

## Investment Climate Statement - Botswana

- [Openness to Foreign Investment](#)
- [Conversion and Transfer Policies](#)
- [Expropriation and Compensation](#)
- [Dispute Settlement](#)
- [Performance Requirements and Incentives](#)
- [Right to Private Ownership and Establishment](#)
- [Protection of Property Rights](#)
- [Transparency of Regulatory System](#)
- [Efficient Capital Markets and Portfolio Investment](#)
- [Competition from State Owned Enterprises](#)
- [Corporate Social Responsibility](#)
- [Political Violence](#)
- [Corruption](#)
- [Bilateral Investment Agreements](#)
- [OPIC and Other Investment Insurance Programs](#)
- [Labor](#)
- [Foreign-Trade Zones/Free Ports](#)
- [Foreign Direct Investment Statistics](#)
- [Web Resources](#)

### Openness to Foreign Investment

[Return to top](#)

#### Overview of Investment Climate

Ranked number one in Africa on Transparency International's anti-corruption index, Botswana is a stable democratic country which has historically enjoyed among the highest economic growth rates in the world. Botswana's ranking on the annual World Bank/IFC Doing Business report was 52 out of 183 countries globally. Its score compared favorably to all other African countries except Rwanda (ranked 45), South Africa (ranked 35) and Mauritius (ranked 23).

Botswana enjoyed one of the fastest growth rates in per capita income in the world between independence in 1966 and 2006. But Botswana's economy, particularly the mining sector, is susceptible to global economic shocks. Consistent with global economic patterns, Botswana's growth slowed to 3% in 2008, expanding to 3.7% in 2009, 10.8% in 2010, and an estimated 8% in 2011. 2012 GDP is estimated to level off at 5.9%. By maintaining a sound fiscal policy and low levels of foreign debt, Botswana will continue to approach global economic downturns from a position of strength. Foreign exchange reserves were estimated to be \$8.3 billion in September 2011, representing a healthy 18 months' cover of imports of goods and services. Botswana's per capita income of roughly USD \$14,800 (IMF estimate) makes it a middle-income country.

Overall, Botswana's good economic record has been built on the foundation of using revenue generated from diamond mining to fuel economic development through prudent fiscal policies. With the prospect of somewhat lower revenues over the medium-term, however, structural reforms to encourage greater entrepreneurship and investment will be essential to future growth.

The Government of Botswana has made strong efforts to maintain a sustainable budget by managing expenditures and diversifying revenue sources. Its policy has been to keep total public expenditure at no more than 40 percent of GDP, deficits at a maximum of 3 percent of GDP and development related expenditure at 30 percent of the total budget. Despite these achievements, a 2010 IMF report cautioned Botswana that its civil service is too large and is competing with the private sector to attract highly skilled workers. A more recent IMF report praised Botswana for the progress it has made in better prioritizing government outlays and containing the growth of the public budget. In April 2011, despite strong pressure by striking public sector workers, the Government of Botswana did not agree to workers' demands for a 16 percent wage increase on the basis that an increase of this magnitude would have worsened public debt and suggested weak fiscal and budgetary discipline.

### Investment Support

Overall, the Botswana government has made good efforts to attract foreign investors, though some regulatory barriers remain. It has launched initiatives to promote economic activity and foreign investment in specific areas, including the establishment of "hubs" to promote economic growth through agriculture, innovation, diamonds, education, health and transport. It has abolished all foreign exchange controls and instituted low corporate tax rates (15% for manufacturing enterprises). It has convened a government-wide task force to improve scores in specific areas of the World Bank's Doing Business report. The government also makes grants available to investors who partner with citizens and will extend credit to investors presenting proposals that have undergone appropriate due diligence. This typically involves, at minimum, the completion of a feasibility study.

The Botswana Export Development and Investment Authority (BEDIA) serves as the main point of contact for foreign investors and has expressed eagerness for working with established businesses seeking to expand their operations to Botswana. BEDIA will attempt to ensure that investors — in particular, those seeking to establish export-oriented manufacturing enterprises — obtain the clearances, residence permits, work permits, factory space, and land they need with minimal delays. After company start up, BEDIA continues to provide services addressing any problems encountered.

Botswana seeks to diversify the economy away from diamonds into goods such as pharmaceuticals, textiles, clothing, and leather products, commodities such as coal, and services such as tourism, financial products, business process outsourcing, and research. Requests by investors for investor support from BEDIA and other agencies will be evaluated based on the extent to which the proposed project assists in the government's diversification efforts, contributes to the growth of priority sectors, and provides employment and training to Botswana citizens. Foreign investors are also encouraged to transfer technology to Botswana and skills to Botswana citizens with a view to preparing them for promotion into management positions.

### Licensing Requirements

Foreigners wishing to invest in Botswana are required to register their enterprise under the Companies Act and are likely to be required to obtain a license given current trends in the enforcement of the Trade Act of 2008.

Under the Trade Act, a license is required to operate a variety of businesses in Botswana. These include banking, non-bank financial services, transportation, medical services, mining,

energy provision, and the sale of alcohol. The Government of Botswana's justifies its license requirements on public interest grounds and notes that its requirements are consistent with international best practice.

Although recent amendments to the Trade Act have eliminated the catch-all "miscellaneous" business license category, owners report that some local authorities will insist that a business apply for a license even though the business does not clearly fall into one of the established categories of businesses requiring a license. The result is that the owner is in essence forced to choose a category in which to be licensed. In addition, some businesspeople have observed that enforcement of licenses varies widely across local government authorities. The Embassy continues to engage with the Government of Botswana to highlight this and other licensing difficulties.

