



Taking our Diamonds from De Beers

Can the Botswana Government deny
De Beers the right to sell Debswana Diamonds?

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I continue my commentary following remarks by Botswana's President on 17/07/25:

<https://youtube/o3tRgVPbn0I?si=EPRmECqNZ7ZLZlqc>

This time I discuss the question of De Beers' right to sell a portion of Debswana production on the one hand, and the Government's powers to deny the investor such rights on another. Firstly, why would this be important to any mining company? The answer is simply that the right to sell the minerals mined is vehicle through which mining companies recoup investment and the basis for securing finance from banks for development of mineral projects across the board. For De Beers, given that diamonds are not a commodity, the marketing (originally through Central Selling Organization CSO) and now Diamond Trading Company), technology, IP and other systems for sale and distribution of rough diamonds have been at the core of the company's business model and competitive strategy since the creation of CSO in the 1930s. While the quantum of production secured for sale is negotiable, the principle is not. In fact for all mining companies, in the absence of such an assurance, the investment cannot be justified financially. That is the big picture. Now to arrangements in Debswana.

Debswana is a separate legal entity from the Republic of Botswana and De Beers albeit owned jointly and regulated by the former using relevant laws and based on a suite of licenses and agreements. As a legal entity, Debswana is empowered by Botswana's company and other laws to conduct its affairs including to contract with third parties for supply and sale of goods and services. This means that in the context of the diamond sale agreements, the Government does not give De Beers diamonds from Debswana to sell. Instead, De Beers is contracted to Debswana to buy, pay Debswana upfront and then sell to at its own cost and risk, a portion of company's diamonds. The sales agreement dates back to the 1970s and was renewed for years at pre-agreed intervals. The original agreement was renewed every five years, but the duration changed to a 10-year cycle following conclusion of negotiations in 2011. The question then becomes, *can the Botswana Government terminate the sales agreement between Debswana and De Beers?* The answer is yes and no depending on the circumstances.

Starting with the affirmative, as with most contracts the Debswana sales agreement with De Beers can be terminated subject to the parties negotiating and agreeing terms. But to reach such an agreement would require revisiting several decades long agreements and negotiating ways to part while protecting the rights of all parties as envisaged in the agreements, including possible financial compensation. Legally, structurally, and operationally, the agreements involve several entities least of which are the Botswana Government, De Beers Group, Debswana, DTC International, DTC Botswana and indirectly Anglo American Corporation plc (AAC) and Okavango Diamond Company (ODC). Each would be materially affected and every contribution that each entity makes to the whole would have to be renegotiated including intellectual property rights owned jointly in Debswana, those relating to technologies owned by De Beers' own sorting and valuing entities and more. The sorting and valuing know-how is not only proprietary to De Beers but, to give itself and its partners a competitive edge, De Beers only deploys such resources in wholly-owned subsidiaries and JVs. As such the company does not sell the technology and equipment in the open market but licenses the technology and IP for exclusive use as long as partnership arrangements remain in force. So, among others it is the fate of such operations that would need consideration. Either way the interim period would potentially disrupt operations, disrupt revenue flow, and undermine confidence in the market. Viewed this way therefore, the answer to the question of if the Botswana Government can terminate the agreement unilaterally is, not likely in the current construct.

So, the question becomes under what conditions can the Government of Botswana unilaterally terminate the Sales Agreement? Again anything is possible but two possible conditions open the way for this. Firstly in the event that De Beers is in default on matters of compliance and contractual obligations. Secondly if the authorities disregard the laws of the country and set aside all rights and obligations captured by the suite of agreements that govern the arrangements for partnerships, licensing, mining, sorting, valuing, and trading. The most significant being the mining leases, terms of De Beers Group JV, the Debswana JV, DTC Botswana JV and the Sales Agreement between De Beers and Debswana. Regarding the cutting and polishing factories, because it was Botswana and De Beers that invited the first ten cutting and polishing factories to open operations in Botswana in 2006, based on an undertaking that parties would receive and additional supply of diamonds from De Beers, these rights and potential damages from the investment made could possibly arise. Finally, if the country changes its laws and applies new ones with new powers of the State retrospectively, though subject to legal challenge, this might be another possibility. In so doing Botswana's leaders would usher a new governance age with far reaching implications.

Speaking of default, under current market conditions, *can low sales by De Beers be considered a default and classified as failure to abide by its obligation to sell Botswana diamonds?* The answer is, *only if a systematic assessment shows that consistently the company is under-performing relative to the market and others.* Also if one ignores market conditions and presumes the company's performance and diamonds are immune to open market forces. This might also call for an assessment of the company's track-record, contribution to Debswana and Botswana the last 50 years. As such, the issue is not a simple matter of taking our minerals. Instead any decision leading to termination of the sales agreement at Botswana's initiative would be complex, costly, and likely protracted. In my next blog, I turn to the state-owned entity ODC, which is also a client of Debswana.

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