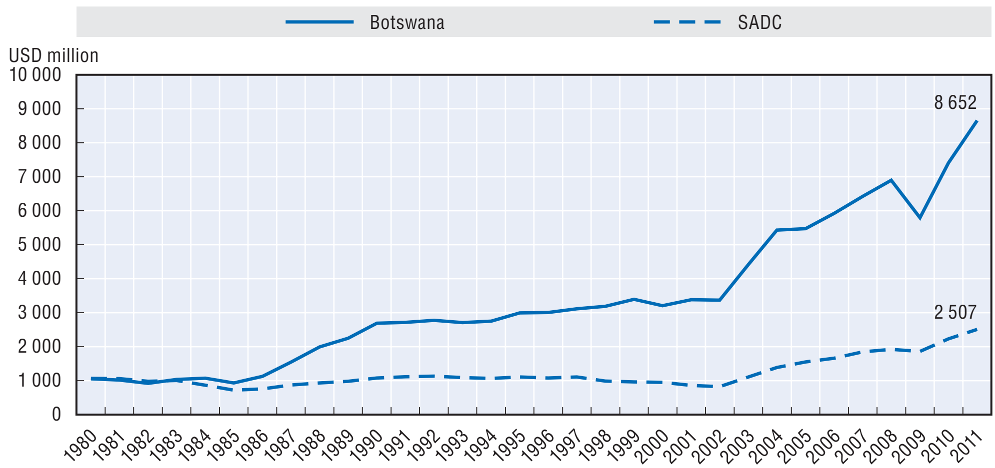
Strong growth since independence, based on sound use of mining revenues

At the time of independence in 1966, Botswana did not seem to offer the most conducive environment for rapid growth. Agriculture and infrastructure were both significantly underdeveloped *vis-à-vis* other sub-Saharan African countries. Botswana was also at a geographic disadvantage, as a landlocked country with a semi-arid climate and irregular rainfall. Nonetheless, a high rate of primary school enrolment at independence together with political and economic institutions conducive to the protection of private property rights, were important building blocks for creating a stable and sound business environment in the decades that followed.[17] The discovery of diamonds only one year after independence was an especially important boon for Botswana.

The key reforms for economic liberalisation described in the previous section, together with judicious use of Botswana's mining revenues through sound fiscal policy, enabled unprecedented **progression in GDP levels**. From Least Developed Country (LDC) status at the time of independence, Botswana reached Middle Income Country (MIC) status within three decades, in 1997.

During this time per capita GDP increased by more than five-fold (in fact per-capita income has progressed almost continuously since the 1980s, aside from a shock related to the global financial crisis in 2009 – see Figure 1.1). Among Botswana's neighbours in the SADC region, only Mauritius and the Seychelles perform better in terms of GDP per-capita growth.

Figure 1.1. **GDP per capita in Botswana and SADC, 1980-2011**



Source: World Data Bank, 2012.

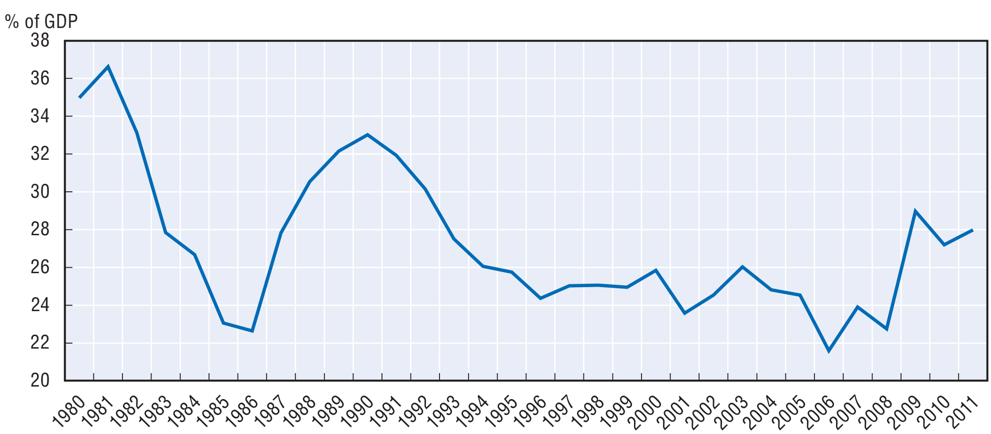
For these reasons Botswana is a frequently cited counter-example to the theory of the "natural resource curse" (see Box 4.1 in Chapter 4 below). Rather than generating avenues for corruption and irresponsible fiscal spending, Botswana has instead kept careful control of its foreign exchange and inflation, and has preserved a **sound governance record**. This is reflected in a consistently high scores in different global rankings – including among others: Transparency International's Corruption Perception Index (CPI), which places Botswana ahead of all other sub-Saharan African countries (at 30th position out of 178 countries), for 2012; the index of institutional quality in the World Bank's Governance Indicators; and Moody's assessment of "high" institutional strength, in light of "strong governance and successful implementation of forward-looking policies".[18]

Through ring-fencing mechanisms such as the Pula Fund (which facilitates targeted management of revenues from mineral tax and royalty payments), Botswana has thus channelled the budget surpluses linked to the diamond industry into public investments that have promoted growth and human development. For 2013-14, spending on education thus accounts for 22.98% of the recurrent budget, and health 12.81% (largely geared to combat the spread of HIV-AIDS, which is taking a very heavy toll on the population).[19]

Due to the combination of strong growth together with vast improvements in social indicators, Botswana has frequently been described as "Africa's miracle".[20]

The **ratio of gross fixed capital formation (GfCF) to GDP** can provide an indication of the extent to which these GDP figures are sustainable and provide strong bases for future growth. This ratio signals how much value-added in total domestic production has been invested rather than consumed (notably in the form of land improvements, machinery and equipment purchases, and physical infrastructure). Following wide variations in the 1980s, Botswana's GfCF/GDP ratio has ranged between 22% and 26% for most of the past two decades, rising closer to 30% since 2009 (Figure 1.2). This is slightly above the standard for African countries (about 21-22%) and follows the average for industrialised countries (about 23-25%). However as marginal returns to additional capital are in any case low in more industrialised economies (which already have large volumes of pre-existing capital stock), Botswana could potentially do better in terms of channelling production revenues into long-term investments. Indeed the GFCF/GDP ratio still falls short both of many emerging economies (for example in East Asia, where rates reach 35-40%), and of the ratio initially targeted by Vision 2016 (an average of 40% for 1996-2016).

Figure 1.2. **GFCF as a share of GDP, 1980-2011**



Source: World Data Bank and UNCTAD, 2012.

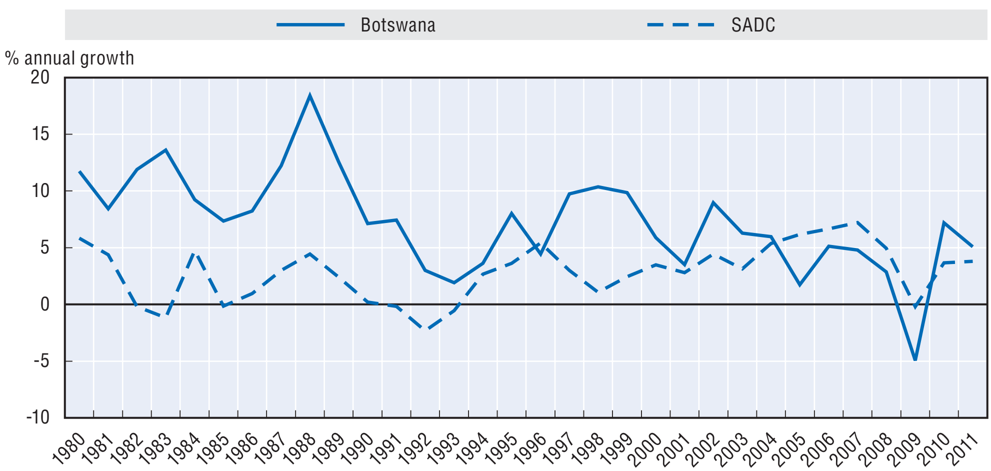
Impact of mining industry on overall growth and stability

Botswana's growth model has nonetheless remained closely tied to the performance of the mining industry. Whereas over 1990-2011 GDP growth mostly oscillated between 5% and 11%, these rates dropped considerably in

2008-09 (Figure 1.3 below illustrates that this shock was more pronounced in Botswana than in most SADC economies) as a result of the economic crisis which cut back demand for minerals. Subsequently production slumped by as much as two-thirds and mines down-scaled their operations. The resulting budget deficit (13.5% of GDP in 2009) forced Botswana to take a USD 1.5 billion loan from the African Development Bank, the largest ever granted by the institution.[21]

Recovery has been fragile since: while real GDP in the mining sector grew by 9.7% in 2011-12 due to regained global demand for diamonds (which rose by 23.7% in the second quarter of 2011), the euro area crisis then caused diamond sales to plunge again (by 70% between July and December 2011). Unsurprisingly, from a predicted 2012 growth rate of 7.1% in the 2011 Budget,[22] realised growth then reached only 6.1% – largely due to the decline in mining sector output.[23] Carat sales and revenue fell by 13% and 19% respectively in 2012, and several mines which had re-opened in early 2012 (such as Lerala Mine and Venture BK 11) were put back on care and maintenance.

Figure 1.3. **GDP growth in Botswana and SADC (1980-2011)**



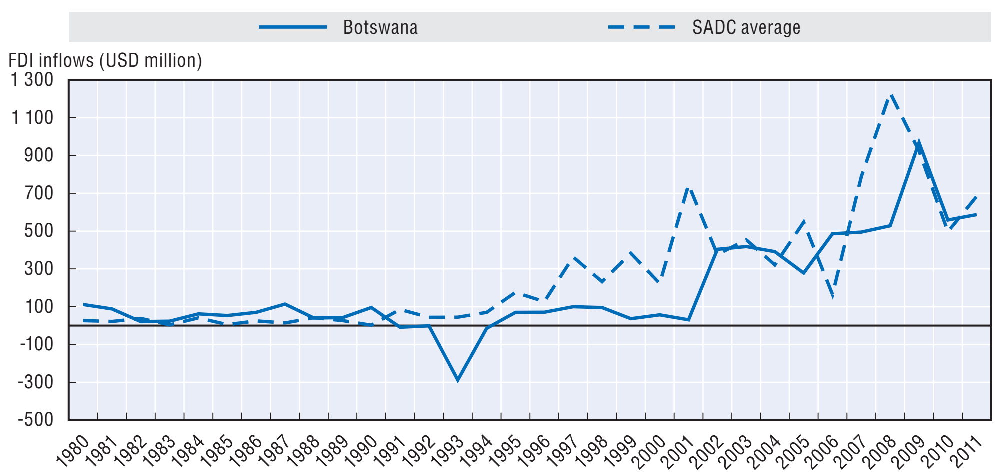
Source: World Data Bank, 2012.

Botswana has nonetheless put in place several **safeguards for macroeconomic stability** since the financial crisis. A statutory cap on government debt has been set at 40% of GDP (20% external and 20% domestic, as per the Stock, Bonds and Treasury Bills Act). By end January 2013 total government debt had been reduced to 28.737 billion pula (USD 3.57 billion, or approximately 23.5% per cent of 2012/13 GDP). Meanwhile the fiscal deficit, which stood at 11.5% of GDP in 2010, was reduced to 6.1% in 2011 and to just 3.1% in 2012. The credit rating agencies Moody's and Standard & Poor's have maintained the country's investment grade ratings in the "A" categories (A2 and A- respectively) for eight consecutive years,[24] and although in February 2010 Standard & Poor's imposed a minor downgrade and Moody's adjusted its outlook from stable to negative,[25] in November 2011 the outlook returned to stable.[26] In a similar vein, Business Monitor International (BMI) ranked Botswana second in its Sub-Saharan Africa risk/reward ratings for 2012, and views Botswana to have "the most attractive risk profile in the region".[27]

Foreign investment trends

Net **FDI inflows** to Botswana have ranged between about USD 20 million and 100 million over most of the 1980s and 1990s, before undergoing considerable expansion in the new millennium (reaching a peak of USD 968 million in 2009, following which the financial crisis cut the trend short). Botswana's FDI performance holds up quite well to the SADC average (see Figure 1.4, where the SADC figures include the performance of South Africa). Outside of oil-producing countries, Botswana has been Africa's sixth most attractive target for FDI between 2003 and 2011 (after Kenya, Uganda, Tanzania, Zambia and Mozambique).[28] Investment has moreover begun recovering since the crisis, and over 2011-12 Botswana received additional investment inflows of a record 1.4 billion pula (USD 176 million), with 1 583 jobs created from these new investments.[29]

Figure 1.4. **Net FDI inflows into Botswana vs. SADC average, 1980-2011**

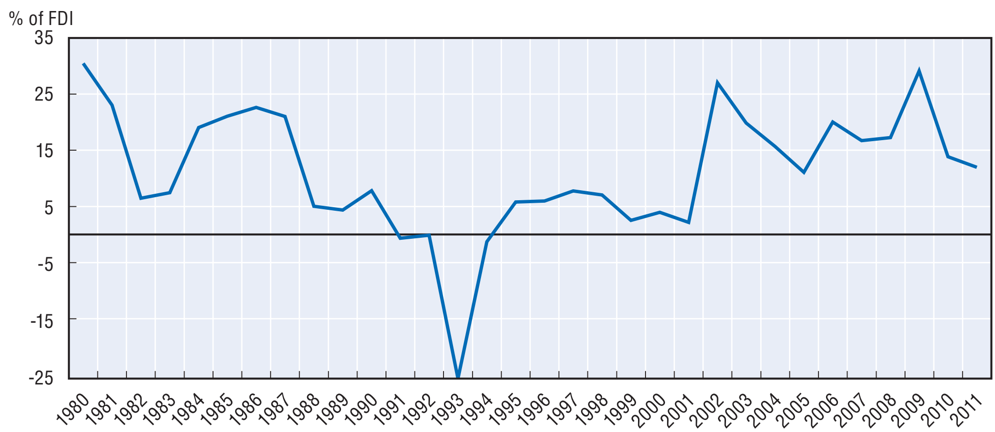


Source: UNCTAD, 2012 (Note: SADC average includes South Africa).

However these FDI volumes remain rather small in absolute terms, and have only amounted to 2-4% of GDP for most of the past two decades (with the exception of a high of 8.4% in 2009). This is far below international standards.

Simultaneously, the **ratio of FDI inflows to GfCF** has been extremely variable, ranging from above 25% to under 5% over the same period (Figure 1.5). While for larger and wealthier countries FDI does not closely influence total gross capital formation (as capital can be generated through other, domestic sources of investment), small export-dependent countries such as Botswana should exploit the potential of FDI as a major source of capital investment. Therefore alongside efforts geared at attracting more FDI, Botswana may benefit from directing a larger share of these flows towards sectors of greater value-addition and capital creation (such as infrastructure, which has relied mostly on public sector financing so far).

Figure 1.5. **FDI inflows as a share of GFCF, 1980-2011**



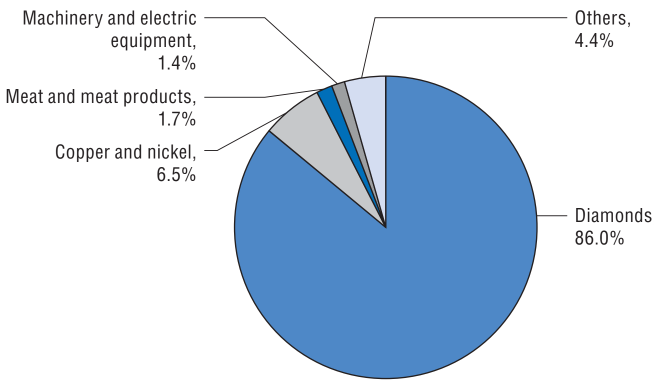
Source: World Data Bank and UNCTAD, 2012 Export and import composition and the trade balance.

Given the narrowness of Botswana's domestic market (a small and sparse population of a little over two million), most **FDI in the country has been export-oriented** rather than domestic market seeking. Most of this FDI has traditionally been from Europe (especially Luxembourg, where the De Beers diamond company is headquartered) and from South Africa. Over 2003-11 the bulk of FDI (38%) has gone into diamond mining, followed by metal ores, financial services, communications, real estate and hotel and tourism.[30] FDI into the financial sector nonetheless temporarily outstripped new investments in mining in 2006, thanks to IFSC efforts to position Botswana in the insurance market: IFSC launched new services for insurance companies in view of filling a market niche for multi-country insurance products. Promising sub-sectors for FDI attraction in the financial services, aside from insurance and reinsurance, include regional investment banking and structured financing operations, and business processing outsourcing.

Trade balance

Export composition has likewise been dominated by the mining sector: in 2006 Botswana's Export Concentration Index (ECI) was the second-highest in Africa (after Angola).[31] As of July 2013 diamonds formed 86% of exports, far ahead of copper and nickel at 6.5%, and meat products at 1.7% (Figure 1.6). While the main purchaser has long been the United Kingdom (67.3% of total exports in July 2013, after a peak of 74% in 2008),[32] exports to SADC countries stood at 13.4% in July 2013 (following a high of 20.3% in 2012), mostly channelled toward South Africa and Namibia (9% and 2.3% respectively).[33] The trade with these neighbouring markets is based mostly on exports of salt and soda ash, and is expected to strengthen as integration within the SADC and the Southern African Customs Union (SACU) gathers speed.[34] Export composition reveals that while Botswana has the ambition of positioning itself as an exporter of tourism and business process outsourcing services, this has yet to materialise in reality.

Figure 1.6. **Export composition in Botswana, 2013**

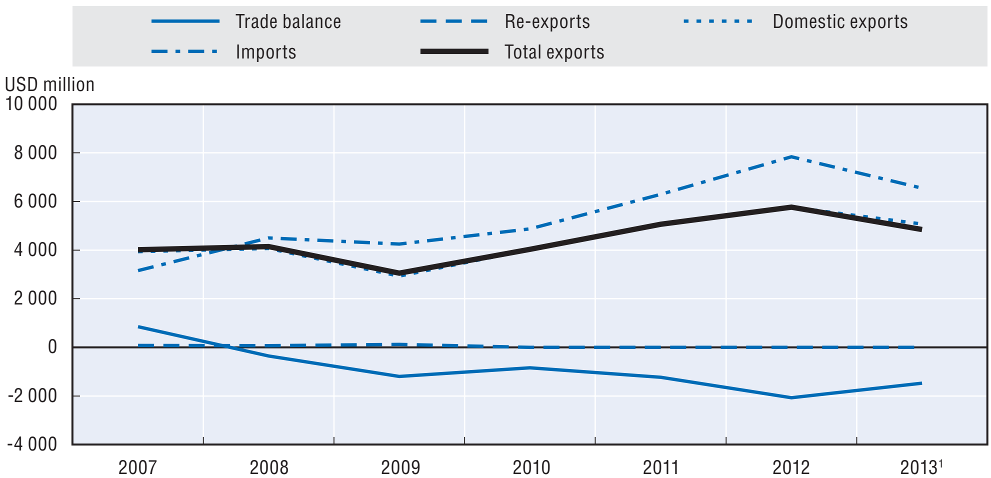


Source: Statistics Botswana, *Botswana International Merchandise Trade Statistics*, No. 2013/21, July 2013.

Import composition in turn reveals that the majority of imported goods are intermediary (input) products like machinery (13.2% as of July 2013), chemical products (10.5%) and fuel (16.9%, a figure which reflects Botswana's energy generation challenges but which has nonetheless fallen from 25% in 2011). Food also features prominently among imports (at 10.3%), given that only some 5% of Botswana's land area is cultivable and that domestic food crop production meets less than a fifth of domestic consumption needs.[35] The vast majority of imports to Botswana are from South Africa (63.4% as of July 2013), compared to 5.1% from Asia, 21.8% from the United Kingdom, and almost none from other African countries.

When diamond trade is included in Botswana's import figures (including temporary trade, composed of diamonds that come to Botswana for aggregation followed by re-exportation), the country's **international merchandise trade** has displayed almost consistent deficits since the fourth quarter of 2008 (Figure 1.7).[36] The balance has grown increasingly negative since 2008-09, due to the combined effects of the crisis-related collapse in export revenues and to increased import spending in the country.

Figure 1.7. **Botswana imports, exports and trade balance, 2007-13**



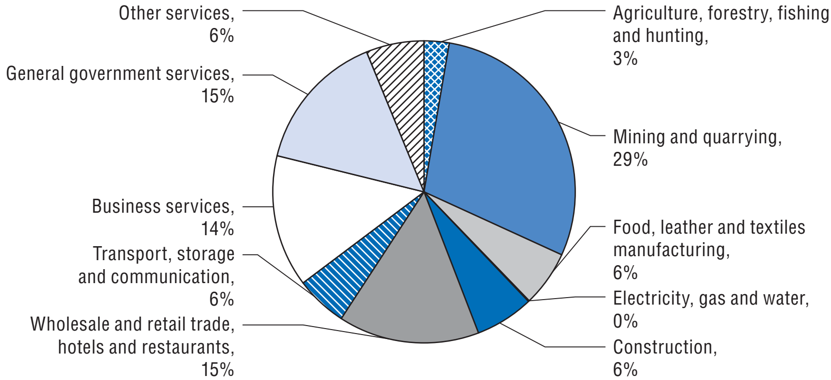
1. Figures for 2013 account only for the sum of trade in Q1, Q2 and July 2013.
Source: Statistics Botswana, *Botswana International Merchandise Trade Statistics*, No. 2013/21, July 2013.

Increasing structural change in the economy of Botswana

Botswana's economy is undergoing **progressive structural change**, which is increasingly visible in terms of the contributions of different economic sectors to: GDP; total value-addition; and employment (each addressed in turn below). This is also reflected by an encouraging drop in Botswana's Herfindahl-Hirschmann index over time: this indicator of economic diversification, which trends towards zero as diversification increases in the economy, had dropped from 0.24 in 2007 to 0.195 by end 2011.[37]

As concerns **sector contributions to GDP**, the share of mining to GDP declined from 34% in 2011 to 24% by the second quarter of 2012; the total decline over 2012-13 was estimated at 12.5%. Likewise while mining revenues constituted 55% of government revenue in 2001-02, this share had fallen to 41.6% by 2011-12. By contrast the rest of the economy grew at 11.6% over 2012-13, pointing to accelerating diversification.[38] Combined, tourism, manufacturing and services (including finance) have thus risen to reach over 60%

Figure 1.8. **GDP per sector, Quarter 3 of 2013**



Source: Bank of Botswana, National Summary Data Page (NSDP), 18 October 2013.

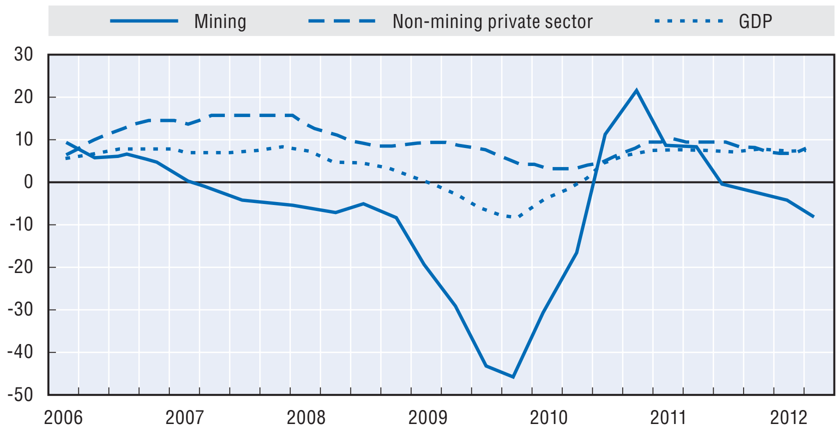
of total output since 2011 (see Figure 1.8). The share of non-mineral private and parastatal sectors in the economy is expected to reach 70% by 2016.[39]

Capital spending focusing on priority projects to promote economic diversification accounts for some 30% of the total government budget.[40] Of **non-mining sectors**, construction was the fastest-growing industry for the first half of 2012 (growing by nearly 22% compared with the first half of 2011). This was followed by: transport and communication (13%); utilities (11.2%); social and personal services (10%); and manufacturing (5.5%).[41] These dynamic rates have counterbalanced the instability in the mining sector (see Figure 1.9 below). After unexpectedly high growth (of about 6%) in 2013, real GDP growth is estimated to moderate to 4.4% in 2014 and 4.2% in 2015.

Among these dynamic growth sectors, the recent absence of the **financial sector** stands out: the competition in this respect remains very tight, especially given the close vicinity of South Africa, the continent's financial powerhouse. Moreover, the most recent economic downturn put a strong brake on financial deepening, with the ratio of banking assets to GDP declining from 49% to 43% between 2010 and 2011.[42] Rather than on finance, the bulk of new investments for 2011-2012 were thus mostly concentrated in steel manufacturing, farming, non-diamond mining, tourism, property development, ICT development and renewable energy.[43] Key structural bottlenecks (including insufficiently enabling infrastructure, and poorly tailored skills in the national labour force) may in particular be preventing Botswana from fully exploiting its potential in the financial services and business process outsourcing sectors.

The government has also begun promoting more **diversification within the mining industry** itself, including by: elaborating a Coal Roadmap and establishing a Coal Development Unit; considering review of the Mines and

Figure 1.9. **Annual growth of mining and non-mining sectors versus GDP, 2006-12**

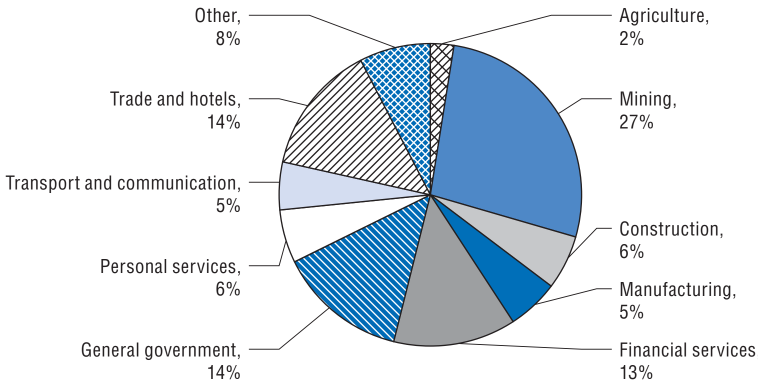


Source: © Moody's Investors Service, Inc. and/or its affiliates. "Credit Analysis: government of Botswana", 27 November 2012, p. 5. Reprinted with permission. All Rights Reserved.

Minerals Act to better cater for the development of uranium and coal bed methane; and creating additional legislation to facilitate the development of a downstream gas industry.[44] These developments are expected to go hand-in-hand with accelerated infrastructure investment, in particular increasing production to support the extension of Botswana's power grid, and preparing the coal sector for exports.[45]

The structural change of the economy is also reflected in the evolution of **value-addition by industry**. Over 2005-11, mining contributed 38% of total value-added in Botswana, followed by general government spending and financial services (at 17% and 11% respectively). By the second quarter of 2013 the contribution to GDP of the mining sector's gross value-added had dropped to 27%, followed by value-added in trade and hotels, government services, and financial and business services (all at around 14%, see Figure 1.10). The agricultural, manufacturing, financial and transport sectors have all increased their shares of total value-added between 2011 and 2012, whereas the mining industry has lost ground (from an average of 37.4% of total value-added over 2005-11, to 27% by July 2013). Likewise the **fastest growing industries in terms of job creation** within the formal sector (all of which have maintained average annual employment growth rates of over 7% since 1975) have been: finance and business services; manufacturing; trade; transport and communications; and government. Mining remains far behind and generated only 3% of total employment as of June 2011.[46]

Figure 1.10. **Contribution of gross value added to GDP by kind of economic activity, Q2 2013**



Source: Statistics Botswana, *Botswana International Merchandise Trade Statistics*, No. 2013/21, July 2013.

Main investment policy challenges

The legal framework for investment would benefit from greater clarity

Despite the many reforms undertaken by Botswana over the past two decades to improve its business environment, the country's **ranking in the World Bank's annual Doing Business Reports** declined for four years consecutively, reaching 65th out of 185 economies in the 2013 report.[47] The World Economic Forum's Global Competitiveness Report (GCR) likewise highlighted a slip from 76th out of 179 countries rated for 2009-10, to 79th out of 144 in 2012-13.[48] This performance is not necessarily a cause for concern – as the decline in rank may simply reflect an increased pace of reform in other countries, rather than declining investor confidence in Botswana itself; and moreover the ranking has since considerably improved (to 74th position out of 148 countries for the 2013-14 GCR, and to 56th position out of 189 economies for the 2014 Doing Business Report).[49] Nonetheless the performance of the previous few years had prompted concerns from investment policymakers, and triggered the creation in 2011 of a Cabinet Committee of Ministers (the **National Doing Business Committee**, NDBC) to address the improvement of the country's business environment.[50]

Botswana's attractiveness as an investment destination depends on the strength and clarity of **regulatory and legal framework for investment**. Botswana has a sound series of laws related to the investment environment, which provide for adequate investor protection in line with most international standards (including safeguards for property rights and expropriation). Nonetheless **restrictions on foreign investment and ownership**, including preferences for domestic investors, remain dispersed over several different strategic documents and regulations. This hampers awareness of available investment opportunities, particularly for foreign investors. It also hinders government efforts to accurately and regularly **evaluate the desirability** of these restrictions and incentives on investment flows, including assessing whether the objectives of such measures might not be better attained through alternative (less discriminatory or fiscally costly) means.

The regulations governing **access to land** also remain excessively cumbersome for investors. This is one of the key bottlenecks highlighted by the National Business Conference 2012, which notes that the inflexible approach to land use hampers entrepreneurial activities by restricting the availability of land for business, making it difficult for land to be re-allocated to more productive economic uses, and imposing restrictions on ownership and transfer of land. The need to relax and simplify procedures for access to land, and especially for change of land use for business purposes, is urgently highlighted by the private sector.

A related challenge is that the laws guaranteeing investor protection have so far not been grouped within a common document, and as a result investors are insufficiently aware of the reliability of Botswana's investment regime. This lack of clarity, rather than the quality of the investment regime itself, may be responsible for some of the decline in business climate rankings. **Grouping all these laws together** (for example in a legal text such as an Investment Code, or simply within a regularly updated Investor's Guide) would make them more easily accessible and would provide investors with greater assurance in terms of openness, transparency and predictability.

Need for a more strategic and sector-targeted approach to investment attraction

As introduced above, the EDD Strategy represents important progress in terms of rationalising the country's economic development strategy. However, although the EDD in principle incorporates most elements of the Investment Strategy for Botswana, **the role of FDI and dedicated strategies for investment attraction** are not well emphasised within the EDD. The investment policy related interventions proposed in the Medium to Long-Term Strategy (under the responsibility of the Thematic Team on Investment and Finance) thus apply only to business facilitation in a broad sense, and do not aim for more ambitious and comprehensive reform of investment policies. **Export-promotion** also appears to have taken somewhat of a back-seat in the early phases of the EDD. The conclusions of the NBC 2012 deplore that while the economy had diversified since the launch of the EDD, this growth and diversification had so far mostly "been driven by firms focused on the domestic market, and there had been little progress with the diversification of exports".[51]

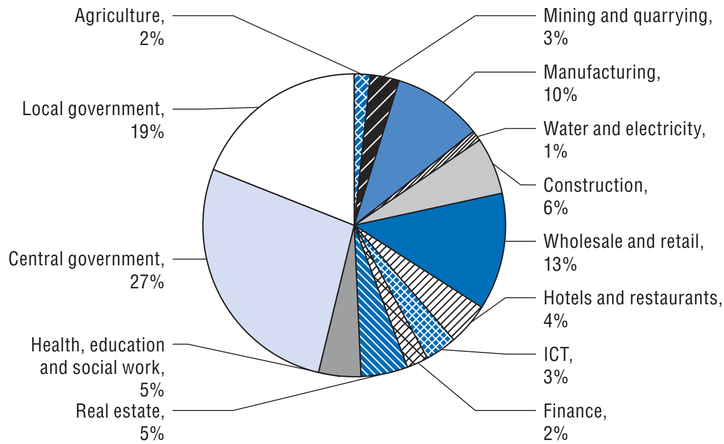
The EDD's identification of priority sectors for intervention is thus based most prominently on empowerment and poverty-reduction considerations, with insufficient emphasis placed on export potential or strategic investment attraction. Finance and business process outsourcing are two economic sectors, among several others, that would benefit from more strategic market analysis. Botswana may thus suffer from **the lack of an investment-specific strategy**, either within the EDD or as a self-standing element. This would also help identify and tackle specific bottlenecks to the expansion and export competitiveness of promising "niche" sectors, including supply-side constraints (in both labour supply and enabling infrastructure).

A coherent, long-term approach to investment attraction would also necessitate improved communication with and **involvement of the private sector in investment policy advocacy** and strategic planning. Indeed while Botswana has an elaborate structure of public-private consultation – especially through the Botswana Economic Advisory Council (BEAC), and the Botswana Confederation of Commerce, Industry and Manpower (BOCCIM), which channel private sector concerns to the High-Level Consultative Council and to the new Special Cabinet Committee which deals with, among other issues, doing business and competitiveness. This multiplicity of communication channels may be counter-productive and is not sufficient to guarantee a strong and sustained policy dialogue. BOCCIM is for instance the sole umbrella body representing the private sector, and as such is solicited by government on all sides (as co-chair of the NEDC, main private sector interlocutor at the HLCC, and as a member of almost all EDD Thematic Teams, among other responsibilities). This puts considerable strain on the agency, which has few staff and limited resources. In addition, other private sector bodies – such as BEMA, the Botswana Exporters and Manufacturers Association – are far less vocal in terms of policy advocacy.

Considerable skills mismatch on the labour market

As of June 2011 the private sector accounted for 48.5% of total employment, followed by central government (26.3%), local government (20.8%) and parastatals (4.4%).[52] Within private sector employment, wholesale and retail provided the most employment opportunities, followed by manufacturing and construction (see Figure 1.11). Unemployment remains high in Botswana (at 17.8% in the 2009/10 Labour Force Survey), and takes a particularly heavy toll on the young – even at higher levels of education.[53] This reflects a **mismatch between skills and industry demand**. Diversifying the economy away from mining and attracting investment into the services sectors (in particular finance and business process outsourcing) will require a labour force with specific and specialised skills.

Figure 1.11. **Distribution of employment across sectors of the economy, June 2011**



Source: Statistics Botswana, June 2011, Formal Sector Employment, October 2012.

This has implications in terms of investment attraction and competitiveness, as it limits the ability of domestic entrepreneurs to tap into possible business linkages with larger firms. The 2011-12 GCR Report notes that "Botswana's primary weaknesses [in terms of competitiveness] continue to be related to its human resources base" – mostly due to low levels of educational enrolment and low quality of the educational system by international standards.[54] The 2013-14 report draws similar conclusions, and the 2012 National Business Conference, which brought together a wide range of public and private sector representatives, deplored that Botswana's public education system "continues to produce poorly trained graduates who cannot find jobs, partly because they bring qualifications that are not relevant to the labour market". Although a variety of programmes have been implemented to help address youth unemployment (including financial support programmes, training, entrepreneurship development, and work experience), these have had limited success – and yet there are few mechanisms available for accurately evaluating the quality and relevance of these programmes, and of education provision more generally.

Botswana has taken this challenge seriously, by attempting to better align education curricula and vocational training with the needs of industry via the National Human Resource Development Strategy (NHRDS) of 2009. To address on-going concerns with respect to access, quality and relevance of education, a comprehensive **Education and Training Strategic Sector Plan** is moreover being developed since December 2012, with completion expected during 2014-15. The Ministry of Education proposes to spend 20 million pula (USD 2.4 million) on the elaboration of this plan. Such HRD strategies could usefully be complemented by the elaboration of a clear national investment strategy for the country, and benefit from an emphasis on strategic investment policy interventions within the EDD (as detailed above).

Many infrastructure opportunities remain un-tapped in Botswana

Despite efforts to accelerate infrastructure development, there remains a shortage of enabling infrastructure for private investment in Botswana. The 2013-14 GCR ranks the country 78th out of 148 economies in terms of the quality of its overall infrastructure (a significant deterioration relative to the previous year, where Botswana was placed 64th out of 144 countries). Energy access and capacity is of particular concern: the importation of most electricity from South Africa, combined with the cost of transport and electricity transmission, significantly raises electricity prices. The very small size of the domestic market and the dispersion of the sparse population moreover render economies of scale and scope difficult to realise, further raising costs. Since 2006 Botswana faces a major **electricity generation challenge**, which will require further regional co-operation and cross-border power projects – as the completion of domestic power projects currently underway (including Morupule B and Orapa) will not suffice to strengthen the country's electricity supply security. In an effort to make Botswana self-sufficient in electricity supply, the 600MW (4×150 MW) Morupule B Power Station has been taken over for commercial operation and defects related to construction are being attended to.