Botswana reserves some business sectors solely for citizen participation including butcheries, general trading establishments, gas stations, liquor stores, supermarkets (excluding chain stores) bars (other than those related to hotels), certain types of restaurants, boutiques, auctioneers, car washes, domestic cleaning services, curio shops, fresh produce vendors, funeral homes, hairdressers, various types of rental/hire services, Laundromats, specific types of government construction projects under a certain dollar amount, certain activities related to road and railway construction and maintenance, and certain types of manufacturing activities including the production of furniture for schools, welding, and bricklaying.

The Ministry of Trade and Industry, which administers the citizen participation initiative, has taken an expansive interpretation of "chain stores" to mean any store with more than one outlet and has allowed the exemption to apply to supermarkets, simple specialty operations, and general trading stores. Hence, large general merchandise markets, restaurants, and the dominant grocery network — all of which are owned by foreigners — operate without restriction. Foreign investors are permitted to participate in all other sectors.

Foreign investors are given equal access to investment incentive schemes (grants and loans) for medium and large projects provided they partner with a citizen of Botswana. Foreign investors do not have access to government loans and grants designed specifically for citizen-owned contracting firms or for small enterprises, defined as those involving investments of less than Pula 75,000 (roughly USD \$10,710).

### Privatization Efforts

The government is moving toward privatizing a number of state-owned businesses. As part of this effort, it has established the Public Enterprise Evaluation and Privatization Agency (PEEPA). PEEPA is developing policies which will impact the extent of foreign participation in privatizing entities. The government would like to use privatization to increase foreign direct investment in the country, but there are significant concerns in government circles that the political costs of privatization are high, e.g., extensive job losses. These concerns have created some controversy and led to delays surrounding the privatization effort.

Privatization efforts initially focused on the national airline, Air Botswana. After more than 11 years of effort and multiple attempts to reach agreement with strategic partners, the airline has still not been privatized. The planned privatization of six other state organizations, including the Botswana Telecommunications Corporation (BTC) and the National Development Bank (NDB), is behind schedule. BTC's privatization is expected to occur by mid-2012.

The ability of PEEPA to manage the privatization of state-owned enterprises is hampered by the fact that there is no privatization-implementing legislation. As a result, the decision for privatizing particular parastatals remains with the relevant ministry or department which has the discretion to advance privatization at the pace and with the vigor of their choosing.

### Competition Policy

Botswana has developed anti-trust legislation and policies to ensure appropriate competition in the business environment. Under the Competition Act, the newly-established Competition Authority is now monitoring vertical and horizontal market agreements and mergers and acquisitions. Laws prohibiting insider trading and securities fraud are still under development.

### **Conversion and Transfer Policies**

[Return to top](#)

There are no foreign exchange controls in Botswana and no restrictions on capital outflows through financial institutions. Commercial banks are required to ensure that their customers complete basic forms indicating name, address, purpose and other details prior to processing funds transfer requests or loan applications. The Ministry of Finance monitors data collected on the forms for statistical information on capital flows, but the form does not require government approval prior to the processing of a transaction and does not delay capital transfers.

To encourage portfolio investment, develop the domestic capital market, and diversify investment instruments, non-residents are able to trade in and issue Botswana Pula-denominated bonds with maturity periods of more than one year, provided such instruments are listed on the Botswana Stock Exchange (BSE). Botswana's "Letlole Saving Certificate" (the equivalent of a U.S. Treasury bond) can be purchased only by Botswana citizens, however. Foreigners can hold shares in BSE-listed Botswana companies.

Botswana residents are permitted to invest overseas and borrow offshore. Travelers are not restricted to the amount of currency they may carry on their person or in their baggage, but they are required to declare to customs at the port of departure any cash amount in excess of Pula 10,000 (USD \$1,330). There are no quantitative limits on foreign currency access for current account transactions.

Foreign currency-denominated accounts are permitted in Botswana. At present, commercial banks offer accounts denominated in U.S. Dollars, British Pounds, Euros and South African Rand. Businesses and other bodies incorporated or registered under the laws of Botswana may open such accounts without prior approval from the Bank of Botswana. The government also permits the issuance of foreign currency denominated loans.

Upon disinvestment by a non-resident, the non-resident is allowed immediate repatriation of all proceeds including profits, rents, fees, etc.

There is no difficulty in obtaining foreign exchange. Shortages of foreign exchange that would lead banks to block transactions are highly unlikely.

### **Expropriation and Compensation**

[Return to top](#)

The Constitution of Botswana prohibits the nationalization of private property. The Government of Botswana has never pursued a policy of forced nationalization and is highly unlikely to adopt such a policy.

## Dispute Settlement

[Return to top](#)

The Constitution of Botswana provides for an independent judiciary. Civil law is based on the Roman-Dutch system. The courts readily enforce legal agreements related to commercial dealings. Foreign and domestic businesspeople have equal access to the judicial system. In general, Botswana courts will enforce decisions of a foreign court found to have jurisdiction in a given case.

In the past, U.S. litigants have complained that the time taken to obtain and enforce a judgment in a commercial dispute is unreasonably long. During the past three years, however, the judiciary has brought the average time to conclude civil cases from more than 20 months to well under 11 months, and the speed continues to improve.

The laws of Botswana including Bills before Parliament are easily searchable and accessible through the Botswana Attorney General's Office web site ([www.laws.gov.bw](http://www.laws.gov.bw)). Note that it can take up to 24 months for a law, once passed, to appear on the web site.

Botswana's commercial and bankruptcy laws are comprehensive. Secured and unsecured creditors enjoy similar rights under bankruptcy proceedings as they would in the United States. Botswana is a member of the International Center for the Settlement of Investment Disputes (ICSID) and the Multilateral Investment Guarantee Agency (MIGA), and therefore accepts binding international arbitration of investment disputes.

