

The China syndrome: Africa, the East and mining

Over the past decade, South Africa has experienced an insatiable demand from China for raw material and commodities to fuel its manufacturing industries. As our biggest trade partner, China is simply light years ahead of the rest of the world when it comes to harnessing the economies of scale in manufacturing of commodities and electronic products and making these products at competitive prices.



The worldwide economic downturn, and in particular the decrease in the growth rate of China's economy, has put tremendous strain on manufacturing enterprises. Worldwide steel mills had to close down and China has pulled back on its manufacturing capacity. This has obviously pushed down commodity prices and has made many mining enterprises marginal or non-profitable.

The growth of the Chinese economy

Given the size and success of China's industries, it is easy to forget that the country is a relative newcomer to the international global markets. It was only in 1988, a mere 28 years ago, that China released its governmental stronghold on its economy and allowed privateers to develop businesses. In the space of these three decades, China has become one of the largest economies in the world and on current prediction, may very soon become the largest.

But there are changes afoot. Chinese state-owned enterprises have not always invested wisely and successfully in foreign markets. So too have privateers made mistakes and commandeered bad investments. Indications are that the Chinese government will take more active measures to prevent outbound Chinese investment and investment over certain margins will simply not be permitted. This comes off the back of Chinese businesses having announced a record-setting \$106bn foreign acquisitions in 2015.

Africa desperate for infrastructure investment

It is uncertain as to what this would necessarily mean for the rest of us. One thing is sure, and my own experience has taught me this, that Chinese investment in foreign markets has become far more conservative and price sensitive. Gone are the days where Chinese state-owned enterprises or privateers would simply throw money at projects almost with reckless abandon for the returns on investment, only to secure access to commodities and mining enterprises as part of its value chain.

Africa is in desperate need of infrastructure development and China has been one of the largest single contracting nations in Africa. In excess of \$375bn was invested in infrastructure projects in Africa in 2015. Yet with current economic pressures, this trend may change.

However, as a mining lawyer, I remain confident that investment in mining in Africa will continue and China will become more active in such investment. Perhaps these investments will be more mature than what we were accustomed to, but it makes sense for China to control as much of the value chain as it can. Also, it is always a good idea to invest in down cycles as the prices are normally right.

Barriers to investment in mining in Africa and South Africa

One big concern is that the South African mining regulatory space is volatile and uncertain. South African mining is going through its own identity crisis. Mineral laws used to follow Roman-Dutch legal principles and were intimately linked to land ownership. In other words, in most cases, if you owned the land, you owned the minerals.

When South Africa became an inclusive democracy in 1994, the government started looking at ways in which to transform the mineral dispensation in an equitable fashion. It is commendable that the government took almost 10 years to do this and with effect from 1 May 2004, minerals no longer belonged to private individuals, but resided in government as the custodian of the minerals for the benefit of all South Africans.

Transitional periods were created for the conversion of old order rights into new order rights, failing which, such rights would fall away and be available for allocation to newcomers.

Although South African mineral laws are constantly being tweaked, the new Mining Charter has still yet to be finalised and is courting much controversy from all sides.

The regulatory environment

The effect of all of this is that the mineral regulatory environment is not entirely predictable and stable. As such, investors do not always know the rules of engagement when they invest in the South African mining industry and they have through experience learnt that changes to the laws may be made, sometimes even without industry-wide consultation. All this leaves investors with an air of uncertainty.

Looking more north into Africa, mineral dispensations invariably follow a postcolonial flavour. The perception from the East is that it is sometimes more important who you know than what you know. As such, investment is often inspired by political affiliation rather than pure economic and commercial drivers.

The US influence

Against this backdrop, the world's largest economy, the United States of America, now has a new president. Barely a few

weeks into his term, President Trump has already made his protectionist, inward-looking approach to policy making abundantly clear. It is not yet clear how his policies will impact on global trade. What seems to be certain though is that aggressive competitors such as China may find greater scrutiny under the new American administration and foreign corrupt practices may be more closely investigated.

Although this does not directly impact on Chinese investment in mining in Africa, it may indirectly affect China's ability to use all material in its manufacturing processes and then to sell those end products into global markets with impunity. China may be forced to compete with America on a more even keel (even if this is only from the American perspective).

The old adage is true - we do live in interesting times. Whatever the future may hold, we cannot ignore the demands of globalisation and competitive markets. Any country in Africa that wants direct foreign investment from the East, will have to be sensitive to the needs of the East within a constantly changing global environment.

ABOUT THE AUTHOR

Wessel Badenhorst is a partner at [\[\www.hoganlovells.com Hogan Lovells]] (South Africa).

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