The situation is similarly concerning in the water sector. In fact the IMF's 2014 World Economic Outlook estimates weaker real GDP growth (of 4.2%) for Botswana in 2015 – due not only to the slowdown in diamond recovery, but also to problems in electricity production and water supply which could soften the pace of economic activity. Compounding this capacity problem, there is a financing gap across all infrastructure sub-sectors, which cannot be met through the public purse alone. Yet opportunities to mobilise private investment in Botswana's infrastructure so far remain underexploited. This is in part due to policy constraints. Possibilities for **greater private participation in infrastructure markets** are accordingly being considered by government, including through the **Public-Private Partnership** (PPP) route. In 2012 the NEDC made clear its decision of fast-tracking PPP implementation in the country. However although a "PPP Policy and Implementation Framework" was elaborated in 2009, Botswana still has no PPP act or regulations, and the existing Public Procurement and Asset Disposal (PPAD) Act makes no explicit reference to the specific modalities of PPP projects. A dedicated legal framework and institutional structure may help attract private bidders for PPP contracts. The absence of a PPP act and regulations and the very limited capacity of Botswana's nascent PPP Unit currently risk weakening Botswana's credibility *vis-à-vis* potential private partners for infrastructure PPP contracts.

Whether or not it enacts binding PPP legislation, Botswana's ambitions to become a regional transportation and logistics hub and to attract more private participation in infrastructure development will also crucially depend on the **state of the playing field** between public and private operators in infrastructure markets. The predominance of **state-owned companies** across all infrastructure sectors limits competition, especially since not all infrastructure sectors have empowered and independent regulatory authorities. Moreover **price rigidities** in infrastructure markets have complicated cost recovery for public utility providers (especially Botswana Power Company and the Water Utilities Corporation), which have grown increasingly dependent on costly government subsidies as a result. As the delicate balance between cost-effective pricing and user affordability also has important implications for attracting private investors in these markets, this requires serious consideration by government; establishing an **independent regulator** for the water and electricity sectors (see below) could play an important role in this regard. As a positive step in this direction, a bill for the establishment of the office of the Botswana Energy and Regulatory Authority, which will be responsible for economic regulation of the Energy, Water and Waste Water Sectors is going through the governance structures and could be tabled before Parliament before the end of 2014.

Investment policy options

Clarify the legal framework for investment

- To better showcase and strengthen efforts at economic opening, Botswana would benefit from clearly listing within a single document the **economic sectors in which foreign investment is restricted**, or screened according to certain criteria (such as size or employment potential).
  - ❖ Restrictions according to investor origin, capital thresholds, and sector of investment should all be clearly stated in this **negative list**, which should be regularly updated in view of full transparency *vis-à-vis* investors. It should include core exceptions (which can be established in the interest of national security or in strategic sectors) as well as restrictions that are based on the country's development strategy (such as ownership or procurement preferences by sector). In addition to this list of restrictions on foreign equity ownership, a common Investment Code or investor guide (see below) should clearly itemise restrictions affecting freedom of entry and investor establishment and operations in each sector, as well as differential access to procurement contracts or to finance.
  - ❖ When establishing this list, the government should aim at **streamlining restrictions** dispersed across different sectoral legislations, analysing opportunities and costs of these restrictions, and limiting their number

with a view to attracting foreign investment across a large range of industries. In particular it will be necessary to **assess the rationale** behind each of the restrictions, notably to verify whether the empowerment or employment goals of these regulations could not be better met through alternative means.

- Given the good quality of Botswana's existing investment legislation, it does not appear necessary to implement a separate Investment Law (as this may just add an unnecessary layer to the country's legal environment). Nonetheless an **Investor's Guide or Investment Code**, grouping all relevant legal instruments for investment in Botswana, would help clarify the legal regime for investment and would better showcase its strengths (especially abroad). This instrument should be designed so as to complement the existing BITC Act, which is focused on investment promotion.
  - Such a codification or listing process should mention all relevant laws granting **protection provisions for investors**, such as: commitments to fair and equitable treatment as well as full protection and security; compensation for losses in case of armed conflict and civil disturbances; provisions on transfer of funds; guarantees against direct and indirect expropriation; key personnel; and access to means of Investor-State dispute settlement as well as commercial dispute settlement (including recourse to national courts as well as to international and domestic arbitration). The fact that Botswana has lifted foreign exchange controls and that repatriation of profits and assets is free would also be worth mentioning in this Code or Guide.
  - The coherence of the legal framework for investment could moreover be further enhanced by improved systems of **commercial dispute resolution**, including updating of the Arbitration Act and establishing dedicated commercial courts (given that the existing Industrial Court deals mostly with employment rather than investment disputes).
  - To guide this codification process, Botswana may wish to make use of existing **policy advocacy bodies**, such as: the NEDC and its sub-bodies (the EDD Unit, the EDD Thematic Team on Investment and Finance, etc.); BOCCIM for the private sector; and the National Doing Business Committee (NDBC). Based on wide stakeholder participation, these bodies would establish the broad objectives and orientations of investment policy, identify existing regulatory gaps, and set out what specific problems the Investment Code or Investors' Guide would seek to address. This structure would also be responsible for regularly updating the document (in the case for instance of any changes to sector-specific limits on foreign ownership, which would need to be reflected in the proposed negative list).

Elaborate a sector-focused national investment strategy

The above codification process would also present a good opportunity to create a comprehensive **national investment strategy**, with a greater focus on sectoral competitiveness and export potential than currently exists in the EDD Strategy.

- Botswana's national market is too small to provide many promising industries with sufficient demand; therefore beyond the EDD goals of citizen empowerment, poverty reduction, and diversification, it is essential that Botswana devise a clear strategy for catering to regional and global markets, and for attracting foreign investment accordingly. This will require targeted interventions in sectors that have strong comparative advantage, and attracting and facilitating investment in these sectors of high export and growth potential.
- Such a strategy could be devised in a self-standing manner, or within the EDD framework – for instance by the EDD Thematic Team on Investment and Finance. It would need to clearly lay out strategic objectives and help identify the main structural bottlenecks to the expansion of promising industries, such as finance or BPO. It would also provide a basis for long-term, sector-focused targets within human resource and infrastructure development strategies.

Further facilitate land ownership, transfer and rental

Botswana should build on the **electronic systems for land registration** already in place, and should endeavour to make the **transformation of land type** (from tribal to state or freehold) faster and more flexible. Transfer of land titles should also be facilitated, but preferably not through auctions as has sometimes been the case for commercial land (see Chapter 2).

- Given that land access is not a challenge country-wide (rather, ease of access depends on location of the land and on the facilitation of the local authorities concerned), a **nation-wide assessment**, broken down by geographic area and sector of investment, would help to diagnose and better tackle the problem. This could also facilitate the benchmarking of progress made in securing land access across Botswana's different localities.
- The recent initiative to directly allocate land to relevant Ministries who can then accelerate the application process for investors should be carefully monitored and evaluated, as it poses multiple risks. Indeed, multiplying the lines of accountability for land management and award could reduce transparency and instead open avenues for corruption and for arbitrary, negotiation-based decision-making. Rather it will be important to establish a **clearer arrangement of responsibilities** among MTI and the Ministries of Lands, and Labour and Home Affairs so as to maintain transparency while accelerating the availing of land, as well as the issuance of residence and

work permits. The resolution of the National Business Conference 2012 with respect to land access goes along similar lines, advocating the elaboration of a comprehensive national spatial planning framework which could help increase transparency and efficiency in the national and sub-national management of rural and urban land.

- Any **decentralisation of land management** to local authorities (including, for tribal land, the Land Boards) should be progressive and accompanied by the necessary mechanisms for oversight, transparency, and right of appeal and compensation for the landholders and investors concerned – including oversight by a single central agency. A representative of government could exercise ex-post control on land transfers by local authorities, with the support of administrative tribunals.

Clarify and review award and rationale of investment incentives

Botswana has one of the most straightforward corporate tax systems in the world, and the system is mainly consolidated through the Botswana Unified Revenue Service (BURS). Discretionary measures however remain possible within the system, as the Minister of Finance and Development Planning may for instance issue orders granting additional tax relief to any project considered beneficial to Botswana's economic development. Currently these incentives are also mentioned in separate acts and regulations (such as the PPAD Act, the Mining and Minerals Act or the Citizen Economic Empowerment Policy), and are not centralised within a common document where they can be readily available to investors.

- Botswana could therefore introduce **more transparency and coherence in its system of investment incentives**. All available investment incentives could be listed within a common investor guide or Investment Code (see recommendation above). This would help reduce the current ministerial discretion and instead provide clear guidance concerning eligibility for these incentives. Centralising all incentives within a common document could moreover assist policymakers by highlighting areas of potential duplication, and may facilitate the impact evaluation exercise.
- It would also be important to develop a mechanism for **regular impact assessment** of tax incentives for investment. It is crucial to ensure that incentives are fulfilling their objectives (i.e. attracting more investment), by subjecting them to both *ex ante* and *ex post* evaluations to determine their effectiveness and their impact on the national budget. Botswana could consider endowing the nascent BITC Financial Incentives Committee with the necessary mandate and capacity for such evaluations. The latter should notably consider whether the public objectives pursued by the incentives could not be better achieved through alternative means for investment

attraction (the foregone fiscal revenue could for instance instead be invested in structural policies for investment attraction, such as improving enabling infrastructure and the economy's skills base).

Level the playing field for investment in infrastructure markets, especially water and energy

Attracting private participation in Botswana's infrastructure markets will require ensuring that private operators can bid for contracts, and more generally do business, on an equal footing with public companies. This raises a group of sequential issues:

- First, **sound SOE governance and financial transparency** are crucial in order to shed light on any loss-making areas of SOEs, where functional separation and a delegation of tasks to the private sector may be most justified and desirable; sound SOE governance can also better pave the way for attracting private participation to the sector and for successful divestiture, should this be the preferred option for government.
- Second, there is a need for strong control and risk mitigation mechanisms to address the new challenges involved in the shift from public to private (or mixed) provision of infrastructure services. This includes: a clear and transparent **public procurement framework** (to ensure that bids are competitively assessed, including for PPP projects); ensuring that bids (especially in the case of PPPs) are selected with adequate attention to risk-sharing, budgetary oversight and Value for Money; and mechanisms for market regulation and appropriate pricing of infrastructure services.
- Third and more broadly, structuring private participation in infrastructure markets requires full alignment of all relevant **legal and regulatory frameworks** and the administration (notably to ensure consistency with former regulations on concessions and procurement, and to align line ministries and regulatory bodies against these common infrastructure development objectives).

The following recommendations attempt to address these challenges across different infrastructure sub-sectors in Botswana:

- Engage in a gradual attempt to **open the electricity market** to companies other than BPC. In addition to encouraging increased structural separation of the power sector (BPC for instance already engages in power purchase contracts with IPPs), government could consider **functional separation** of integrated utilities. This can allow to better identify areas in which public utilities are recording profits or losses, and highlight the segments which would be best-suited for private sector participation. Moreover agencies such as the Local Enterprise Authority (LEA) may want to ensure that small domestic enterprises have the requisite skills and training to enable them to enter IPP contracts.

- Support and accelerate the work of the **Botswana Energy and Water Regulator** (BEWR) Taskforce, set up in 2012 to establish a regulatory framework for the energy and water sectors. This will require effective supporting legislation. Establishing an independent regulator for the energy and water sectors would help regulate tariff increases, not only in energy (where tariffs have risen by 30% over the last two years, but where cost recovery remains difficult), but also in water (so to as to make the sector more financially sustainable). In the short-term, the balance between cost-effective pricing and user affordability may be better met through **consumption subsidies rather than production subsidies**, so as to allow power and water companies to operate on cost-recovery principles.
- Building on the effectiveness of the **Competition Authority** and on its established collaboration with other relevant bodies – such as the public procurement and anti-corruption authorities – consider extending the Competition Authority's market analysis to strategic infrastructure sectors (such as energy, water and ICT).
- Given Botswana's narrow market size, place increased emphasis on cross-border infrastructure projects, as well as on developing **interconnections in the transport sector** which would facilitate the expansion of export-oriented production targeting regional and international markets.
- Create a **regulatory framework for PPP development** (beyond the existing PPAD Act, which makes no provisions specific to PPP contracting). Building on the basis of the 2009 PPP Policy and Implementation Framework, a PPP Act and Regulations could be developed by procurement experts and budget officials in-house, rather than relying on external consultants (which has purportedly led to delays). Nurturing government capacity and reinforcing Botswana's fledgling PPP Unit is also necessary, and staff for this could be recruited – even on a temporary basis – from relevant institutions outside of MFDP (such as PPADB).

Build analytical and statistical capacity for human resource development (HRD)

Capacity remains weak for analysing and forecasting Botswana's labour supply and demand. Labour Force Surveys are conducted infrequently (only every ten years), and as of yet there is no systematic evaluation or forecasting of labour demand and skills gaps by sector and industry. Meanwhile the institutional landscape of agencies charged with development and implementation of HRD strategies remains blurred, although dedicated agencies are to be established in 2013 to remedy to this shortcoming.

- **Evaluation of Botswana's educational and vocational training system** should be strengthened: the recently-established HRD Advisory Council (HRDAC) should be capacitated to play a central role in conducting regular sector-specific surveys of "skill gaps", so as to shape the national education and training system accordingly.

- Based on a better understanding of existing and forecasted labour market gaps by sector, the elaboration of the Education and Training Strategic Sector Plan over 2013-15 should be taken as an opportunity for Botswana to adopt a more **deliberate sectoral approach** in its HRD strategies. Within this Strategic Sector Plan, specific attention should be placed on developing a competitive human resource base in economic activities where Botswana may have a comparative advantage in terms of investment attraction relative to other countries in the region.
- Meanwhile both the private sector and institutions tasked with HRD (particularly the forthcoming National HRD Council, which has been formally established in a Bill before Parliament in August 2013) should be granted a more systematic role in **policy advocacy**. Once operational, the HRDC should also be fully capacitated for its task of reducing overlap among different agencies working on HRD in the country. Government should in addition accelerate the move towards innovative incentives for further encouraging employers and business to train employees or to **co-finance training** and labour market analysis.

Strengthen implementation and communication dimensions of investment facilitation

Together with the private sector, government should consider means of **streamlining channels of communication** among itself, investors, and BITC. It is also necessary to strengthen the main umbrella group for the private sector (BOCCIM), and also to better delegate BOCCIM's advocacy functions among other available bodies – essentially diversifying the voice of the private sector in Botswana.

Following the merger between BEDIA and IFSC, BITC will moreover need to reinforce recent progress made in terms of firmly **defining its approach to investment facilitation** (either as a one-stop shop, or via a model that would service bare requirements for investors *in-situ*, while tackling questions pertaining to other government agencies through negotiated service-level agreements). The BITC's Business Facilitation Services Centre launched on 18 February 2014, adopts the latter approach via the "One Window Model", as detailed in Chapter 3 below. This centre will need to be empowered accordingly, and the corresponding lines of accountability and oversight made clear. As concerns investment facilitation for SMEs, although it has run into delays in 2012, rationalisation of mandates between LEA and the Citizen Entrepreneurial Development Agency (CEDA) would also deserve renewed momentum.

- As the One-Stop Shop for investors that BEDIA had operated was never fully effective, and few investors used the service, over 2012-13 BITC direction considered a variety of approaches to investment facilitation. This led to the adoption of the "One Window Model" via BITC's Business Facilitation Services Centre. Especially if any "silent consent" frameworks are envisaged (which the Ministry of Trade and Industry has been considering in light of successful reforms in other countries, notably Mauritius), establishing **clear lines of accountability and oversight for all investment facilitation decisions** will be imperative to ensuring the success of this approach.
- BITC's role in **promoting business linkages between small and large investors** should also be clarified, in relation to similar responsibilities incumbent on other agencies (such as the Local Enterprise Authority, LEA, or the EDD Unit). BITC will for instance have a role to play alongside these agencies in designing and implementing the Entrepreneurship Development Policy, which is currently under formulation as a potential replacement for the 1998 SME Development Policy. The new policy should seek to address more contemporary SME needs, including access to innovative forms of finance, intellectual property rights for SMEs, and facilitated participation in PPP and procurement projects.

Box 1.1. **The Policy Framework for Investment**

The Policy Framework for Investment (PFI) was developed to help governments "mobilise private investment that supports steady economic growth and sustainable development, and thus contribute to the prosperity of countries and their citizens and the fight against poverty" (PFI Preamble).

Inspired by the 2002 United Nations Monterrey Consensus on Financing for Development, which ascribes to governments the responsibility for creating the right conditions for private investment to flourish, the PFI aims to support development and the fight against poverty and to promote responsible participation of all governments in the global economy.

The PFI represents the most comprehensive multilaterally-backed approach to date for improving investment conditions. It addresses some 82 questions to governments in 10 policy areas to help them design and implement good policy practices for attracting and maximizing the benefits of investment. The PFI is based on the common values of rule of law, transparency, non-discrimination, protection of property rights in tandem with other human rights, public and corporate sector integrity, and international co-operation for development.

Box 1.1. **The OECD Policy Framework for Investment** *(cont.)*

Several countries participated in developing the PFI, including some 30 OECD and 30 non-OECD governments. Business, labour, civil society, and other international organisations, such as the World Bank, also played an active role, and regional dialogue and public consultations were organised around the world. The PFI was endorsed by OECD ministers in 2006, when they called on the OECD to continue to work with non-member governments and other inter-governmental organisations to promote its active use. Already, Morocco, Indonesia, China, India and Zambia are some of the countries that have undertaken a self-assessment of their investment framework based on the PFI.

Based on analysis of what sectors would most benefit from reform and best stimulate the rest of the investment environment (as explored in the preceding overview), the Ministry of Trade and Industry of Botswana decided to focus on four distinct policy areas of the PFI: Investment Policy; Investment Promotion and Facilitation; Public Governance; and Infrastructure.

In response to new forces reshaping the global investment landscape and to the numerous lessons learnt through its use in over 20 developing and emerging economies since 2006, the PFI is currently being updated. The updated version will incorporate feedback from the international policy community and reflect evolving international economic fundamentals – such as the growing relevance of Global Value Chains or the economic and investment impacts of climate change.

Source: www.oecd.org/investment/pfitoolkit.

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Chapter 2

Investment policy in Botswana

This chapter charts how much progress Botswana has made in improving its investment climate, especially since the mid-1990s. Business establishment could be further facilitated through simplification of procedures of land allocation and property registration. Foreign ownership is also restricted in several economic sectors, limiting the overall openness of the investment regime; the fact that these restrictions are not listed within a common "negative list" may moreover reduce transparency for investors. Nonetheless investors in Botswana today benefit from protection from expropriation, sound contract enforcement, and guarantees for intellectual property rights, among others. Botswana's legal framework for investment is therefore quite comprehensive and provides investor protection provisions which meet international standards. While Botswana's Doing Business rankings have declined since 2009, this chapter suggests that this performance is not necessarily a reflection of poor quality of the legal regime. Rather, improvement may be particularly necessary as concerns the transparency and clarity of the legal framework vis-à-vis *investors.*

The quality of investment policies directly influences the decisions of all investors, be they small or large, domestic or foreign. Transparency, property protection and non-discrimination between foreign and domestic investors must underpin efforts to create a sound investment environment and must be clearly reflected in the legal framework. While in many countries restrictions may be applied to foreign investors in view of empowering domestic investors, such strategies may reduce investor confidence and deprive countries of important inflows of foreign capital and transfer of technology. Alternative means of supporting domestic entrepreneurs – for example through supply-side approaches that improve the enabling environment for local entrepreneurship and that help foster business linkages between small and large investors – may be a more desirable approach.

Steps taken to simplify Botswana's investment regime

> What steps has the government taken to ensure that the laws and regulations dealing with investments and investors, including small and medium sized enterprises, and their implementation and enforcement are clear, transparent, readily accessible and do not impose unnecessary burdens?

Over the past two decades Botswana has made significant progress in improving its business climate and increasing openness to foreign investment. Efforts undertaken to clarify and improve the regulatory framework for business establishment and investor protection include a series of laws which: guide business establishment (such as the Companies Act); cater to investor protection (such as the Copyright and Neighbouring Rights Act and the Acquisition of Property Act); and clarify modalities for investment in different economic sectors (such as the Mines and Minerals Act or the Public Procurement and Asset Disposal Act). Most recently the Companies Act and the Trade Act have been revised, a Competition Law was enacted in 2009 and the associated Competition Commission appointed in June 2010, and in August 2012 the Industrial Property Act of 2010 was enacted, together with Industrial Property Regulations.

Protection provisions for investors in Botswana's current legal framework

According to international best practice, protection provisions for investors in an investment law cover the following: non-discrimination (including commitments to fair and equitable treatment, and full protection and security); guarantees against direct and indirect expropriation, and associated provisions for prompt, effective and adequate compensation; provisions on transfer of funds; and key personnel. Protection provisions should also grant foreign and domestic investors non-discriminatory access to courts for the adjudication of investment disputes, as well as access to means of alternative commercial dispute resolution (such as mediation or conciliation).

In Botswana, business establishment is legislated by the Companies Act of 2003 and the Co-operative Societies Act of 1989. All companies are registered with the Registrar of Companies and Industrial Property (ROCIP), which certifies that the company is incorporated (see Chapter 3). Meanwhile provisions for investor protection are to be found across various legislations:

- **Transfer of capital profits and dividends:** Under Botswana's **Capital Transfer Tax Act**, 1985, tax is levied on the transfer of property (tangible, intangible movable or immovable), by way of gift or inheritance. There are no restrictions on non-residents holding shares in listed companies on the Botswana Stock Exchange, and exchange controls, previously governed by the Exchange Control Act, were abolished with effect from 9 February 1999. Free transfer of capital profits and dividends is also guaranteed in different Bilateral Investment Treaties (BITs) concluded by Botswana, and in incentive schemes or Development Approval Orders available for investment projects in specific economic sectors (see Section 3.5 below).
- **Protection against unlawful expropriation:** This, together with the right for appropriate and timely compensation for any expropriation that does take place, is guaranteed under the Section 8 of the **Botswana Constitution** and also referred to in the **Acquisition of Property Act**. Botswana is also party to several BITs containing provisions for investor-state dispute settlement (ISDS), which allow foreign investors to initiate dispute settlement proceedings against the government under international law – notably in the case of expropriation. In the case of tribal land and acquisition of land by Land Boards, the right to challenge expropriation decisions is also addressed in Section 25 of the Tribal Land Act. All of these legal instruments are described in detail in Section 2.6 below.
- **Settlement of disputes** is not adequately provided for in Botswana, as the country lacks a system of dedicated commercial courts and the Industrial Court set up by the Trade Disputes Act covers mostly employment issues. While further elements of dispute settlement (including establishment of a

panel of mediators and arbitrators for trade disputes, and of an industrial court to which the panel can refer disputes) are addressed in the **Trade Disputes Act** of 2004, these mostly cover employment disputes. Meanwhile core provisions for international enforcement of awards and international settlement of disputes are covered in the **Arbitration Act** (enacted in 1966) and the **Recognition and Enforcement of Foreign Arbitral Awards Act** (of 1971). This framework is however considerably outdated.

The legal framework for core investor rights is thus set out in a variety of different laws and regulations. There is no self-standing investment law or code, and for the past two decades investment policymakers have repeatedly debated the question of whether Botswana should compile these various provisions regarding investor protection within a single legal instrument – as outlined in Box 2.1.

Box 2.1. **Consideration of an Investment Code by the Ministry of Trade and Industry, 2002-12**

A **Foreign Investment Code** was drafted in 2001-02. This Code was however considered as a tightening of Botswana's foreign investment regime, by prohibiting any FDI in projects below a certain size. For joint ventures, these size thresholds were adjusted downwards as per the degree of local shareholding in the project. This put a premium on the volume of the projects, rather than their quality or potential for technological innovation and other developmental impacts (which in some industries can in fact be higher for smaller-scale projects). In addition the Code was to complicate certain business establishment procedures, as applicants for manufacturing, trading, or tourist enterprise licences were required to have prior deposits of investible funds in Botswana, while granting of work and residence permits was made contingent upon securing an operating license. Criticised for being restrictive to foreign investors by both the Foreign Investment Advisory Service (FIAS) and by UNCTAD, the proposed Foreign Investment Code was never put in place.

In May 2012 MTI drafted a **position paper for a proposed Investment Facilitation Law**. The current *Investment Policy Review of Botswana* has been requested by the government of Botswana in part with a view to providing guidance on this question. The recommendations of the current document should inform next steps in terms of consolidating Botswana's legal regime for investment.

Given the overarching quality of Botswana's current legal regime for investment (which, as the following sections demonstrate in detail, provide satisfactory protection of investor rights), it is not crucial for Botswana to create a self-standing Investment Law. This may risk simply adding an additional layer of legislative complexity to the regime, and indeed many countries that have successfully attracted FDI (including OECD member countries) do not have an Investment Law. However in order to clarify and showcase the available provisions of the legal framework, an Investment Code (which gathers all existing legal instruments for investor protection within a single umbrella document) may be desirable. Alternatively an Investor Guide could provide similar advantages, without necessitating any legislative procedures. This Code or Guide would serve to clarify investor rights, to compile information regarding FDI restrictions, and also to better advertise and lay out the extent of government commitments not to discriminate in the treatment afforded to domestic and foreign/non-resident investors (see Section 2.2). In Botswana where openness to the private sector has been on the rise for several years, clarifying these legal commitments within a single instrument can only be to the country's advantage.

Bringing more unity and clarity to the body of existing investment legislation can indeed be very helpful and attractive for potential investors – particularly foreign, for whom the investor protection provisions set out in different policy documents may be more time-consuming and complex to decipher. In deciding whether or not to invest in a foreign country, overseas investors will look to a clear body of laws and regulations setting out the specifics of investor protection, as well as their rights to participation in the different industries of the country. An Investor Code or Guide could also help clarify available investment opportunities for smaller investors. Providing investors with greater assurance in terms of openness, transparency and predictability is becoming increasingly necessary given Botswana's ever-stronger diversification imperative.

Principle of non-discrimination on laws relating to investment

> Has the government taken steps to establish non-discrimination as a general principle underpinning laws and regulations governing investment? Has the government reviewed restrictions affecting the free transfer of capital and profits and their effect on attracting international investment?

There are no restrictions of portfolio investment in Botswana, nor any minimum thresholds for investment by foreigners: no legislation stipulates how much an investor is expected to bring into the country as contribution to the project, although financial institutions like Botswana Development Corporation (BDC, the country's main agency for commercial and industrial development) and the National Development Bank (NDB) do require that at least 25% of total cost of the project that they finance come from the foreign investor. There are also few key personnel restrictions: foreign investors are allowed to bring some skilled labour into the country for a given time period, as long as there is proof that the skills brought in are not locally available (although this may not be straightforward to demonstrate).

Botswana also provides for free repatriation of profits and has liberalised exchange controls since 1999. Foreign exchange is available to all investors, domestic or foreign, regardless of their export volume.[1] In addition the Export Credit and Guarantee Insurance Company (BECI) offers export credit to all Botswana-based companies, whatever their ownership.

Regulations on foreign ownership are established in sectoral legislation

However, the government does make exceptions where it is in the public interest for certain businesses to be reserved for citizens. Although the rather restrictive Foreign Investment Code proposed in 2001 was swiftly dropped (see above), foreign participation remains prohibited or restricted in several industries. Sectoral laws have been instituted in recent decades to limit FDI entry especially into small-scale businesses, as part of multiple ventures destined to promote citizen empowerment. This has been accompanied by programmes such as: the **Localisation Policy**, favouring employment of Botswana citizens over non-citizens given similar qualifications; and the **Reservation Policy**, under which some businesses and services are reserved for citizens only, and preferential treatment is granted to citizens in public procurement bids.

Today, such reservations remain provided for in the following laws:

- The **Industrial Development (Amendment) Regulations 2008** reserve participation in **small-scale retail and manufacturing** to Botswana citizens or companies wholly-owned by citizens. These activities include, among others, school furniture manufacturing, welding and bricklaying, sorghum milling, bread baking and confectionery, manufacture of traditional leather products and traditional crafts, packaging, and meat processing.[2] Nonetheless MTI can also issue licenses to foreigner companies to operate in these restricted sectors if there has been any proven ambiguity over the scope of application of the licensing prohibition.[3]
- Under the **Trade Act 2003**, the following small-scale services are reserved for Botswana citizens or wholly-owned companies: bookshops, cleaning services, curio and furniture shops, fresh produce, hair dressers,

restaurants, supermarkets, and motor dealers (among others). **Joint ventures** in these areas are possible within specified and considerable size thresholds (enterprises with under 100 employees and annual sales of 1.5-5 million pula, or USD 188000-627 000), and only if foreign participation does not exceed 49%. Any higher level of foreign participation is subject to approval by the Minister of Trade and Industry.

- Under the **Liquor Act 2003** reservations similar to the above apply to liquor bars, bottle stores and clubs. While previously certain tourist enterprises were also reserved for citizens, the **Tourism (Reservations of Tourism Enterprises for Citizens) Revocation Regulation** No. 86 of 2007 rescinds this reservation so as to ensure consistency with international commitments on market access to hotels and restaurants.[4]
- Certain activities related to **road and railway construction and maintenance** are closed to both foreign and domestic private investors.
- Under the **Mines and Minerals Act 1999** (which is under continuous review), small-scale mining – that is, mining and processing of non-diamond minerals in volumes of under 50 000 tonnes of raw ore per year, and where overall investment in fixed assets does not exceed 1 million pula (USD 125 400) – is reserved for Botswana citizens or companies wholly-owned by citizens. At the time any mining license is issued, the Government of Botswana moreover retains the option of acquiring up to 15% working interest participation in the mining company – nevertheless this right is rarely exercised in practice.
- Under Part III of the **Petroleum (Exploration and Production) Act** of 1981, no licence shall be granted to or held by an individual who "is not a citizen of Botswana or has not been ordinarily resident in Botswana for a period of four years or such other period as may be prescribed", or by a company which "has not established a *domicilium citandi et executandi* in Botswana" (unless such a company is incorporated under the Companies Act and as such has obtained a development license).

Preferences for domestic participation in public procurement and privatisation

In addition to these reservations made in sectoral laws, Botswana's procurement and privatisation frameworks include additional forms of preferences for domestic investors:

- While the **Public Procurement and Asset Disposal** (PPAD) **Act** of 2001 establishes open competition, cost effectiveness, fairness, equity, accountability and transparency as the core principles for public procurement, the 2006 **PPAD Regulations** explicitly declare that "open domestic bidding is the default method for use in public procurement".

International bidding is restricted to, "where optimal competition or value for money may be enhanced, or due to the technical complexity of the bid specifications".[5] Restricted foreign as well as domestic bidding, meanwhile, can only be used within certain threshold values, and with the following prerequisites: prior written authority of the PPAD Board; if the supplies, works or services are available only from a limited number of providers; and when there is insufficient time for an open bidding procedure due to an emergency situation.

- The **Public Procurement and Asset Disposal Board** (PPADB) operates a Reservation Policy in the **construction sector**, whereby 100% citizen-owned companies benefit from a 5% preference margin. These projects are also classified, according to financial thresholds, into five "Opportunity Categories": the smallest projects (under Categories A and B) are reserved for 100% citizen ownership, while grade C must be majority citizen-owned, and D and E are open to all contractors. Similar preferences exist for the **provision of ICT and medical supplies**. For procurement of services grants, 100% citizen-owned enterprises benefit from 5% price preference margins, followed by 3% for majority-owned companies and 2% for minority-owned firms.
- The **EDD Strategy** further encourages preference of local enterprises in government procurement, taking over from a similar initiative within the Investment Strategy for Botswana (namely the Local Procurement Programme, LPP). The EDD approach to procurement is described in more detail in Section 3.6 below.
- Beginning in 2013 government is also aiming to make public sector assets more available to citizens through its **Privatisation Policy** – particularly by reserving shares from privatised entities. 49% of the shares from the on-going privatisation transactions of Botswana Telecommunications Corporation (BTC) and the National Development Bank (NDB) have for instance been reserved for citizens.[6] This is an approach frequently adopted by OECD countries as well; it is unproblematic as long as citizen empowerment objectives do not override due attention to financial viability and value-for-money in the privatisation contracts.
- Botswana's **Citizen Economic Empowerment (CEE) Policy**, approved by Parliament in August 2012, further strengthens preference schemes for local companies. As of June 2013 and as per the annex to the CEE Policy, the following amendments to Botswana's Reservation and Price Preference Schemes have been accepted by Cabinet: mandatory subcontracting of citizen-owned consultancy and construction companies by foreign-owned companies when awarded government contracts (for mega-projects, citizen-owned companies are to be given a price preference of up to 6%, and a maximum of 30% of the total cost of the project may be subcontracted to them); mandatory transfer of skills to the subcontracted citizen-owned company; mandatory placement of interns by companies awarded projects; a

price preference incentive of up to 4% to joint ventures between foreign-owned and citizen-owned companies; and removal of the caps on price preference margins that previously existed for different categories of subcontracting.

These preference schemes within the public procurement and privatisation frameworks indicate that Botswana still follows a cautious approach *vis-à-vis* foreign participation in its concession operations. Prior to approval of the CEE policy and the subsequent revisions of the Reservation and Price Preference Scheme in June 2013, the applied preference margins (of the order of 2-5%) remained much lower than in many of Botswana's neighbours. However the removal of copy on these preference margins since 2013 could alter this situation. It is therefore particularly important for Botswana's procurement-related documents to continue to maintain a clear emphasis on the quality of procured goods and services: in the interest of balancing citizen empowerment considerations with value-for-money, no reservation or preference is permitted in open international bidding where contracts exceed 50 million pula (USD 6.2 million). In the ICT sector, a maximum preference of 100 000 pula (USD 12 540) is allowed for any contract size.[7]

Notwithstanding the justifications for employing the reservations and preference schemes detailed above, the fact that these **considerations for entry and operations of investors** (including quantified limits on foreign equity ownership) **are not clearly set out within a single, easily accessible instrument** makes the investment context difficult to grasp for foreign investors. In the interest of openness, transparency and predictability, all of the sectors in which foreign equity ownership is restricted should be grouped within a **"negative list"** that can be regularly updated, and that could be included within an Investment Code or a more informal investors' guide. Alongside these restrictions by investor origin, supplementary considerations for permitting investment (such as geographic locations and capital thresholds) could be clearly mentioned in such an umbrella document.

There is also a need to regularly **review the rationale for each regulation** limiting the extent of foreign participation, in light of how effectively it meets Botswana's poverty reduction and development objectives. The purpose, costs and benefits, and means of phase-out over time for every restriction requires careful analysis. In parallel, the potential benefits of opening certain sectors to foreign investment – including job creation, revenue collection, transfer of technology and know-how, linkages with domestic enterprises, and enhanced services for final users – should not be underestimated in this evaluation exercise. The assessment would also need to take into account alternatives which could replace the sector restrictions and serve the same end-purpose (such as training the local workforce for enhanced employability in high-value-added sectors, and improving the quality of basic infrastructure to reduce operational costs for SMEs in those sectors).

Steps taken to improve processes of property and land ownership registration

> What steps has the government taken towards the progressive establishment of timely, secure and effective methods of ownership registration for land and other forms of property?

Land types and registration of customary land rights under common law

There are three categories of land in the country (tribal, state and freehold). The legal framework for access to land in Botswana is accordingly guided by: the **State Land Act** (commenced in 1966 and regularly amended over the 1970s and 1980s, and most recently in 2003); the **Land Control Act** (commenced in 1975 and updated in 1986); the **Tribal Land Act** (commenced in 1970 and regularly amended, most recently in 2003 and 2007); and the **Town and Country Planning Act** (commenced in 1980 and planned for amendment in 2013). As listed in Box 2.2 below, these acts mainly guide land access for Botswana nationals.

- **Tribal land** constitutes about 70% of total land. Tribal land is held under Customary Land Rights and is not subject to free market transactions, although land use can be converted. Approval from the relevant Land Boards (which administer tribal land, see Box 2.2) is required for sale or transfer of this land. The land can also be leased for 50-year periods, for industrial, agricultural and commercial purposes.
- **Freehold land** constitutes about 5% of total land.[8] Freehold land is designated in blocks, mostly in eastern and southern Botswana, and is constituted of privately-owned industrial, commercial, agricultural, and residential land. Freehold land can be purchased by non-citizens and citizens alike, but property sales are subject to different transfer duties: for citizens, no duty is charged for on land valued below 200 000 pula (USD 24 923), and a 5% rate is charged on any amount of land above that threshold; by contrast the 5% rate is charged on the transfer of all freehold land by non-citizens (including companies with minority local ownership). For agricultural land, the duty rate rises to 30%. Freehold land rights entitle perpetual and exclusive rights to the land, and approval from the Land Board is not required for sale or transfer of the land.
- **State land** constitutes about 25% of land area in Botswana, and covers all urban areas, national parks, game reserves, and some wildlife management areas. It is administered by government through the Department of Lands. Plots can be leased for commercial and industrial use (for a duration of 50 years), and for residential use (for 99 years). Allocation of State land requires registering in a waiting list of applicants, first established in 1991 under the State Land Act (see Box 2.2 below).[9]

Box 2.2. **The Tribal Land Act and the Town and Country Planning Act**

Tribal Land Act (Cap 32:02, commenced in 1970 and regularly amended, most recently in 2003 and 2007): this Act establishes Botswana's Land Boards, one in each of twelve tribal areas, for the approval and granting of applications for tribal land.