## Performance Requirements and Incentives

[Return to top](#)

Performance requirements are not imposed as a condition for establishing, maintaining, or expanding an investment in Botswana, or for access to tax and investment incentives. Foreign investors are encouraged, but not compelled, to establish joint ventures with citizens or citizen-owned companies.

Foreign investors wishing to invest in Botswana are required to register the company in accordance with the Companies Act and comply with other applicable legislation. Investors are encouraged, but not required, to purchase from local sources. The Government does not require investors to locate in specific geographical areas, use a specific percentage of local content, permit local equity in projects, manufacture substitutes for imports, meet export requirements or targets, or use national sources of financing.

As a policy matter the government encourages foreign firms to hire qualified Botswana nationals rather than expatriates, and the granting of work permits to expatriates may be made contingent upon establishment of demonstrable "localization" efforts. When such a contingency is imposed, after the company's start-up period the government may require evidence that a citizen is being trained to assume some of the duties being filled by an expatriate, particularly at the middle-management level.

Many investors who rely on expatriate managerial and technical expertise believe immigration is a major regulatory constraint. Some have complained of unreasonable delays in the adjudication of work permits, and others have said that the immigration authorities lack the necessary skill and expertise to properly adjudicate applications for individuals who possess a particular technical skill set. The U.S. Embassy is working with the Government of Botswana to

resolve these issues. These challenges may be somewhat mitigated for the investor who meets BEDIA's criteria for assistance on matters related to compliance with regulation, including immigration.

Botswana offers foreign investors equal access to certain incentives designed to promote export-oriented industries. Current incentives include an exemption from sales tax when importing machinery and equipment required in the production of goods for export, and a drawback of import duties for purchasing raw materials to be used for the production of goods destined for export.

The Botswana Export Credit Insurance and Guarantee Ltd. (BECI) allows investors to purchase coverage against certain events and losses such as the insolvency and inability of buyers to pay for purchases, unanticipated import restrictions, or the blockage by the buyer's country of foreign exchange transfer.

Grants are available to the foreign investor who partners with a Botswana citizen. A venture capital fund has been established under the Citizen Entrepreneurial Development Agency (CEDA) to provide equity capital to citizens and ventures between citizens and foreign investors. Approximately USD 29 million is available in the fund.

The government has directed central government, local authorities and parastatal organizations to purchase all products and services from locally-based manufacturers and service providers if the goods and services are locally available, competitively priced, and meet tender specifications in terms of quality standards as certified or recognized by the Botswana Bureau of Standards. The Department of Industrial Affairs under the Ministry of Trade and Industry administers this program.

This presents a regulatory challenge for U.S. exporters because government is the single largest procuring entity in the country. In order for a foreign firm to qualify with the Department of Industrial Affairs as a "locally-based manufacturer or service provider" so as to be able to sell goods or services to the Government of Botswana, the firm first must be registered with the Registrar of Companies and possess a relevant license or a waiver letter written by a "competent authority." Foreign firms may qualify as locally-based provided they go through the registration procedure and obtain the appropriate license. Since few of these procedures can be completed online, in reality this requires the company to have, at minimum, an agent on the ground to handle such matters, which increases the cost of doing business.

For Companies Act registration purposes, enterprises are classified as follows: Micro Enterprises —less than 6 employees including owner and annual turnover of up to P 60,000; Small Enterprises — less than 25 employees and annual turnover of between P 60,000 and P 1,500,000; Medium Enterprises — less than 100 employees and an annual turnover of between P 1,500,000 and P 5,000,000; Large Enterprises —more than 100 employees and an annual turnover of P5,000,000 or more.

The Minister of Finance and Development Planning has the authority to issue "Development Approval Orders" for specific projects, providing special tax relief and/or education and training grants of different types and rates. The Minister must be satisfied that the proposed project will be beneficial to Botswana's economy. Any firm, local or foreign, may apply for a Development Approval Order through the Permanent Secretary for Finance and Development Planning. Applications will be evaluated against the following criteria: job creation for Botswana citizens; the company's training plans for Botswana citizens; the company's plans to localize non-citizen

positions; Botswana citizen participation in company management; amount of equity held by Botswana citizens in the company; the location of the proposed investment; the project's effect on stimulation of other economic activities; and the project's effect on reducing local consumer prices.

### **Right to Private Ownership and Establishment**

[Return to top](#)

Other than the previously identified business sectors reserved for citizen ownership, Botswana has no restrictions on investment ownership, the sources of financing for investments, the marketing of products, the sources of technology used by companies, or the methods of training used by companies. Foreign and domestic private entities may freely establish, acquire, and dispose of their interests in business enterprises.

### **Protection of Property Rights**

[Return to top](#)

The Constitution of Botswana prohibits the nationalization of private property.

There are three main categories of land in Botswana: freehold, state land, and tribal land. Tribal and state land cannot be sold to foreigners. There are no restrictions on the sale of freehold land, but only about 5% of land in Botswana is freehold. In Gaborone, the number of freehold plots is limited.

State land represents about 25% of land in Botswana. On application to the Department of Lands, both foreign-owned and local enterprises registered in Botswana may lease state land for industrial or residential use. Commercial use leases are for 50 years and residential leases are for 99 years. Waiting periods tend to be long for leasehold applications, but subleases from current leaseholders are available.

Tribal land represents 70% of land in Botswana. To obtain a lease for tribal land, the investor must approach the relevant local Land Board. Processes are unlikely to be streamlined or consistent across Land Boards.

Since independence, the trend in Botswana has been to increase the area of tribal land at the expense of both state and freehold land.

Landlord-tenant law in Botswana tends to be moderately pro-landlord.

In addition to helping investors who meet its criteria obtain appropriate land leaseholds, BEDIA has also built factory units for lease to industrialists at affordable rental rates with the option to purchase at market value.

