

A lawyer's perspective on incentivising mining legislation

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A lawyer's perspective

- Transparency
- Elements of mining tax legislation
- Legitimacy –management of revenues collected
- International trends in extractives regulation
- Legislation as a driver of change

Transparency initiatives

- Transparent (from Merriam-Webster)
 - able to be seen through
 - easy to notice or understand
 - honest and open : not secretive
- International developments
 - Country by country reporting
 - Extractive Industries Transparency Initiative
 - Transparency Guarantees, may be a qualifying criterion in licensing policy
 - Enhanced revenue and contract reporting, publicising obligations
- National developments
 - Zimbabwe Mineral Revenue Transparency Initiative has been launched
 - H.E. President Mugabe has made several speeches emphasising drive for more transparency and fairness, including this month at the UN General Assembly ;

Why transparency?

- Transparency



- Accountability



- Good government



- Trust



- Value



Elements of mining tax legislation

- Basis - sovereign ownership of natural resources, incl. minerals
- Sound legal framework – on sustainable basis
 - Consistency, transparency, accountability, fairness, equal treatment
 - A fair sharing of burdens and returns from mining
 - Government roles and institutions clearly defined and responsibilities separated
 - Safeguarding health, safety, security, environment (HSE)
- Attuned to world market
 - Competitive package to attract investors
 - Government aim to capture a reasonable share of the resource rent
- Stability and predictability for business environment
- Transparent and effective revenue collection
- Aim for neutral, generally applicable regime, not case-by-case negotiation

Essential add-ons:

- Political will, clear strategy and adequate resources to implement legislation and enforce compliance
- Commitment to dialogue by authorities and industry - building trust

Legitimacy – management of revenues collected

- Focus not only on the collection of taxes
- Tax payers acceptance of tax system is influenced by perception of how tax revenue is spent
 - Fairness,
 - Efficiency
 - Value for money
 - Lack of corruption
- “Is our money being put to good use?”

International trends in extractives regulation - High level

- Increased focus on resource management by national authorities
 - moving from passenger seat to steering wheel
- Transition from contractual regulation to legislation
- Increased attention from civil society, trade unions, NGOs, etc
 - Extending the dialogue with stakeholders, including civil society
- From confidentiality to transparency
- Transparent tender rounds with simplistic tender criteria
- Increased attention to environmental management; stricter requirements for sustainable operations
- Increased HSE regulation levels – raising the bar
- Critical look at operational standards
 - from «good industry practice» to «Best international practices»

Using legislation to drive change

- Political will, consultation and capacity to implement
 - necessary prerequisites for reform
- Legislation then becomes more of a technical tool for executing policy
 - but, tools must come out of the box and into use
 - implementation and training essential for legislation to have the desired effect
- Regulatory focus
 - Modern resources regulations tend to focus on systematic management approach to compliance, especially in the areas of HSE
 - International trend is towards a strong flavour of self-regulation, easing some of the burden of the supervising agencies.
 - Smart regulation requires smart inspectors => continual training and improvement
- More than anything:
 - Transparency
 - Accountability
 - Sustainability

} Building trust

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