- **Land Boards** generally include members appointed by the Minister of Lands and Housing, as well as representatives of the Ministries of Agriculture and of Trade and Industry. The Boards must consult the District Council on the formulation of policy regarding the exercise of these functions. Under Part VII of the Act, approval for transfer or sale of any tribal land must also secure Land Board consent.
- Part III of the Act makes provisions for the grant of **Customary Land Rights**, as well as for the identification of **land use zones** (for which the Board may determine management plans in consultation with the District Council, village development committees, and tribal authorities). Part III also notes that no land board shall grant any **land to non-citizens**, nor shall any land be granted through Customary Land Rights for trading, manufacturing or any other commercial purposes.
- Meanwhile Part IV addresses the grant of **land rights under Common Law**, which can only be granted to non-citizens with the written consent of the Minister of Lands and Housing. Land that falls within this category cannot be leased or granted for agricultural or horticultural purposes, except to a tribesman or to the government of Botswana.
- Finally Part V makes provisions for **land required for public purposes**, which the State may request to be granted by the relevant Land Board.

Town and Country Planning Act (Cap 32:09, commenced in 1980): Government is planning to update this act over 2013. The Act guides developments and land allocation in certain areas of land having been identified as "**planning areas**":

- Planning areas are selected for the preparation of development plans, if they fall within the following categories: sub-District headquarters; environmentally sensitive areas; areas experiencing land allocation or land use pressures; and areas with rapid population growth.
- Development and investment in these areas requires securing a **planning permission**, followed by a building permission. Rejected requests for permits can be appealed to the Minister of Lands and Housing.
- Subsequent development of the area must abide not only to the Town and Country Planning Act, but also to the **Development Control Code**, the **Urban Development Standards**, and the **Building Control Code**.

Box 2.2. **The Tribal Land Act and the Town and Country Planning Act** *(cont.)*

- Should the occupier of the land carry out developments without permission, the Minister may issue an **enforcement notice** requiring that no further development be carried out or that the land be restored to its original state.
- The Town and Country Planning Bill 2012 was recently tabled before Parliament. It proposes to amend the Act so as to decentralise the Town and Country Planning Board's (TCPB) functions to local Councils, in view of reducing delays in the approval of planning permits. This possibility will be considered by government over 2013.

Source: Ministry of Lands and Housing, official website.

Land allocation processes for domestic and foreign investors

In the early 2000's land allocation decisions were extremely lengthy: **waiting lists** for land had become very long, since allocation of land was subject to availability of serviced land and no additional plots had been serviced since the late 1980's. The only allocations being made were therefore on repossessed plots. In Gaborone this situation led to the freezing of land applications for several years. Exceptions were nonetheless made for **commercial land**, which was attributed by tender or direct grant rather than through the waiting list system. However the latter approach was sub-optimal as it introduced more space for arbitrary decision-making, with the associated risks of corruption and rent-seeking in the tender and land award processes; it moreover did not allow to tailor land allocation decisions to the needs of specific projects.

This set-up has been improved since, and the following registration and allocation procedures apply:

- Customary rights (on tribal land) are not registrable, and **citizen landowners** holding a Customary Land Right and wishing to convert it to a Title Deed must apply to their Land Board for conversion of the land to common law. Upon receipt of the application the Board issues a draft lease, and the land survey must be lodged with the Registrar of Deeds for examination prior to approval. Despite their apparent intricacy, the latter procedures usually take only five days.
- Under the Land Control Act, **acquisition of both tribal and State land by foreign investors** is contingent on explicit ministerial approval.[10] Foreigners must make a proposal to the Investment Promotion Agency (BITC, formerly BEDIA). BITC assesses the application and makes a recommendation for

allocation to the Department of Lands within the Ministry of Lands and Housing (MLH), which in turn makes a recommendation to the Minister to allocate the land. This enables foreign companies to lease land for both commercial and residential use once they are registered in Botswana.

- Additional procedures are observed in the case of industrial land, factory sites, and land for tourism activities:
  - For **industrial land allocation**, all applications from both domestic and foreign investors are evaluated by a committee comprised of the Ministry of Local Government, the Ministry of Lands and Housing, and the Ministry of Trade, Industry, Environment, Wildlife and Tourism. Evaluation is based on the following criteria (among others): type of industrial project; manufacturing content; fund availability; employment generation potential; potential foreign reserve savings; export earning as well as import substitution potential; volume of capital investment; and plot size.
  - State land is leased to **tourism organisations** and individuals (both foreign and domestic) for 15-year periods (which can be renewed), and the land's use is subject to review every five years. Tribal land can meanwhile be leased for tourism purposes on 50-year leases, and some freehold allocations can also take place.
  - Serviced **industrial sites and factory shells** are also provided for rental by BITC, as the central investment promotion agency, to foreign and domestic investors alike and often at concessionary rates. For this purpose the **2011 BITC Act** endows the BITC with the powers to "acquire, purchase, sell, develop or otherwise deal with property, whether movable or immovable, including contracting for the construction of factory shells".[11] For this purpose BITC has already obtained specific parcels of land in Gaborone, Francistown and other areas. This move aims to tackle the shortage of serviced industrial land in Botswana, which by 2010 was still identified by private investors as a major investment constraint.[12]

Via the above processes, the average number of **days taken to register investor property** in Botswana (as calculated by the 2014 World Bank Doing Business Survey) is 15. In this regard Botswana remains a comparatively strong performer: 15 days is considerably shorter than the average time required for registering property in Sub-Saharan Africa (60 days) and even in OECD countries (24 days). Nonetheless during Botswana's National Business Conference of October 2012 the private sector strongly emphasised the continuing obstacles to entrepreneurial activities posed by the inflexible approach to land use and allocation (especially the difficulties for re-allocating land to productive economic uses, and the restrictions imposed on ownership and transfer of land).

Another shortcoming, highlighted during the initial stages of Botswana's "Land Administration Procedures, Capacity and Systems" project (LAPCAS, undertaken since May 2011 in co-operation project with Sweden – see Box 2.3), is the **inadequacy of public-sector skills** for running an effective and efficient land administration system. This results in insufficient record keeping and slow service delivery – a strong deterrent for investors. The Botswana Confederation of Commerce, Industry and Manpower (BOCCIM, the umbrella private sector group) points out that these land access and management challenges are not prevalent country-wide; rather, access is more or less complicated and lengthy depending on the location of the land and subject to the facilitation of the authorities concerned. The Botswana Communications Regulatory Authority (BOCRA) concurs on this point, noting that the lack of harmonisation and common planning among different land authorities greatly complicates the operations of Telecom operators seeking to obtain land for tower construction. Moreover many applications for land allocation are denied without proper justification.

In attempting to accelerate land allocation, it is also important to **avoid multiplying derogation regimes** which could introduce high transparency risks (especially when public sector capacity is low): when developed in 2009, the Investment Strategy for Botswana for instance developed guidelines to allocate blocks of land to relevant Ministries, allowing these to assess investor applications themselves and thereby accelerating the land allocation process.[13] To date about 270 000 hectares of land as well as eight concession areas have thus been reserved for the Ministries of Trade and Industry, Environment, Wildlife and Tourism, and Agriculture. However such fast-track land allocation across different Ministries multiplies the number of agencies empowered to deliver land, and blurs lines of accountability in land delivery. It also increases the scope for discretionary and case-by-case decision-making – with the danger of disadvantaging certain investors *vis-à-vis* others, especially if there are discrepancies and inconsistencies across Ministries in their processes for taking these accelerated land allocation decisions.

In view of these transparency and capacity risks, BOCCIM is therefore advocating for the elaboration of **clearer directives for local land provision** to address such discrepancies; this question was tabled before the High-Level Consultative Committee (HLCC, see below) and at the 2012 NBC. The relevant NBC resolution thus advocates elaborating a comprehensive national spatial planning framework to increase transparency and efficiency in the national and sub-national management of rural and urban land. LAPCAS work will likewise focus on fostering efficient land administration within MLH, based on: simplified procedures; correct information on land parcels and land rights; and robust information systems that can be maintained and supported in a sustainable way.

Since 2012 MLH is considering establishing an **Asset Register and Facilities Management Act** to introduce more clarity into these processes. A **nation-wide assessment**, broken down by geographic area and sector of investment, would be another important first step to tackling and assessing the contours of this issue. This could also facilitate benchmarking of progress made in securing land access across Botswana – and pave the way for reforms targeted at overcoming the impediments specific to different localities. In addition the EDD Strategy, under the core thematic area on "sectoral development and business linkages", plans to facilitate the optimisation of land use through the following activities: mapping sector-specific business zones; developing appropriate infrastructure to support prioritised sectors in these zones; establishing efficient land allocation systems; and promoting appropriate land usage.[14] The specific means for implementing these activities would nevertheless deserve to be better clarified in the document.

Land mapping and electronic management of the land registry

Another important step towards faster and more transparent land management could be taken via the **electronic management** of land cadastres and registries. Indeed all steps of the land allocation process, as well as registration and the transfer of land from tribal to freehold, is difficult without a **clear cadastre** or country-wide mapping as well as a soundly and easily-manageable **land rights database**. Past attempts have been undertaken in Botswana, but with little success. The Land Inventory for Tribal Land Boards of Botswana (LYNSIS), as well as the Botswana Land Integrated System (BLIS, launched in the mid 1990's to electronically consolidate waiting list information for the allocation of state land plots), were never fully implemented. In 2002 this was followed by the State Land and Tribal Land Information Management Systems (SLIMS and TLIMS, respectively). TLIMS was intended to automate land allocation at the Land Board level, enabling the boards to process applications electronically; yet again however, implementation has been halting and the system may be overly complex. These nonetheless remain highly necessary efforts towards promoting administrative simplification and quality services via information and communication technologies.[15] E-government is an area of emphasis for the medium-to-long term EDD strategy; while the roll-out of this component has been somewhat delayed so far, the EDD could provide useful momentum for renewing progress on electronic land registry projects.

Land disputes: The role of Land Boards and the Land Dispute Tribunal

Botswana counts twelve **Land Boards**, which make decisions on tribal land allocation. Section 40 of the Tribal Land Act, which creates these Boards, also provides for the establishment of one or several **land tribunals**. Any

Box 2.3. **The Land Administration Procedures, Capacity and Systems (LAPCAS) Project**

Recognising that previous changes in national land administration had been made only on an incremental and ad-hoc basis, LAPCAS is a five-year co-operation arrangement between the Ministry of Lands and Housing (MLH) and Swedish authorities. It is an attempt at taking a holistic look at land management issues in Botswana. Capacity building in all areas of land administration will be a major part of the project. The project's seven components are identified as follows:

- national systems for unique referencing of land parcels and location addresses;
- improvement of land administration processes (this may include reassessing the structure of the Ministry of Lands and Housing, to make it more responsive to client needs);
- deeds register computerization (as the Registry is still in manual form);
- systematic adjudication on tribal land;
- development of IT procedures and organisation;
- exchange and dissemination of land administration data; and
- training and study trips.

A comprehensive project organisation of some 50 members of mainly MLH staff has been put in place to manage the roll-out of LAPCAS.

Source: Bareng MALATSI, Botswana and Åke FINNSTRÖM, Sweden, "Reform of Land Administration in Botswana", TS05F – Land Tenure in Africa, 18-22 May 2011.

person or entity aggrieved by the decision of a Land Board can refer the matter to these tribunals for further adjudication within four months of the decision. Land Boards may also apply to the Land Tribunal for the enforcement of their decisions.

Botswana originally counted a single land tribunal, which commenced operations in October 1997 from Gaborone and then expanded, setting up a branch in Palapye in April 2005. By 2007 the Gaborone Tribunal (or "main tribunal", presided by a panel of three members including the President) registered an average of 23 cases per month, which created somewhat a capacity problem and resulted in a backlog of about 1 000 cases). Prior to 2008 it took approximately 18 months from the date of appeal registration to its completion, and three months between completion of the hearing and the decision reaching the parties concerned. In view of reducing the case backlog and cutting the time for delivery of judgement to just one month, MLH set up two ad-hoc tribunals to begin operations in January 2008. The Registrar of Deeds is responsible for the daily general administration of these district-level tribunals, and their decisions are enforceable in the same manner as those of a court of competent jurisdiction. Thereafter there remains a right of appeal on the decision of the Land Tribunals to the High Court (on a point of Law only but not on a point of fact).

While the Land Boards and Tribunals provide a sound and expanding set-up for the adjudication of land disputes, it is nonetheless worth noting that the above system applies to tribal land alone (that is, land owned by Botswana nationals). Allocation decisions for commercial land and land awarded to foreigners meanwhile depend on BITC facilitation and on Ministerial approval, but so far suffer from a lack of robust and formalised appeal and dispute settlement mechanisms.

Protection of intellectual property rights

> Has the government implemented laws and regulations for the protection of intellectual property rights and effective enforcement mechanisms? Does the level of protection encourage innovation and investment by domestic and foreign firms? What steps has the government taken to develop strategies, policies and programs to meet the intellectual property needs of SMEs?

Botswana is a member of several international organisations which uphold it to intellectual property (IP) standards:

- the World Trade Organisation (and its Agreement on Trade Related Aspects of Intellectual Property Rights, TRIPS);
- the African Regional Intellectual Property Organisation (ARIPO, formed in 1926 as a regional system to complement the national industrial property system of its 18 members) ; and
- the World Intellectual Property Organisation (WIPO, joined by Botswana in 1998).

As part of its membership to the above bodies, Botswana is also a contracting State to several international and regional conventions on IP (outlined in Box 2.4 below).

Legal framework for IP protection

IP-relevant legislation in Botswana includes: the **Industrial Property Act 2010**, which replaced the equivalent Act of 1996; the **Copyright and Neighbouring Rights Act**, which updated the equivalent 2000 Act and commenced in October 2006; and the **Registration of Business Names Act**, first enforced in 1975 and updated in 2008. Implementing rules and regulations for these acts include: the Industrial Property Act (Date of

Box 2.4. **International conventions for intellectual property protection signed by Botswana**

Botswana is a contracting State to the following IP agreements (treaties which define internationally agreed standards of IP protection in each country):

- the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) of 1994;
- the World Intellectual Property Organization (WIPO) Convention (joined since 1998), the WIPO Performances and Phonograms Treaty, and the WIPO Copyright Treaty (member of the latter two since 2005);
- the Berne Convention for the Protection of Literary and Artistic Works (member since 1998);
- the Paris Convention for the Protection of Industrial Property (member since 1998); and
- the Beijing Treaty on Audiovisual Performances (signed in October 2012 and pending ratification as of January 2013).

In addition Botswana is a contracting State to the following Global protection agreements (treaties which ensure that one international registration or filing will have effect in any of the signatory states):

- the Patent Co-operation Treaty (ratified since 2003);
- the Hague Agreement for the International Registration of Industrial Designs (member since 2005); and
- Madrid Agreement concerning the International Registration of Marks (member since 2006).

Source: World Intellectual Property Organization (WIPO) 2013.

Commencement) Order 2012; the Copyright and Neighbouring Rights Regulations of 2008; and the Companies Act of 2007 (enacted in 2008). Patent applications in Botswana are received by the **Registrar of Companies, Patents, Designs and Trademarks** (ROCIP), while foreign applicants are required to submit applications to ROCIP through a local agent. Applications are then examined by ARIPO before being granted by ROCIP, at a cost of USD 1 600-1 800 for international applications through the PCT.[16]

The **Industrial Property Act 2010** covers the protection of patents, trademarks, industrial designs and utility model certificates (petty patents). This Act came into force in August 2012 together its Regulations, and has been commended as an important step forward in modernising Botswana's regulatory framework for IP protection. The 2010 Act comprises new areas including: protection of Geographical Indications; layout designs of integrated circuits; traditional knowledge and handicrafts; provisions to allow for parallel importation of pharmaceutical products; filing of patents under the Patent Cooperation Treaty (PCT); international registration of trademarks under the Madrid Protocol; and registration of designs under the Hague agreement. Provisions pertaining to the need to record licenses are substantially relaxed in the 2010 Act. Although several of the so-called "Madrid Applications" lodged before the Act came into force are not addressed in the 2010 Industrial Property Act itself, in general the latter successfully makes Botswana's IP legislation more compatible with international commitments and trends. It also makes provision for fairly novel concepts and areas where commercial or industrial exploitation have not yet taken place, such as the protection of traditional knowledge, and grants Botswana's courts wide discretionary powers to award damages to the local community for any infringement of their rights.[17]

The **Competition Act** (2009) and the National Competition Policy for Botswana (2005) are two additional items of the regulatory framework for investment that have particular relevance for the administration and adjudication of IP rights. Prior to 2009, competition was governed by industry-specific legislation (such as the Industrial Development Act, the Consumer Protection Act and the Companies Act). The **Competition Commission**, which operates since June 2010, received 22 cases and completed 11 of these over its first year of operations, carrying the rest forward to 2013. IP rights are excluded from coverage in the National Competition Policy and the Competition Act, in an attempt to better incentivise innovation and to facilitate the appropriation of the benefits of research for investors. The overall benefit of such provisions is however debatable, as it opens avenues to abuse of dominant market power. Rather than excluding IPRs from coverage by the Competition Act outright, it may be more effective to include a clause in the Act which provides for more specific and case-by-case coverage of IP rights.

Like the Industrial Property Act, the 2000 **Copyright and Neighbouring Rights Act** was reviewed since its creation, and replaced with a stronger Act in 2005. Other key improvements included creating a **Copyright Office** operating independently from ROCIP and from the Attorney-General's Chambers. The Act also established the **Copyright Society of Botswana**, a collective administrative non-profit body which represents the interests of copyright owners, negotiates, collects and distributes royalties, and puts in place rules and regulations approved by the Copyright Office.

Enforcement and dispute resolution for IP rights

To improve enforcement, the 2005 revision of the Copyright and Neighbouring Rights Act also set up a **Copyright Arbitration Panel** appointed by MTI.[18] This Panel provides an alternative dispute settlement mechanism, thereby broadening the array of different remedies previously available to copyright owners. This mechanism provides for enforcement of rights related to civil remedies, criminal sanctions, and powers of customs officials. Civil remedies compensate the owner of rights for economic injury suffered because of the infringement, usually in the form of monetary damages, while criminal sanctions punish acts of piracy of copyright on a commercial scale. Measures can also be taken at national borders, involving action by customs authorities rather than by judicial authorities, and can result in the suspension of circulation of goods which are suspected of infringing copyright. The Copyright and Neighbouring Rights Act also sanctions non-respect of "copy-protection" or "copy-management" systems, with a category of enforcement provisions which has grown in importance with the progress of digital technology.[19] The reinforced Copyright Act has been praised by several observers, especially academics, which point to it as "currently the most up-to-date piece of copyright legislation in the SADC region and beyond", which "could serve as a model for the other SADC countries".[20]

As concerns enforcement and dispute resolution for IP rights more broadly, Section 60 of the **Industrial Property Act** provides for the trademark owner to bring forward proceedings for infringement, and Section 77 provides for offences that can be committed under this Act. A central improvement in the 2010 Act (which replaced the 1996 text) is that it lists the grounds on which an application for patent may be refused or opposed. The 2010 Act also set outs additional grounds pertaining to inherent registrability (based on, among others, the characteristics or nature of a mark). Section 82 outlines potential defences against trade-mark infringement (including pre-grant oppositions of patents). Section 135 (c) of the new Act moreover provides for any person aggrieved by any decision made under the Act to "appeal directly to the High Court against the decision of the Registrar or the Minister". Aggrieved parties can also appeal to the WIPO Arbitration and Mediation Centre; Botswana has lodged two such cases, once in 2011 and one in 2012. Nevertheless **management and enforcement of IP** could be further improved in Botswana, firstly in terms of raising awareness of the economic value of IP rights among the population. Indeed, of the 83 patent applications received by ROCIP over 2006-2011, only 15 were submitted by Botswana nationals and only one of those 15 applications secured a patent.[21] On the SME front, efforts for training to educate SMEs on IP and granting them lower fees when filing IP applications could be promoted further. Alongside this awareness-raising, mechanisms for enforcing IP rights and settling IP disputes should be more firmly established, as currently ROCIP deals almost only with patent and trademark registration but has no enforcement functions. Moreover Botswana still does not have a dedicated **IP court**. This forces ROCIP applicants to appeal to the High Court or to external bodies such as ARIPO or WIPO, thus tending to penalise domestic parties which may have more difficult access to arbitration and enforcement bodies outside of Botswana.

Contract enforcement and Alternative Dispute Settlement systems

> Is the system of contract enforcement effective and widely accessible to all investors? What alternative systems of dispute settlement has the government established to ensure the widest possible scope of protection at a reasonable cost?

Track record for contract enforcement and resolving insolvency

The Botswana Constitution provides for a judiciary, which is independent of both the executive and legislative authorities. The legal system grants foreign and domestic parties equal access and standing, and provides for secure commercial dealings with civil law based on Roman-Dutch law. The system of contract enforcement in Botswana is accessible, transparent, and predictable, as reflected by strong progress made in the World Bank Doing Business **ranking for contract enforcement**: over 2010-12 Botswana's position relative to other countries rose by a total of twelve notches. In 2013 Botswana is ranked 68th out of 185 economies covered, and has far lower costs for enforcing contracts than in Sub-Saharan Africa on average (28.1% of the cost of the claim rather than 50.1%). Contract enforcement procedures also take slightly fewer days in Botswana (625 days) compared to other Sub-Saharan African countries (649 days).

Botswana also ranks very well for **resolving insolvency**: it is ranked 29th in 2013, with an average duration of 1.7 years for insolvency procedures. This is the same time-length as the average for OECD countries, and half of what is required (3.4 years) on average in the rest of Sub-Saharan Africa. Moreover resolving insolvency disputes costs only 15% of estate value in Botswana (compared to 9% for OECD, and 23% in other Sub-Saharan African countries on average). Equally important, the recovery rate for insolvency procedures (at 64.8 cents on the dollar for 2013) is close to the OECD average (70.6) and far above the average Sub-Saharan African (22.4 cents on the dollar). Given that a 2009 SWOT analysis included in the ISB had cited the lack of strong collateral and bankruptcy laws to protect the rights of borrowers and lenders as a central weakness of the investment regime, the current strong performance suggests that efforts undertaken by Botswana in recent years to improve the framework for resolving bankruptcy have been fruitful.

Framework for commercial dispute resolution

Despite the strong track record on contract enforcement, the legal framework for commercial dispute resolution is weak and outdated. Although Botswana has a **Trade Disputes Act** (Act No. 15 of 2004, which provides for the establishment of an Industrial Court and a panel of arbitrators), the latter deals almost exclusively with labour-related disputes and falls under the oversight of the Commissioner of Labour alone. The lack of commercial courts considerably complicates resolution of investment disputes, and also creates risks of caseload backlog. Forms of alternative dispute resolution (ADR) are likewise scarce: the **Botswana Institute of Arbitrators** is a wholly informal and voluntary set-up to facilitate dispute resolution, and focuses especially on the construction sector. Moreover while Botswana does have an **Arbitration Act** the latter has not been modified since 1966, and only refers to the High Court of Botswana – no provisions are made for **dedicated commercial courts**.

So as to further **improve contract enforcement** in the country, NDBC at its Doing Business Conference of May 2012 developed a two-year action plan for expediting the resolution of commercial disputes. Through its sub-committee on enforcing contracts, NDBC will monitor implementation of this plan, with a target date of May 2013. There is also scope for improving the effectiveness of courts through: better case management system to reduce backlog; establishment of specialised commercial court(s); and making information on available arbitration mechanisms more readily available for investors (for example within an Investment Code or investors' guide).

Recognition of foreign arbitral awards

Botswana courts will in general accept and enforce decisions of a foreign court found to have jurisdiction in a given commercial case.[22] In this view the Act on the Recognition and Enforcement of Foreign Arbitral Awards commenced in 1971, following on Botswana's ratification of the 1958 New York Convention – which requires courts of contracting states to give effect to private agreements to arbitrate, and to recognise and enforce arbitration awards made in other contracting states. Alongside this, sector-specific legislation (such as the Mines and Minerals Act of 1999) reiterates guarantees for international arbitration of disputes and free repatriation of profits for investors in the mining sector.

Guarantees against unlawful expropriation

> Does the government maintain a policy of timely, adequate, and effective compensation for expropriation also consistent with its obligations under international law? What explicit and well-defined limits on the ability to expropriate has the government established?

Protection against expropriation without fair compensation is one of the most crucial rights of investors and must be granted in the regulatory framework for investment through provisions providing for transparent and predictable procedures. governments are encouraged to provide high protection against arbitrary or uncompensated dispossession of investors' property, while maintaining sufficient leeway to regulate in the policy space.

Protection against expropriation in the Constitution

There have been few known **cases of expropriation disputes** between the government of Botswana and an international investor and the government has never re-nationalised an industry once it has been divested to the private sector. The scarce examples of expropriation are generally concluded on generous compensation terms for the investor (as the example of the frequently cited Bonnington Farm case, in Box 2.5, illustrates).

Section 8(1.a) of the **Botswana Constitution** (of 1966) states that, "no property of any description shall be compulsorily taken possession of", except if the acquisition is necessary for: the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement; in order to enable the development of the property for a purpose beneficial to the community; or in order to secure the development or utilisation of Botswana's mineral resources of Botswana. In addition Section 8(1.b) notes that any expropriation must be accompanied by prompt payment of adequate compensation, and by securing a right of access to the High Court for the landholder or investor (either directly or on appeal from any other authority). This right of access should allow the High Court to pronounce itself in the determination of the aggrieved party's rights and of the legality of the case, as well as on the amount of any compensation, for the purpose of obtaining prompt payment of that compensation. The Constitution also specifically notes that acquisition of rights to minerals must be accompanied by provision for the payment at reasonable intervals of adequate royalties.

Any decision by the government to expropriate can therefore be challenged in the courts of Botswana. Section 8(2) of the Constitution moreover allows the remittance of the compensation payment (in its whole amount, free from any deduction, charge or tax made or levied in respect of its remission) to any country outside of Botswana. The Constitution thus provides for expropriation in line with the principles not only of adequate compensation within reasonable time, but also of non-discrimination in compensation. Where the owner of the expropriated property is a citizen of a country with which Botswana has a bilateral investment promotion and protection agreement, the dispute can also be settled in accordance with the rules provided for in the said agreement.

Expropriation provisions within the Acquisition of Property Act and the Tribal Land Act

In addition to the Constitution, the **Acquisition of Property Act** (commenced in 1955 and updated in 1971) makes provisions for the process of expropriation itself. It contains provisions for, among others: the power of the President to acquire property; preliminary investigations and notice of intention to take property; disputes as to legality of acquisition as well as to determination of compensation; valuation disputes to be settled by a Board of Assessment; filing of award and time for payment; payment of compensation to the Ministry of Finance and Development Planning; and delay in payment of compensation. The Act clearly outlines the composition of the Board of Assessment in charge of property valuation (which includes representation of the High Court), as well as matters to be considered in determining compensation (such as the market value of the property but also any likely increases in value, damage to the property owner by reason of the severing of the land, and expenses for any change of residence rendered necessary).[23]

Under Section 20 of the Act, persons aggrieved with the valuation decision of the Board of Assessment may moreover appeal to the High Court within 30 days of the decision; appeal to the High Court on the legality of the expropriation is also made possible under Section 9 of the Act. This framework thus provides sound protection, although the provisions relative to the power of the President to acquire property could be reinforced by outlining legal criteria which more clearly distinguish between the legitimate right of the State to regulate in the public interest, and the legitimate right of investors to protection of their property rights.

Section 25 of the Tribal Land Act also refers to expropriation, but makes few provisions for investor protection. Rather as concerns reclaiming of tribal land by Land Boards, it states that "no person shall, in the absence of any written agreement to the contrary, have any claim against a Land Board or the State for compensation for any improvements effected to land which is vested in the Land Board, or which for any reason reverts to the Land Board". The grantee of a given land area has six months within termination of the grant to remove any improvements to the land before it reverts to the Board, unless the

Board elects to pay compensation for these improvements instead. These provisions apply only to land that is held under customary rights, and therefore not to freehold land held under common law, nor to land attributed to foreign investors following the approval procedure with BITC and MLH. Nevertheless this can be a strong deterrent to land improvement by domestic entrepreneurs; the rationale behind these provisions could be usefully called into question by government.

Meanwhile Section 33 of the Act, on privately owned customary rights, states that where land is required for public purposes and the occupier is required to vacate the land, the latter will be granted the right to other land and entitled to adequate compensation (including the value of any standing crops, of any improvements effected to the land, the costs of resettlement, and the loss of the right of use of the land). Applications can be made to the High Court should the parties be unable to agree on the amount of compensation.

In addition to the above provisions of the domestic legal framework, Botswana is also a signatory to the World Bank's **Multilateral Investment Guarantee Agency** (MIGA). MIGA provides an extra layer political risk insurance guarantees to private sector investors and lenders, and protects investments against non-commercial risks. There is therefore a sound framework for protecting investors from expropriation, which could gain from being showcased and reflected within a common grouping of investment legislation.

Box 2.5. **Settling of expropriation and compensation disputes in the Bonnington Farm Case**

This case arose in 1979 out of the expropriation by the government of two farms in accordance with the Acquisition of Property Act, while the government proposed compensation based on the market value of the land the owner held that this valuation was too narrow.

When called upon to pronounce itself on the 1981 judgement, the Botswana Court of Appeal ruled that the compensation calculated by government was inadequate, as it had valued the farm only as agricultural land without taking account of its potential value for urban development and of its proximity to Gaborone. Based on the statutory principle of full indemnification of loss, the Court upheld that "**adequate compensation**" should cover not only the value of the land but also all likely costs involved in restoring the owner to the same position he or she would have been in, had the land not been appropriated (this included the cost of relocation and finding similar property).*

Box 2.5. **Settling of expropriation and compensation disputes in the Bonnington Farm Case** *(cont.)*

The appeal was therefore upheld in 2006, with the High Court of Lobatse almost quadrupling the determination of compensation payable for the expropriation.

* Allen, Tom, "The Right to Property in Commonwealth Institutions", 2000, p. 231; cited in: du Plessis, Wilhelmina Jacoba, "Compensation for Expropriation under the Constitution". University of Stellenbosch, March 2009.

Source: ATTORNEY-GENERAL v WESTERN TRUST (PTY) LTD 2006 (2) BLR 1 (HC). High Court, Lobatse, Civil Cause No. 37 of 1981. 2006.

International co-operation in the promotion and protection of investment

Are investment policy authorities working with their counterparts in other economies to expand international treaties on the promotion and protection of investment?

Investors face risks when investing abroad relating to the treatment they will receive in the host country. In this context, bilateral investment treaties (BITs) have emerged, over the past four decades, to promote certain standards of treatment for foreign investors. BITs usually provide for non-discrimination through national treatment, most-favoured nation and fair and equitable treatment provisions, as well as security for investors and guarantee of compensation in case of expropriation. BITs also usually contain provisions granting free transfer and repatriation of invested funds. The inclusion of investor-state dispute settlement provisions in BITs typically offers investors recourse to international arbitration, most commonly before ICSID tribunals, to settle disputes with the host country. By adding a layer of protection to covered foreign investors, BITs signal a country's commitment to reinforce property rights and thus create a safer and more predictable legal framework. If they are associated with good institutional quality, they may in turn lead to an indirect increase in FDI inflows.

Yet, governments should not rely on BITs as a substitute for long-term improvements in the domestic business environment. The evidence on the promotional effects of BITs on FDI inflows into developing countries is mixed, however. Countries should be mindful of the possible financial and political costs associated with entering into BITs. Careful evaluation of whether a country is in a position to benefit from a BIT, given its institutional and economic characteristics, and the risks associated with such a treaty, should be a standard government practice before entering into BITs, as these conditions may determine the success of the BIT in achieving its proposed objectives.

Like other major emerging countries, such as Indonesia, some SADC member countries, first and foremost South Africa and Namibia, but also Botswana, are currently terminating or reconsidering what they perceive to be outdated treaties that excessively curtail their "policy space" and unduly restrict investment policy making. They are pushing to curb on the ability of foreign investors to sue host states based on investment treaty provisions. This major policy stance is motivated by the idea that investment protection provisions contained in treaties signed in previous decades could undermine standards of environmental, consumer protection and other public welfare policies. This policy shift has resulted from growing governmental concerns that BITs may provide an excessive level of legal guarantees to foreign investors and expose the government to potential litigation before international arbitration tribunals.

In the case of Botswana, this policy shift might not have a substantial impact, as only two of the eight BITs entered by Botswana in the past had been ratified in any case; the rest were therefore not in force. Having now announced discontinuation of its BITs, Botswana would not benefit from ratifying the remaining treaties, which must moreover be outdated. As for the existing treaties in force, they could either be renegotiated to be adjusted to a new model which leaves more policy space for the host country. But if Botswana continues down this route of BIT discontinuation, it would be useful to provide foreign investors with alternative forms of assurance that their investment rights will be protected – including by ensuring that its court system is of sufficient proficiency to offer all necessary guarantees for speedy and equitable dispute settlement.

On the regional level, Botswana is also party to several economic co-operation arrangements, including the **Southern African Customs Union** (SACU), the **Southern African Development Community** (SADC) and the African Union, and the **Interim Economic Partnership Agreements** (IEPA). Botswana is also actively collaborating with the SADC Secretariat and the OECD in developing a Regional Investment Policy Framework for the SADC region. This Framework addresses, along with questions of restrictions on foreign investment, infrastructure investment, and tax incentives for investment, the issue of investor protection, including through the renewed approach to investment treaties in the region.

Notes

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6. Republic of Botswana, "Citizen Economic Empowerment Policy", government Paper No. 1 of 2012, Appendix 1.
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Chapter 3

Investment promotion and facilitation in Botswana

Over the past decade Botswana has taken important steps in building a more efficient framework for setting up businesses. This chapter examines various measures adopted by the government to reduce administrative burdens on investors, and notably the functions of the Botswana Investment and Trade Centre (BITC) as Botswana's central investment promotion agency. It also explores how an array of national economic development strategies (on competition, trade, investment, private sector development and exportation) have been organised within a framework headed by the Economic Diversification Drive (EDD) since 2011. While this common structure places emphasis on poverty reduction, investment linkages, human resource development, and the needs of smaller enterprises, the role of private investment (and particularly FDI) is not strongly emphasised. The country may therefore benefit from developing a dedicated national investment strategy. This chapter also investigates the framework for awarding and assessing tax incentives for investment, and ends by investigating different dimensions of Botswana's human resource development strategy with these investment facilitation goals in mind.

Investment promotion and facilitation measures, including incentives (Sections 3.1-3.7 below), can be effective instruments to attract investment provided they aim to correct for market failures and are developed in a way that can leverage the strong points of a country's investment environment. Human Resource Development strategies (explored in Sections 3.9-3.12) can additionally play an important role in making sure that the job-creation opportunities of investment inflows are tapped into.

Investment promotion and facilitation strategy

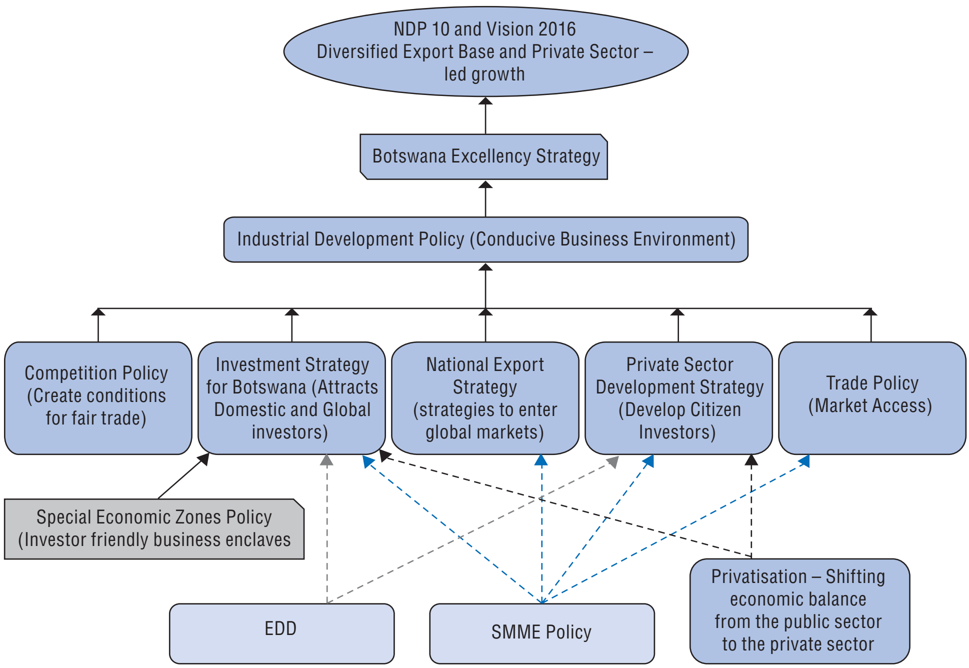
> Does the government have a strategy for developing a sound, broad-based business environment and within this strategy, what role is given to investment promotion and facilitation measures?