### **Transparency of Regulatory System**

[Return to top](#)

Bureaucratic procedures necessary to start and maintain a business tend to be open, although somewhat slow.

The Public Procurement and Asset Disposal Board (PPADB) is responsible for the award of all government tenders. Prospective government contractors are required to register with the PPADB. The PPADB maintains a process by which tender decisions can be challenged, and a

bidder can also challenge a tender procedure in the courts. PPADB publishes its decisions concerning awarded tenders, prequalification lists, and newly registered contractors.

The PPADB Act calls for preferential procurement of citizen-owned contractors for “works, service and supplies,” as well as “specific, disadvantaged women’s communities,” though it states that such preferences must be time bound, phased in and out as necessary, and consistent with the country’s external obligations and its “market-oriented, macroeconomic framework.” When a procuring entity wishes to reserve a tender for citizen-only participation, it is required to publish a notice to that effect either in the bid document or the pre-qualification notice.

Health and safety laws, embodied in the Factories Act of 1973, provide basic protection for workers from unsafe working conditions. Minimum working conditions required on work premises include cleanliness of the premises, adequate ventilation and sanitation, sufficient lighting and the provision of safety precautions. Health inspectors and the Botswana Bureau of Standards carry out periodic checks at both new and operating factories.

## **Efficient Capital Markets and Portfolio Investment**

[Return to top](#)

The government encourages the establishment of new and diverse financial institutions to support increased foreign and domestic investment and to fill existing gaps where finance is not commercially available.

Botswana’s central bank, the Bank of Botswana, acts as banker and financial advisor to the government and is responsible for the management of the country’s foreign exchange reserves, the administration of monetary and exchange rate policies, and the regulation and supervision of financial institutions in the country. Monetary policy in Botswana is widely regarded as prudent. The IMF reports that despite the strong recovery in 2010, inflation pressure remains contained.

Botswana banks may lend to non-resident controlled companies and other non-resident owned business entities in Botswana without specific approval from the Bank of Botswana. As a practical matter, foreign investors usually enjoy better access to credit than local firms due to the limited capital base of the local entrepreneur and conservative lending policies by commercial banks. Commercial lenders generally apply a debt to equity ratio of 4:1. Authorized dealers and credit institutions licensed by the Bank of Botswana are allowed to make foreign currency-denominated loans, financial leases and other forms of financial support to their customers in Botswana whether or not they have onshore accounts.

There are currently nine commercial banks operating in Botswana, and no merchant banks. All have correspondent relationships with U.S. banks. In addition, the African Banking Corporation operates a financial services institution, specializing in structured trade finance, treasury operations and investment banking.

The Botswana Stock Exchange (BSE) enjoyed impressive rates of growth between 2000 and 2006. In 2010, still reeling from the effects of the recession, the market capitalization of the domestic firms listed on the exchange fell to its lowest level since 2006. However, the 12 foreign companies listed on the exchange’s Foreign Company index (of which six are mining-related operations) increased their capitalization by 23% in 2010.



The Non-Bank Financial Institutions Regulatory Authority (NBFIRA) started its operations in April 2008 and is responsible for regulating all non-banking financial entities registered in Botswana including those engaged in asset management, micro-lending, pension funds, insurance, and collective undertakings. The regulations are designed to extend know-your-customer practices to the non-bank financial sector and deter money laundering and terrorist financing. NBFIRA is also responsible for regulating the International Financial Services Centre (IFSC). In 2011, the Government of Botswana launched the Financial Intelligence Agency, an independent government body responsible for the investigation of money laundering and terrorist finance. The FIA will assist the Botswana Police Service, Directorate on Corruption and Economic Crime, and Department of Public Prosecution to identify and investigate money laundering offenses.

The Government has legitimized offshore capital investments and allows foreign investors, individuals and corporate bodies, and companies incorporated in Botswana to open foreign currency accounts in specified currencies. The designated currencies are U.S. Dollar, Pound Sterling, Euro and the South African Rand. There are no known practices by private firms to restrict foreign investment participation or control in domestic enterprises. Private firms are not permitted to adopt articles of incorporation or association which limit or prohibit foreign investment, participation or control.

In general, Botswana exercises careful control over credit expansion, the Pula exchange rate, interest rates, and foreign and domestic borrowing. Banking legislation is in line with industry norms for regulation, supervision, and payments.

## **Competition from State Owned Enterprises**

[Return to top](#)

State-owned enterprises (SOEs) are majority or hundred percent owned by the Government. No law or regulation prohibits or restricts private enterprises from competing with SOEs. Private and government-owned enterprises are governed by the same business registration and licensing laws. The government has set up state-owned enterprises to compete with the private sector when and where an opportunity arises — primarily in the financial and utilities sectors — with the stated goal of assisting in the development of local small and medium enterprises. The senior management of SOEs report to the Permanent Secretary of the relevant ministry and the board seats of the SOEs may be allocated to any executive from the government and/or the private sector. Botswana law requires SOEs to publish annual reports, and depending on how they are constituted, subject themselves to audit by professional accountants or the Auditor General. In 2011, Parliament also began to exercise oversight of the SOEs compelling Presidents and Chairmen of the SOEs to appear before a Parliamentary committee to provide reports and answer questions regarding the performance of their firms.

The Bank of Botswana maintains a long-term sovereign wealth fund known as the Pula Fund in addition to a regular foreign reserve account providing basic import cover. This Pula Fund was established under the Bank of Botswana Act and forms part of the country's foreign exchange reserves, which are primarily funded by diamond revenues. The Pula Fund is wholly invested in foreign currency-denominated assets and is managed by the Bank of Botswana Board with input from recognized international financial management and investment firms. All realized market and currency gains or losses are reported in the Bank of Botswana's income statement.

