

This article was first published in *Mining Journal*, 21 December 2015

Beneficiation Legislation – does it achieve the desired effect?

By Rachel Speight

In recent years many emerging economies have looked to increase their domestic revenues from the mining industry. This has been attempted via taxes, royalties, state-ownership, local content quotas and increasingly local beneficiation programmes, as illustrated by comments from Jacob Zuma at the recent “Forum for China-Africa Cooperation Summit”, where he emphasised that African economies are looking to “prioritise beneficiation and value-addition”. It has also been endorsed by the African Union and regional bodies such as the Southern African Development Community (SADC).

The objective of local beneficiation is for raw materials to be processed in the country in which they are mined rather than exported for beneficiation overseas. Processing raw materials locally can bring economic benefits, such as increased income from taxation and increased profits once the processed materials are exported. It can also improve the quality of life of those living locally – creating jobs, providing opportunities to develop a skilled workforce and generating more money to reinvest in local communities. One method of introducing a local beneficiation regime has been through regulation and new or amended legislation (such as export bans, tax breaks or licensing controls) but it seems that this government-led approach has not achieved the desired results.

Botswana is widely considered to have the most successful example of a programme to increase local beneficiation. De Beers began cutting diamonds in Botswana over 20 years ago, and through partnership with the government of Botswana, the Diamond Trading Company Botswana was created, which is a 50/50 joint venture between the government and De Beers. By 2013, De Beers had moved all its international trading activity from London to Botswana. Although not perfect, this beneficiation programme has achieved positive outcomes such as improved infrastructure, a skilled workforce (today nearly 3,000 workers in Botswana are cutting and polishing diamonds to export). In addition there is the knock-on effect of boosting local businesses, such as hotels, leisure centres and restaurants, and, arguably most importantly, the project has helped to signal that Botswana is a safe and welcoming place for foreign investors, creating a stable climate for future growth.

Some legislation has been amended in Botswana during the life of this programme, such as the Mines and Minerals Act (1999) which gives more control over exploration licences to the government of Botswana. But more significant legislative changes, such as export bans, have not been introduced in the way that they have in certain other jurisdictions. The reasons for the success of



Rachel Speight

Partner

E: rspeight@mayerbrown.com

Beneficiation Legislation – does it achieve the desired effect?

the Botswana beneficiation project are not therefore thought to be due to legislative innovations, but more down to good communication between the government of Botswana and the board of De Beers, and a desire from both parties to work together for a mutually beneficial outcome. Such co-operation, seen in initiatives such as a government-industry steering committee, has helped to generate the other elements required for successful local beneficiation.

Where the imposition of legislation is the starting point for a local beneficiation programme, the same success does not yet seem to have followed. In Zimbabwe in 2011, legislation was brought in banning the export of chrome ore. The intention being that chrome be processed locally, bringing all the associated economic benefits that go with this. Unfortunately smelting capacity, power shortages and infrastructure capabilities in Zimbabwe were not able to cope with the volume of chrome ore, which began to stockpile in the country. And so, in June 2015, the ban was lifted and the 20 percent export tax on the raw metal was also scrapped.

In Zambia, a 10 percent export tax on unprocessed copper was introduced (intended as an incentive to promote local beneficiation). However, this law introduced in 2011, was suspended in October 2013, reinstated in a modified form a month later and recently the government has suggested introducing a total ban on the export of unfinished mineral products. This uncertainty has unsettled investors and resulted in corporations stockpiling their copper with concerns over whether the smelting capacity of Zambia was able to cope with such a beneficiation project.

It can be argued that De Beers and Botswana had a somewhat unique relationship. The government and the corporation had been in partnership for decades and the trust and understanding created by this partnership left

the two very able and willing to work together to create a mutually beneficial system. But what this example and the less successful examples above do show is that beneficiation legislation without support from the industry can be damaging, creating uncertainty and deferring vital international investment.

It can be difficult for governments and corporations to work together as their aims and objectives may be quite different. A government may be looking, first and foremost, to improve the country's economy and increase the quality of life of local people, while a corporation needs to look to its shareholders and might therefore be more concerned with producing a good and marketable product and keeping costs low in a struggling commodities market.

In the absence of easy cooperation, legislation has surfaced as the best solution, with proposals for further new laws in 2015 in Ghana (requiring the local beneficiation of bauxite), Indonesia (increasing tin royalties on exports) and Zimbabwe (introducing a 15 percent export duty on unrefined platinum (which was later suspended)). The question is whether the necessary improvements in (for example) local smelting capacity, skill levels and power supplies can be expected to be generated following legislative incentives, and whether the required expertise and technology for successful beneficiation will be shared among all parties if industry is uncomfortable with such legislation.

It is important that a robust legislative framework exists so that beneficiation is regulated and local benefits are assured. But if the groundwork is not laid before legislation is implemented, and a productive relationship between government and industry is not maintained, then a successful beneficiation programme does not seem to be easily achievable: the problem seems too complex for legislation alone to solve.

Mayer Brown is a global legal services provider advising many of the world's largest companies, including a significant portion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest banks. Our legal services include banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; US Supreme Court and appellate matters; employment and benefits; environmental; financial services regulatory and enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

Please visit www.mayerbrown.com for comprehensive contact information for all Mayer Brown offices.

Mayer Brown is a global legal services provider comprising legal practices that are separate entities (the "Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP and Mayer Brown Europe-Brussels LLP, both limited liability partnerships established in Illinois USA; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales (authorized and regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown, a SELAS established in France; Mayer Brown Mexico, S.C., a sociedad civil formed under the laws of the State of Durango, Mexico; Mayer Brown JSM, a Hong Kong partnership and its associated legal practices in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. Mayer Brown Consulting (Singapore) Pte. Ltd and its subsidiary, which are affiliated with Mayer Brown, provide customs and trade advisory and consultancy services, not legal services. "Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

"Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

© 2016 The Mayer Brown Practices. All rights reserved.

0479con