National development agenda within the Economic Diversification Drive

For a decade (1998-2008), industrial development in Botswana was mostly guided by the **Industrial Development Policy** (IDP) of 1998. Common themes underlying the policy included the need to: diversify the economy away from its dependency on mining and agriculture; foster the growth of the private sector; support employment creation, particularly in smaller towns and villages; foster competitiveness, productivity improvement and the adoption of new technologies; and promote new management systems. The 1998 IDP has been revised. The successor (released in July 2014) will cover: industrial governance; efficiency and upgrading strategies; inclusion policies; and financing for industrial development.

In 2008 the **Botswana Excellence Strategy** was launched along the bases of the IDP. This strategy places doing business reforms at the centre of economic diversification. It mostly comprises short-term interventions for investment facilitation, such as: work and residence permits; licensing and permit procedures; company registration processes; and the availability of land and its secure tenure. Under the Strategy, a wide range of strategies for export promotion (such as the National Export Strategy and the Trade Policy), private sector development (the PSDS), and investment promotion (the Investment Strategy for Botswana, ISB) were developed. Since 2011, this structure has been streamlined within the **Economic Diversification Drive** (EDD). The EDD provides an overarching framework for aligning policy efforts across all parts of Botswana's civil service. Figure 3.1 depicts the inter-linkages among these different national development plans.

Figure 3.1. **Coherence among National Development Plans in Botswana**



Source: Botswana Local Enterprise Authority (LEA), 2014.

The **short term EDD Strategy** focuses on encouraging private sector participation in economic activities and programmes that depend mainly on government support and protection, with the objective of promoting local production and consumption of goods and services. The associated EDD activities thus aim to secure "quick wins", mostly through interventions for the promotion of domestic production and consumption (including through reservations and preference margins for local procurement by government), and by means of a large government import bill to promote the development of local companies. The intention of the **medium-to-long-term EDD Strategy**, by contrast, is to produce a globally competitive private sector which can operate in export markets without requiring government support. As such this component of the Strategy is formulated around the following seven "**thematic areas**" (the first two of which constitute the core fields of intervention of the strategy):

- sectoral development and business linkages (which aims to develop Botswana's priority sectors through: maximisation of local content; promotion of technology transfer and innovation; transfer of modern management know-how; development of the SME sector; and attraction of foreign direct investment);
- export development and promotion (with a focus on diversification);
- investment and finance (aiming to create a conducive environment for investment and provision of investment finance for the identified EDD priority sectors);
- quality control, standards and production (which assists local companies in producing quality certified goods and services);
- technology development, innovation and transfer (including identifying innovative business opportunities in energy and environment, water harvesting and treatment technology, mining and beneficiation, biotechnology, and agricultural production and agro-processing);
- research and development (which includes setting up a National Research Fund, designing an e-monitoring and evaluation tool, and establishing collaboration between Statistics Botswana and relevant research organisations); and
- entrepreneurship development.

Seven Thematic Teams have been set up, one for each of these areas of activity. Since their launch in February 2012, the Teams have proposed a re-prioritised list of **economic sectors on which to focus EDD activities**. This list was based on industry gap analyses (conducted in particular for electrical products, grains and horticultural projects), to determine the potential of producing these products locally and to identify upstream industries with which these sectors could develop backward linkages. Approved by NEDC in March 2012, these industries include: agro-processing (particularly dairy, where up to 80% of local demand was met through imports in 2011; as well as leather, meat, and horticulture); primary production (grains, livestock, horticulture, etc.); coal, diamond and other minerals beneficiation; recycled material products; arts and crafts; construction; textile and clothing; renewable energy; banking, finance and insurance; and service or support sectors (ICT, transport and logistics, hotels, entertainment, etc.). These sectors largely match those identified by the ISB and National Export Strategy 2010-16, which focused on sectors with maximum potential to contribute to export growth employment and poverty reduction.

The EDD is overseen by the **National Economic Diversification Council** (NEDC), which is chaired by the Minister of Trade and Industry, with a vice Chairperson from the private sector. Several other government ministries, as well as the National Strategy Office (NSO), the private sector, and government implementing agencies (including BITC, BDC, LEA, CEDA, PPADB and PEEPA among others – see below) also participate in the NEDC. The latter reports to a Special Cabinet on a quarterly basis. Meanwhile the **EDD Unit** (hosted within the Ministry of Trade and Investment, MTI) functions as the Secretariat of the NEDC and ensures implementation and roll-out of EDD activities. NEDC provides strategic direction and guidance to the Unit and to the seven Thematic Teams with a view to ensuring the successful implementation, monitoring and evaluation of the Strategy.

Position of investment strategy and objectives within the EDD

The ISB 2009-16 was aimed at broadening and deepening the economy's industrial base, and better leveraging Botswana's "strategic geographical location at the epicentre of Southern Africa" in the interest of domestic and foreign investment attraction.[1] The ISB also had an export dimension, with the objective of facilitating the creation of new sources of export revenues and employment opportunities – including in upstream and downstream beneficiation of minerals and other locally available natural resources, commercial agriculture, services and business hubs, tourism, and special economic zones. Finally, together with the Private Sector Development Strategy (PSDS), the ISB aimed to strengthen partnerships among the private sector, the national labour force and civil society – especially in view of better identifying and removing administrative and bureaucratic impediments to investment attraction and business development. On the implementation side, the ISB was informed by three committees, focused on: products (including minerals, meat, textiles and several others); services (especially financial services, ICT, energy, tourism and transport); and strategy (with attention to a competitive business environment, competence and skills development, and portfolio rationalisation of investment promotion agencies among other elements).

The approach of the ISB and PSDS has in principle been **incorporated into the EDD medium-to-long-term Strategy** since 2011. The PSDS chapter of the EDD, drafted and led by the Botswana Confederation of Commerce, Industry and Manpower (BOCCIM), proposes the following activities: developing Sector Charters for strategically important sectors, such as mining, construction, retail, and hospitality; facilitating development of domestic and foreign-owned companies as well as Joint Ventures; harnessing business-to-business procurement opportunities and developing SME-to-large-business linkages; developing capacity of local enterprises; maintaining an up-to-date database of BOCCIM membership; implementing the BOCCIM/DCEC Code of Conduct for the private sector (see Chapter 4); and developing a BOCCIM EDD Unit (BEDDU) to drive the EDD Strategy from a private sector perspective. By contrast however, strategic investment measures (especially targeted long-term objectives by sector) do not feature very prominently in the EDD.

Indeed the investment policy related interventions proposed in the EDD (under the responsibility of the Thematic Team on Investment and Finance) apply only to business facilitation in a broad sense, with few specific areas of investment policy action identified. Similarly, the EDD approach to export competitiveness has disappointed so far, as noted during Botswana's 2012 National Business Conference. The NBC 2012 resolutions warn that while the economy has diversified since the launch of the EDD, this growth and diversification "has generally been driven by firms focused on the domestic market, and there has been little progress with the diversification of exports".[2]

Given the crucial importance of investment attraction in supporting successful diversification – and in particular the strong interdependence between investment attraction and export competitiveness – Botswana could consider further **emphasising the importance placed on investment policy reform** within EDD activities and implementation. Investment potential could be granted more weight in the choice of EDD sectors of focus, and possible reforms of investment policy should be a key consideration for EDD Thematic Teams. As for export competitiveness, the first proposed resolution of the NBC 2012 is to "ensure that EDD policies are aligned to business development with a focus on export-led growth strategy", by: auditing all new and existing laws and regulations for alignment and take corrective action; developing and implementing an integrated framework to support SMEs in developing export-readiness; developing a results oriented monitoring and evaluation mechanism for the EDD; and undertaking a detailed analysis of priority sectors to identify likely viability.[3] The latter are valid and well thought-out recommendations that should be seriously considered for implementation by government.

Alternatively a **national investment strategy document** could be a useful complement to the above framework for policy design. More self-standing and strategy-oriented than the ISB, such a document could define time-bound investment objectives, and ensure better coherence with other national strategy documents (on fiscal policy, trade, human resource development, infrastructure, etc., as included within the EDD, NDP 10 and Vision 2016). Should Botswana consider enacting an Investment Code or investors' guide, having a dedicated national investment strategy – or a greater focus on the investment climate than currently exists within the EDD – may also facilitate the alignment of the overall investment policy framework with long-term investment objectives. This would help boost growth in important industries as well as improve policy coherence and predictability for investors.

Establishment of an investment promotion agency

Has the government established an investment promotion agency (IPA)? To what extent has the structure, mission, and legal status of the IPA been informed by and benchmarked against international good practices?

Establishment of the Botswana Investment and Trade Centre (BITC)

Created in 1997, the **Botswana Export Development and Investment Authority** (BEDIA) served as Botswana's national investment and export promotion agency for over a decade. BEDIA established offices in South Africa, the UK and India, and obtained ISO 9001 certification.[4] The agency's performance was well recognized in the region: in 2009 BEDIA for instance won the Africa Investor Award for the Investment Promotion Agency of the year. Despite these efforts however, as put in NDP 10, inflows of FDI fell short of expected levels "because the role of attracting investment remains fragmented", with "too many role players".[5]

Since 2010, **streamlining** has therefore been underway so as to facilitate investor access to financial and other services. In April 2011 Cabinet approved the merger of BEDIA with the Brand Botswana Management Organisation (BBMO, in charge of positioning Botswana *vis-à-vis* an international audience), and with the **International Financial Services Centre** (IFSC). This merger created the **Botswana Investment and Trade Centre** (BITC) which launched operations in April 2012. BITC has a sectoral focus structure, emphasising key sectors with potential for advancing economic diversification. This rationalization is expected to: ensure effective service delivery; eliminate duplication among agencies; improve policy co-ordination; and enhance shareholder oversight.[6] All investments previously facilitated by BEDIA continue to receive priority in terms of land allocation, visa and permits applications. Likewise all former BEDIA client companies and IFSC-certified companies continue to enjoy previously awarded incentives and benefits under the BITC Act (see Section 3.5).[7] BITC is also to assume the leadership role on several of the EDD items previously led by BEDIA.

The BITC mandate is outlined in the **BITC Act 2011**, whereby the functions of the Centre include: undertaking investment and export promotion missions; publishing information relating to investment in and exports from Botswana; encouraging expansions and new investments, including through joint business ventures; providing advisory and after-care services to investors; and more generally facilitating all aspects of the investment process (including registrations, authorisations, etc). These items constitute the bulk of the BITC Act, which does not set out any new provisions for pertaining to investment policy and promotion more broadly. In this respect the BITC is rather weak; the creation of BITC Regulations, as well as a BITC Strategy (which may provide for establishing One Stop Shop features within BITC), may provide a good venue for introducing any desired modifications to the country's investment policy framework. MTI suggestions for **empowering the investment promotion agency** for instance include: providing incentives packages for BITC; reviewing the role given to sector-specific investment agencies; enabling BITC to function as a "one-stop-shop" for investment promotion; adopting the "silent consent" approach to certain business licensing procedures; and clarifying arrangement of responsibilities among MTI and the Ministries of Lands, and Labour and Home Affairs so as to fast-track the availing of land, as well as the issuance of residence and work permits.

Since the **"one stop shop" concept** established at BEDIA was never fully effective (although BEDIA hosted representatives from different authorities, these all operated with little co-ordination and few investors used the service), BITC has however considered another model for investment promotion. Through the Business Facilitation Services Centre, which was launched in February 2014 under the Go Botswana Strategy BITC will henceforth service the bare requirements for investors (such as connecting utilities, providing industrial licenses, and work and residence permits) through front office desk staff. Meanwhile questions pertaining to other government agencies and ministries (such as Ministries of Land and Housing, Labour and Home Affairs, and the Immigration Department) will be addressed through service-level agreements negotiated between BTIC and the relevant authorities. This Services centre thus aims to follow a "One Window Model", through which investors can submit all their requests. BITC then subsequently processes applications with the authorising government departments on the investors' behalf. This will of course require strong political backing of BITC, in order for the required authorisations to be obtained with minimum delay.

Other agencies for promoting investment in Botswana

While BITC is now Botswana's leading Investment Promotion Agency, specific organisations have also been mandated to promote diversification alongside it. Sector-focused IPAs include the Agricultural, Diamond, Health, Innovation, Education and Transport Hubs, set up in the context of the ISB (and which also sit on the relevant Thematic Teams of the EDD Strategy). These Hubs provide specific expertise in different economic sectors, and have so far maintained good working relationships with BITC, notably organising promotional missions together. The Botswana Tourism Organisation was also recently established, taking over coverage of the tourism sector from BEDIA. In addition, the Botswana Development Corporation (BDC) and the Botswana Innovation Hub (BIH) are central counterparts to BITC.

Further rationalisation of the portfolio responsibilities of these sectoral investment promotion agencies (including BDC, BTB and the ISB Hubs) was an expected outcome of the ISB and is also mentioned in the EDD Strategy, as a Strategic Action to be led by the Public Enterprises Evaluation and Privatisation Agency (PEEPA). As noted by MTI, streamlining the responsibilities of these different investment agencies, or at least clearly setting out their respective mandates and different areas of authority, would indeed be desirable – for instance within the context of the BITC Act or its forthcoming Regulations. This would help: clarify lines of accountability; facilitate performance monitoring of these agencies; reduce risks of duplication in their investment promotion and facilitation activities; and also grant them a stronger and more coherent voice in investment policy advocacy.

Adequacy of government funding and monitoring of the IPA

> Is the IPA adequately funded and is its performance in terms of attracting investment regularly reviewed? What indicators have been established for monitoring the performance of the agency?

Attention to funding and performance reporting in both BEDIA and BITC

Like any other investment promotion agency, BITC will require significant resources to achieve its mandate – particularly if it becomes empowered as a "one stop shop" for investor services in the near future. Part VI of the BITC Act of July 2011 lists the **main sources of BITC revenues**, as follows: such moneys as may be appropriated by the National Assembly for BITC purposes; grants and donations; fees BITC might charge for services rendered; and any income it may receive from the rental or sale of land or buildings. The use of any surplus revenue accrued will be subject to ministerial approval at MTI. Meanwhile BITC's predecessor BEDIA had received its funding from the government and its performance was reviewed annually against set targets, and based on a five-year strategic plan.

BEDIA's **performance indicators** were reported upon by the Department of Export Enterprise Development (for export sales data realized through BEDIA-facilitated missions) and by under the Department of Business Development (for investment related measures). The latter included the following: the number of new investments promoted and employment generated; business facilitation (which enables investors to secure all clearance and approvals with minimum bureaucratic delays); business authorization (including industrial licenses, work and residence permits, and access to infrastructural facilities such as land, factory space and utilities);

and aftercare. It would be logical for BITC to continue to hold these high standards, notably by outlining clear benchmarks for regular performance evaluation which should be fully accessible to government as well as the general public. Part VII of the BITC Act indeed requires BITC to annually submit a comprehensive report of operations to the Minister, who within 30 days is to put it before the National Assembly. Based on these reports the Minister may make regulations for better carrying out the BITC Act's provisions. This establishes a formal feedback structure which can have important and constructive impact on investment policymaking in Botswana.

Assessing the effectiveness and impact of national investment strategies

The 2008 Botswana Excellence strategy similarly commits to developing "performance tracking, measures and indicators to help ensure effective implementation of the Strategy", and provides a list of various yardsticks for this purpose (including for instance the rate of GDP growth, the share of non-diamond mining activities in GDP, and levels of foreign and domestic investment). Vision 2016 and NDP 10 also have numerous Key Performance Indicators for each of their pillars, and mid-term reviews of both guiding documents were undertaken in 2012. Finally the EDD strategy has elaborated a very large and comprehensive set of performance indicators across all seven of its thematic areas – accompanied by detailed accounts of how strategic initiatives within each of these areas will strive to accomplish progress on these indicators.

These mechanisms for evaluating investment policies could benefit from strengthening data collection functions in the **Botswana National Productivity Centre** (BNPC) and streamlining the work of different institutes already engaged in data collection (such as Bank of Botswana, the Central Statistics Office, and BNPC). Baseline indicators are published annually in BNPC's Productivity Statistics Report and interpretations of these indicators are captured in the "Productivity Insights" publication.[8] Productivity Indices cover labour productivity, capital productivity and multifactor productivity. These could be extremely useful, but for now do not include other measures such as Total Factor Productivity, and are not produced on a sufficiently regular basis (the current series covers the period 1979/80 to 2005/06 only). Institutes such as BNPC and the measures that they develop are crucially needed for the elaboration of realistic and accurately benchmarked investment and innovation policy. If effective performance and impact monitoring is to take place, extensive data collection is required.

Streamlining administrative procedures and learning from investor feedback

> How has the government sought to streamline administrative procedures to quicken and to reduce the cost of establishing a new investment? In its capacity as a facilitator for investors, does the IPA take full advantage of information on the problems encountered from established investors?

Streamlining of administrative procedures for establishing new investments

Companies seeking to do business in Botswana, whether foreign or domestic, must abide by the Companies Act and register with the **Registrar of Companies and Industrial Property** (ROCIP) for their incorporation. Following this (and as summarised in Figure 3.2 below), any **sector-specific licenses** can be obtained from the relevant authorities. Regular business licenses are issued by MTI following a routine review of proposed commercial activities; this is a transparent process which does not discriminate against foreign investors and applies no particular investment screening mechanisms. Meanwhile **industrial licenses** (for activity in the sectors listed under the Industrial Development Act of 1998 or in the Liquor Act of 2003, as listed in 2.3 above) must be secured by MTI's Industrial Licensing Department. This Department was set up through a 2007 amendment to the **Industrial Development Act**, a move which has reduced the turnaround time for consideration of industrial licence applications from one month to one week. The Act also set up the Industrial Licensing Authority for registration of "large scale and more complex enterprises". More generally the amendment makes obtaining licences by manufacturing enterprises less cumbersome by providing a simplified, transparent and efficient licensing system.

Trading licenses are in turn awarded as per the 2003 Trade Act, which decentralises the weekly issuance of these licenses to 29 Local Authorities. Finally importer/exporter licenses and "specialised dealer" licenses were phased out in May 2008 – thus helping to rationalise the licensing process. After securing these licenses, companies complete the process by registering for a Corporate Income Tax number with the Commissioner of Taxes. Importers and exports with an annual turnover of at least 20 000 pula (USD 2 493) must also register with the Director of Customs and Excise for VAT.

This sequence of processes for starting a business cumulates in nine procedures and 60 days in 2014. Despite decisions to conduct some of the processes simultaneously since 2011, this compares poorly to the Sub-Saharan African average of eight procedures and 30 days. Botswana is ranked 96th out of 185 economies in the "starting a business" category of the 2014 World Bank *Doing Business Report*, a decline since the previous year – making this one of the categories on which Botswana performs the most poorly relative to other countries (see Table 3.1 below).

This performance is particularly concerning given that the following reforms have nevertheless been undertaken over the past decade to accelerate administrative procedures for establishing new investments:

- The **Companies Act** has been revised: the Companies Act No. 32 of 2004, which came into force in 2007, removes the need for a Memorandum and Articles of Association and by introducing a simple registration form. The company registration process has been computerised, and turnaround time has improved from 90 days to five working days for error-free applications. Furthermore it is no longer a requirement to use Company Secretaries to register a company, and MTI centralises most of the process.
- The **Industrial Development Act** (amendment of 2007) decentralises the issue of SME licenses to local authorities, as appointed by MTI. The 2007 amendment additionally introduces an indefinite industrial licence which requires investors to pay only annual fees and to continue with business operations for an indefinite period (rather than renewing the license every year). In addition a point-based system for approving work and residence permits was introduced in April 2012 in order to facilitate FDI.
- Since 2011 government has been once again reviewing the Industrial Development Act in view of aligning it with the Trade Act 2003, in order to further simplify and streamline the issuance of trade licenses and to deregulate small-scale business activities.[9]
- New regulations for Environmental Impact Assessment (which in the minerals, water and energy sectors cause the longest delays for dealing with construction permits) have been reviewed by Cabinet in May 2012 and are now ready.

While for several years the efforts for simpler regulation of trade, competition and investment had been reflected by an improving ranking on different listings of business climate performance (Botswana rose by 20 positions, to 56th place out of 131 economies, on the World Economic Forum's Global Competitiveness Report over 2007-08; and by 13 positions, to 38th place out of 178 countries, in the World Bank Doing Business Survey over 2008-09),[10] rankings declined between 2009 and 2013. The overall 2012-13 rank was 65th out of 185 economies according to the *Doing Business Report*, and 79th out of 144 countries in the GCR. The GCR deterioration had been concentrated in five areas: infrastructure (see Chapter 5); macroeconomic environment; health and primary education; labour market efficiency (see Sections 3.9-3.12); and technological efficiency.[11] Meanwhile as the World Bank survey indicates (see Table 3.1), registering property and accessing credit were also areas of particular concern. Encouragingly, these scores have well improved since: Botswana ranked 74th out of 148 countries in the 2013-14 GCR; and rose by nine places, to 56th out of 189 economies, in the 2014 Doing Business Report – largely due to improvement in dealing with construction permits.

Table 3.1. **Doing Business rankings, 2013-14**

Topic rankings	DB 2013 rank	DB 2014 rank	Change in rank
Starting a business	95	96	⬇ –1
Dealing with construction permits	164	69	⬆ 95
Getting electricity	96	107	⬇ –11
Registering property	40	41	⬇ –1
Getting credit	71	73	⬇ –2
Protecting investors	51	52	⬇ –1
Paying taxes	48	47	⬆ 1
Trading across borders	145	145	No change
Enforcing contracts	87	86	⬆ 1
Resolving insolvency	33	34	⬇ –1
Overall Doing Business rank	65	56	⬆ 9

Note: Due to a change in methodology, Botswana's 2013 rankings have been adjusted.
Source: World Bank Doing Business Scores 2014.

An effort to regain ground in Doing Business scores: The National Doing Business Committee

A central challenge for investment policymakers since 2009 has been how to reverse this decline. The **National Doing Business Committee** (NDBC) was created in May 2011, to explore the causes of this deterioration, and to investigate options exist for strengthening Botswana's legal and regulatory framework so as to regain investor confidence. This Committee brings together ten government ministries, investment-related parastatals, and the private sector (represented by BOCCIM). Sub-committees have been formed to expedite reforms for business licenses, construction permits, paying taxes, trading across borders, and global competitiveness. At the NDBC meeting of 23 May 2012, it was decided that the Attorney General's Chambers would be represented at future meetings as a means of accelerating the pace of legislative reforms necessary for business climate amelioration.[12] A **Cabinet Sub-Committee on Doing Business and Global Competitiveness** was additionally appointed in November 2011 to review NDBC implementation of reforms, as well as to enhance the impetus and political will behind these reforms. It includes the Ministers of: Finance and Development Planning; Labour and Home Affairs; Local Government; Lands and Housing; and Minerals, Energy and Water Affairs.

Consultative framework among government, the IPA and investors

To what extent does the IPA promote and maintain dialogue mechanisms with investors? Does the government consult with the IPA on matters having an impact on investment?

Dialogue mechanisms exist between the IPA and government, as well as between the IPA and the targeted investors

Prior to the BITC merger, the government of Botswana regularly consulted with BEDIA through established forums such as the National Committee on Trade Policy and Negotiations (NCTPN) and its Technical Committees. Furthermore, BEDIA was mandated to advocate for policy change on any laws that might discourage business establishment in Botswana, or that may have affected the competitiveness of locally produced products in the international arena. BITC has since been charged with similar functions. It has moreover developed a very informative and user-friendly website, and since May 2013 has launched its branding strategy, "Go Botswana", in view of stimulating greater innovation and diversity in investment.

BEDIA also maintained **dialogue with investors**, including by publishing the "Botswana Investment Guide" which summarised key opportunities for investment and the characteristics of different industry sectors.[13] BEDIA also collected information on the problems encountered from established investors by distributing an Aftercare Questionnaire. This asked investors to indicate factors "that are very important to the company when deciding to set up in a new location" (with a comprehensive list of possible answers, ranging from political stability through availability and cost of serviced land, to tax rates and bureaucracy). Investors ranked Botswana on these factors, and indicated in which areas any improvements would induce increased investment on their behalf. The investor's or company's awareness of BEDIA's existence and of the services that it provided, along with satisfaction with these services, was also covered in the survey.[14]

Such information gathering is crucial to improving the performance of investment promotion agencies, and is being replicated and further enhanced by BITC. The Aftercare Programme of BITC aims to: identify problems encountered in the implementation of investment projects and offer assistance; extend support to companies in expansion, diversification and reinvestment opportunities; and undertake periodic review of problems faced by industries and establish new protocols to expedite project implementation.

BITC could moreover reinforce this strategy of gathering feedback from the private sector via greater collaboration with the relevant statistical organisations, such as Statistics Botswana and the Botswana National Productivity Centre (BNPC, a parastatal mandated to enhance the level of productivity awareness in Botswana).[15]

In addition to the national investment promotion agency, other important venues for relaying the investment-related concerns of private investors include **BOCCIM**, the **Botswana Exporters and Manufacturers Association** (BEMA, which safeguards the interests of exporter and provides specialized export services), and the **BNPC**. BOCCIM occupies a particularly crucial function as the country's umbrella organisation for all private sector interests. In light of its many functions, BOCCIM is however a surprisingly **small organisation**; its staff capacity is increasingly over-stretched, and it may become necessary for government to consider supporting BOCCIM's expansion – or otherwise sharing its load of responsibilities with relevant entities.

Jointly with government, BOCCIM also hosts the biennial **National Business Conference** (NBC), which last took place in October 2012 and brings together over 400 members of public, private and civil society sectors to discuss central bottlenecks to private sector development, competitiveness, economic diversification and growth business. The NBC plays a valuable advocacy function: each Conference leads to a set of priority resolutions, which are to be implemented by the responsible government departments and also presented before the HLCC. As noted in the 2012 NBC, there is therefore a wide range of consultative venues involving private sector and government, and "no lack of opportunities for consultation".[16]

The NBC 2012 resolutions call for **rationalisation of consultative bodies** between private and public sectors (including rationalising and harmonising HLCC and NBC roles, and more systematically taking NBC resolutions into account at HLCC meetings). The resolutions further advocate auditing outstanding HLCC and NBC resolutions in view of taking corrective action, and note that **mechanisms for user feedback** on service delivery in both public and private sectors need to be reinforced. Implementing these constructive resolutions would not only provide investment policy reforms with greater momentum, but would also enhance the value and relevance of the NBC as an empowered platform for investment policy advocacy and public-private dialogue in the country.

Changing the role of government vis-à-vis *the private sector*

As expressed in multiple policy documents (such as Vision 2016 and several Budget speeches), the government realizes that dialogue with private partners has in the past been partially hampered by "the prevailing mind set in Botswana", which "has not been very conducive for strong private sector development".[17] Much of the country's growth continues to be largely government-generated, and the private sector remains highly dependent on public expenditure through government contracts as well as consumption expenditure by civil servants. Such a situation requires that public-private relations be improved in a structural manner, and not solely through the intermediary of the investment promotion agency.

The 2008 Botswana Excellence strategy thus commits to "changing meaningfully government's approaches to promoting business and economic activity, shifting it away from acting primarily as protector of local interests, to instead becoming a positive promoter and partner in the creation of new enterprises and private sector projects". The Strategy further recognises that continued success in diversification efforts will require, "changing the position of government within society and its role in the economy by creating space for business through extensive outsourcing, Public Private Partnerships and the outright privatisation of parastatals".[18]

In this vein one of the central aims of NDP 10, which echoes the advice of the Botswana Economic Advisory Council (BEAC), is for government to reduce its dominance in the economy by cutting government spending to 30% of GDP by 2016. Botswana is on good tracks for meeting this aim: government expenditure and net lending has fallen from 45% of GDP in 2008-09 to 36.4% in 2011-12, and is expected to reach 33.2% in 2012/13.[19] A successful transition in government roles towards greater facilitation and regulation would in turn give more space for private entrepreneurial development – both local and foreign – and would allow to significantly enhance the private sector dialogue functions of both BITC and BOCCIM. Chapter 5 addresses in more detail the role of government and state-owned enterprises in infrastructure markets, an area in which PPPs and other forms of private participation hold particular promise.

Investment incentives and their evaluation

> How is the legal framework for investment incentives defined? Has a public statement of all tax incentives for investment and their objectives been made within a common governing framework? Have efforts been made to consolidate all tax incentives within the tax law, so as to increase their transparency?

A transparent and simplified legal framework for incentives

According to international best practice (see the OECD Principles set out in Box 3.1 below), tax incentives for investment should only be granted in

Box 3.1. **OECD Principles to enhance the transparency and governance of tax incentives for investment in developing countries**

Action is needed by governments to:

- Make public a statement of all tax incentives for investment and their objectives within a governing framework.
- Provide tax incentives for investment through tax laws only.
- Consolidate all tax incentives for investment under the authority of one government body, where possible.
- Ensure tax incentives for development are ratified through the law-making body or parliament.
- Administer tax incentives for investment in a transparent manner.
- Calculate the amount of revenue forgone attributable to tax incentives for investment and publicly release a statement of tax expenditures.
- Carry out periodic review for the continuance of existing tax incentives by assessing the extent to which they meet the stated objectives.
- Highlight the largest beneficiaries of tax incentives for investment by specific tax provision in a regular statement of tax expenditures, where possible.
- Collect data systematically to underpin the statement of tax expenditures for investment and to monitor the overall effects and effectiveness of individual tax incentives.
- Enhance regional co-operation to avoid harmful tax competition.

In addition to governments, stakeholders have responsibilities:

- Action is needed by development partners and donors to include tax incentives and revenues forgone in the dialogue with governments in developing countries and provide appropriate technical advice and assistance.
- Action is needed by business to refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to taxation, financial incentives or other issues.
- Action is needed by civil society to draw attention to, and publicise, revenues forgone from wasteful tax incentives that could free up resources for development.

accordance with a comprehensive policy, which lays down principles and policy objectives for the introduction or continuation of each incentive. Governments should provide a justification for tax incentives (such as regional or territorial development, employment creation, etc.) together with the expected costs and intended benefits. These objectives and their rationale should moreover be communicated publicly through regularly updated statements, so as to provide the basis for the assessment of tax incentives, to avoid overlap and duplication, and to enable the public to hold governments accountable for all tax incentives granted.

Tax incentives for investment have not all been consolidated into a single tax law in Botswana, which may be worth considering in view of greater transparency for investors. Currently the **legal framework of revenue laws** in Botswana include: the Customs and Excise Duty Act, the Income Tax Act, the Capital Transfer Act, the Value Added Tax Act, and Subsidiary Legislation to the Income Tax Act. Benefits beyond those provided for in these laws (for instance additional tax relief which can be granted on a case-by-case basis to large-scale projects) are transparently communicated to the public: Development Approval Orders for such projects are outlined in Subsidiary Legislation to the Income Tax Act, and easily consulted. In addition case-by-case tax agreements negotiated for large diamond mining projects are subject to ratification by Parliament.

Available investment incentives have been much simplified over the past decade: these incentives no longer include grants, and instead mainly focus on creating a conducive environment for setting up industries, and providing low tax rates. Botswana's company tax system is in fact one of the most straightforward in the world. Until July 2011 corporate income tax rate was split into two tiers: first, a basic company tax which was set at 15% in general (with a special rate of 5% for both manufacturing companies and companies registered with the IFSC); and second, an Additional Company Tax (ACT), which was of 10% for all companies. IFSC-registered companies and manufacturing companies – as well as approved companies trading in the Botswana Innovation and Diamond Hubs – therefore faced a combined 15% tax, compared to 25% for other firms.

This two-tiered company tax regime was slightly modified in July 2011, as a first step towards the objective set by MFDP to attain full compliance with the Internationally Agreed Tax Information Exchange Standard under the OECD Peer Review process.[20] The current tax regime discards the two-tier and ACT system and replaces it with a flat 25% tax rate (which remains at 15% for manufacturing and IFSC/BIT firms). The absolute tax rates faced therefore are the same as previously, as detailed in the list below. However the tax calculation process is simplified; in addition the withholding tax is halved to 7.5%.[21] This reform is intended to improve the investment climate and competitiveness of the economy.

Fiscal sustainability of the incentive regime

Until 2000 (when it was abolished for new applications) the Financial Assistance Policy (FAP) had been the dominant incentive scheme of the last two decades in Botswana. The FAP offered grants – including a capital grant and a wage subsidy – to promote investment and employment in non-traditional sectors. The Policy gradually expanded from a focus on manufacturing and non-traditional agriculture to include tourism, small-scale mining and related service businesses. However the excessive generosity of the FAP grants led to many cases of abuse and fraud, and the policy was discontinued (apart from concessional loans managed by the CEDA in the interest of local enterprise development).[22]

A USAID comparison of tax incentives at the SADC level shows that Botswana today has one of the lowest combined burdens of company tax plus dividend tax, and also imposes a relatively low marginal external tax rate (METR) on investors. The study commends Botswana for striking a relatively sound balance between retention of some investment revenues and attractive effective tax rates.[23] This is contrasted to several other SADC countries, some of which risk jeopardising their fiscal sustainability by fully exempting certain enterprises from company income tax, dividend withholding, capital gains tax, and import duties.

Through its Minerals Policy Committee, the government of Botswana has indeed frequently negotiated favourable revenue sharing formulas with mining concessions in the past – for instance substantially increasing the government's overall revenue share in 1970 and in again the 2000s, when original mining licenses were to be renewed.[24] Botswana's mining firms thus face rather high rates of mineral royalty and an upward sliding-scale income tax (see Box 3.3). Over 2012-13, mineral revenue was the second-largest contributor to government revenue (at 30.11%, with 13.25 billion pula or USD 1.66 billion), closely behind customs and excise (31.08%) and ahead of non-mineral income tax (which contributed the third largest share to government revenues, at 20.37%).[25] To quote USAID, "Botswana has recognised to great advantage [that] there is no reason to offer large tax breaks to fundamentally viable resource-based projects that are location specific".[26]

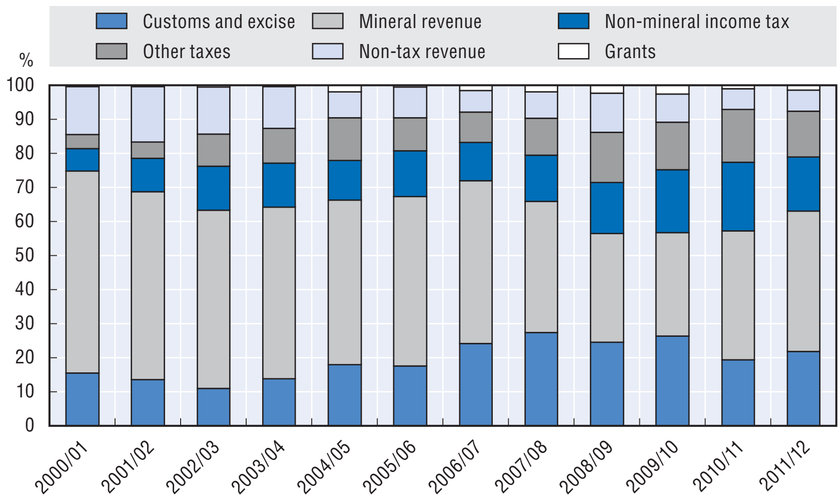
According to the Minister of Finance, the incentive simplification measures detailed earlier are moreover expected to increase non-mineral tax revenue by about 5%. Figure 3.2 below illustrates that mineral revenue has visibly declined as a share of total government revenue over the past decade, in part thanks to a significant increase in customs and excise tax revenues (most notably due to customs tax sharing agreements concluded since 2005 within the Southern African Customs Union, SACU). SACU-derived revenues surpassed mineral revenues in the government budget for the first time in 2011.[27]

Investment incentives available by sector

The incentive schemes currently available in Botswana are as follows:

- **IFSC (and now BITC)-registered companies** benefit from zero-rated VAT and exemption from both Withholding Tax and Capital Gains Tax, while other companies face 10% VAT, 7.5% Withholding Tax (reduced from 15%

Figure 3.2. **Decline of mineral revenue as a share of total government revenue, 2000-2012**



Source: © Moody's Investors Service, Inc. and/or its affiliates, "Credit Analysis: government of Botswana", 27 November 2012, p. 11. Reprinted with permission. All Rights Reserved.

since 2011), and 15% Capital Gains Tax. These companies also have access to a 200% training rebate, to credits for withholding taxes from other jurisdictions, and to double taxation treaties to which Botswana is a party.

- Incentives available for **export oriented enterprises** include an export credit guarantee scheme (managed by the Botswana Export Credit Insurance, BECI), duty draw-back and rebate facilities, and duty-free and quota-free access to the American and EU markets (all three managed by the Department of Customs and Excise within BURS).
- Other customs incentives are available for enterprises that are not wholly export-oriented, including rebates for import of raw materials that are not available locally. All such schemes (mostly tariff exemptions and concessions on imported inputs used for manufacturing) have been harmonised along the lines of the SACU agreements.
- Under the Manufacturing Development Approval Order, any approved **manufacturing company** is taxable at a flat rate of 15%. Eligible companies can moreover apply for additional tax relief on a form prescribed in the Schedule of the Manufacturing Development Approval Order. Such additional relief is obtainable for projects in value-added and transformative manufacturing activities, especially the cutting, polishing and refining of minerals and the tanning of leather. Basic value-added activities such as labelling or packaging are not eligible, nor are domestic companies which supplement domestic production by importing finished products.