## **Corporate Social Responsibility**

[Return to top](#)

Corporate Social Responsibility (CSR) is recognized and embraced by government, foreign and local firms, and customers. Major banks such as Standard Chartered and cell phone providers such as Mascom have established CSR programs and will sponsor projects and support local nonprofit concerns (e.g., Childline, SOS Children's Village, etc.). However, the CSR ethos has not taken hold in many smaller firms. The U.S. Embassy is working with the Botswana Confederation of Commerce, Industry and Manpower (BOCCIM) on the issue of CSR as well as ethical compliance.

## Political Violence

[Return to top](#)

There is no political violence in Botswana. The 2011 April-June public sector strike saw some police deployed to respond to student protesters, but with the exception of a few minor instances, the demonstrations did not turn violent.

## Corruption

[Return to top](#)

Corruption, including bribery, raises the costs and risks of doing business. Corruption has a corrosive impact on both market opportunities overseas for U.S. companies and the broader business climate. It also deters international investment, stifles economic growth and development, distorts prices, and undermines the rule of law.

It is important for U.S. companies, irrespective of their size, to assess the business climate in the relevant market in which they will be operating or investing, and to have an effective compliance program or measures to prevent and detect corruption, including foreign bribery. U.S. individuals and firms operating or investing in foreign markets should take the time to become familiar with the relevant anticorruption laws of both the foreign country and the United States in order to properly comply with them, and where appropriate, they should seek the advice of legal counsel.

The U.S. Government seeks to level the global playing field for U.S. businesses by encouraging other countries to take steps to criminalize their own companies' acts of corruption, including bribery of foreign public officials, by requiring them to uphold their obligations under relevant international conventions. A U. S. firm that believes a competitor is seeking to use bribery of a foreign public official to secure a contract should bring this to the attention of appropriate U.S. agencies, as noted below.

**U.S. Foreign Corrupt Practices Act:** In 1977, the United States enacted the Foreign Corrupt Practices Act (FCPA), which makes it unlawful for a U.S. person, and certain foreign issuers of securities, to make a corrupt payment to foreign public officials for the purpose of obtaining or retaining business for or with, or directing business to, any person. The FCPA also applies to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the United States. For more detailed information on the FCPA, see the FCPA Lay-Person's Guide at: <http://www.justice.gov/criminal/fraud/>

**Other Instruments:** It is U.S. Government policy to promote good governance, including host country implementation and enforcement of anti-corruption laws and policies pursuant to their obligations under international agreements. Since enactment of the FCPA, the United States has been instrumental to the expansion of the international framework to fight corruption. Several significant components of this framework are the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Antibribery

Convention), the United Nations Convention against Corruption (UN Convention), the Inter-American Convention against Corruption (OAS Convention), the Council of Europe Criminal and Civil Law Conventions, and a growing list of U.S. free trade agreements. This country is party to [add instrument to which this country is party], but generally all countries prohibit the bribery and solicitation of their public officials.

**OECD Antibribery Convention:** The OECD Antibribery Convention entered into force in February 1999. As of March 2009, there are 38 parties to the Convention including the United States (see <http://www.oecd.org/dataoecd/59/13/40272933.pdf>). Major exporters China, India, and Russia are not parties, although the U.S. Government strongly endorses their eventual accession to the Convention. The Convention obligates the Parties to criminalize bribery of foreign public officials in the conduct of international business. The United States meets its international obligations under the OECD Antibribery Convention through the U.S. FCPA. Botswana is not a party to the Convention.

**UN Convention:** The UN Anticorruption Convention entered into force on December 14, 2005, and there are 158 parties to it as of November 2011 (see <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>). The UN Convention is the first global comprehensive international anticorruption agreement. The UN Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption. The UN Convention goes beyond previous anticorruption instruments, covering a broad range of issues ranging from basic forms of corruption such as bribery and solicitation, embezzlement, trading in influence to the concealment and laundering of the proceeds of corruption. The Convention contains transnational business bribery provisions that are functionally similar to those in the OECD Antibribery Convention and contains provisions on private sector auditing and books and records requirements. Other provisions address matters such as prevention, international cooperation, and asset recovery. Botswana is a party to the Convention.

**OAS Convention:** In 1996, the Member States of the Organization of American States (OAS) adopted the first international anticorruption legal instrument, the Inter-American Convention against Corruption (OAS Convention), which entered into force in March 1997. The OAS Convention, among other things, establishes a set of preventive measures against corruption, provides for the criminalization of certain acts of corruption, including transnational bribery and illicit enrichment, and contains a series of provisions to strengthen the cooperation between its States Parties in areas such as mutual legal assistance and technical cooperation. As of December 2009, the OAS Convention has 34 parties (see <http://www.oas.org/juridico/english/Sigs/b-58.html>)

**Council of Europe Criminal Law and Civil Law Conventions:** Many European countries are parties to either the Council of Europe (CoE) Criminal Law Convention on Corruption, the Civil Law Convention, or both. The Criminal Law Convention requires criminalization of a wide range of national and transnational conduct, including bribery, money-laundering, and account offenses. It also incorporates provisions on liability of legal persons and witness protection. The Civil Law Convention includes provisions on compensation for damage relating to corrupt acts, whistleblower protection, and validity of contracts, inter alia. The Group of States against Corruption (GRECO) was established in 1999 by the CoE to monitor compliance with these and related anti-corruption standards. Currently, GRECO comprises 49 member States (48 European countries and the United States). As of December 2011, the Criminal Law Convention has 43 parties and the Civil Law Convention has 34 (see [www.coe.int/greco](http://www.coe.int/greco).)