Box 3.2. **Tax incentives in Botswana's mining sector**

Tax incentives have most frequently been used in the mining sector in Botswana, although they have generally been lighter than in other countries. The mining sector is taxed through three instruments: a royalty; a corporate profits tax; and a withholding tax on dividends. At the end of 1999 a new Mines and Minerals Act was made active, along with a new mining tax regime, with the aim of making Botswana's minerals sector more competitive and attractive to investors. According to the Ministry of Minerals, Energy and Water Resources, the 1999 Act compares well with modern mineral legislation elsewhere, addressing investor concerns such as security of tenure, a stable legislated fiscal regime, clear and streamlined licensing procedures, and environmental obligations relating to international best practice. The key policy changes in the mining code included:

- The abolition of the government's right to a 15% free equity participation in all new mining projects, replaced by an option to acquire up to a 15% on mutually agreed commercial terms;
- A downward revision of royalty rates payable on the sale of all minerals or mineral products from 5% to 3% (with the exception of precious stones and precious metals, which remain at 10% and 5% respectively);
- The introduction of new variable rate income tax formula, applicable to non-diamond mining operations;
- Simplification of grant, renewal and transfer of mineral licenses, making the process more predictable and transparent and thereby improving security of tenure for mineral concessions holders; and
- Liberalisation of restrictions on the transfer of mineral concessions.

As regards **non-diamond minerals**, Botswana is currently in the middle of a development boom: the moratorium placed on issuing new prospecting licenses for coal, uranium, coal-bed methane (CBM) and related minerals was lifted in January 2012, and a Coal Development Unit, together with a Coal Roadmap, have been established to enhance the industry's growth.[*] A timeline has been developed which includes diamond mine closures as well as potential exploitations in other minerals based on results from feasibility studies. While taxation agreements for large diamond projects can be negotiated on a case-by-case basis, these non-diamond companies faced a tax rate of 22% (reduced from 25% since 2012).

- For **large-scale projects, especially in mining**, additional benefits (beyond those listed in Box 3.2 below) are covered under company-specific Development Approval Orders. Companies can apply for tax holidays under this order, depending on the scale and the magnitude of the project. These

Box 3.2. **Tax incentives in Botswana's mining sector** *(cont.)*

The **Mines and Minerals Act is now being amended** once again to expand its coverage to these minerals. This amendment would also cover modalities for diamond mine closure and rehabilitation funding schemes. MMEWR is additionally currently developing a **new Minerals Policy**. A base case study has been undertaken for this Policy, which maps the situation of the current minerals policy, including comparisons with other countries such as Namibia.

* Creamer, Martin. "Botswana cuts taxes, gives private sector scope", Mining Weekly, 6 July 2012.
Source: MMEWR Interview, May 2012; MMEWR, "Botswana Mineral Investment Promotion – 2008"; KPMG, Fiscal Guide 2011.

holidays are normally restricted to five or ten years. Applications are assessed on a case-by-case basis according to the applicants' job-creation prospects, training plans for citizens, plans to localise non-citizen positions, citizen participation in management, citizens' equity, investment location, effects on other economic activities, and effects on reducing consumer prices. According to SACU, these Development Approval Orders have been used sparingly as an instrument to attract investment.[28] Several of these Orders – such as the Rising Sun (Pty) Ltd. Order and the Sapphire Textiles (Pty) Ltd. Order – are outlined in Subsidiary Legislation to the Income Tax Act.

- Over 2012 Botswana's Ministry of Minera**ls, Energy and Water Resources (MMEWR)** has explored avenues for ensuring that the **fiscal formula for non-diamond minerals** does not dis-incentivise investors. Botswana's Income Tax Act and VAT Act have been amended to reduce company tax in the sector from a minimum of 25% to 22%, especially in view of attracting further investments in the growing coal, copper and silver sectors. In addition the amendment to the VAT Act has extended the definition of capital goods to include mining capital expenditures.

How are tax incentives administered and governed? Are incentives placed under the authority of a single government body to ensure transparency and avoid unintended overlap and inconsistencies in incentive policies? Is the amount of revenue loss attributable to tax incentives reported upon regularly, for instance as part of an annual Tax Expenditures Report?

Discretion in the administration and governance of tax incentives in specific sectors

Where various Ministries are involved in the administration and granting of tax incentives, they may not co-ordinate their incentive measures (tax and non-tax) with each other or with the national revenue authority. As a result incentives may overlap, be inconsistent, or even work at cross-purposes. Moreover, once particular tax incentives are introduced this creates constituencies in their favour, which in turn can make it politically difficult to remove the incentive once it is no longer needed or has proven to be ineffective.

It is therefore considered good practice to place all tax incentives under the authority of one government body, ideally the Ministry of Finance, rather than under the responsibility of several different ministries (such as trade or investment or other ministries). Consolidating administration of all incentives under a single body can: limit risks of corruption and rent seeking; increase transparency by limiting the discretionary power of policymakers; help to avoid unintended overlap and inconsistencies in incentive policies; and enable policymakers to coherently address problems that may arise with the governance of tax incentives.

In Botswana the **Botswana Unified Revenue Service Act** established BURS as well as two revenue departments, the Department of Customs and Excise and the Department of Taxes. Prior to the commencement of the Act these had been departments of MFDP. Through these Departments, BURS is thus in charge of administering most tax incentives, and oversees all tax assessment and collection in the country. Meanwhile the high-level Minerals Policy Committee sets the framework for taxation and revenue-raising in the mining sector, and leads negotiations with mining firms.[29] Centralising incentives in this way (within BURS and the Minerals Policy Committee) is a very helpful step towards effective management of these incentives. In addition Botswana could consider reducing the administrative discretion in the governance of tax incentives: currently the Minister of Finance may issue an order granting additional tax relief (which can take any form and is entirely negotiable, by notice in writing to the Commissioner of BURS) to any project which considered beneficial to the economic development of the country.[30] Such discretion on a case-by-case basis may increase risks of corruption and rent seeking with regard to investment incentives, and could prudently be avoided.

The merger of BEDIA and IFSC into BITC provides opportunities for a further move towards transparent and unified management of these incentives. Under the merger, two committees (co-ordinated by BITC and on which BURS will sit) are being established within MFDP and MTI: the **Financial Incentives Committee** and the **Non-Financial Services Committee** respectively. The former will house all tax incentives for investment, including those previously provided by IFSC and the manufacturing development approval orders. The draft order establishing this Committee amends the IFSC Committee and also provides an opportunity for amending some tax holidays. BITC foresees the establishment and workings of this Committee to be relatively smooth, given that all financial incentives fall under Ministry of Finance oversight; but by contrast, running of the Non-Financial Services Committee is likely to be more complex because the delivery of these incentives (including means of facilitating access to land, permits, and trade and industrial licenses for instance) fall under several different ministries and government agencies. Nonetheless centralising of the delivery of investment incentives into two such committees is a valuable enhancement of transparency in this domain.

Tax authorities should also periodically carry out **audits of cases where tax incentives have been claimed** to ensure that they are not misused. There are strong requirements for financial auditing of companies incorporated in Botswana: companies with turnover above 10 million pula (USD 1.2 million) and total assets above 5 million pula (USD 627 000) are required to prepare annual financial statements and must adhere to International Financial Reporting Standards (IFRS). This is accompanied by an Accounting Framework for SMEs, set up on a voluntary basis by the Botswana Institute of Chartered Accountants (BICA) companies below the IFRS compliance threshold. Meanwhile annual auditing and financial reporting of public interest entities is regulated by the **Botswana Accounting Oversight Authority** (BAOA, established by the Financial Reporting Act of 2010). In recognition of these many financial reporting and auditing structures, the 2013-14 GCR ranks Botswana 48th out of 148 countries for the strength of its auditing and reporting standards.[31]

Botswana could take advantage of this existing auditing capacity to undertake stronger and more co-ordinated efforts for **calculating and regularly reporting** on the amount of revenue forgone attributable to tax incentives for investment. This would ideally be carried out through an annual, publicly released statement of tax expenditures which covers all main tax incentives. This requires that data be collected systematically to underpin the statement of tax expenditures. Such calculations contribute to more transparent and effective governance of these incentives, by shedding light on the revenue cost of tax incentives, rather than scrutinising cash expenditure budgets alone. Embedding estimates of revenues forgone by tax incentives in the yearly budget process can moreover support medium-term fiscal planning, and highlight the largest beneficiaries of tax incentives for investment. Making such information accessible can enhance the public legitimacy of governments and their revenue authorities, and can improve tax compliance more broadly.

What mechanisms has the government established for the evaluation of the costs and benefits of investment incentives, their appropriate duration, their transparency, and their impact on the economic interests of other countries?

Rationale for regular impact evaluation of tax incentives

Internationally, strong evidence increasingly calls into question the **effectiveness of some tax incentives for investment** – in particular tax free zones and tax holidays. Ineffective tax incentives are no compensation for, or alternatives to, a poor investment climate. They may be unsuccessful in attracting sustainable investment, and may damage a country's revenue base. Investment incentives can be wasteful for the following reasons: ineffectiveness (if the incentive fails to produce benefits to the host economy that exceeds the budgetary costs); inefficiency (where benefits outweigh the costs, but authorities fail to properly maximise the former and minimise the latter); opportunity costs (as incentive schemes are rarely a first-best option for attracting investment); deadweight loss (if the investments would in any case have taken place in the absence of incentives); and triggering harmful competition or a "race-to-the-bottom" (if other jurisdictions put in place matching measures).

The above risks make it essential to adequately analyse the costs and benefits of investment incentives in a national context, to support government decision-making and allow frequent review of incentives provided. A system of **regular ex-ante and ex-post evaluation** is also indispensable because the wasteful effects of incentives can change over time and depending on the capacity of the implementing authority. The results of such periodic reviews, publicly reported together with the review criteria, can inform decision-making around the continuation or removal of individual tax incentives. These assessments should involve open public consultation so as to accurately include social – and not only financial – costs and benefits in the analysis. Indeed impacts of investment on employment creation, business linkages, value-addition and technology transfer are worth careful consideration. Assessments should also consider whether or not the forgone fiscal resources would not be better employed in training, research and development, infrastructure investment, and other efforts that can potentially mitigate some of the structural and supply-side shortfalls that limit investment opportunities in Botswana.

A lack of data for evaluating current incentive schemes

Performance reviews of tax incentives require that data be collected systematically by tax authorities and finance ministries. Unfortunately however (and although in 1998 the Industrial Development Policy already noted that "appropriateness of specific direct incentives should be monitored closely to ensure sustainability"[32]), the evaluation of tax incentives is not undertaken in a systematic manner in Botswana, nor by any dedicated agency to date. Thus the Financial Incentives Committee which is being established by BITC so far has no mandate for the evaluation of fiscal incentives. Rather it will only centralise incentive delivery and negotiation functions; expanding the Committee's role to include incentive evaluation would be highly desirable.

Such an evaluation role would require strong statistical capacity. As noted by the Botswana Institute for Development Policy Analysis (BIDPA), there persists a "lack of data to undertake financial cost-benefit analysis to determine whether tax incentives for inward investors yield a positive net financial return for Botswana".[33] An important first step to any re-design of tax incentives in the country would therefore require strengthening the capacity of relevant units (such as Bank of Botswana and the Central Statistical Office [CSO]) for the collection and analysis of industry-specific data. In addition the Chamber of Mines (a private organisation representing mining and exploration companies and associated industries, and which includes committees on safety, health, the environment, and training) has recently been increasing efforts to evaluate investment incentives for mining. Such steps should be actively encouraged, and possibly channelled into a common framework for evaluating investment incentives across all economic sectors and on a regular basis.

Supporting SME development and promoting investment linkages

> What measures has the government put in place to address the specific investment obstacles faced by SMEs?

Policy reform and institutional framework for addressing SME needs

Facilitating SME investment and business development can strongly contribute to employment creation, and multiply avenues for economic diversification. Development challenges commonly faced by SMEs in Botswana include: lack of access to finance; bias of the education system against self-employment; lack of data on SMEs and of information on government assistance programmes; lack of business start-up training and of entrepreneurial and marketing skills; shortage of business premises; and excessive complexity of laws and regulations for doing business. SMEs are also disadvantaged for accessing the market for public and private procurement, although this has been strongly taken on board in recent years (first with the Investment Strategy for Botswana in 2009, and since 2011 with the EDD – see below). For these reasons, the survival rate of Botswana's SMEs before their third year of operation is below 50%.

SME specificities are extensively addressed in the **Industrial Development Policy (IDP) of 1998**. This explores the differing needs and characteristics of SMEs in different geographies (rural and urban) and industries (rural industry, agriculture, and tourism).[34] The successor version of the IDP (IDP 2011) would benefit from similarly careful consideration of SME niches and growth opportunities. Along the lines of the IDP the first **SME Policy for Botswana** was approved by Parliament in 1998, followed by the 2004 Small Business Act which set up the Small Businesses Council. The SME Policy set objectives for the promotion of: citizen entrepreneurship; SME competitiveness and employment opportunities; vertical integration and horizontal linkages between SMEs and primary industries in agriculture, mining and tourism; and business linkages between large and small businesses. More broadly the Policy aims for advancing diversification, export promotion and the efficiency in delivery of services to businesses.[35] Although the 1998 SME Policy has is now rather outdated, and its update is underway in the form of an **Entrepreneurship Development Policy** (under elaboration since 2012, together with LEA and CEDA – see below).

In line with this overarching policy, over the past two decades several reforms in response to the array of new challenges facing SME development:

- Government removed the sales tax for small businesses (with turnover below 75 000 pula, or USD 9 468).
- Government established the **Citizen Entrepreneurial Development Agency** (CEDA) and the **Local Enterprise Authority** (LEA, under the Small Business Act – see below).
- Under the **Industrial Development Act** (in force since 2008), issuance of Industrial Licenses for Small and Medium Scale manufacturing companies was fully decentralised to 29 Local Authority stations in view of "taking services to the people". The Industrial Licensing Authority was introduced to issue manufacturing licenses to large and complex enterprises, and alongside guidelines were developed to facilitate the implementation and official registration of small and micro enterprises exempted from licensing procedures.
- The **Citizen Economic Empowerment** initiative (CEE) was elaborated in 2008 as part of the Botswana Excellence strategy. In addition to training and business development efforts, the CEE was to provide incentive structures to: promote procurement from SMEs; and encourage large domestic and foreign companies to enter into constructive procurement partnerships and joint ventures.

The above initiatives, and the CEE in particular, aimed to open doors for Batswana entrepreneurs into big business – whereas previous reservation policies (as mentioned in Section 2.2 above) had so far largely channelled citizens towards smaller businesses[36] and towards procurement with the public rather than the private sector. government has however pointed to evidence that by 2012, these efforts had not yet permitted significant citizen participation in major economic activities. In procurement for example, domestic companies generally continue to provide low-value goods and services and do not qualify for the higher-value contracts. A **CEE policy** was approved by Parliament in August 2012 to rectify this perceived shortcoming, and to reinforce the implementation of the different preferential measures in favour of domestic SMEs. In particular this policy requests the amendment of the Reservation and Price Preference Schemes, to strengthen participation of citizen consultancy and construction companies including in mega-projects. Beyond these policies however, enhancing the ability of local enterprises to contend for large-scale procurement contracts will require **more structural efforts** – including: targeted human resource development schemes; improvement of local infrastructure networks; expanding access to finance for small domestic firms; and simplifying regulations and alleviating tax burdens for SMEs. While the IDP 2011, as well as other strategies like the ISB, commit to tackling this dimension of investment policy, there remains a need for more focused and continued attention in this domain.

Implementing agencies to address SME financing and capacity needs: LEA and CEDA

On the implementation front, the **Local Enterprise Authority** (LEA) is mandated to advise the Minister of Trade and Industry on any legislation seen as a barrier to SME development. Through its national branch network (with 13 regional branches and four incubator sites), LEA plays an advocacy role for change of regulations when the need arises, with a focus on leather, piggery, horticulture and dairy. The agency also provides development and support services to the SMEs, including training, mentoring, business plan facilitation, market access facilitation, and facilitation of technology adaptation and adoption.[37] By end 2012 LEA had trained 7 806 entrepreneurs in these various courses, creating 4 371 jobs in the process. LEA aims to enable SMEs to graduate to medium and large enterprises capable of competing in local, regional and international markets. As of end 2012 it had 1 078 active clients, of which 659 were existing businesses and 419 were start-ups.

In complement to LEA, the **Citizen Entrepreneurial Development Agency** (CEDA) has been set up to address the need for coherent and holistic financial support for the development of small and medium but also large scale enterprises. CEDA delivers this objective through a number of subsidiaries, offering funding for capital expenditure in new and existing business ventures. In 2008 CEDA developed a set of Guidelines to encourage **convergence and rationalisation** among different existing citizen economic empowerment schemes in Botswana, which had previously been operating in isolation with varied guidelines, making their monitoring and co-ordination difficult. These schemes include: the Young Farmers Fund (YFF, which since

2007 provides subsidised loans and training to young agricultural producers[38]); the CEDA Credit Guarantee Scheme (CCGS); the Citizen Entrepreneur Mortgage Assistance Equity Fund (CEMAEF); the Venture Capital Fund (VCF); and the CEDA loan (CEDA backs participating loans institutions in lending to SMMEs, guaranteeing 75% of the net loss on the loans under a certain threshold). With the introduction of the Guidelines these schemes are all brought under one umbrella, with CEDA functioning as a "one stop centre".[39] Over 2012 CEDA funded a total of 702 new projects at a cost of 591 million pula (USD 74.5 million), generating 3 274 jobs.[40]

In view of further harmonisation, since 2011 efforts have been underway to align CEDA's portfolio responsibilities with those of LEA. This extensive exercise, now completed, aimed to reduce the overlap between the two agencies' business support activities. Following on a jointly undertaken rationalisation study, LEA and CEDA put 14 recommendations before MTI, of which nine were supported (see Box 3.3). Although this **agency-driven rationalisation exercise** ran into delays and controversy by late 2012, its effective implementation should be encouraged going forward. It can help to better represent SME issues within national investment policymaking and constitute a useful step towards the design and implementation of the forthcoming Entrepreneurship Development Policy. Moreover this exercise, if successful, could provide a positive model for other investment promotion agencies to follow.

Alongside CEDA and LEA, capacity development of local enterprises is also supported by: the **Botswana Bureau of Standards** (BOBS, which facilitates business competitiveness and growth through quality certification and assurance of goods and services); BITC (through export development assistance for local manufacturing businesses); and BNPC, which promotes improvement of business productivity and efficiency levels. These institutions engage local SMEs through strategic business-to-business partnerships, including joint ventures and mentoring between local enterprises and foreign investors possessing links to international markets[41] (see Section 3.6 for more details on encouraging business linkages). Greater functional rationalisation may also be worth considering between implementing agencies (such as LEA, CEDA and the Botswana Bureau of Standards, BOBS) and higher-level entities like BITC and the EDD Unit. In the past, LEA notes, BEDIA and the EDD Unit have spent too many efforts on implementation, rather than leaving these functions to dedicated agencies and instead focusing on their advocacy and policy development roles.

SME participation in public procurement

One of the aims of the 2009-16 ISB was to increase the competitiveness of local enterprises and to develop their capacity to compete for more complex government contracts in the supply of goods and services. The ISB developed

Box 3.3. **LEA/CEDA Rationalisation Exercise**

Among the "Recommendations on the LEA/CEDA Rationalisation Report" communicated to these agencies by the Permanent Secretary of MTI on 8 November 2011, the following are expected to bring particularly significant and positive changes to the operations of LEA and CEDA:

- Recommendation 10 noted that there should be **specialisation in provision of services to SMMEs**, with CEDA's primary role being provision of lending products, and with LEA providing non-financial business development services to SMMEs. The largest ground for duplication – that of enterprise training and mentoring – would thereby be reduced, with training and mentoring functions, budget and clients being transferred to LEA, along with CEDA's Business Development Service providers. Since LEA's priority industries are narrower than those covered by CEDA (which has no specific sector focus), implementing this recommendation may require that LEA outsource some training and mentoring if it is to assist all CEDA clients.
- Recommendations pertaining to **information gathering and needs monitoring** (Rec.3, which provides for set-up of a National SMME Integrated Information System, and Rec. 5, which states that an SMME Assessment should be conducted at national level on each new law and regulation before being presented to Parliament) were also supported.
- According to the Ministerial report, LEA and CEDA are also to incr**ease resource sharing where appropriate**, and to develop a strategy for **promoting linkages** between their clients for the supply of goods and services among each-other.
- While the recommendation of creating a National SMME Council was not supported by the Ministry, it was instead proposed that SMME development issues be elevated to the level of the National Economic Diversification Council (NEDC).

a **Local Procurement Programme** (LPP), which aimed to:[42] assess all supply chain linkages of public and private sector projects, as well as local enterprise supply-side constraints (including human resource development needs); upgrade industrial production capacities and provide product quality enhancement support; and leverage FDI to contribute to the development of local enterprise capacity, as well as transfer of technology and skills between local enterprises and large companies.

The **EDD short-term strategy** comprises a successor scheme to the LPP: since 2010, local manufacturers, service providers and agricultural producers are issued with an **EDD Certificate** which gives them margins in procurement contracts (see details in following section and in Box 3.4). The aim is both to foster SME development, and to reduce the country's import dependence.

Box 3.3. **LEA/CEDA Rationalisation Exercise** *(cont.)*

The following implications of the considered rationalisation can be pointed out:

- To better complement LEA activities, CEDA has been moved from the Ministry of Finance and Development Planning to the Ministry of Trade and Industry.
- LEA and CEDA are now to **share customer bases**, so as to make their activities as complementary as possible for Botswana's SMEs. However for this purpose CEDA may need to narrow its customer base, as unlike LEA it currently services all enterprises with no specific sector emphasis – and only a light focus on smaller enterprises. A potential risk for SMEs is indeed that CEDA may be moving away from SME-specific servicing, and towards larger and more resilient enterprises. This tendency is more financially sustainable but should be held in check in the interest of smaller firms.
- **LEA and CEDA budgets** may also need to be shored up in order for them to effectively run their operations and support small businesses. To date CEDA for instance remains dependent on government support for long-term survival: without a government grant of 269 million pula (USD 33.3 million) in financial year 2009-10, CEDA would have been in net operating loss of P426.5 million (USD 52.8 million). CEDA's new corporate strategy aims to reduce this dependence on government funding. This therefore remains an important challenge to the operating environment of these agencies.

Source: Ministry of Trade and Industry, "Recommendations on the LEA/CEDA Rationalisation Report", 8 November 2011.

2009-10 analysis of Botswana's import bill for example reveals that only 5% of electrical products and 16% of grains are produced locally, a situation which this programme hopes to rectify.[43] A National Suppliers Directory is also being developed by the EDD Unit to centralise all information on local enterprises and their products; as of June 2012, the Directory featured 2 471 enterprises and work was underway to raise access for rural areas.

What steps has the government taken to promote investment linkages between businesses, especially between foreign affiliates and local enterprises?

Since 2009 the importance of fostering investment linkages has been strongly recognised by the National Export Strategy, the ISB, and the long-term strategy of the EDD. The latter is expected to develop a vibrant and globally competitive private sector through greater focus on its seven thematic areas of production (see Chapter 2 above). Sector and sub-sector strategies, as well as value chain mapping and plans for cluster development in the interest of business linkages, are currently being developed by the seven EDD thematic teams. This marks a coherent approach, centred on increasing the employment and poverty reduction spill-overs of investment and exportation, which is shared by the government and the private sector alike. However as noted in earlier, the driving force of the EDD Strategy could be further enhanced through a more specific and strategic focus on developing investment niches – rather than selecting priority sectors primarily in light of their poverty reduction potential.

Encouraging business linkages through public procurement: EDD and PEEPA initiatives

The **EDD Certificate scheme** entitles certificate holders to **preference margins** during tender evaluations. The margins vary according to the size of the firm (see the note of Box 3.4 below for definitions of these size thresholds). The margins are highest for small-scale firms (15%), followed by medium-scale companies (10%), and large-scale local companies (5%). These margins are expected to be of a short-term nature so as to boost competitiveness, although specific timelines for phase-out have not been announced yet. In order to assess the impact this procurement scheme, companies which have held the EDD Certificate for over 12 months are to be monitored. Collecting and analysing these measures in a systematic manner can provide regular feedback to ministries, parastatals, local authorities, and the concerned government agencies such as LEA, CEDA, BITC, and MTI. Box 3.4 details the distribution and coverage of EDD Certificates to date.

In addition to procurement margins, MTI is also exploring more innovative ways to **promote market access for local firms in the short-term**, notably through: vendor short listing; longer term retainer supply contracts (of 3-5 years); development of industry standards; mobilisation of seed money for EDD projects; and development of new financing options. EDD is for instance engaging with local Commercial Banks (including Stanbic Bank and First National Bank) in its SME support activities.

Supply-side challenges to SME participation in procurement

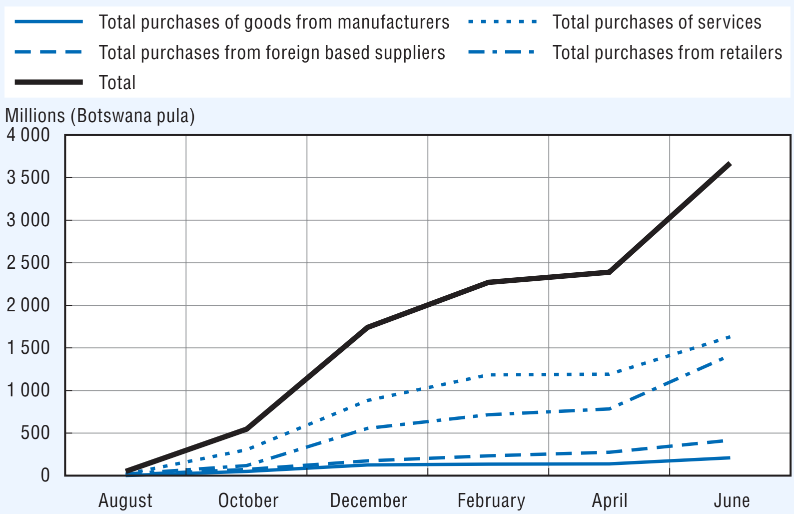
In its short-term approach to local procurement and to business linkages, the EDD Unit affirms that quality is never to be compromised in the choice of procurement. Indeed only quality and product-certified SMEs are eligible to benefit from preference margins in public procurement; this criteria is hoped to encourage the SMEs to become more competitive for procurement with foreign and larger-scale domestic companies as well. Currently however local SMEs do not have sufficient **capacity and ability to provide procuring entities with quality goods**, and support agencies such as CEDA and LEA (as well as

Box 3.4. **EDD Certificate Scheme for Public Procurement**

Total government purchases from local manufacturers and service providers for the financial year 2011-12 amounted to 1.9 billion pula (USD 237 million), and is expected to reach 2.5 billion pula (USD 312 million) by the end of 2012-13. Overall public purchases from local suppliers are thus clearly on the rise *vis-à-vis* foreign suppliers, as Figure 3.3 below illustrates.

Figure 3.3. **Government purchases for reports of August 2011-June 2012**

Million of pula



the SMEs themselves) often lack the financial resources needed to go through the full quality certification process required in procurement bids.

With this concern in mind, the "investment and finance" thematic area of the EDD aims to improve the financial management competencies of local enterprises, including by providing training in financial management. The thematic area on "quality control, standards and production" engages all organisations active in productivity and quality issues – such as BOBS, BNPC, and the National Food Technology Research Centre – to co-operate in promoting a higher quality of products marketed by domestic firms. It will also be important to adapt human resource development strategies and products to SME needs (see Sections 3.9-3.12).

The priority placed by the EDD Certificate Scheme on quality of procured goods is essential in order to safeguard the prudent use of fiscal resources in support of SMEs. A similarly prudent and quality-geared approach should be likewise adopted in Botswana's forthcoming PPP and privatisation projects.

Box 3.4. **EDD Certificate Scheme for Public Procurement** *(cont.)*

The **distribution of enterprises detaining EDD Certificates** mostly favours smaller enterprises (Figure 3.5). Indeed of the 507 enterprises that had been issued with EDD Certificates by February 2013, 403 were listed as "small-scale" (with turnover below 5 million pula, or USD 630 000). Gaborone has naturally concentrated the large majority of EDD purchases: 86% by June 2012. These Certificates are also concentrated in the manufacturing sector, with only a single certificate having been attributed to an agricultural firm so far (Figure 3.4).* This stands in contrast to the number of companies actually operating in the agricultural sector: the most recent CEDA Annual Report suggests that agribusiness and services dominate in terms of SME loan approval (at 55% and 45% of total approval respectively), while property and manufacturing lag behind with 15% of approved loans.

Figure 3.4. **Enterprises issued EDD certificate by sector (as of April 2012)**

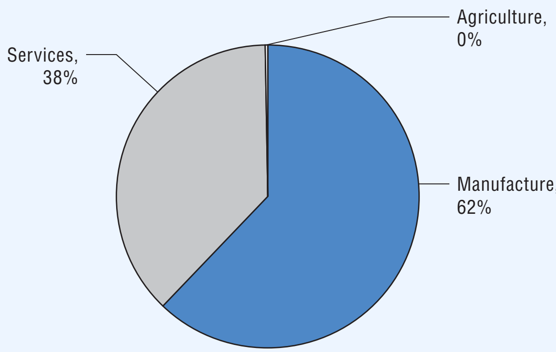
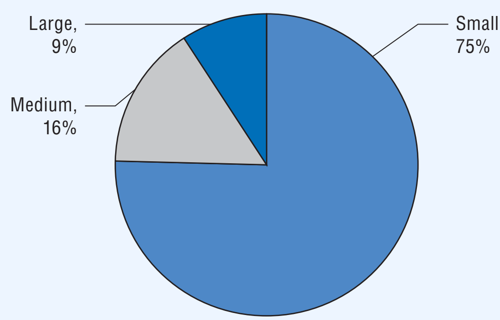


Figure 3.5. **Enterprises issued EDD certificate by size (as of April 2012)**



* Minister of Trade and Industry, Hon. Dorcas Makgato-Malesu, "Presentation of progress reports on the implementation of some key flagship programmes", 11 April 2012.

Note: Small enterprises are defined as having a turnover of less than 5 million pula, or USD 630 000; medium enterprises have a turnover of 5-19.9 million pula, or USD 630 000-2.5 million; and large-scale enterprises have a turnover of above 20 million pula, or USD 2.52 million.

Source: Ministry of Trade and Industry, 11 April 2012.

For instance the "**Citizen Economic Empowerment Strategy Framework for Privatisation**" currently under development by PEEPA aims to increase domestic company involvement in privatisation and facilitate participation of citizen companies in privatization tenders,[44] and Botswana's **2009 PPP Policy and Implementation Framework** (investigated in more detail in Chapter 5) contains a Guidance Note on Citizen Participation which recommends that bidders for PPP projects be required to associate with citizen-owned companies in bidding consortia and to use local labour and supplies wherever possible.[45] More problematically, the Policy notes that encouraging involvement of citizen companies in PPPs could require establishing a dedicated fund to grant citizen companies the necessary access to finance, which contradicts the essential rationale of PPP projects and which could have heavy fiscal implications for the public partner. While such objectives of citizen empowerment are fully legitimate, the latter should not be emphasised at the cost of quality procurement and value-for-money. Rather, it is all the more essential to work on long-term capacity development for SMEs so as to render them more competitive (independently of financial support from government) in public procurement tenders.

Role of BOCCIM in fostering business linkages

Complementing these government-led initiatives, BOCCIM also plays a role in encouraging investment linkages among domestic private-sector companies. BOCCIM makes better representation of all business sectors, big and small, one of its central objectives. The performance criteria of the 2002-12 BOCCIM Strategic Plan included increasing membership of SMMEs by 10% per annum, and strengthening the capacity and voice of Local Level Consultative Structures (which, established since 2004, have so far remained very weak due to insufficient financial resources). In 2009 BOCCIM counted 2005 members, of which 1900 were SMEs and 105 were large companies. To encourage business-to-business relations between its large and small members, BOCCIM has initiated a Buyer/Seller Forum which links local producers with local retailers and other big businesses.[46]

BOCCIM's re-focused Strategic Plan (for a shorter timeframe, 2010-14) aims to strengthen such initiatives through a needs assessment of SMMEs, as well as identification of the relevant government ministries and collaborating institutions (such as LEA, BITC, BNPC, etc.) which could grant SMEs better access to funds and services for development and growth. Despite these efforts however, BOCCIM may face some difficulties in extensively addressing SME issues, given its stretched capacity and the many large interests and different economic sectors grouped under its umbrella. It may therefore be necessary to establish a separate representative body for SMEs, to mobilise additional resources for small enterprises.

Special Economic Zones and the Botswana Innovation Hub

Following recommendations provided by the Botswana Business and Economic Advisory Council (BEAC) in 2005, Botswana's **Special Economic Zones** Policy was tabled before Parliament by MTI and adopted in August 2011. The policy intends to attract industries at the high end of product development, and to secure better access to competitive international technologies. Implementation of the new SEZ policy has however been rather slow to date, and may require the careful review of laws that deal with land allocation, work permits and tourism. Thorough sectoral research will also be required to establish the location of these zones; poorly-designed SEZs that are not soundly backed by an enabling investment environment are unlikely to generate any economic benefit. Especially, the provision of adequate infrastructure within these zones will be a crucial challenge for the effective functioning of the future SEZs. Currently no SEZs are yet operational in Botswana, but since 2012 MTI has been elaborating a report delineating possible geographic zones for SEZs, and government has also been considering developing an SEZ Act.

The **Botswana Innovation Hub** (BIH) may provide a reliable model for future SEZs to follow. BIH is being implemented as a vehicle to diversify the national economy into technology-driven and knowledge-intensive businesses. It has two thematic areas and technical teams, focused on entrepreneurship support and technology transfer. To facilitate technology-related investment and uptake, BIH is currently building a **science and technology park**, which it hopes will become Botswana's first SEZ (see Box 3.5). To date however the establishment of the park has been somewhat hampered by the delays experienced in putting in place an SEZ law or act. Instead BIH has had to rely on gazetted incentives, so as to provide park investors with a special package of 15% incentivised tax rate and exemptions on hiring specialised skills. BIH also remains impeded by the weak support from private sector companies for research and innovation in Botswana, and by the lack of private investment and of skilled expertise in the area of intellectual property management.

Increasing the scope for linkages between foreign investors and domestic businesses in the diamond industry

The majority of FDI into Botswana is targeted at the diamond sector, an industry which traditionally had little scope for value-addition and domestic linkages. Until recently all of Botswana's diamonds had to reach the London Diamond Trading Company before any polishing or value-addition could take place. According to a contract between the Diamond Trading Company in London (DTC London) and De Beers, diamonds all over the world were first sent to DTC London and only afterwards redistributed to polishing companies, Box 3.5. **Botswana Innovation Hub (BIH) science and technology park**

While it is one of the competitiveness Hubs established by the Botswana Excellence Strategy, the Botswana Innovation Hub is different from the other Hubs in that it is quite separate from government and operates on its own business model (which has public good but also a commercial components). BIH is not an investment promotion agency; it works jointly with BITC and has an autonomous board of directors chaired by the former Minister of Trade and Industry. Outputs of the BIH are monitored primarily through the National Strategy Office (NSO), but the Hub also releases quarterly performance reviews.

The BIH science and technology park draws on successful global examples, especially on experiences from Finland, a recognized leader in the area of innovation support. The park currently covers 57 hectares and is to be fully serviced in terms of power, water, ICT and transport infrastructure. In addition 36 hectares are hoped to host spin-off activities from R&D, possibly facilitated through LEA. The park is hoped to host innovative business clusters in its four focal areas: information and communication technologies (including software and content development); mining technologies (including beneficiation, as the park will be located next to the Botswana Diamond Trading Centre); energy and the environment (especially for solar power development and the sustainable development of coal reserves, through the BIH Clean-Tech Centre); and biotechnology and health.*

* Neba, Alphonsus, "Towards Overcoming the Innovation Chasm in Botswana: Some Strategic National and Institutional Interventions", Triple Helix 9 Scientific Committee, 2010. Available at: *www.leydesdorff.net/th9/O-027_Towards%20 Overcoming%20the%20Innovation%20Chasm%20 in%20Botswana.pdf*.

Source: BIH Interviews; and Neba, Alphonsus, "Towards Overcoming the Innovation Chasm in Botswana: Some Strategic National and Institutional Interventions", Triple Helix 9 Scientific Committee, 2010.

such as those established in Botswana. Botswana thus exported rough diamonds to London first and then imported them back for polishing. This contract had the effect of transforming diamonds from a raw material to an intermediary input for Botswana.