**Free Trade Agreements:** While it is U.S. Government policy to include anticorruption provisions in free trade agreements (FTAs) that it negotiates with its trading partners, the anticorruption provisions have evolved over time. The most recent FTAs negotiated now require trading partners to criminalize “active bribery” of public officials (offering bribes to any public official must be made a criminal offense, both domestically and trans-nationally) as well as domestic “passive bribery” (solicitation of a bribe by a domestic official). All U.S. FTAs may be found at the U.S. Trade Representative Website: <http://www.ustr.gov/trade-agreements/free-trade-agreements>. Botswana has no FTA in place with the United States.

**Local Laws:** U.S. firms should familiarize themselves with local anticorruption laws, and, where appropriate, seek legal counsel. While the U.S. Department of Commerce cannot provide legal advice on local laws, the Department’s U.S. and Foreign Commercial Service can provide assistance with navigating the host country’s legal system and obtaining a list of local legal counsel.

**Assistance for U.S. Businesses:** The U.S. Department of Commerce offers several services to aid U.S. businesses seeking to address business-related corruption issues. For example, the U.S. and Foreign Commercial Service can provide services that may assist U.S. companies in conducting their due diligence as part of the company’s overarching compliance program when choosing business partners or agents overseas. The U.S. Foreign and Commercial Service can be reached directly through its offices in every major U.S. and foreign city, or through its Website at [www.trade.gov/cs](http://www.trade.gov/cs).

The Departments of Commerce and State provide worldwide support for qualified U.S. companies bidding on foreign government contracts through the Commerce Department’s Advocacy Center and State’s Office of Commercial and Business Affairs. Problems, including alleged corruption by foreign governments or competitors, encountered by U.S. companies in seeking such foreign business opportunities can be brought to the attention of appropriate U.S. government officials, including local embassy personnel and through the Department of Commerce Trade Compliance Center “Report A Trade Barrier” Website at [www.export.gov/Report\\_a\\_Barrier/index.asp](http://www.export.gov/Report_a_Barrier/index.asp).

**Guidance on the U.S. FCPA:** The Department of Justice’s (DOJ) FCPA Opinion Procedure enables U.S. firms and individuals to request a statement of the Justice Department’s present enforcement intentions under the anti-bribery provisions of the FCPA regarding any proposed business conduct. The details of the opinion procedure are available on DOJ’s Fraud Section Website at [www.justice.gov/criminal/fraud/fcpa](http://www.justice.gov/criminal/fraud/fcpa). Although the Department of Commerce has no enforcement role with respect to the FCPA, it supplies general guidance to U.S. exporters who have questions about the FCPA and about international developments concerning the FCPA. For further information, see the Office of the Chief Counsel for International Counsel, U.S. Department of Commerce, Website, at [http://www.ogc.doc.gov/trans\\_anti\\_bribery.html](http://www.ogc.doc.gov/trans_anti_bribery.html). More general information on the FCPA is available at the Websites listed below.

Exporters and investors should be aware that generally all countries prohibit the bribery of their public officials, and prohibit their officials from soliciting bribes under domestic laws. Most countries are required to criminalize such bribery and other acts of corruption by virtue of being parties to various international conventions discussed above.

Botswana has a strong legislative regime to combat corruption. The major corruption investigation body is the Directorate on Corruption and Economic Crimes (DCEC). Overall, DCEC is regarded as an active and effective organization.

Corruption in Botswana occurs but most have noted that it has not been an obstacle to investment. Botswana ranks 32nd out of 183 countries in Transparency International's Corruption Perception Index for 2011. The 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. In 2011, DCEC and the Botswana Confederation of Commerce, Industry and Manpower (BOCCIM) launched a business code of ethics for Botswana firms; fourteen major Botswana businesses have signed the Code.

In cases involving substantial misappropriation of money and land by government personnel, the DCEC and Attorney General have not been reluctant to investigate and prosecute officers at all levels. Corruption or "cheating for valuable consideration" is punishable by a prison term of up to 10 years, a fine of P500,000 (USD \$66,667), or both. The government typically obtains 16-20 convictions per year for corruption-related crimes. High level officials have been prosecuted.

The government bureaucracy is paid on time and is provided a living wage. Investors with experience in other developing nations describe the relative lack of obstruction or interference by law enforcement or other government agents as among the country's most important assets.

Foreign investors' complaints generally focus on the inefficiency and/or unresponsiveness of mid-level and low-level bureaucrats in government. Some have observed that nepotism in government as well as the private sector is too often tolerated; this situation is not aided by the small size of the population and the chronic shortage of skilled workers. The government has introduced a Performance Management System to improve the service and accountability of government employees, but its effectiveness has not yet been evaluated.

The 2000 Proceeds of Serious Crime Act expanded the DCEC's mandate to include money laundering. The 2009 Financial Intelligence Act provides a comprehensive legal framework to address money laundering and establishes a financial intelligence agency (FIA). The FIA, which operates under the Ministry of Finance and Development Planning, cooperates with various institutions such as Directorate of Public Prosecutions (DPP), Botswana Police Service, Bank of Botswana, the Non-Banking Financial Institutions Regulatory Authority (NBFIRA), the DCEC, and foreign FIAs to uncover and investigate suspicious financial transactions. 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.

### **Anti-Corruption Resources**

Some useful resources for individuals and companies regarding combating corruption in global markets include the following:

- Information about the U.S. Foreign Corrupt Practices Act (FCPA), including a "Lay-Person's Guide to the FCPA" is available at the U.S. Department of Justice's Website at: <http://www.justice.gov/criminal/fraud/fcpa>.

- Information about the OECD Antibribery Convention including links to national implementing legislation and country monitoring reports is available at: [http://www.oecd.org/department/0,3355,en\\_2649\\_34859\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/department/0,3355,en_2649_34859_1_1_1_1_1,00.html) See also new Antibribery Recommendation and Good Practice Guidance Annex for companies: <http://www.oecd.org/dataoecd/11/40/44176910.pdf>.
- General information about anticorruption initiatives, such as the OECD Convention and the FCPA, including translations of the statute into several languages, is available at the Department of Commerce Office of the Chief Counsel for International Commerce Website: [http://www.ogc.doc.gov/trans\\_anti\\_bribery.html](http://www.ogc.doc.gov/trans_anti_bribery.html).
- Transparency International (TI) publishes an annual Corruption Perceptions Index (CPI). The CPI measures the perceived level of public-sector corruption in 180 countries and territories around the world. The CPI is available at: [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009](http://www.transparency.org/policy_research/surveys_indices/cpi/2009). TI also publishes an annual *Global Corruption Report* which provides a systematic evaluation of the state of corruption around the world. It includes an in-depth analysis of a focal theme, a series of country reports that document major corruption related events and developments from all continents and an overview of the latest research findings on anti-corruption diagnostics and tools. See <http://www.transparency.org/publications/gcr>.
- The World Bank Institute publishes Worldwide Governance Indicators (WGI). These indicators assess six dimensions of governance in 213 countries, including Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law and Control of Corruption. See <http://info.worldbank.org/governance/wgi/index.asp>. The World Bank Business Environment and Enterprise Performance Surveys may also be of interest and are available at: <http://data.worldbank.org/data-catalog/BEEPS>.
- The World Economic Forum publishes the *Global Enabling Trade Report*, which presents the rankings of the *Enabling Trade Index*, and includes an assessment of the transparency of border administration (focused on bribe payments and corruption) and a separate segment on corruption and the regulatory environment. See <http://www.weforum.org/s?s=global+enabling+trade+report>.
- Additional country information related to corruption can be found in the U.S. State Department's annual *Human Rights Report* available at <http://www.state.gov/g/drl/rls/hrrpt/>.
- Global Integrity, a nonprofit organization, publishes its annual Global Integrity Report, which provides indicators for 106 countries with respect to governance and anti-corruption. The report highlights the strengths and weaknesses of national level anti-corruption systems. The report is available at: <http://report.globalintegrity.org/>.

## Bilateral Investment Agreements

[Return to top](#)

Botswana and the United States entered into an investment guarantee treaty soon after independence. Botswana has bilateral trade agreements governing the duty-free entry of goods with Malawi and Zimbabwe. Botswana is also a member of the Southern African Development Community (SADC) and the Southern African Customs Union (SACU). Other members of

SACU include South Africa, Namibia, Swaziland and Lesotho. SACU has announced it is planning to pursue free trade negotiations with China and India in addition to its Trade and Investment Cooperation Agreement with the U.S. Botswana has signed an interim Economic Partnership Agreement with the EU as part of SADC. In addition, Botswana participates in the Generalized System of Preferences, and is an Africa Growth and Opportunity Act beneficiary country. It is important to note, however, that none of these agreements are specifically "investment" agreements.

Botswana's trade regime is more open than that of an average Sub-Saharan Africa country. Its tariff policy is governed by SACU, which controls customs and excise duties on goods imported from non-SACU countries and establishes transit rights for products transported over Southern African territory. Botswana has erected some non-tariff barriers to trade, including import permit requirements for a variety of food products, seasonal trade bans on selected agricultural goods, and a state monopoly on beef exports. An ongoing USAID-funded program is working with the Government of Botswana and SADC to reduce such barriers.

### **OPIC and Other Investment Insurance Programs**

[Return to top](#)

The Overseas Private Investment Corporation (OPIC) makes insurance available to U.S. investors in Botswana. In October 2008, OPIC approved a USD 250 million guarantee facility for the Botswana diamond industry. The purpose of the guarantee was to develop a robust lending market to Botswana's emerging cutting and polishing industry.

Botswana is a member of the Multilateral Investment Guarantee Agency (MIGA). MIGA offers investors protection against inconvertibility or transfer of currency, expropriation, breach of contract, and war and civil disturbance.

The Botswana Pula has a crawling peg exchange rate and is tied to a basket of currencies comprised of approximately two-thirds South African rand and one third Special Drawing Right (SDR is itself a currency basket, comprised of the U.S. dollar, the Euro, British pound, and Japanese yen). As a result of the composition of the Pula basket, the exchange rate is heavily influenced by movements of the South African rand against the U.S. dollar.

The U.S. Embassy in Gaborone purchases local currency at the official exchange rate provided by the Department of State's Financial Service Center. The annual estimated U.S. dollar value of local currency used by the U.S. Embassy in Botswana is USD 15 million.

### **Labor**

[Return to top](#)

Botswana has high unemployment (estimated at 26.2 percent in 2008) and a severely constricted worker skills base. Employers can expect to engage in significant training efforts depending on the industry. Retention of workers and absenteeism can pose problems. In addition, managers often cite productivity of the workforce as a point of frustration. The lack of trained local citizen professionals is generally resolved by the use of expatriates.

The Employment Act of 1992 provides basic guidelines for employment in Botswana. The legislation sets minimum wages, length of the workweek, annual and maternity leave, hiring and termination. Standards set by the Act are consistent with international best practice as described by ILO model legislation and guidelines.

Some have observed that Botswana workers, as a whole, are both aware of their rights and not reluctant to take an employer to court if they believe these rights have been violated. Considerable expense and frustration can be avoided if an employer is careful to observe the labor laws and only fire for cause and with sufficient proof. Before a potential litigant goes to labor court, the parties must attempt mediation through the Department of Labor. If mediation fails, the parties go to one of eleven labor courts.