The domestic linkages and value-addition from FDI into mining are now more likely to increase: in September 2011, the government signed a deal placing the roles of aggregating, valuing and selling diamonds in Africa rather than London. The agreement underpins a ten-year contract under which De Beers will transfer the entirety of its London-based rough diamond sales activities (that is, sorting and trading) to Gaborone by the end of 2013 – potentially "transforming Botswana into one of the world's leading diamond trading and manufacturing hubs".[47] Botswana should thus become a diamond retailer as of 2013.[48] Under the agreement Botswana will directly sell 10% of local production, thereafter rising to higher percentages. De Beers will moreover significantly increase the value of the diamonds it makes available to manufacturing companies in Botswana.

The migration of all DTC International sales from London to Gaborone is on schedule for December 2013, and in February 2012 the Okavango Diamond Company was established by government. The moratorium imposed in 2008 on diamond cutting and polishing licenses has also been lifted in 2012. This is a very positive evolution, given that the previous arrangements constrained development and size of local cutting and polishing enterprises, significantly hobbling Botswana's attempts to introduce local value-added and backward linkages in its diamond industry. As of 2013 Botswana has thus welcomed 21 diamond cutting and polishing firms, which have created 3 500 domestic jobs; this is a substantial share of total employment from the mining sector, which employs 12 000 Bastwana directly.[49]

International and regional initiatives for strengthening investment promotion expertise

> Has the government made use of international and regional initiatives aimed at building investment promotion expertise, such as those offered by the World Bank and other intergovernmental organisations? Has the IPA joined regional and international networks? To what extent has the government taken advantage of information exchange networks for promoting investment?

The creation of BITC was in itself based on international exchanges and peer studies: the taskforce conducting the merger of IFSC and BEDIA conducted benchmarking exercises in Singapore, Ireland and Mauritius. Ireland's Industrial Development Agency evolved through a similar process to the BITC, and shared key learning points. Meanwhile the Board of Investment of Mauritius evolved out of the Mauritian equivalent of BEDIA (MEDIA), and its IFSC equivalent (MOBAA). The benchmarking in Mauritius additionally involved looking into Mauritian financial sector laws.[50]

Regional arrangements on trade and investment moreover provide principal markets for Botswana's goods and services. The **Southern African Customs Union** (SACU) is for instance developing the Regional Indicative Strategic Development Programme (RISDP), which seeks to establish a free trade area (FTA) among its members. SACU members have concluded several trade and investment agreements with third parties, including: a preferential trade agreement (PTA) with the South American countries of the MERCOSUR; a free trade agreement with European Free Trade Association (EFTA) countries; a Trade, Investment and Development Cooperation Agreement (TIDCA) with the United States; and on-going investment and trade negotiations with China and India.

Meanwhile as a member of the **Southern African Development Community** (SADC), Botswana is encouraged to implement sound macro-economic policies that attract investment flows, increase savings, and promote technology transfer in the region. SADC aims to establish a free trade area for the liberalisation of intra-SADC trade in goods and services, and this will require the adoption of relevant trade laws. Recent initiatives for co-operation on investment policy and investor protection include the **SADC Finance and Investment Protocol** (FIP), which was negotiated in 2010 as an integral pillar of the SADC regional economic integration agenda. It sets the legal basis for regional co-operation and harmonisation in the areas of finance, investment and macroeconomic policy (including the development of a Regional Investment Policy Framework, which will use the OECD Policy Framework for Investment as a reference). All of these regional endeavours open up more opportunities for both investment and trade in Botswana, and can expose its domestic industries and exports to a much higher degree of future competition as well as to possible technology transfers.[51]

Strengthening human resource development (HRD) to facilitate investment linkages

> Has the government established a coherent and comprehensive human resource development policy framework consistent with its broader development and investment strategies, and its implementation capacity? Is the HRD policy framework periodically reviewed to ensure that it is responsive to new economic developments and engages the main stakeholders?

Policies that develop and maintain a skilled, adaptable population, and ensure the full and productive deployment of human resources, are essential to identify and seize investment opportunities. HRD will be particularly crucial to Botswana's development path in a post-diamond economy, as is recognised by many of its policy documents: the commitments to innovation and increased export and business sophistication highlighted in the National Export Strategy, the ISB, the EDD and the IDP all depend heavily on securing a highly capable labour force. While Botswana has long placed priority on HRD, this remains a very challenging area for government, especially as concerns aligning the skills in the labour force with investor needs.

The 2012-13 GCR indeed notes that "Botswana's primary weaknesses [in terms of competitiveness] continue to be related to its human resources base" – mostly due to low levels of educational enrolment and low quality of the educational system by international standards.[52] This statement is reiterated in the 2013-14 report. Rising unemployment (at 17.8% according to the 2011 Labour Force Survey[53]) further highlights the need for continued efforts – particularly as the brunt of unemployment falls disproportionately on Botswana's youth and recently-graduated: Batswana aged 15-19 faced the highest unemployment in 2011 (at 41.4%), followed by the 20-24 age-group (34%).[54] Human resources that are well-aligned with industry requirements will be crucial to the effective roll-out of national economic strategies which aim to build on the advantages of a modern and technologically capable workforce.

National strategies for HRD

Since 2009 Botswana has developed and is in the process of implementing a **National Human Resource Development Strategy** (NHRDS). This framework aims for maximum consistency with the country's broader development and investment strategies, with the goal of better "aligning HRD planning with national economic and societal goals and the needs of the global market place".[55] The Strategy identifies the people of Botswana as the key future resource of the country. This Strategy aims to enable Botswana to:

- proactively anticipate the future and match Botswana's HRD strengths with the opportunities in the external environment;
- address national HRD through a holistic systems-level understanding, embedded in the broader national development strategy of transformation and diversification; and
- take the whole HRD life-cycle as a unit of analysis, without bias towards any particular element (e.g. primary education, tertiary education, or employment).

In order to better engage businesses and other stakeholders in HRD development, NHRDS roll-out is driven by Sectoral Committees. In view of fostering direct linkages between the skills developed in the workforce and the fast-changing needs of the economy, these Committees comprise the following sector specific representatives: business and employers; employees and labour unions; educational and skills training institutions; regulatory agencies; civil society stakeholders; and central and local government representatives. The operations of these diverse Sectoral Committees are.

More recently and as a means of further guiding implementation of the NHRDS, a comprehensive **Education and Training Strategic Sector Plan** was launched in August 2012, with completion expected during 2014-15. Through the Ministry of Youth, Sports and Culture, since 2012 the government is also establishing a **Multi-Sectoral Committee** which will aim to integrate youth matters (including adaptation to evolving labour market requirements) into the policies and programmes formulated by all other Ministries.[56] The integration of education and employment objectives across all areas of policy planning, notably investment strategies, is highly desirable; such a Multi-Sectoral Committee would need the capacity not only to meet regularly, but also to base its advocacy functions on reliable labour market data (as discussed below). Likewise, in order for the forthcoming Education and Training Strategic Sector Plan to adequately play its role in filling skills gaps in specific niche sectors of the economy, it must be based on detailed and regularly updated statistical analysis of the labour market.

Institutional set-up for NHRDS: The Human Resource Development Council

Past HRD strategies have been hampered by ineffective policy co-ordination, as HRD responsibilities have traditionally straddled several ministries and agencies: MFDP was responsible for manpower planning; the Ministry of Education and Skills Development oversees the Tertiary Education Council; the Ministry of Labour and Home Affairs hosted the Botswana Training Authority (BOTA); and the Ministry of Education and Skills Development covered Vocational Education and Training.

One of the objectives of the 2009 NHRDS is the rationalisation of responsibilities and resource allocation: the Strategy is implemented by the Ministry of Education and Skills Development as the lead agency, supported by the Tertiary Education Council (TEC). Since 2012 the TEC and the Botswana Training Authority (BOTA) are being merged and transformed into the **Human Resource Development Council** (HRDC), as a single support agency for implementing and monitoring national HRD. A bill to launch and implement the HRDC was accepted by Parliament in August 2013, and the HRD Advisory Council (HRDAC) was set up to guide the merger process in the meantime. Once fully active, the HRDC will review the mandates of existing and proposed Councils and Advisory Bodies (such as the National Council on Education, Labour Market Observatory, NEMIC, etc.) with a view to eliminating overlapping functions. The role and mandate of the Human Resource Development Council will be to:

- provide a single, connected and integrated approach to HRD that is strategic, focused and long-term;
- ensure that the policies of government, the desires of civil society, the programmes of educational institutions, and the initiatives of business and

industry are better aligned and work together in a co-ordinated way to enhance overall human resource capabilities;

- establish a better link between the supply side of human resource development – that is, education and training – with the demand (or employer/industry) side; and
- link both supply and demand sides to the economic development strategy which inter-alia, includes economic diversification and transformation, attracting FDI, and ensuring a better strategic fit between citizen empowerment, skills requirements and needs and workforce productivity.

The HRDC is thus expected to identify new growth paths that respond to the needs of the economy with respect to human capital development. Meanwhile its implementing body, the HRDAC, is to play a central role in determining the shape and size of the education and skills training system in Botswana, based on employment demand and labour market forecasts. This rationalisation of institutional responsibilities appears to be a highly necessary step, as emphasised by the private sector which on the occasion of the NBC 2012 pointed to an "**institutional vacuum** that has prevailed for some time" in the field. Two other new agencies are being put in place over 2013 to improve the competitiveness of Botswana's labour force: the Botswana Qualifications Authority (BQA), the Botswana Teaching Council, and Botswana Examinations Council (BEC).

In addition the **Citizen Economic Empowerment** (CEE) policy (approved by Parliament on 8 August 2012) proposes to develop "Areas of Excellence" for the country by channelling more resources towards: management training school (for both Batswana and clients from other Southern African countries); practical training for young Batswana; public health management; and the possible establishment of a regional hospitality training school to extend Botswana's competitive edge to diverse tourism segments. Meanwhile the **EDD Strategy** reiterates the NHRDS aim to accelerate Botswana's transition "from natural resource to human resource development",[57] or from a "Factor Driven" economy to an "Efficiency Driven" one that is characterised by high-level skills, technology transfer, productivity and innovation.[58]

Improving quality of instruction to better attract investment and leverage its spill-overs

In the short term countries always face a constraining choice between increasing participation in basic schooling, and improving the quality and duration of instruction. The path followed by Botswana since the 1970s was to "upgrade from the bottom", by first rapidly raising (and sustaining) the base of primary school attainment to 100%, and then more gradually shifting the mass of educational attainment to ensure that an increasing number of

> What steps has the government taken to increase participation in basic schooling and to improve the quality of instruction so as to leverage human resource assets to attract and to seize investment opportunities?

children exited the secondary level system later. The government has set the target of moving 80% of students through to senior secondary (at 17-18 years old) by the conclusion of NDP 10 in 2016.

This approach has been complemented by a concerted effort to raise the levels of adult literacy and skills training and development, and the government has also invested considerably in **tertiary education**. Over 2011-12, 9 118 additional students were enrolled into tertiary institutions, and the average intakes for 2013 and 2014 are anticipated at 20 000. In 2012 budgetary provisions were also made to cater for practical skills and knowledge enhancing facilities such as computer laboratories and related equipment in secondary schools.

Steps to improve the **quality of instruction** include the establishment of the **Botswana National Productivity Centre** (BNPC) in 2003. BNPC is mandated to enhance the level of productivity awareness in Botswana, to empower individuals and organisations through training and consulting to be productive and competitive, and to promote the adoption of productivity best practices in Botswana. Along with BNPC, the Directorate of Public Service Management (DPSM, see Chapter 4), Botswana University and other HRD organisations are part of several EDD Thematic Teams. This integration of HRD priorities within the EDD is an important step forward for better tackling the "supply-side" concerns for attracting foreign and domestic investment.

Better aligning labour supply with the needs of investors

> Does labour supply and skills correspond to industry needs, and is data collected to identify "labour skill gaps"? What measures are being taken to ensure the full benefit of a country's investment in its own human resources accrues within the country, and that nationals who have completed their studies abroad are attracted to return? What mechanisms exist to promote closer co-operation between education institutions and business, and to anticipate future labour force skill requirements?

Inappropriate training programmes have in the past created a labour market mismatch

NHRDS recognises that Botswana faces major challenges of access, quality and relevance across the entire education life cycle. At the early childhood, primary and secondary levels, the main weaknesses are of access and participation outside of urban areas. Meanwhile higher education (the tertiary level, skills training and development, and life-long learning) is mostly hampered by limited levels of opportunity, restrictive access, poor linkages to the labour market, and poor quality of academic institutions with programmes often being too theoretical and conservative. As put by the Ministry of Infrastructure, Science and Technology (MIST), purely academic training has created graduates who are overloaded with knowledge, but with **few applied professional tools**.

The views of Botswana's private sector, as expressed in the resolutions of the 2012 National Business Conference, confirm this assessment and highlight the following challenges: the declining academic standards of Botswana's public education; the mismatch between the types of education and training provided and the demands of the private sector; and the lack of preparedness of learners for the world of work when they leave education. As the NHRDS notes, consequently "the educational level of the unemployed population is being raised".[59] The predominance of youth unemployment and this rising level of graduate unemployment point to critical shortcomings in the country's higher education structures.

In addition **vocational training and life-long learning** both suffer from low awareness: students and parents have negative perceptions of the value of vocational skills training and there is weak recognition by employers. As a result students lack critical individual and work-based skills, and the low relevance of curriculum to "real life" creates a mismatch between labour supply and demand. Over the last few years higher education completers in Botswana have indeed found it difficult to find fulltime employment: there is undersupply of high-value jobs that can meet graduates' expectations and abilities.

To tackle this training gap, several youth vocational training or internship schemes are underway. For example: the **National Internship Programme** aims to provide skills and on-the-job learning experience for youth, to help absorb some of these unemployed graduates; the **Youth Empowerment Scheme** (YES) assists unemployed young people to gain skills and certified experience through Boot Camps; and the **Ipelegeng Programme** provides temporary work for the unemployed, while contributing to infrastructure maintenance, environmental cleanliness, fighting crime and job security.[60] The latter programme was the main driver behind the 11.9% increase in employment in local government employment recorded between March and June 2011.[61]

Evaluating the effectiveness of training programmes and involving the private sector

> To what extent does the government promote training programmes and has it adopted practices that evaluate both: their impact on the investment environment; and their effectiveness in creating a workforce that can attract and seize investment opportunities?

The NHRDS recognises that insufficient availability of data and the lagging development of strong analytical and forecasting capacities remain a critical weakness for the country; the development of a comprehensive HRD enabling system has therefore been made a priority for the NDP10 plan period. The success and relevance of any HRD strategy partially depends on frequent **evaluation of its effectiveness and impact** on the investment environment. government organs charged with promoting and measuring the impact of education and training in Botswana include the **Botswana Training Authority** (BOTA, established in 1998 as regulatory body to co-ordinate and monitor training provided by training institutions) and the **Tertiary Education Council** (TEC) – both of which are currently being merged into the HRDC. government has also established the **Labour Market Observatory** (LMO) in MFDP to collect, analyse and disseminate labour market information for the purposes of identifying mismatches and guiding policy accordingly.[62]

Via the above agencies and under co-ordination of the HRDAC, several evaluation initiatives have been underway since January 2011 to improve the relevance and quality of primary, secondary and post-secondary schooling. These include: developing standards and indicators for quality education; assessing and evaluating the Botswana Technical Education Programme; re-organising Technical and Vocational Education and Training; and developing a National Credit Qualification Framework. These organisations also undertake Tracer Studies to assess the employability of graduates. The **HRD Sector Planning Committees** advocated by the NHRDS (which are to represent all stakeholders *vis-à-vis* the HRDC) will also play an important role in contrasting what exists in terms of manpower and skills compared to the future needs for each sector. Indeed, **sector-specific "skill gap surveys"** would be very helpful to the future design of academic and vocational curricula in Botswana. In addition the HRDC is to undertake Organisational Capacity and Performance Assessment Studies of all HRD agencies every four to six years.[63]

> What mechanisms are used to encourage businesses to offer training to employees and to play a larger role in co-financing training?

Among its mechanisms for encouraging businesses to offer training to employees and to play a larger role in co-financing training, Botswana offers investing companies a **200% tax deduction** for cost of approved training for citizen employees. In this respect it is a leader among SADC countries (alongside Swaziland, which also offers 200% deduction of training costs), as other countries either do not involve training schemes as part of their tax incentive structures, or only offer deductions of about 25%.[64] BOTA moreover comprises a Vocational Training Fund (VTF) which is used to reimburse the training costs of employers after they have trained their employees. This facility is available for training at certificate level and for some selected diploma training. In addition, Botswana's Citizen Economic Empowerment Policy (CEE), with its focus on developing "areas of excellence" for the country, puts in place mandatory subcontracting of citizen-owned consultancy and construction companies by foreign-owned companies awarded government contracts, including a mandatory transfer of skills and placement of interns (or "learner contractors") within these foreign companies.

However despite these incentives, the contribution of the private sector towards financing training and reducing the mismatch between labour market demand and supply has been weak to date. Private sector uptake of the National Internship Programme has for instance been modest: since the latter's inception and as of end 2012, of the 6 708 graduates having gone through the programme, only 2 090 were offered permanent jobs as a result.[65] The government hopes to address this shortcoming with its forthcoming National Internship Policy (under elaboration as of end 2012).

The National Business Conference 2012 notes that HRD remains a crucial challenge for Botswana despite the very high level of spending on education and training – suggesting that lack of resources is not the underlying problem. The NBC resolution in this regard calls for a more demand-driven education system, with an active role for employers not only in financing but also in influencing the type, quantity and quality of education offered. The NBC conclusions also recommend that appropriate work-based learning programs to improve workplace readiness and employability be developed, together with improved (and better monitored) utilisation of the training levy and training tax deduction by the private sector.

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Chapter 4

Public governance for sound investment in Botswana

Botswana has undertaken significant effort in the field of public governance, and is upheld as a model and benchmark for many developing countries in this regard. To date Botswana has quite successfully avoided the "natural resource curse" at stake in its diamond revenue exploitation. Nonetheless corruption has become more of a concern since the early 1990s, with the emergence of several corruption scandals in the country. This chapter evaluates Botswana's progress since then, in terms of developing a comprehensive anti-corruption framework guided by the Directorate on Corruption and Economic Crime (DCEC). Reforms along other dimensions of public governance, such as regulation of civil service performance within the Directorate of Public Service Management (DPSM), public consultation, and co-ordination of the country's regulatory framework for reducing administrative barriers to investment, are also described here. The regulatory frameworks for procurement and privatization, as overseen by PPADB and PEEPA, are also briefly reviewed in terms of their transparency and clarity – and further expanded upon in Chapter 5.

Regulatory quality and public sector integrity are two dimensions of public governance that critically matter for the confidence and decisions of all investors and for reaping the development benefits of investment. While there is no single model for good public governance, there are commonly accepted standards of public governance to assist governments in assuming their roles effectively.

Mechanisms for co-ordinating regulatory reforms

> Has the government established and implemented a coherent and comprehensive regulatory reform framework, consistent with its broader development and investment strategy? What mechanisms are in place for managing and co-ordinating regulatory reform across different levels of government so as to ensure consistent and transparent application of regulations and clear standards for regulatory quality? To what extent are regulatory impact assessments used to evaluate the consequences of economic regulations on the investment environment?

A framework of multiple regulatory institutions

Botswana has several regulatory institutions, including: the Competition Authority, the Non-Bank Financial Institutions Regulatory Authority (NBFIRA), Botswana Unified Revenue Services (BURS), and the Bank of Botswana. These institutions manage and co-ordinate regulatory reforms across different levels of government to ensure consistent and transparent application of regulations, and clear standards for regulatory quality. Also all parts of central government (the Executive, the Legislature and the Judiciary) have key roles to play in supporting the regulatory quality process. Composed of Line Ministries, the Executive is the most active regulator and usually partakes in the management and co-ordination of regulatory reforms.

Among these regulatory structures, the **National Strategy Office** (NSO) is housed in the Office of the President and is responsible for monitoring the performance of all government entities, awarding marks to reflect progress; all ministries are required to report on their performance to the NSO. The NSO was created in 2010 (replacing the Government Implementation Co-ordination Office, GICO) to oversee implementation of the Botswana Excellence Strategy;

it notably ensures that public governance reform is coherent and comprehensive. The NSO is placed at the apex of Botswana's central platforms for economic and regulatory reform: it functions as the secretariat of the Botswana Economic Advisory Council (BEAC); sits on the National Economic Diversification Council (NEDC) in charge of overseeing the EDD Strategy; and is also part of the Secretariat for the High Level Consultative Council (HLCC), the central structure for public-private dialogue in Botswana. NSO partners with the Botswana Institute for Development Policy Analysis (BIDPA) since early 2010, and has set up collaborations with Botswana National Productivity Centre (BNPC) in the aim of jointly establishing a mechanism for timely and on-budget delivery of government projects.[1]

Regulatory impact assessment

Prior to the establishment of the National Doing Business Council (NDBC) and of the institutional framework for the EDD Strategy, **regulatory impact assessments** (RIAs) were not regularly undertaken to evaluate consequences of regulatory reforms on Botswana's investment environment – despite the presence of different agencies to co-ordinate reform. Since 2011 the **EDD Unit** has been put in charge of overseeing the roll-out of the EDD Strategy at all levels of government and across all Thematic Teams. For this purpose the Unit is developing a Balance Score Card Reporting Tool an electronic Monitoring and Evaluation tool. These are intended to: ensure effective tracking of all implementation plans; to help to identify any further burdens on investors; and to improve accountability as well as future investment policy based on this feedback.

The **NDBC** also plays a role in evaluating regulatory reform: at the Doing Business conference hosted by NDBC in May 2012, the possibility of introducing of an RIA Committee (which would review the benefits of new and existing regulations) was put forward. The NDBC Subcommittee on "Practical and cost effective regulations" endorsed the principle of RIAs and proposed the Law Reform Unit to co-ordinate the initiative.[2]

Co-ordination of Public Financial Management reform

Until recently Botswana had not yet adopted a comprehensive integrated approach for the co-ordination and management of regulatory reforms related to Public Financial Management (PFM). The 2009 **Public Expenditure and Financial Accountability** (PEFA) assessment,[3] financed by the European Union, as well as the World Bank Public Expenditure Review and the International Monetary Fund's PFM Assessment in 2010, all pointed to the need for a greater focus on value-for-money, efficiency and effectiveness in Botswana's public financial management. These studies highlighted the lack of a multi-year perspective in fiscal planning and budgeting; insufficient budget credibility due to inaccurate forecasting; poor enforcement of budget controls; and weak capacity to manage public procurement.

Based on the conclusions of the 2009 PEFA Assessment, the **Public Finance Management Reform Programme (PFMRP) for Botswana** was approved by the Ministry of Finance and Development Planning (MFDP) in July 2010. More recently a **Medium Term Fiscal Framework** is being put in place to forecast government revenue over a three-year period, rather than just one as had been done previously. This three-year rolling budget framework was introduced in February 2013, and its first iteration should be fully developed by end 2016.

Currently in its third year, the **PFMRP Programme** seeks to address current socio-economic challenges that require prudent management of public finances. The PFMRP is aimed at strengthening financial management systems in order to support fiscal discipline, strategic allocation of resources, and effective and efficient service delivery and accountability. It prioritises fundamental reform areas, such as enhancing tax and debt management capacities and creates integrated information systems relating to human resource management, procurement, and public investment management. The PFMRP reform agenda runs concurrently with the implementation period of NDP 10 and Vision 2016.

The PFMRP is accredited with accelerating the enactment of the Public Finance Management Act and the Financial Reporting Act (which were previously combined within the Finance and Audit Act of 1997). The PFM Act is notably expected to address weaknesses in the budget process, including distribution of authority for budget management.[4] Other PFM reforms undertaken in this context have focused on:

- improving revenue collections and promoting education, service and enforcement;
- decentralising and modernising the public procurement system;
- strengthening the independence and effectiveness of the office of the Auditor-General; and
- implementing an integrated financial management system – the government accounting and budgeting system (GABS).

By November 2011 considerable progress had been made in terms of defining, communicating and approving the institutional arrangements needed to manage and co-ordinate the complex set of reforms contained in the PFMRP. A Steering Committee and Coordination Committee had been established, along with designated managers for each Programme component and sub-component. A systematic PFMRP Monitoring and Evaluation Framework was under development in early 2012, to provide the basis for regular progress reporting to all stakeholders.[5]

A March 2012 assessment notes that the design and context of the PFMRP action plan remain relevant to the NDP10 goals, and that the implementation model is pertinent. Moreover the 2012 report of Moody's Investor Service on Botswana assesses Government Financial Strength as "very high", especially as the six-year NDPs comprehensively define economic objectives and define fiscal rules to be followed over each applicable period (such as spending as a proportion of GDP, the ration between recurrent and development spending, or the channelling of mining revenues towards investment alone – including in infrastructure, education, training and health).[6] Despite slow progress in the programme's first year (with low institutionalisation of PFM reform across government in a sustained manner), PFM co-ordination has thus stepped up in the second year.

Freedom of information and disclosure of public finances

The extent to which these consultative processes are truly open and inclusive is reflected by Botswana's high scores on different governance rankings: the Ibrahim Index of African Governance ranked Botswana third in Africa in 2011 and 2012, with especially high ratings for "willingness of the government to respect the rights of citizens to take part in the affairs of the state" and "fighting poor ethics in the public service". In September 2011 the Mo Ibrahim Foundation also ranked Botswana as first in Africa in terms of accountability and the rule of law.[7]

Botswana's framework for public consultation of government policies and reform is therefore firmly grounded. In 2011 the WGI (World Governance Indicators) granted Botswana the highest score of SADC countries by for "**Voice and Accountability**", that is: "enjoyment of freedom of expression, freedom of association, and a free media." Yet the country's worldwide ranking on this indicator has in fact been in decline over recent years. The media (through its association, MISA-Botswana) and some others have notably complained of a lack of "freedom of information" legislation, or of any other law **ensuring public access to information**, including on the budget. Supporting this claim, the World Bank Institute remarks that the country has a highly developed bureaucratic state which "governs without the controls imposed by a dynamic associational milieu or media".[8] To improve access to public information, in 2009 media advocacy organisations were therefore lobbying for media law reform and the introduction of a **Freedom of Information Act**.[9] An FOI Bill was elaborated by the Attorney General's office in 2010, proposing the creation of an independent Information Commission. By late 2012 transformation of the Bill into a proposed Act was however still pending.

Over the past few years progress had become necessary on the transparency of public budgets: the European Commission's 2009 PFM

Performance Assessment Report for Botswana noted that the government was not fully transparent in terms of making its **financial and general government operations reports** readily accessible to the public. This mixed performance on budgetary transparency was reflected in international scoring exercises: while Botswana performed highly for most political governance indicators, its ranking on the Open Budget Index (OBI) had declined over recent years, from 65% in 2005 to 51% in 2010 (signifying that only some information on central government's budget and financial activities was provided to the public). Another public finance measure, the Revenue Watch Index (RWI) which assesses transparency of oil, mineral, gas and oil revenues, ranked Botswana only 24th out of the 41 resource-rich countries graded in 2010. This rather unsatisfactory score reflected unavailability of revenue information (such as the price per carat of diamonds) to the public and to members of parliament.[10]

Budget information is currently made available in the government bookshop and posted on the MFDP website. Going forward MFDP will develop a webpage dedicated to budget consultations and hold radio talk shows and seminars to discuss budget issues with the public.[11] Stronger mechanisms for feedback from the public and parliament on the budget and on the performance of oversight institutions such as the Office of the Auditor General could further increase accountability and the effectiveness of the budget process, and assist in the monitoring of national projects and initiatives.[12]

Botswana has successfully avoided the "natural resource curse"

Botswana is a frequently cited counter-example to the theory of the "resource curse", which posits that the discovery of natural resources in a developing country can be extremely detrimental to economic and social development if the windfall revenues are not adequately managed: such abundant revenues are likely to increase avenues for corruption, and can foster irresponsible fiscal spending by governments because of the large budget surplus that they engender. This can in turn generate more systemic risks – such as appreciation of the exchange rate or inflation, both of which harm the competitiveness of other export sectors in the country.

Botswana has however kept careful control of its foreign exchange and inflation, and has preserved a sound governance record. Historically, Botswana's expenditure policy framework specifies that mineral sector revenues, since they result from the sale of an asset, should be used to finance investments in other assets. The trend in Botswana's Sustainable Budget Index (SBI) over time indicates that this spending principle has been well-heeded. While an SBI of over 1 indicates that non-investment spending is being financed in part from mineral (or non-recurrent) revenues, an SBI below 1 indicates that mineral revenue is being saved or spent on public investment. After remaining above 1 over 2001-05, Botswana's SBI has been well below 1

Box 4.1. **The Economics of the Natural Resource Curse**

The discovery of very lucrative natural resources in developing countries was first termed a "natural resource curse" by the economist Richard Auty, in light of the detrimental effects that such a discovery has had on various countries. These effects are in part political (opening avenues for corruption and misappropriation of the windfall revenues), but also very much economic.

The economics of the Natural Resource Curse posits that the discovered natural resources will trigger a boom in export earnings to the country, which will increase its foreign exchange inflows and put the country's External Balance in surplus. The government, which most often operates a large part of the natural resource production, will also earn substantial export revenues and therefore experience a large budget surplus. This engenders several economic pressures: first, there is pressure for the exchange rate to appreciate due to the excess supply of foreign exchange; however this appreciation harms the competitiveness of the country's other exports, often leading to what has been termed the "Dutch disease": the decline in other export industries at the expense of the natural resource sector. Second, if the government is not prudent in its fiscal policy, it may be tempted to squander most of its budget surplus in excessive public spending – this will increase the volume of money circulating in the economy and generate inflation (which in addition to creating social hardship makes the country's traditional exports even less attractive and affordable abroad). The risks of natural resource discovery are therefore three-fold: permanently debilitating other exporting industries; causing an inflationary spiral; and generating over-reliance on the resource sector for foreign exchange earnings, which could be dangerous if the market for that particular resource were to suffer in the future. Botswana has avoided the first two of these risks to date. However the effects of the 2008-09 economic crisis, which sharply hit Botswana's FDI and GDP levels due to the resulting drop in demand for mining products, illustrates the vulnerability with respect to the third risk, and further justifies the rationale of the long-term EDD Strategy.

To avoid these economic risks, certain countries endowed in natural resources – such as Chile in the case of copper – have created stabilization funds. These allow the government to ring-fence part of these foreign inflows in separate funds. As well as limiting excessive fiscal spending and its effects on inflation, this move can make these funds available for future counter-cyclical purposes if the price of the resource were to drop (as the funds could then be re-injected into the economy). Taking the inflows of foreign exchange off the money supply can also prevent an appreciation of the currency, thus avoiding the "Dutch disease", or the negative effects of appreciation on other exporting industries' competitiveness.

since 2006 thanks to substantial increases in health and education spending in the overall budget. This prudent spending has also been facilitated by the Pula Fund, established under the Bank of Botswana Act 1996; this Fund, which is invested entirely off-shore in long-term financial assets, enables targeted management of foreign exchange reserves and revenues from mineral tax and royalty payments.[13]

Effectiveness of public consultations

> What public consultation mechanisms and procedures, including prior notification, have been established to improve regulatory quality, thereby enhancing the investment environment? Are the consultation mechanisms open to all concerned stakeholders?

Botswana's National Development Plans establish a basic structure of public consultation

The government undertakes extensive **consultations with the private sector**, civil society and the civil service when formulating its National Development Plans.[14] If the need for development of a new law or regulations is identified, all affected stakeholders (businesses, trade unions, other civil societies, wider interest groups and other levels of government) are consulted. Different national-level mechanisms and procedures for public consultations are used, from notification (where the public is treated as a passive consumer of government information), to consultation (where the opinions of interested and affected stakeholders is actively sought), and finally participation (involving active involvement of interested stakeholders in the formulation of the regulatory objectives, policies and approaches or in the drafting of the texts).

Tools used for public consultations are usually circulation of regulatory proposals for public comments, public notices, hearings and informal consultations. All improvements or changes to the regulatory environment are published in the *Government Gazette* for public scrutiny before they can be passed by Parliament.[15] Design and implementation of the EDD Strategy is also based on consultative frameworks, facilitated through the set-up of seven Thematic Teams. Any possible formulation of an Investment Code by Botswana should make full use of these available consultation mechanisms.

Public consultations are also held through workshops and seminars for relevant stakeholders including **non-state actors** (NGOs and CSOs). Freedom of association is guaranteed in the Constitution and civil society is active through a number of associations. Most NGOs fall under the umbrella organisation the **Botswana Council of Non-Governmental Organisations**

(BOCONGO), which aims to assist in establishing an enabling environment for the NGO/CBO sector to become a recognised partner in the development process in Botswana and internationally. BOCONGO provides a platform for networking, advocacy, lobbying and capacity building for local NGOs and for mobilizing resources to ensure the self-sustainability of the NGO sector. Co-operation between the government and NGOs/CSOs has considerably increased over the past decades in Botswana, thanks to these organisations' potential to complement and support the developmental role played by government at central and local level.

Meanwhile Community Based Organizations (CBOs, often located within the remote communities that they serve) were until recently affiliated to the Botswana Community Based Organizations Network (BOCOBONet), which has however ceased operations due to insufficient financial and operational capacity. Indeed the majority of NGOs and CBOs **depend on government spending**. The 2001 Policy Guidelines for Financial Support to NGOs would need to be updated and streamlined throughout the different ministries, to mitigate this dependency.

Consultation with the private sector through BOCCIM

Private actors likewise have the opportunity to consult with and provide feedback to senior government officials through the Botswana Confederation of Commerce, Industry and Manpower (BOCCIM). BOCCIM is the main channel for private sector representation in Botswana, and has been a key initiator in the Botswana privatisation debate since 2002. It was the lead institution in the preparation of Botswana's Private Sector Development Strategy (PSDS 2009-13), released in 2008 together with MTI. PSDS is now an integral component of the Medium to Long-Term EDD Strategy: the EDD Private Sector Chapter is based on a BOCCIM Concept Paper, and BOCCIM sits on all seven of the EDD Thematic Teams (see Chapter 3 above). The National Economic Diversification Council (NEDC), which oversees the EDD Strategy, is moreover co-chaired by MTI and BOCCIM. In addition since November 2011 BOCCIM serves on a Task Force (driven by MTI and the NSO) which is to support the National Doing Business Committee in analysing Botswana's business environment and in regularly reporting to Cabinet.[16]

A **BOCCIM Public Relations Department** was established in 2005, followed by development of a full website and of an SMS communication system in 2009.[17] The **National Business Conferences** (NBC) held by BOCCIM in this context aims to stimulate public-private dialogue, and come forward with resolutions that BOCCIM channels through MTI and before the HLCC. Although policy action is only taken on some on these resolutions (certain resolutions have been pending for close to a decade), this is a valuable venue for facilitating public-private dialogue. BOCCIM emphasises that the HLCC structure has so far worked very well: double taxation in the tourism sector (via the bed levy and training levy) has for instance been eliminated after having been put before the HLCC.[18]

Measures taken to promote anti-corruption practices in public institutions

> Does national legislation, as well as institutions and procedures, ensure transparent, effective and consistent application and enforcement of anti-corruption laws and regulations, including bribe solicitation and extortion, and integrity in the public service? Have standards of conduct by public officials been established and made transparent? What measures are used to assist public officials and to ensure that expected standards are met? Are civil society organisations and the media free to scrutinize the conduct of public officials' duties? Are "whistle-blower" protections in place?

Adherence to international and regional initiatives for tackling corruption

Botswana is party to a number of international initiatives aimed at fighting corruption. Botswana has acceded to the **United Nations Convention against Corruption** (UNCAC) in June 2011. Botswana is also in the Committee spearheading the formation of the Association of African Commonwealth Anti-Corruption Agencies, and is a member of Southern Africa Forum Against Corruption. This forum is aimed at reinforcing bilateral relations between anti-corruption organisations in the SADC Region, assisting in issues of mutual legal assistance such as investigations, and assisting with training. In addition Botswana is a member of the Eastern and Southern Anti-Money Laundering Group (ESAAMLG), a regional standards-setting body for ensuring appropriate laws, policies and practices to fight money laundering and the financing of terrorism.[19]

Finally Botswana is one of the nine countries that have ratified the **SADC Protocol Against Corruption**, which takes note of the fact that corruption varies among member countries at different levels of development, and attempts to identify traits and forms of corruption that are characteristic to SADC member countries. The Protocol also aims to establish provisions dealing with corruption at the trans-boundary level in the SADC, and encourages the establishment of anti-corruption agencies in member countries. Based on the provisions of the protocol, most anti-corruption institutions in the nine member countries have made efforts to review the legislation that governs their operations, so as to be in line with the provisions of the protocol, and to suit their country contexts.