All Botswana citizens except those working in the Botswana Defense Force (BDF), police, and prisons are permitted to participate in trade unions. The largest unions are comprised of public sector workers. Although workers have a right to strike, those engaged in certain categories of “essential” services, including air traffic control, electricity services, fire services, the Bank of Botswana, health services, sewage services, diamond workers, veterinarians, and teachers, are not permitted to strike. The last three categories were added as essential services in the wake of the April-June 2011 public sector strike, in which 90,000 public sector workers went on strike and forced school and hospital shutdowns.

### Foreign-Trade Zones/Free Ports

[Return to top](#)

Botswana currently has no domestic free trade zones or free ports.

### Foreign Direct Investment Statistics

[Return to top](#)

Foreign direct investment statistics trends show that FDI forms a major portion of capital flows into Botswana followed by portfolio investments, which, though small, have shown a considerable increase since the establishment of the Botswana Stock Exchange.

The following tables show the Levels of Foreign Investment in Botswana by Industry and Country. The figures are from the Bank of Botswana 2010 Annual Report, the latest available at the time of printing.

Level of Foreign Direct Investment in Botswana by Industry (millions of Pula)

Industry	Foreign Direct Investment	Other Investment
Mining	3,714	131
Manufacturing	98	186
Finance	3,826	1,130
Retail & Wholesale	719	255
Water, Electricity and Energy	0	569
Business Services and Real Estate	590	4
Transport and Communication	14	7
Construction	1	0
Hospitality	9	0
Public Administration	0	13,914
Other	475	67
Total	9,446	16,263

Level of Foreign Direct Investment in Botswana by Country (millions of Pula)



Source	Foreign Direct Investment	Other Investment
North and Central America	0	219
(of which) U.S.	0	219
Europe	4,992	754
(of which) U.K.	888	671
(of which) Netherlands	34	0
(of which) Luxembourg	4,017	4
(of which) other Europe	19	82
Asia Pacific	536	344
Africa	3,918	1,028
(of which) South Africa	2,337	563
Middle East	0	0
Other	0	13,917
Total	9,446	16,262

Average exchange rate USD/Pula 1:7.5

Mining and finance remain the main contributing industries to foreign direct investment in Botswana, with a representation of nearly 80 percent. Europe dominates as the principal source of direct investment (56 percent). South Africa is also a significant contributor to foreign direct investment as a result of South Africa's involvement with the financial institutions in Botswana.

The following paragraphs provide a description of the major U.S.-based investors in Botswana.

AON Botswana is the largest insurance brokerage firm in the country with more than 100 employees. It currently commands about 60% of the insurance market and provides brokerage and advisory services in all insurance disciplines. It is a wholly owned subsidiary of the AON Corporation, headquartered in Chicago. AON-Botswana has annual revenues of USD \$7 million and its primary clients are the Government of Botswana and Debswana (Government-De Beers joint venture).

Marsh Insurance is 95-percent owned by Marsh New York (of the Marsh and McLennan Insurance Companies) and operates in Gaborone.

Lazare-Kaplan Botswana is a wholly-owned subsidiary of New York-based sightholder and jewelry manufacturer Lazare-Kaplan International.

Laurelton Diamonds, a subsidiary of U.S. luxury jewelry retailer Tiffany & Co is a sightholder involved in cutting and polishing diamonds. In August 2011, Laurelton completed an additional USD 300 million diamond cutting and polishing factory in Gaborone.

The Gemological Institute of America, part of the U.S. non-profit institute of gemological research of the same name, operates an office in Botswana which offers training programs for Botswana citizens in diamond grading and grades diamonds for mining companies.

In September 2011, Hewlett-Packard opened operations in Botswana and is providing computing and connectivity services. HP is working with the Government of Botswana on e-government and data solutions for health care.

Microsoft Innovation has a relationship with the Botswana Innovation Hub and has partnered with the Hub to provide a software design and development incubator in Botswana.

Wal-Mart has obtained a majority share of South-Africa based Massmart, which owns two large local retailers: Game and Builders' Warehouse.

Additional U.S. Distributors/Agents/Franchisees operating in Botswana include: Kentucky Fried Chicken, ReMax Realtors, Colgate Palmolive, Grant Thornton Acumen, Deloitte and Touche, Federal Express, Avis, 3M, and Canon.

Among non-U.S. investors, by far the largest is the Anglo-American Corporation (De Beers), which has a 50 percent stake, along with the Government of Botswana, in the country's diamond mining company Debswana.

## **Web Resources**

[Return to top](#)

Bank of Botswana: <http://www.bankofbotswana.bw>

Citizen Entrepreneurial Development Agency: <http://www.ceda.co.bw>

Ministry of Agriculture: <http://www.moa.gov.bw>

Ministry of Trade and Industry: <http://www.mti.gov.bw>

Ministry of Finance and Development Planning: <http://www.finance.gov.bw>

Southern African Development Community: <http://www.sadc.int>

Overseas Private Investment Corporation: <http://www.opic.gov>

Botswana Central Statistics Office: <http://www.cso.gov.bw>

Botswana Public Procurement and Asset Disposal Board: <http://www.ppadb.co.bw>

Botswana Export Development and Investment Authority: <http://www.bedia.co.bw>

Botswana Development Corporation: <http://www.bdc.bw>

Botswana Telecommunications Corporation: <http://www.btc.bw>

Botswana Telecommunications Authority: <http://www.bta.org.bw>

Directorate on Corruption and Economic Crime: <http://www.gov.bw/en/Ministries--Authorities/Ministries/State-President/Department-of-Corruption-and-Economic-Crime-DCEC>

Botswana Stock Exchange: <http://www.bse.co.bw>

[Return to table of contents](#)