Corruption and Economic Crime Act

Overall Botswana's domestic legislative regime to combat corruption is strong, as reflected in very positive scores on anti-corruption perceptions. Botswana for instance ranked 30th out of 178 countries in Transparency International's Corruption Perception Index for 2012 (with a score of 6.5), an improvement of seven places since 2009. This places Botswana as the least corrupt country in Africa for the seventeenth year running.[20] To give more specific examples, according to a 2010 IFC survey only 1.5% of firms report that they are expected to give gifts in order to secure a construction permit, compared to 27% of firms in Sub-Saharan Africa and 23.4% of firms globally.[21] As users of infrastructure services, only 3.7% of firms have had to use bribes to obtain electricity connections and 13.3% of firms were expected to give bribes to secure water connections. These rates are far below the Sub-Saharan African and world averages, although they nonetheless present an unnecessary obstacle to doing business – whether in tourism, manufacturing or industry.

Corruption was long relatively unknown in Botswana's politics and the public service prided itself on being free from corruption. The early 1990s, however, saw several cases of high-level corruption uncovered by three consecutive Presidential Commissions.[22] This prompted the enactment of the **Corruption and Economic Crime (CEC) Act** in 1994, which defines corruption and identifies actions to be taken in case of violation of the Act. This Act established an anti-corruption agency, the **Directorate on Corruption and Economic Crime** (DCEC), which is mandated to fight corruption in all public bodies. Further described in the following section, the DCEC is quasi-autonomous, as it reports to the President, and the Director and staff fall under the Public Service Act.

To further ensure a holistic approach towards fighting corruption, an **amended Corruption and Economic Crime Act** was tabled before Cabinet by DCEC (first in August 2011, and re-tabled in November 2012). The review aims to strengthen and empower DCEC to investigate and deal with all forms of corruption. As such, main amendments would extend the Act's coverage to: abuse of office (also to be added to the penal code); trading and influence; and conflict of interest. The definition of a "public body" would also be widened, from comprising any entity where government shares exceeded 51%, to encompassing all organisations where public money. This would widen the scope of investigations in the public sector. In addition the amended Act may also include, in annex, a blacklist of procurement companies guilty of corruption offences (as suggested by the Public Procurement and Asset Disposal Board, PPADB, to target procurement malpractice).

Furthering this domestic anti-corruption framework, Botswana has taken a firm stance on money laundering. In 2000 the **Proceeds of Serious Crime Act** expanded the DCEC's mandate to include money laundering, and in 2009 the **Financial Intelligence Act** provided a comprehensive legal framework to address money laundering. In addition the development of a **Botswana Anti-Corruption Policy** is on-going, with completion expected by the third quarter of 2013.[23]

Institutional framework for ensuring enforcement of anti-corruption laws and regulations

Oversight agencies in Botswana include the government Implementation Coordination Office (GICO), the Office of the Auditor General, the DCEC and the Office of the Ombudsman (a Vision 2016 objective). **DCEC** is the leading anti-corruption body among these. It has a three-pronged strategy to fight corruption, namely: Corruption Prevention, Investigation and Public Education. Under the first prong, the Directorate has developed a **Checklist for Corruption Prevention Intervention**, which is available on its website to guide public authorities when tackling corruption prevention interventions in procurement and contract dealings.[24] Under the second prong, DCEC assesses all reports on corruption and economic crime and investigates where appropriate; violation of the CEC Act is punishable by law (as detailed below). Under the third prong, DCEC has embarked on an education campaign to raise public awareness about the cost of corruption and is also working with government departments to reform their accountability procedures. Since 2011 topics of corruption are being mainstreamed into various educational programmes.[25]

To enhance their common efforts, the Office of the Auditor General, DCEC and the Office of the Ombudsman recently signed a **Memorandum of Understanding** (MoU) to increase their collaboration in such areas as human resource development, public education and outreach. DCEC has also signed a MoU with PPADB, the Competition Authority and the Civil Aviation Authority of Botswana to jointly fight potential corruption in tendering (including price-fixing, bid-rigging and corruption in market allocation).[26] Other mechanisms for overseeing the management of public resources include the Public Accounts Committee in Parliament, which is effective in its scrutiny of the Executive. In 2011 Anti Corruption Units were moreover established in all Ministries and Local Authorities. Working alongside PPADB, these Units enforce guidelines to prevent abuses in procurement. Anti-Corruption Committees have been put in place alongside these Units in all line Ministries as of 2012.

Meanwhile the **Directorate of Public Prosecutions** (DPP) is in charge of prosecution and adjudicates the cases referred to it by both the DCEC and the police. Before DPP establishment, all cases went to the police which was by consequence overloaded. The case-load for DPP is nonetheless very high, leading to backlogs. For certain complaints or in cases of unreasonable delay in judgement, cases can be transferred to the Attorney General. An electronic case management system would significantly speed up the investigation process, as has been planned for since 2004 – however progress on this has been very slow and the system is not yet operational. Botswana would be advised to rapidly move ahead in this process, as a high backlog in cases can significantly reduce the deterrent effect of corruption cases and penalisation on the future incidence of corruption.

Effectiveness of enforcement of the legislative framework against corruption

Despite these strong functional bases and the improving CPI scores above, there nonetheless is debate over the extent to which the DCEC can be **effective as an anti-corruption commission**. Botswana is somewhat unique among models of anti-corruption commissions: the legislature lacks crucial elements of independence from the executive, since the DCEC reports to the President who approves the release and dissemination of an annual report.[27] This centralized executive authority may limit the DCEC's ability to actively forward cases for prosecution, the DCEC's operations having more heavily focused on prevention and community outreach than on investigative functions since its creation. The Bill proposing a revision of the Corruption and Economic Crime Act may be an avenue for further empowering the DCEC. Botswana could also consider strengthening the independence of different anti-corruption bodies, such as the Attorney General, DCEC and Ombudsman, and further develop mechanisms for assessing and quantifying the effectiveness of anti-corruption laws.

Many of Botswana's other anti-corruption institutions also face some **underlying challenges**. The Office of the Ombudsman, tasked with investigating issues of maladministration, has exhibited growing pains that hinder its effectiveness.[28] Likewise there have been several instances in which trials have been delayed, possibly for political reasons, which has come to affect the conviction rates of the cases brought before the DCEC (while the latter has no role in the prosecution of corruption cases, it is responsible for forwarding attention-worthy evidence to judicial authorities).[29] Cases have also been delayed within the Attorney General's Chamber. Increasing the independence and resources of the DCEC and Ombudsman may alleviate these concerns, as would be highly necessary in order to improve public's perception of the efforts made in combating corruption. Finally laws relevant to anti-corruption that are still missing from Botswana's regulatory framework include a bill on declaration of assets by public officials and MPs, and better regulation of Party funding.[30]

Nonetheless an increasing number of cases has been brought before the DCEC and in turn put forward to the DPP, signalling an improvement of the situation. In 2010, 106 cases were sent before court, of which 79 went before the DCEC and 44 were communicated to the DPP. Of the latter, 30 cases were completed, resulting in ten convictions, five acquittals, and 15 cases withdrawn. Over 2011 the total number of cases referred to courts was similar (110), but 109 were referred to the DCEC (that is 99% instead of 75% referral rate), and 42 were in turn brought before the DPP. 40 of these cases were completed (38% completion rate compared to 28% in 2010), with 23 convictions, 14 acquittals, and three cases withdrawn. These higher rates, not only for referring cases to the DCEC but also for case completion and prosecution, are encouraging signs of increasing efficiency and a stronger stance against corruption and economic crime in the country.

Scrutiny and performance of the public service

> Are civil society organisations and the media free to scrutinize the conduct of public officials' duties? Are "whistle-blower" protections in place? Have standards of conduct by public officials been established and made transparent? What measures are used to assist public officials and to ensure that expected standards are met, including in procurement processes?

Improved media scrutiny and whistleblower protection

As mentioned previously, civil society organisations and the media are relatively **free to scrutinize** the conduct of public officials' duties in Botswana: freedom of association is guaranteed in the Constitution and civil society is active through a number of associations such as BOCONGO, and Ministers and the Permanent Secretaries converse with the public about their performance through the media as a means of public accountability. At the beginning of every year, Ministers and Permanent Secretaries also highlight their strategic plans through the press, and the media generates debates about achievements and progress reports published quarterly.[31] These initiatives have led ACoP to also commend Botswana for its exemplarity in terms of its public reporting system and the transparency of standards of conduct by public officials.

Although by 2010 Botswana still had no legislation providing for a system of **whistleblower protection**,[32] progress is being made in this domain also. Section 14.4.5 of the BOCCIM/DCEC Code of Conduct for the Private Sector defines the whistleblower concept, and warns that retaliation against such an employee will not be tolerated. The Code also notes the need to amend the Corruption and Economic Crime Act to provide for whistle blowing.[33] In this vein, in May 2011 Botswana's Acting Minister of Defence, Justice and Security stated that the country would be drafting of a Whistleblower Bill, which would provide for the protection against victimisation of persons who make disclosures on acts of corruption and economic crime.[34] By November 2011 the government had begun the process of drafting Whistle Blowing Legislation, with the help of the Australia Attorney General.[35] Yet although by August 2012 the Act was ready for tabling before Parliament, this move is still pending as of early 2013; it would be timely both to renew momentum on this front, and to ensure that any necessary provisions are also reflected in the forthcoming iteration of the Corruption and Economic Crime Act.

Tackling corruption is on the demand side, via co-operation with the private sector

The **Business Action Against Corruption** (BAAC) initiative embodies the principle of tackling corruption not only on the supply side (in the public sector which may impose bribes), but also on the demand side (in the private sector which requests services in exchange). Botswana has taken leadership on the BAAC at the regional level: set up in Johannesburg in October 2005 for application Africa-wide, the BAAC is piloted by BOCCIM and the DCEC. The BAAC organisational strategy is to set up joint business-government structures to simplify the regulatory environment and thus prevent corruption.[36]

In this perspective, in 2006 DCEC and BOCCIM began jointly developing a **Code of Conduct for the Private Sector**. This guidance includes standards and principles for the conduct of business activities in the market place, and addresses corrupt behaviour and short-termism as well as terms of employment. The importance of quality consumer service and of developing transparent customer care standards is also emphasised, as is the practice of fair competition. Code implementation will require employee training and internal controls within businesses, and regular monitoring and evaluation of the integrity of business systems and processes.

The Code of Conduct is designed to complement guidelines that already exist for businesses in Botswana, including on Responsible Business Conduct. As such it does not address the issues of corporate governance, for which Botswana refers to the comprehensive coverage provided South Africa's King I, II and III reports, and by the United Kingdom's Cadbury Reports. However as noted by the Public Enterprises Evaluation and Privatisation Agency (PEEPA), Botswana still lacks a set of institutionalized **standards of practice for State-Owned Enterprises**. Predictability and transparency therefore remain very discretionary – the case of the "BDC Saga" (wherein the Botswana Development Corporation faced largely mediatised allegations of corruption in the tender award of a glass manufacturing project) is a case in point of poor

SOE governance. Likewise uncovering performance and revenue details is not mandatory for SOEs in Botswana. There is no transparent framework for assessing and benchmarking the return on assets secured by SOEs, and for assessing whether these dividends are reaching forecasted levels. Given the predominant role of SOEs in Botswana's economy (especially in infrastructure markets, as discussed in the following chapter), Botswana would be strongly advised to develop a stringent **code of corporate governance dedicated to SOEs.**

Transparency in procurement procedures

The prudent use of public finances is particularly essential in the award of **large-scale procurement and privatisation contracts**. As put in Section 12 of the DCEC/BOCCIM Code of Conduct (on procurement and tendering), "few areas offer [more] opportunities for unethical conduct".[37] Sub-section 12.3 specifies different ways in which procurement can be corrupted by procurement entities, including by: tailoring specifications to favour particular suppliers; restricting information about contracting opportunities; claiming urgency so as to award the tender without competition; disqualifying potential suppliers through improper prequalification; and improper bid comparison. On the supply side, the Code also warns that suppliers can collude to fix prices, offer bribes, or promote discriminatory technical standards. Unethical conduct that takes place after the contract has been awarded is also detailed. The Code requests subscribing private sector companies to forswear engaging in such practices, and notes that some of its provisions may require changes in the relevant legislation (such as the Corruption and Economic Crime Act 1994 and the Public Procurement and Asset Disposal Act). PPADB has notably proposed that the forthcoming Corruption and Economic Crime Act include a frequently-updated blacklist of government contractors.

On the implementing front, Botswana's **Public Procurement and Asset Disposal Board** (PPADB) and **Public Enterprises Evaluation and Privatisation Agency** (PEEPA) play a large role in guaranteeing the transparency of tendering procedures – as discussed in detail in Chapter 5 below. The PPADB Regulations moreover establish an **Independent Complaints Review Committee**, to which complaints submitted to the PPADB can be referred. This includes allegations of improper conduct of the procurement process; the Independent Committee may refer or report any aspect of its decisions to the Attorney-General or the DCEC for further action or inquiry. If any allegation of fraud or bias is proved by the Independent Committee during the course of its enquiry, parties found guilty can be excluded from the procurement process.[38] Since the Committee's establishment in 2004, multiple PPADB decisions have been challenged in court via this structure.

Overall transparency in PPADB however remains unsatisfactory, as was noted by BOCCIM before Botswana's most recent HLCC meeting in May 2012: although the PPAD Regulations state that PPADB must make procurement plans, the PPAD Act itself is silent as to the publication of these plans. This creates concerns about delivery shortfalls, lack of implementation and poor procurement planning by some government departments, which can hamper effective private sector participation in procurement. PPADB has since been compiling procurement plans from across Ministries to inform the delivery of its overall mandate; incorporating an explicit requirement to publish these plans within any future update of the PPAD Act would be an important step forward in terms of transparency and accountability.[39]

Standards for public service integrity

Botswana's **Public Service Charter** contains standards by which public officials are to be held. There are eight such principles, which go beyond the standard requirements of accountability, transparency, and freedom from corruption, to include: regard for the public interest; neutrality (including not only political neutrality but also equality of treatment, and the ability to understand policies, explain them to the public, and implement them); continuity (operating in a regular and reliable manner, so that decision-making and services are provided on a continuous basis); remaining informed of all matters pertinent to one's service; and due diligence.[40]

To improve the efficiency of public servants in catering to consumer needs, the **Directorate of Public Service Management** (DPSM) has additionally released the **Botswana Customer Service Standards Framework**, which gives guiding principles and standards for public service (such as freedom from corruption, transparency and due diligence), and proposes ways of monitoring these standards – such as internal and external audits, and customer satisfaction surveys.[41] Assignment studies are also performed by corruption prevention officers to identify corruption opportunities in institutions, and advise on steps to be taken to prevent or minimize occurrence of corruption, which include amongst others implementation and compliance with internal controls and other regulatory instruments.

National guidelines to enforce accountability and integrity in the civil service are often complemented by guidance and **charters at the level of individual public institutions**. For instance in 2010 the Botswana Unified Revenue Service (BURS, in charge of all tax assessment and collection) launched its Customer Service Charter, which spells out the minimum standards to meet in providing services as well as the rights and obligations of taxpayers; and a set of Anti-Fraud guidelines.[42]

Institutional framework for public performance management

The African Community of Practice on Managing Development Results (ACoP) notes that while the institutional framework for establishing, monitoring and controlling performance in public service delivery is generally weak in Sub-Saharan African countries, Botswana has taken effective steps in the following areas: institutionalizing performance measurement and management; establishing service standards; establishing clear and actionable lines of accountability for its public service; and embracing reform efforts. For example, management structures have been put in place to facilitate and to provide structures for consultation, performance reviews and reporting. Relevant structures include: **Ministerial Performance Improvement Committees**, which are chaired by the Permanent Secretary and review the performance of Ministries on a quarterly basis; a **Performance Improvement Committee of Permanent Secretaries**, which groups all Permanent Secretaries in view of experience-sharing on common performance management challenges; **Performance Improvement Co-ordinators** attached to each Permanent Secretary; and **Work Improvement Teams** (WITs) in each Ministry, which facilitate identification and problem-solving of operational bottlenecks for timely delivery of services.[43]

Horizontal co-ordination of associated regulatory reforms at the cross-ministry level is facilitated by the **Public Service Reforms Unit** (PSRU), under the Office of the President, which is tasked to facilitate and oversee the implementation of reform processes across line ministries in order to improve productivity and service delivery. Specific functions include: monitoring and evaluation of public service reform programmes; research and development as well as capacity building in Ministries; and reforms advocacy to improve productivity and promote better management of service standards in the public service. DPSM also has responsibilities in monitoring performance management in the public service, as well as designing training programmes, collecting best-practices and developing guidance for public officials. All ministries and departments also send bi-annual reports on their performance, based on performance indicators, to the National Strategy Office.

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Chapter 5

Infrastructure Investment Framework in Botswana

Infrastructure, as both a feature of the enabling environment for investment and as an investment opportunity, presents valuable opportunities for stimulating foreign and domestic investment on a large scale – provided that adequate frameworks for regulation and private participation are in place. This chapter first highlights the strategic importance of infrastructure development for Botswana (including through cross-border projects and regional co-operation), given the country's geographic constraints and small domestic market size. It then provides an overview of the state of existing infrastructure networks in Botswana – in power, transport, ICT, and water – and of the degree of private participation in these markets. Current legal and institutional frameworks for encouraging greater private participation in infrastructure are then investigated, including recent momentum in the area of PPPs and privatisation. Finally the issue of pricing and regulation in infrastructure markets, which can strongly impact not only on end-user affordability but also the attractiveness of infrastructure projects for private investors, is analysed.

Strategic importance of infrastructure for investment and competitiveness in Botswana

Facilitation of doing business through basic infrastructure services

Sound infrastructure plays a crucial role in **developing the competitiveness and export potential of domestic enterprises** across all sectors of the economy, and including SMEs. Botswana's Local Enterprise Authority (LEA) found that limited access to infrastructure was the second-greatest obstacle to doing business for SMEs in 2009, after lack of finance.[1] As regards the needs of largest investors, the World Economic Forum's GCR ranks Botswana 78th out of 148 countries in terms of the quality of its overall infrastructure for 2013-14 – a clear decline from the 2011-12 ranking (see Table 5.1). Water infrastructure, while infrequently taken into account in competitiveness surveys, also continues to pose challenges.

Nevertheless and despite this drop, "inadequate infrastructure financing" ranks only sixth overall in terms of the most constraining factors for doing business in the country according to the GCR.[2] Although surveyed business executives deemed **air transport, electricity supply and internet services** to fall short of international standards (and these have declined in ranking since 2011), **roads, railroads and mobile phone services** were viewed to be of relatively good quality. These contrasted findings suggest that a carefully targeted approach is required to address Botswana's infrastructure needs in order for the country to become globally competitive.

Table 5.1. **Botswana's Infrastructure Competitiveness, 2011-14**

Infrastructure Indicator	2011-12: Score out of 142 countries	2012-13: Score out of 144 countries	2013-14: Score out of 148 countries
Quality of overall infrastructure	57	64	78
Mobile telephone subscriptions	45	19	20
Quality of road infrastructure	53	55	59
Quality of railroads	55	55	59
Quality of electricity infrastructure	101	104	113
Quality of air transport infrastructure	93	96	94
Fixed telephone lines	105	101	101

Source: Global Competitiveness Report 2011-12, 2012-13, and 2013-14, World Economic Forum, Switzerland.

Geographic constraints and implications for regional co-operation

Botswana's guiding strategies for development and diversification (including Vision 2016 and the EDD Strategy) highlight the country's **geography as a binding constraint that must be tackled through regional co-operation** on infrastructure investment. Due to Botswana's small and sparse population, the revenue constraints which commonly hamper investment prospects in African countries are compounded by the limited size of the domestic market. Market size makes it essential for Botswana to co-operate on cross-border investment projects, where cost efficiency and economies of scale can be reached, and where there is more space for attracting private investors to compete in infrastructure markets. In addition to making infrastructure investments more profitable through inter-connections, regional co-operation is also crucial because, as a land-locked country, Botswana depends on neighbouring countries for water resource management, electricity imports, and connection to the sea through railways and roads.

A number of **cross-border power, water and transport projects** are already underway in Botswana (including co-operation with neighbouring countries to tap into undersea fibre optic cables). A few examples include:

- In the water sector, Botswana is a member of the Okavango River Basin Commission (OKACOM), the Zambezi River Commission (ZRC), and the Orange-Senqu River Commission (ORASECOM, which involves joint management of the Orange-Sengu River Basin with Lesotho, Namibia and South Africa). Negotiations have notably been concluded with the seven ZRC member states to draw about 495 million cubic metres of water per year from the Chobe-Zambezi Rivers system.
- In the transport sector, emphasis is put on developing transport links with trade partners in particular – such as through the Kazangula Bridge project, which aims to develop a rail and road bridge linking Botswana and Zambia through the Kazangula border.[3] Botswana has also secured land from the government of Namibia to develop the Dry Port Facility at Walvis Bay through a 50 year lease, which could provide both countries with a gateway to countries along the Atlantic Coast in Africa, Latin America, Europe and North America.
- Under the Botswana Integrated Transport Project (for which the Draft National Integrated Transport Policy was completed in 2012), sector studies have furthermore been undertaken on Regional Integration of Road and Rail Corridors, on multimodal transport in the Greater Gaborone area (aimed at addressing traffic congestion in Gaborone), and on a National Intermodal Transport Master Plan. Three traffic circles are due to be upgraded to split-level junctions by 2015, and the airports at Kasane and Maun are being upgraded in order to stimulate investment and tourism.

- In the energy sector, the Mmamabula Energy Project (MEP) was intended to produce an integrated coal mine and power station. The project was planned to take place close to Botswana's border with South Africa, enabling the CIC Energy Corporation to serve as an independent power provider (IPP) in both countries. CIC had been engaged in power purchase agreements (PPAs) with the two national utilities (Botswana Power Corporation and South Africa's Eskom). However the MEP never got off the ground. The development of the Integrated Resources Plan 2010 (IRP 2010) by South Africa introduced challenges in the development of the project, as this Plan excludes foreign based IPPs for coal fired power generation such as the MEP. Moreover there was disagreement over the pricing of the Power Purchase Agreement with Eskom.

Such regional co-operation therefore poses important questions in terms of inter-government co-operation, to ensure that policy frameworks in all countries involved are supportive and in agreement. Despite such mixed results, regional co-operation on this front is set to increase further with the implementation of projects identified within the SADC Regional Infrastructure Development Master Plan (RIDMP, released in late 2012).

Moreover the forthcoming infrastructure pillar of the SADC Regional Investment Policy Framework, towards which Botswana actively contributes and which the OECD is currently developing together with the SADC Secretariat, should facilitate the necessary co-ordination of infrastructure investment policies across countries of the region.

Overview of state of key infrastructure sectors

Botswana's greatest investment needs are in the power sector, which requires approximately USD 431 million a year for capital expenditure, operations and maintenance. Water and sanitation has the second biggest needs, at USD 138 million followed by transport at USD 107 million and ICT at USD 70 million.[4] In total this amounts to 7% of GDP – a very low share compared to other countries in the region, but a significant investment requirement nonetheless.

Current state and accessibility of energy infrastructure in Botswana

The **Botswana Power Corporation** (BPC) is a wholly government-owned utility with sole responsibility for energy generation, transmission and distribution. It also implements the government's rural electrification schemes. In 2007, the government amended the Electricity Supply Act to allow **Independent Power Producers** (IPPs) to participate in the investment and supply of electricity. At the moment there is only one IPP operating, APR Energy which operates a 70 MW diesel emergency power plant at Matshelagabedi. The IPP framework functions according to the **single buyer**

model, whereby the contractor sells the power generated to BPC, who retains monopoly of the power transmission and distribution segments.

In the framework of the EDD, government hopes to encourage further independent provision – not only in the energy but also in the water sector, which currently has no IPPs. As discussed in late May 2012 between MTI and MMEWR, both BPC and the Water Utilities Corporation (WUC) apply EDD preference margins when purchasing electricity and water from small-scale IPPs. BPC has since submitted an analysis of the financial implications of the application of these preference margins to government, which is under review.[5]

As of 2010, 60.7% of the population had **access to electricity**.[6] The current electrification network is densely concentrated in the eastern part of the country and does not reach more sparsely populated areas in the central and western regions of Botswana. According to the 2010 Statistical Yearbook, mining operations use up the most electricity (33%), followed by commercial users (28.5%); then domestic (25%); government and civic (11.5%). Under the 2009 **National Energy Policy**, the government has committed to: absorbing the capital costs of grid extension to rural areas; subsidising renewable energy to reduce the costs of accessing electricity; and addressing the problems of distributing electricity to the widely dispersed population.[7] Various pricing schemes, such as the **National Electricity Standard Connection Cost** (NESC) programme, attempt to facilitate the connection of rural populations to the national grid.

Up to now, approximately 93% of Botswana's **electricity has been imported** from its neighbours: in 2011, 74% of energy generation came from South Africa and 19% from Zambia and Zimbabwe, with only 7% derived from local sources.[8] Botswana's heavy import dependence for energy has led to problems in energy supply in the past, especially since energy pressures in South Africa (including capacity constraints on the South African power utility Eskom) have reduced the amount of electricity available to Botswana since 2007.[9] Beyond its implication on the current account balance, these low levels of domestic power generation considerably challenge the competitiveness of enterprises. Electricity shortages undermine profits both as a result of financial losses (3.7% of annual sales are lost due to electrical outages) and of the extra costs imposed on firms that resort to generators (34.5% of firms own or share a generator). Such costs are particularly detrimental for SMEs. SWOT analysis conducted in the context of the EDD Strategy identified both the high cost of electricity, and disruptions in supply, as central weaknesses that threaten the efficient and rapid roll-out of long-term diversification and growth objectives.

In spite of this unstable situation, Botswana currently spends only about 1.5% of GDP on the power sector (1.5%), which is on the lower end of the scale for most African countries.[10] Most of this amount is derived from public sources, and has historically been directed towards **operations and**

maintenance rather than capital expenditure. This has resulted in a stagnation of generation capacity for several years (at 132 MW, essentially derived from a single power station at Morupule – by contrast to an average capacity of 798 MW for middle-income African countries).[11] To provide a back-up during peak times, the government is now meeting the operational costs of two **emergency power plants** with a combined output of 160 MW, at Orapa and Matshelagabedi. BPC has nevertheless experienced **power shortages** due to low capacity at Morupule (which it manages), low electricity imports, and low energy availability from Orapa. This has led to load shedding during peak hours.

To tackle this capacity challenge, BPC has been overseeing the construction of a new 600 MW power station, **Morupule B**. Morupule B has been taken over for commercial operation and defects related to construction are being corrected. In addition **co-operation on the regional level** can help: Botswana is a member of the SADC Power Pool, which facilitates power sharing among member states, and also of the SADC Regional Electricity Regulators Association. government has also been considering the potential for **coal reserves** (an estimated 212 billion tonnes, about 80% of the coal resources in Southern Africa) for mitigating the energy crisis in the short run.

As virtually all of locally-produced electricity (approximately 87%) is generated from coal and peat, with none produced from hydro and negligible amounts from renewable resources, some policy measures have also been put in place to promote **renewable energy**. Botswana has particularly strong potential in solar energy, as it receives more than 300 days of sunshine a year, one of the highest rates in the world. Moreover, a 2009 government feasibility study showed that there is good potential for biofuels production, particularly from ethanol and jatropha.[12] BPC, through the subsidiary **BPC-Lesedi**, already provides solar-based energy services to end-users, mainly in rural areas. The users assume the capital costs, which are partly subsidized by the government.

While this has presented an opportunity for private sector participation in the provision of renewable energy services in rural communities, increasing space and flexibility for IPPs in the network, and incentives such as pricing regulations for biofuels and feed-in tariffs, remain necessary to help attract IPPs into this line of electricity generation. In this view a **Renewable Feed-In Tariffs (REFIT) policy** was approved in June 2012, which includes provisions for: subsiding renewable energy production; obliging BPC to purchase electricity produced from renewable sources at cost-reflective prices; and increasing production and grid connection opportunities for small renewable power generators, beyond the solar industry alone. However as of 2014 the REFIT Policy is still to be implemented owing to the currently low tariffs (non cost reflective) which require significant government subsidies, and which place renewable energy at a cost disadvantage vis-à-vis conventional energy sources.

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Current state and accessibility of ICT infrastructure in Botswana

There are currently three operators in Botswana's ICT sector: **Botswana Telecommunications Corporation** (BTC); Mascom; and Orange. BTC is a parastatal wholly owned by the government and the country's only fixed-line service operator. Nevertheless, in line with further liberalisation of the telecommunications market in Botswana, the regime does allow another two operators to provide fixed line services. Indeed, BTC's monopoly status was removed by revision of the Telecommunications Act (Act 15 of 1996), allowing independent operators to enter the market. This revision also ended BTC's dual role as operator and regulator: the Botswana Communications Regulatory Authority (BOCRA) has taken over its regulatory functions, and since the Communication Regulatory Authority Act 2012, BOCRA has complete authority to license all operators. This is an important step towards more independent regulation of the market, and may partially explain the sound financial performance of BTC to date. BTC participates in BEDIA trade missions and provides technical advice on Ministry of Trade negotiations. BTC was indeed one of a handful of public enterprises that **made a payment dividend** to the government in 2011, making it autonomous from **government subsidies.** It already espouses corporate management principles, and its privatisation is planned for within the draft Privatisation Master Plan II (for 2012-2017).

In recent years government spending has allowed concrete gains in terms of access and development of the ICT network. Botswana's mobile telephone penetration rate already exceeded 150% by mid-2011 and by 2009 99% of the population had GSM coverage (higher than the middle income country average of 85%).[13] Despite these advances Botswana however continues to lag in the area of **individual usage and affordability of ICT**. Rates of computer ownership and internet penetration are very low compared to mobile phone usage. In 2008 internet penetration stood at only 4.9% of households, which was just above the Sub-Saharan average of 4.5% but below rates for Namibia (12%) and Malawi (7%); this rate had only risen to 6% by 2012. Likewise, fixed telephone penetration was only 8% in 2012. Moreover monthly internet subscriptions are high compared to other SADC countries.

The quality of ICT infrastructure has notably improved in recent years due to investments in submarine fibre optic cables: the **East Africa Submarine Cable System** (EASSy, an investment of 70 million pula or USD 8.7 million); and the **West African Cable System** (WACS, an investment of 250 million pula or USD 31 million). BTC is part of the WIOCC consortium which owns the majority of shares (29%) in the EASSy project, and negotiations are underway with Namibia's Telecom to share the landing costs of the WACS (as Botswana would access WACS through Namibia). Comparing the 2012-13 GCR to the previous year's report reveals that Botswana has overtaken Senegal, Morocco, Namibia, Kenya and Gambia in terms of ICT competitiveness. This remains the case in the 2013-14 report. Tapping into these cables will allow Botswana to access high-speed international bandwidth at lower cost than before, but only provided that the **domestic fibre backbone** is expanded in order to easily access the cables. Realising this impediment, the government has allocated 50 million pula (approximately USD 7 million) in the 2012-13 budgetary cycle in order to upgrade the domestic bandwidth.[14] Strengthening the backbone would also boost the service sector in Botswana, by facilitating the export of ICT services.

To improve **access to ICT services** across the whole population, in 2010 the government launched the second phase of its Rural Telecommunications Development Programme (Nteletsa II), which targets 197 villages divided into four districts of the country. The existing operators have been commissioned to build and operate networks and telecentres in these villages, which are then managed by the local communities. As of November 2012, all 197 villages had been connected with data and internet as well as voice services, and the upgrading of older infrastructure existing in 85 other villages was nearing completion.[15] Next steps should include adapting these telecentres to the specific needs of villages and their populations.

Current state and accessibility of transport infrastructure

As noted **by Vision 2016,** Botswana is strategically located in the SADC region and can easily access the trans-Kalahari highway, the Maputo corridor, and other southern African transport networks. Botswana straddles many **regional transport corridors**, such as the Walvis Bay corridor and the North-South corridor. Botswana also hopes to become a country of choice for **air travel**, given that air transport is crucial for the development of tourism and other service sectors. Currently Botswana has four major airports and has negotiated 21 Bilateral Air Service Agreements under the Open Skies Policy (of which eight had been signed by end 2012).

The **network of Botswana Railways** (the country's monopoly provider for the rail sector) extends for 640 km on its main line, with two branch lines of 174.5 km and 16 km. Alongside this, the Ministry of Transport maintains 8 916 km of road overall.[16] The paved **road network** has been expanded in recent years, with the completion of over 300 km in local roads projects. Condition surveys for maintenance works are carried out every three years based on annual periodic maintenance plans that are developed and implemented under recurrent expenditure; as a result 80% of paved roads are in good or fair condition while 73% of unpaved roads are in good or fair condition.[17] Road congestion in Gaborone has dramatically decreased as urban roads have been recently refurbished, and they are now in exceptionally good condition (although urban sprawl does make the road network in the Gaborone area larger and costlier to maintain than it could be).

Despite this positive situation, there however remains a need to improve the domestic air, road and rail networks. In the air sector, the declining number of flights in recent years suggests that domestic or international demand for flights from Botswana is low (especially with the proximity of OR Tambo Airport in Johannesburg, which connects Southern Africa to all major global cities, only a 45 minute flight away from Gaborone). The country's air transport sector thus remains far below cost-recovery: Air Botswana suffered net losses of 45 million pula (USD 5.6 million) in 2010, which followed on several years of losses in the 2000s. These losses occurred despite heavy subsidies from the government and have led to unsuccessful attempts at privatization of the airline. Meanwhile road and rail are also particularly costly in light of the country's land-locked nature: to mitigate the resulting high costs for imports and exports of goods and to maintain competitiveness *vis-à-vis* neighbouring countries, subsidies are prevalent across transport sub-sectors (particularly rail).

As for most other areas of infrastructure, the **record of private investment and management in Botswana's transport sector is limited**. There have been no transport PPPs to date and projects are typically financed by debt from the government. The Ministry of Transport has oversight over: roads (both capital development and services); railways, through the parastatal Botswana Railways; and civil aviation, through Air Botswana which is also a parastatal and which dominates the aviation industry. Since 1999 Botswana Railways has been opening up to other entities (engaging with Transnet Freight Rail for a joint venture on the Gaborone Container terminal for instance), and the 2004 amendment of the Botswana Railways Act allows Botswana Railways to engage in commercial operations and to participate in PPPs. However the railroads sector remains a de facto monopoly – especially as construction and maintenance of the sector is closed to both foreign and domestic private investment.

A strategic and co-ordinated approach to strengthen these national networks and their inter-linkages, together with regional connections, will be essential to facilitate growth and trade across all sectors of the economy. First steps are being taken at cross-border facilitation of trade, including plans to upgrade the Lobatse Pioneer border post and to improve its operations, in partnership with BURS and the Department of Immigration. Physical infrastructure will have to keep up with such efforts as well. Creating more space for private sector participation in these domains will be an important step to take. Expansion of the coal industry, for instance, will require further development of railway infrastructure, particularly the Trans-Kalahari and Botswana-to-Mozambique-via-Zimbabwe railway projects. This necessity has been recognised by government, which aims to begin exporting coal in 2013. Transport infrastructure is of course equally crucial for the cost-competitiveness of non-extractive industries, particularly agriculture and tourism – where secondary feeder roads, in addition to central roads and rail, have a central importance.

Current state and access of water infrastructure

85% of Botswana is covered by the Kalahari,[18] making the area hard to navigate, while southern parts of the country lack water resources. Nonetheless water supply is not as much of a hindrance for enterprises in Botswana as in other developing countries. A 2010 Enterprise Survey for Botswana found that manufacturing firms experienced on average 3.2 days of water shortages a month, compared to 7.3 days in other Sub-Saharan African countries and 6.2 days globally. The agriculture sector however faces more problems, as farmers depend heavily on boreholes which often have low capacity and uptake compared to farmers' irrigation needs. There have been some concerns that the connection charges are too high and act as a deterrent to users wanting to connect to piped water systems.[19] There have also been concerns about **water access issues** for the Bushmen, in a context of depleting water resources in the Kalahari. Moreover Botswana faces an impending reduction in the water volumes its dams, in large part due to climate change, and also since most of Botswana's only perennial rivers (Chobe and Okavango in the North) have their sources outside the country.

Establishing sustainable water supply for domestic, industrial and personal needs, as well as covering isolated communities, are targets set out by Vision 2016. Moreover in November 2012 government presented a **National Water Policy** to provide a long-term framework for addressing water resource management and for balancing various public needs for water. However this policy has been approved by Cabinet but is still to be tabled before Parliament, which is expected to be done by end of 2014.

The **Water Affairs Department** in MMEWR is in charge of overall sectoral planning for water. The **Botswana Water Utilities Corporation** (WUC), a parastatal wholly owned by the government, is meanwhile mandated to supply and distribute water, undertake water development projects, and engage in regional water sharing agreements with Botswana's neighbours, particularly South Africa. Until recently, WUC's jurisdiction was in urban areas, while the Department of Water Affairs (DWA) and District Councils distributed water to rural areas. Under the **Water Sector Reforms Programme**, WUC has taken over the water supply functions from the DWA and the District Councils. As of November 2012, 454 out of 540 villages in Botswana had been taken over by this reform programme and 342 villages had migrated to the WUC billing system. By 2014 all villages previously supplied by the DWA and District Councils have been taken over by WUC, the last take-over having been completed in April 2013.

As a result, WUC now holds a **virtual monopoly** in the sector. This creates a vast body that will be in need of firm rationalisation, including as concerns tariff-setting decisions. There is thus no private sector participation in the water sector currently, although under the EDD efforts are being made to extend the single buyer model to water provision. The government should indeed consider how to more formally integrate small-scale water service providers into national distribution channels.[20] With few possibilities for also dams and limited borehole capacity for agriculture usage, Botswana has adopted of strategy of regional co-operation for managing water resources (see above).

Prioritisation and financing of infrastructure needs and priorities

> What processes does the government use to evaluate its infrastructure investment needs? To what extent are infrastructure development plans aligned with strategic needs of specific sectors of the economy, in view of their potential for investment attraction or export competitiveness? What sources of finance can be mobilised for infrastructure investment? What regulations are in place for unlocking novel sources of infrastructure financing and for facilitating investor access to these?

Insufficiently strategic approach to infrastructure development

Meeting domestic infrastructure needs is high on the government agenda, as is reflected in **budgetary allocations**. 26.7% of the 10.06 billion pula (USD 1.26 billion) Development Budget for 2012-13 was thus allocated to MMEWR, for projects in: emergency power supplies including the Morupule B Power Station; renewable energy and rural electrification; and water planning and development, including supply to major villages. An equally significant share (20.9%) of this Budget was allocated to the Ministry of Transport and Communications to cover road and airport projects, as well as roll-out of the e-government programme. The third-largest share of the budget was granted to the Ministry of Local Government, especially for village infrastructure projects.

The priority placed by the government on infrastructure is also reflected in **national diversification and development strategies**. One target of Vision 2016 is thus for Botswana to enter the information age by 2016 on equal footing with other countries and to become a regional leader in the production and dissemination of information. The Vision also commits to tackling the high cost of utilities compared to neighbouring countries and the significant variation in access to sanitation between rural areas (where the access rate is 32%) and urban areas (where 77% of the population has access). In addition Vision 2016 recommends making use of the Central Bank's strong reserves of foreign currency to support investments in physical infrastructure – thus better distributing the benefits associated with Botswana's diamond revenues.

Meanwhile NDP 10 repeatedly highlights the strategic importance of enhancing transport infrastructure and electricity networks, and the EDD Medium to Long-term Strategy sets measurable objectives for improving the quality and availability of infrastructure and utilities. These measures include increased infrastructure lifespan, reductions in utility cost, and equitable distribution of infrastructure and utilities. Associated EDD initiatives include promoting private sector investment in infrastructure, enhancing use of PPPs, promoting market user charges (such as toll gates for roads), and promoting maintenance of infrastructure.[21] The Strategy also sets the objective of improving the utilisation of ICT, including by auditing ICT needs in the country, encouraging private sector driven ICT investment, and developing e-government and e-commerce systems. ICT is notably expected to boost business process outsourcing (BPO) and to facilitate the export of services in the region.

Yet despite the prominence of infrastructure development both in national development strategies and in budgetary allocations, infrastructure spending and objectives are not directed in a sufficiently strategic manner so as to best support the growth of priority export and investment sectors. Botswana **has no specific infrastructure master plan** which can simultaneously address the inter-linkages among different infrastructure sub-sectors (for instance the inter-dependencies between power pools or submarine IT cables, and the country's rail and road network). A dedicated infrastructure plan would also allow Botswana to better identify infrastructure priorities, according to the specific needs of industries that have strong potential for investment attraction and/or export competitiveness (such as BPO or tourism). government would be well-advised to implement the resolutions of the 2012 NBC, in which Botswana's private sector calls for the elaboration and implementation of a national infrastructure development and maintenance strategy which would notably ensure that the selection of public infrastructure projects is aligned with economic growth objectives. Such a strategy would also help guide provision of appropriate human resources to facilitate efficient operation of priority infrastructure projects.

Heavy public sector bias in financing infrastructure development in Botswana

Botswana, like most SADC countries, faces a considerable **financing gap** for meeting the infrastructure demands of its population and industry. Participation by the private sector in infrastructure investment is becoming increasingly necessary to fill this gap. Yet up to now, most of the spending on Botswana's infrastructure is from domestic sources, with very little from private investors, emerging market financiers or development assistance. Moreover the government has not to date resorted to financial instruments such as equity and bond issues, commercial bank loans, or corporate bonds. government has rather provided guarantees for infrastructure projects, such as the North-South Carrier system (see the sub-section on water below), to facilitate investment.

In the aftermath of the financial crisis which forced Botswana to take a USD 1.5 billion loan from the African Development Bank (increasing the country's external debt to GDP ratio), the government however expects to resort to guarantees and domestic borrowing to finance future capital expenditure. Steps should be taken to balance the need to mitigate certain commercial risks (such as through revenue guarantees for investors) and the need to limit their burden on the public purse. Reaching this balance can help reassure investors, who may otherwise be concerned about the government's ability to afford certain projects put up for tender.

In addition to budgetary allocations, it is therefore necessary – and feasible – for Botswana to explore the possibility of tapping into **additional financing sources** to fund its infrastructure programme. government could learn from experiences in other African countries in this domain: for instance Namibia has successfully issued corporate bonds, South Africa has issued municipal bonds and equity, and Mozambique, Uganda and Zambia among others have issued bonds for power sector projects.[23] Moreover Botswana's investment-grade credit rating makes it easier to access financing from markets and international financial institutions, and also sends a positive signal to potential investors about the soundness of the financial and political system. In addition, if well-regulated Botswana's **domestic capital market and finance sector** can provide a potential pool of funds that can be tapped into for infrastructure projects (see Box 5.1). Beyond these efforts at national level, **expanding market size beyond the domestic economy** and taking part in cross-border infrastructure projects will also be crucial for securing the necessary long-term finance.

Box 5.1. **Summary of Botswana's domestic capital market and finance sector**

Botswana's banking sector is well-developed and non-banking financial institutions (NBFIs, including pension funds and social security industries) are also making headway. These are respectively regulated by BITC and by the Non-Bank Financial Institutions Regulatory Authority (NBFIRA). As of August 2012 **total assets held by the banking sector** amounted to 56 831 million pula (USD 7 million) for commercial banks, and 61 290 pula (USD 7.6 million) for Bank of Botswana. Meanwhile **total assets of pension funds** – of which 70% must by law be invested within the country – amounted to 45.7 billion pula (USD 5.56 million) by September 2012, a 15% increase over the previous year.[1]

The **Botswana Stock Exchange** (BSE) also plays an important role in the country's financial sector. Initially set up as an informal share market in 1989, the BSE was established in 1995.[2] Today it deals with both equities and fixed-income securities, offers bonds with maturities of 2-, 5-, and 12-years since 2003, and undertakes some dual listing with Johannesburg Stock Exchange (JSE). In 2010, the BSE additionally introduced trading of an Exchange Trade Fund – a basket of shares that trade as a single security – and is set to shift to automated trading in 2011.[3] Despite a low turn-over ratio (0.2%), with average aggregate returns of 24% in the past 10 years the BSE is one of the best performing stock exchanges in southern Africa and the third largest in terms of market capitalisation. Although the BSE was hit by the 2008-9 financial crisis (market capitalization of listed domestic firms fell to its lowest level since 2006), the number of listed foreign companies (11) did not change, and the Foreign Company Index even increased by 23% during 2010.

Critical to the proper functioning of these financial institutions is the overall **co-ordination framework of the sector**. In the non-banking sector of many African countries, different markets (capital, pensions, and insurance) are either overseen by the central bank, or regulated by separate supervisors (such as external agencies, or even the ministry of finance or independent securities commissions). In Botswana (as in South Africa and Namibia, but unlike most African countries) the institutional supervision framework for different financial markets falls under a single unified regulator. This is a commendable step towards developing a sound institutional framework for the regulation of financial markets, and can reinforce the country's regional value-added in terms of financial services.

1. Republic of Botswana 2013/14 Budget Speech. By Honourable O.K. Matambo, Minister of Finance and Development Planning, 4 February 2013.
2. Irving, Jacqueline, Regional Integration of Stock Exchanges in Eastern and Southern Africa: Progress and Prospects, *IMF Working Paper*, WP/05/122, 2005, Appendix.
3. "Botswana 2011 Investment Climate Statement", Bureau of Economic, Energy and Business Affairs, US Department of State, March 2011. Available at: *www.state.gov/e/eeb/rls/othr/ics/2011/157825.htm*.

Source: Bank of Botswana, Financial Statistics, September 2012. Data provided by Ministry of Finance and Development Planning and NBFIRA.

Spectrum of public and private provision of infrastructure

> What procedures and principles exist to guide the choice on the extent of private participation in infrastructure? What efforts are taken to create a competitive environment in different infrastructure sectors, including by subjecting activities to appropriate commercial pressures, dismantling unnecessary barriers to entry, and implementing and enforcing adequate competition laws?

There is a full spectrum of options available to governments wishing to develop infrastructure projects, with different levels of involvement by the private sector: from full SOE provision, through traditional procurement (where the government acquires infrastructure assets which are constructed by private companies, to whom the construction is awarded through tender and where the asset is operated by the government once the construction is finished), through PPPs (where both the construction and the operation of the asset are transferred to the private actor, with different levels of risk-sharing between public and private parties), and finally to full divestiture and privatization of SOEs. Private sector participation in infrastructure thus takes various forms, including public procurement, which itself encompasses PPPs (see Table 5.2).

Table 5.2. **Spectrum of public and private provision of infrastructure**
Low ➔ Extent of private sector participation ➔ High
➔ *Increasing share of risk shouldered by private partner* ➔

Work and service contract	Management and maintenance contracts	Operation and maintenance concessions	Build operate transfer concessions	Full privatization
Traditional public procurement and SOE provision		*Public Private Partnerships*		Open competition by private operators across infrastructure market

Source: OECD, adapted from: Straub, S. (2009). Governance in Water Supply. Thematic paper for the Global Development Network project.

As these various options and risk-sharing arrangements all have their own costs and benefits, it is crucial to ensure that the choice among them will arrive at **the most cost-effective option** of infrastructure provisions that provides the most value-for-money for end-users. This choice can be facilitated by transparent public procurement frameworks (see next section), and should be based on assessing the comparative advantage of each potential actor in providing the service. In countries such as Botswana where parastatals dominate infrastructure markets, this notably requires a careful **evaluation of the effectiveness and efficiency of state-owned enterprises**.

While the existence of "natural monopolies" in itself is not necessarily problematic or unusual in infrastructure sub-sectors (as the extremely high fixed costs for operation and maintenance of infrastructure networks are difficult to shoulder for all but large enterprises), these monopolistic state-owned firms frequently pose risks of inefficient management and under-investment. In Botswana **infrastructure SOEs have been efficient for the most part**, without posing too much of a drain on public finances: a rare case among African countries, parastatals overall yield positive total dividends to government (for instance reaching 107 million pula or USD 13.3 million in 2009-10). These dividends are led by the telecommunications parastatal (BTC), which is managed according to corporate principles.

Nevertheless government intervention through discretionary pricing policies and restrictions on private investment do distort competition on utility markets, and more needs to be done to level the playing field so that private companies can enter the market and compete on an equal basis with public enterprises.[24] For instance in the energy sector, although the state-owned BPC is relatively efficient in its operations (with distribution losses of less than 10%), it does rely on increasing levels of government subsidies.[25] The company only manages 88% cost recovery on average, and registered net losses of 133.6 million pula in 2011 due to a 40% increase in operating costs which could not be offset by tariffs (as the latter were maintained artificially low in the interest of user affordability). In addition to the standard BPC allocation in the government Budget (of 1.3 billion pula in the 2011-12 budget cycle), these rising subsidies have cost government as much as 500 million pula (USD 70 million) over 2011-12.

Increasing the space for private actors in public procurement, notably through PPPs

As noted by the 2012 National Business Conference, to date there has been **little involvement of the private sector** in financing and managing infrastructure projects in Botswana, and increasing such private sector involvement will be a crucial part of the economic diversification strategy. There has been fluctuating interest in PPPs in Botswana, beginning in 2005 with a detailed assessment of the feasibility of PPPs undertaken by PEEPA and the SADC Banking Association. Based on the study's results PEEPA developed a PPP Implementation Strategy for Botswana in 2006. This led to a **PPP Policy and Implementation Framework**, produced by MFDP in 2009, which provides extensive guidance on private sector participation in Botswana's social and economic infrastructures (highlights are provided in Box 5.2, and this legal framework is further detailed below). Yet in spite of this Implementation

Strategy, specific legislation on PPPs is still pending: the 2009 PPP guidance has not yet been translated into a PPP Act or Regulations.

To date, a couple of **pilot PPP projects** have been undertaken in Botswana, namely a 10 year concession for an office complex (Plot 21) which was completed on time and within budget, and a 17 year concession for the SADC headquarter, which was underwritten by MFDP. However, there have been no PPPs in the power, water and sanitation, ICT and transport sectors, and the experiences of Plot 21 and the SADC headquarter were more expensive for public finances than expected.[26] government is nevertheless intent on renewing the momentum for PPPs over 2013, as notably emphasised by the National Doing Business Committee. It is expected that the country's PPP Unit, which currently counts only two part-time staff-members, will be reinforced so as to accelerate the transition towards successful PPP contracting in infrastructure sub-sectors.

Momentum towards privatisation of certain state-owned enterprises

The 2012 NBC has attributed the slow pace of privatisation over the past ten years to several causes, including: the lack of legal authority of PEEPA to implement privatisation, with authority lying fully with portfolio Ministries and MFDP; and slow progress in building a suitable political base in support of privatisation. Indeed the current privatization policy in Botswana takes a very cautious approach towards privatisation – the latter is defined very broadly, including outsourcing and private sector participation in almost any form.

Nonetheless government has been revising the 2005 **Privatisation Master Plan** to identify state-owned enterprises (SOEs) that can be privatized or rationalized by 2017. This agenda also includes shrinking the size of the civil service by outsourcing some public functions to the private sector, thus opening the door to improved management of infrastructure services. The **draft Privatisation Master Plan II (for 2012-17)** adopts a stricter focus on the infrastructure projects included and budgeted for within the NDP10, with a stronger emphasis on follow-up so as to make delivery on those projects more likely. Meanwhile as concerns other forms of private participation in infrastructure (such as PPP contracts), projects currently in the PPP pipeline include: the Trans-Kalahari rail, for which a feasibility study has been completed; a dry port in Namibia; and projects listed in the NDP10, and that have been receiving unsolicited bids so far.

Beyond whole-sale privatization the draft Master Plan II also includes restructuring, commercialization and corporatisation of parastatals. **Two projects are covered for divestiture** so far: BTC (of which 49% will be sold on the Botswana Stock Exchange) and the National Development Bank (NDB, where government will retain a 51% share, sell 44% through IPO to members of the public, and secure 4% for NDB staff). The first phase of BTC divestiture (namely the registration of Botswana Fibre Networks as a new infrastructure company and of BTC Limited as the service provider) was completed in November 2012, and the actual separation and transfer of the infrastructure of Botswana Fibre Networks is currently on-going. Private participation will also be introduced in the power sector. PEEPA will oversee implementation of the Master Plan, with approval from PPADB for the sale of government assets and according to bidding procedures set out in the PPAD Act (detailed below).

Transparency and procedural fairness in infrastructure contracting

> What measures has the government adopted to uphold the principle of transparency and procedural fairness for all investors bidding for infrastructure contracts, to protect investors' rights from unilateral changes to contract terms and conditions? Does the government have clear guidelines and transparent procedures for the disbursement of public monies funding infrastructure projects?

A sound legal and institutional framework for structuring private participation will be essential in order to manage the risks incurred in the transition from public to private and hybrid forms of infrastructure provision. This section accordingly discusses Botswana's public procurement legislation and institutional structure, as well as its current PPP Policy and implementing bodies. An inadequate implementation framework for private and public infrastructure development poses important challenges, as emphasised during Botswana's 2012 National Business Conference: the NBC conclusions largely attribute the **decline in the quality of infrastructure project implementation** in recent years to insufficient planning, design, budgeting and project management on behalf of public authorities.

Institutional structure for implementation and oversight of public procurement and PPP projects

The shift towards private sector participation in infrastructure places new demands on government agencies and involves the responsibilities of a multiplicity of bodies, from the Ministry of Finance (which should play a key role as a gatekeeper, ensuring that private procurement projects such as PPPs are affordable and that the overall investment envelope is sustainable), through central procurement and privatisation authorities, to procurement entities and dedicated PPP Units.

Public procurement acts frequently establish three types of **oversight and management authorities** for procurement projects. Together with Ministries of Finance, these bodies are responsible for securing an efficient use of public funds, and ensuring that public procurement is carried out in a fair and transparent manner:

- **Central procurement authorities**, which approve the award of contracts by procurement entities, and channel and re-direct all tendering and bidding from line ministries and local government. In Botswana this role is conducted by the PPADB, which was set up under MFDP by the Public Procurement and Asset Disposal Act of 2001. PPADB hosts several tender adjudication committees in charge of overseeing procurement according to the size of the project (Ministerial Tender Committees for large-scale procurement, and District Administration Tender Committees for tendering under 2 million pula, or USD 249 300). Meanwhile micro-procurement (under 30 000 pula, or USD 3 785) is included in the portfolio of accounting officers and can be conducted on a sole supplier basis without competition.
- **Procurement appeal authorities** with complaint and dispute resolution functions – for which Botswana's PPAD Act has set up an Independent Complaints Review Committee (ICRC) since 2004. In accordance with the PPAD Act, PPADB must regularly publicise decisions arising from complaints and challenges dealt with by itself or by the ICRC.
- **Privatisation authorities**, to oversee procurement that takes the form of outright or partial divestiture, and to monitor the performance of public entities once they have been privatised. In Botswana PEEPA is endowed with this role.

In addition to the above entities, on the implementation front procurement is carried out by the **procurement entities**, and in the case of PPPs thanks to the guidance of **PPP Units**. While procurement entities retain overall responsibility for identifying, developing, implementing and monitoring procurement projects, PPP Units bring the technical advice and assistance necessary to support this process and ensure the quality and consistency of projects with PPP policies. Both procurement entities and PPP Units are thus involved from the outset of project preparation (developing the project plan and timetable, carrying out feasibility studies, preparing design of responsibilities, risk allocation, and payment mechanisms within the PPP contract, defining bid evaluation criteria, and selecting the procurement method).

Role of the competition authority in Botswana's infrastructure markets

Competition authorities also have an important role to play in infrastructure markets – both upstream (co-operating with public procurement and anti-corruption agencies to minimise opportunities for bid rigging or collusion in tendering) and downstream (detecting cases of anti-competitive behaviour by infrastructure operators, recommending possible structural separation of infrastructure markets, etc.) Botswana's Competition Authority (established by the 2009 Competition Act) is taking positive steps in this regard – especially upstream of infrastructure markets. As mentioned in Chapter 4 above, it is closely involved in public procurement and tendering procedures. As reported in its 2012-2013 Annual Report (which is publicly accessible online), the Competition Authority developed Procurement and Transport Guidelines in the period under review. It also collaborated with the PPADB to align its Tender Regulations and Procedure Manual with the PPADB's procurement guidelines. It has signed MOUs in August 2012 with both the PPADB and the Directorate on Corruption and Economic Crime (DCEC); this has allowed joint workshops between the authorities, such as a workshop on "Review of Compliance Mandatory Requirements in Tendering" and the launch of the PPADB Online Contractor Registration System (26-27 March 2013), or participation at the DCEC "Measurement of Corruption Training Workshop" in February 2013.

In addition to such close collaboration with procurement and anti-corruption entities, competition authorities require adequate political support and independence to exercise effectively – in particular when they must challenge vested interests in utility markets. In doing so, they may intervene on policy areas usually covered by sector regulators and line ministries – and in such cases, the position that the competition authority occupies in the hierarchy of competent government agencies must be clearly defined by law. Although there is no explicit mention of the treatment granted to State-owned infrastructure operators in Botswana's Competition Act, article 72 of the Act makes reference to the relationship with sector regulators. Under article 73(3), the Competitio Authority and the regulators shall "establish a mechanism through which they can maintain regular contact regarding the exercise of their respective responsibilities". Moreover where the Authority proposes to investigate a matter which involves an enterprise which is in other respects subject to the jurisdiction of a regulator, it is to notify the relevant regulator of the proposed investigation. The regulator is entitled to make written representations to the Authority on matters under investigation which involve an enterprise under its jurisdiction, and can also place sector-specific expertise, including inspectors, at the disposal of the Authority and assist with the Authority's investigation. Nevertheless, the Act makes clear in Article 73(9) that the Competition Authority retains the final say in such investigations: the determination of the Authority shall be final, except where consultations with the regulators have not been held. This clearly positions the Authority high in the hierarchy of government institutions, a positive point which enhances its effectiveness but on which many countries fall short.

Despite this highly supportive legal framework, to date the Botswana Competition Authority has conducted no investigation into the activities of SOEs per se – and especially not in infrastructure markets. As evidenced by the 2012-2013 Annual Report, currently much of the Authority's attention has been directed at merger control and at industries that are of particular concern to the public due to their effect on small to medium-sized businesses. These industries include medical aid and healthcare (12% of merger notifications in 2012-13), fast-moving wholesale and retail goods (also 12%) and the construction and mining industries (6% and 17% respectively). The situation is similar for abuse of dominance investigations, and as concerns research, the Research Analysis branch of the Authority embarked on market studies in the wholesale, retail (food and groceries), cement and poultry sectors in 2013. So far, there is thus little attention paid to sectors where SOEs might play a larger role, such as backbone infrastructure. Having established itself as an efficient and transparent regulator, Botswana's Competition Authority could now enhance its impact by extending its investigation and research work to cover the market structure of key infrastructure sectors.

Capacity of public procurement agencies

In Botswana both of these implementation bodies for public procurement face serious **capacity challenges**. Despite the capacity-building workshops that it holds multiple times a year for sectoral bidding committees, PPADB emphasises that procurement unit staff are often ill-equipped to manage procurement processes and purchase choices. In addition although a fledgling PPP Unit has been established under the Ministry of Finance, this mainly consists of existing MFDP staff who combine this role with other functions, and as of March 2013 the Unit counts only two part-time officers. The resolutions suggested by the private sector in the context of NBC 2012 likewise call for enhancing the capacity of both the government and the private sector to take the initiative on PPPs by: securing a PPP strategy and project advisor within the private sector umbrella group (BOCCIM); establishing a joint technical project selection committee within government; creating bond issuance options for infrastructure PPPs; and accelerating the implementation of the PPP unit. Given the complexity and scope of PPP projects, nurturing government capacity and reviving the PPP Unit, and providing clearer guidance for procurement entities including at local level, is of crucial importance.

MFDP attributes the faltering roll-out of the PPP Unit to delays and unforeseen complications in attempting to hire external consultants for this task. Yet rather than expecting external consultants to take this next step, it may be necessary and desirable for Botswana to develop the remaining regulatory framework for PPP in-house; this would increase ownership, understanding and buy-in in the process. Increased efforts on behalf of MFDP to recruit staff – even on a temporary basis – from relevant institutions such as PPADB may be very helpful in accelerating the development of the appropriate regulatory framework for PPPs, and could also give stronger momentum to the PPP Unit. Guidance provided through regional PPP fora, such as the **SADC 3P Network**, could be helpful in this regard.

Legislation for public procurement, including PPPs

Procurement procedures for all infrastructure projects are set out in **Botswana's 2001 PPAD Act and its 2006 Regulations**. In addition to setting out the functions and powers of the PPADB and its committees, the Act details procedures and eligibility for reserved and preferential treatment (in view of empowerment of citizen contractors), and safeguards for transparency of procurement (including independent auditing and registration of contractors). The Act also outlines several principles for tender adjudication, including: attention to bidder capacity, capability, cost effectiveness and technological effectiveness in bid selection; fair and equitable treatment of all contractors; and integrity, transparency and accountability of the procurement process. The Government of Botswana, through the Ministry of Trade and Industry, is also considering the introduction of unsolicited bids within the procurement framework so as to better tap the innovation of project proponents.

Complementing these procurement principles, Part III of the 2006 **PPAD Regulations** clarifies the bidding process and the content of bidding documents, as well as the choice of evaluation method (including quality-based, cost-based, least-cost or fixed-budget selection; the first three methods are generally used for works contracts, while for supplies the least-cost method is preferred, and for procurement of supplies all methods are available). Following bid evaluation, the procuring entity makes a recommendation to PPADB for its adjudication and approval based on a consideration of costs, technical merit, and citizen participation (in accordance with PPADB reservation and preference schemes). Tender awards since 2005 are available and listed by month on the PPADB website. PPADB also has an **Operating Manual**, developed in 2008, containing standard operating procedures for public procurement with the aim of attaining value for money and securing economies of scale and transparency in the process.[27] Procurement contracts in Botswana are based on standards set by FIDIC (International Federation of Consulting Engineers), an internationally recognised contract form which balances the interests of both the government and the contractor.

Despite these sound standards however, the legal framework for public procurement falls somewhat short of the needs of current infrastructure investment needs in Botswana. NBC 2012 resolutions with respect to infrastructure call for more systematic cost-benefit analysis of all public infrastructure projects, in order to ensure that chosen projects generate positive returns and meet clearly defined economic and social objectives. The PPAD Act and Regulations would also need **updating in order to reflect elements of Botswana's 2009 PPP Policy**; indeed the Act, the Regulations, and the 2008 Operating Manual were developed prior to 2009 and make no specific mention of modalities for PPP contracting. In order to give optimal results, PPP legislations and regulations must be fully in line with rules for traditional procurement processes to enable public authorities to make rational and informed choices between using PPPs or traditional infrastructure procurements.

An overview of Botswana's PPP Policy (Box 5.2 below) suggests that this also has certain shortcomings, for which the existing PPAD Act does not compensate. The Strategy adopts a very **broad definition of PPPs**, in which immovable infrastructure but also movable assets (such as vehicle fleets) or services (such as social grant administration) are covered. This may reduce the clarity of the document for procurement entities wishing to take the PPP route, especially given that the structure and upstream preparation of PPP contracts are very different for physical infrastructure as compared to services or movable assets. Another risk posed by the Implementation Strategy lies in the emphasis that placed on encouraging maximum involvement of citizen companies in PPPs – possibly at the expense of value-for-money and contract quality. The Strategy recommends establishing a dedicated fund to grant citizen companies the necessary access to finance to bid for projects; while it is legitimate for the government to strive for citizen empowerment within its PPP framework, the rationale behind such a fund **contradicts the essential rationale of PPP projec**ts – namely, that the public sector benefit from private sector financing and expertise which would otherwise be out of reach. As it is, financing domestic companies that bid for PPP projects would have heavy fiscal implications for the public partner.

Beyond this PPP Policy, Botswana moreover lacks a dedicated PPP Act and associated regulations. Although the enactment of a PPP Act is not clearly identified as an international "best practice", adopting such a dedicated law can send investors a strong positive signal on public commitment to facilitating private participation in infrastructure. A **binding legal framework for PPPs** could help provide adequate investor security and set guiding principles for sound risk-sharing and contracting. Such laws also regulate elements specific

Box 5.2. **Botswana's 2009 PPP Policy and Implementation Framework**

The PPP Policy and Implementation Framework, developed by MFDP in June 2009, is a comprehensive document which addresses the rationale and objective for PPPs, as well as the process for implementing PPPs, and provides specific policy guidance on the funding arrangements and accounting requirements. The document ends with a useful and concise summary of these PPP guidelines (under Annex 3), which can serve as a rapid means of introduction for interested public officers and procurement entities.

Rationale and objective for PPPs:

The Implementation Framework defines PPPs very broadly, as: "a contractual arrangement between a governmental institution and a private party whereby the private sector party provides public infrastructure and/or infrastructure related services", which is:

- Based on measurable output (end result specifications);
- Governed by a payment mechanism that provides payment only on delivery of services at required standards;
- Accompanied by a transfer of financial and operational risks with consequential financial effects; and
- Capable of demonstrating Value for Money to government.

PPP implementation framework:

Sector ministries are given primary accountability for service delivery, including identifying and initiating, as well as procuring and managing PPP projects. Meanwhile MFDP is to play an advocacy and capacity-building role, and PPADB is to be responsible for ensuring that the PPP procurement process is fair and transparent, as well as within the existing budget allocation. PPADB is also granted power to approve bidding documents. Meanwhile a PPP Unit within the MFDP is provided for, for overall coordination and monitoring, technical assistance in the selection of projects, and approval for PPP feasibility studies. Unfortunately however, progress in establishing this Unit has been halting since 2009 and the unit is not yet fully operational or sufficiently capacitated.

to the success of PPP contracts, and provide procurement entities with guidance concerning the novel risks and considerations that PPP projects entail. This includes, importantly, provisions for adequate upstream preparation of PPP projects – without which the benefits of PPP projects may well lie out of reach. Should Botswana move ahead in developing dedicated PPP legislation to

Box 5.2. **Botswana's 2009 PPP Policy and Implementation Framework** *(cont.)*

PPP process:

This section provides considerable detail on different phases of PPP implementation, from feasibility study (including cost benefit analysis to assess how well the project addresses the National Development Plans' development requirements) to project procurement, contract management, and performance monitoring. In addition the document notes that maximum involvement of citizen companies is to be achieved in the PPPs, possibly by amending the mandates of procuring entities, or establishing a dedicated fund to grant citizen companies the necessary access to finance. Finally the policy notes that unsolicited proposals are not excluded, on the condition that the procurement process remains transparent and competitive, and that the unsolicited bidder demonstrate substantial technical or financial innovation or meet an unidentified need. This is an important feature that is often omitted in PPP recommendations, and which nonetheless poses itself as a real question for public officers faced with PPP project identification and selection.

Source: Ministry of Finance and Development Planning, "PPP Policy and Implementation Framework", June 2009.

accompany the 2009 Policy, it must of course be consistent with pre-existing and broader-spectrum legislations on investment and procurement.

Registration of bidders and computerisation of public procurement processes

In view of greater transparency and more fluid information on bidders, as of 15 August 2012 bidders for public procurement (including those operating within the EDD framework) are required to obtain a registration certificate from PPADB beforehand. On 17 January 2013 this requirement was strictly extended to all contractors wishing to tender for the provision of services, works and supplies (whether it be with parastatals, SOEs, local authorities or government-funded NGOs). The only exceptions are for: small businesses engaging in micro procurement; tenders not exceeding 30 000 pula (USD 3 630); and tenders by international contractors.[28] While this can be a useful means of ensuring quality bids and tracking bidders, PPADB has however been facing a large backlog of registration requests since – it will be urgent to avoid any registration delays that could risk further complicating the procurement process and deterring potential bidders.

In the interest of transparency, tenders exceeding 100 000 pula (USD 1 262) are published in the Government Gazette as well as in local newspapers and on the government website.[29] In accordance with Clauses 86 and 87 of the

PPAD Act, the Board is also to advertise: all applications by contractors for registration, and thereafter the decisions on the grades (based on technical and financial criteria) accorded to applicants; all tenders being invited; and all bids received, together with award decisions and prices. As most tendering data and documents remains collected manually, PPADB has additionally embarked on a **computerisation process** and is developing an Integrated Procurement Management Software (IPMS) which would establish a computer registry for companies and contractors, and do away with the need for contractors to travel to PPADB registration units. Computerisation would also reduce delays in registering contractors country-wide.

Regulation and pricing of infrastructure markets to meet end-user needs

> How is regulation and pricing of infrastructure services co-ordinated? Is it entrusted to specialised public authorities or regulatory agencies that oversee infrastructure investment and the operations of relevant enterprises? Are these agencies competent, well-resourced and shielded from undue influence by the parties to infrastructure contracts?

Regulation and pricing in the telecommunications sector

Telecommunications is Botswana's leading infrastructure sub-sector in terms of regulation. The **Telecommunications Acts of 1996** established the **Botswana Telecommunications Authority** (BTA) as the sector regulator, with the mandate to: set and approve tariffs; award licences; charge licensing and other regulatory fees; resolve disputes among operators; monitor service quality; and protect consumer interests. To increase predictability in pricing, BTA has developed a Cost Model and Pricing Framework to determine the underlying costs of providing telecommunication services, and to set prices to be charged by operators (prices have been revised downward since 2005). As a member of the ICT subsector High Level Consultative Committee (HLCC) BTA also plays an advocacy role for enhancing the contribution of ICTs to broader economic growth.

In addition to its advocacy and pricing functions, BTA has a role in regulating competition and market structure. On a periodic basis BTA undertakes market studies that assess the feasibility of market entry for major operators and inform the regulatory decision making process. It assesses market performance to gauge the level of competition and efficiency in service provisioning. BTA has considerable decision-making power in its assessments of market dominance and choices for tender award: for instance when BTA awarded tenders to Orange at the loss of the national utility BTC, BTC accepted the decision. Indeed, competition has been such that BTC was the last to be licensed for mobile telephony and only has minority market share.

Despite this decision-making power and although BTA is functionally and financially independent, it must nonetheless **report its strategic plans** and annual operations to the Minister of Transport and Communications. This risks undermining BTA autonomy by giving the Minister a potential veto on its decisions, especially as BTA Board members are selected by the Minister. BTA is also obliged to consult the Minister on licensing for fixed line and cell-phone operators and on the associated fees. Although BTA has not received any government funding since 2001 (being funded to the height of 90% by regulatory fees, as well as by investment income), the Minister must moreover approve its budget.[30] Government plans to empower the Botswana Communications Regulatory Authority as a common regulator for telecommunications, broadcasting and postal services could help rectify these independence risks, and lead to better services in all areas of communication.

Regulation of the transport sector

In the road sector, the Ministry of Transport acts as the only regulator, and competition in the sector has been weak. Likewise all tendering and operations of the rail sector are directly managed by Botswana Railways, rather than by an independent agency. The exception is in the air transport sector, since the **Civil Aviation Act** (approved by Parliament in 2011) which established the **Civil Aviation Authority of Botswana** (CAAB). CAAB plays the role of regulatory authority and airport owner (although private contractors are in charge of maintenance of airports and fleets). It has authority for: licensing pilots; authorizing routes; traffic control; and pricing. CAAB funds its activities through charges on passenger tickets, and fees for air space usage and for landing and parking at airports.

Regulation and pricing of the energy and water sectors

As there is so far no dedicated and independent regulator for the energy sector, MMEWR, through its **Department of Energy Affairs** (DEA), is in charge of formulating policy for the energy sector and overseeing inter-ministerial co-ordination for its implementation. The DEA's regulatory functions include setting tariffs and supervising the activities of BPC. Electricity prices have long been set artificially low, with a tariff framework based on five groups of consumers (domestic; small businesses; medium businesses; large businesses; government; and water pumping). In the interest of affordability, tariffs are set differentially across these consumer groups, based on the amount of electricity consumed and adjusted through a combination of fixed and variable charges. These electricity tariffs are set by the Minister responsible for energy and in practice, under collective responsibility, tariff setting for both electricity and water have been done by Cabinet.

These low tariffs have prevented BPC from reaching full cost-recovery – as mentioned above, currently BPC only manages 88% cost recovery on average, and has required substantial government subsidies in 2011 and 2012 to stay afloat. The **water sector**, which also lacks independent regulation, likewise depends on heavy subsidies. 70% of water revenues collected from customers are in effect subsidised,[31] and tariffs are set according to an incremental scale. The domestic water connection charge has been standardised at 1 500 Pula per cubic metre for the first 50 metres and 27 Pula per metre for every subsequent metre. Separate tariffs are also in place for government agencies and town and district councils, who pay more than domestic and business users. Similarly to the energy sector, infrequent updating of tariffs has impeded cost recovery in water operations. This underlies some of the financial complications currently faced by the national utility WUC: although WUC made a profit of 171.6 million pula (USD 24 million) in the 2009-10 financial year, taking over responsibilities of the DWA and District Council has since caused it to inherit 70-80 million pula (USD 8.75-10 million) worth of debt.

While broadening the access of poorer citizens to electricity and water is a crucial objective to uphold, artificially low tariffs and production subsidies for parastatals appear not to be the most efficient way to address the power and water access gaps – nor are they the only available option for governments. In fact, production subsidies do not automatically generate the expected socially desirable effects; where electricity and water access remain geographically constrained to areas inhabited by richer segments of the population, low tariffs, backed with extensive public funding, can act as a regressive subsidy for the rich rather than facilitating access for the poor. In view of these risks and fiscal costs, production subsidies could potentially be replaced by **consumption subsidies** while allowing national utilities such as BPC or WUC to operate on a more commercial basis. This would also enable tariffs to be set by independent regulators based on power and water production and distribution costs, rather than artificially lowered via production subsidies.

With a view to these factors, government aims to establish an autonomous regulatory framework for the power and water sectors. To this effect a taskforce has been established in 2012 to explore opportunities for creating a **Botswana Energy and Water Regulatory Authority** (BEWRA). The BEWRA Taskforce will also consider preparation of an Energy and Water Regulation Act to facilitate the associated legislative changes. A Bill to this effect will be tabled before Parliament. This would be a good opportunity to ensure that BEWRA had sufficient independence in its pricing and market structure decisions; BEWRA could also play a role in creating a more level playing field for private actors to operate in the sector – beyond IPPs, unbundling distribution and transmission functions in water and power could for instance be brought before government for consideration.

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