

UNDERSTANDING THE LEGAL AND REGULATORY CONSIDERATIONS FOR MINING SOLID MINERALS IN NIGERIA

By

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1. INTRODUCTION

Nigeria is regarded as a country endowed with abundant natural mineral resources such as iron, lead-zinc, tin, tungsten, tantalum, gold, manganese, and nickel. Nigeria's mineral resources also include valuable industrial minerals and rocks such as barite, halite, talc, kaolin, gemstones, limestone, marble, and granite. Over time, the solid mineral sector in Nigeria has remained largely undeveloped. However, in recent times, the government has committed to developing the country's mining sector. This article considers comprehensively, the legal and regulatory regime applicable to the mining sector in Nigeria.

2. THE LAWS AND REGULATIONS APPLICABLE TO THE MINING OF MINERALS IN NIGERIA

In Nigeria, there are a number of laws applicable to the mining sector such as the Constitution of the Federal Republic of Nigeria 1999 (as amended) (the **Constitution**), Land Use Act, Cap L5, Laws of the Federation 2004 (the **Land Use Act**); Nigerian Minerals and Mining Act, 2007 (the **Mining Act**); Nigerian Minerals and Mining Regulations 2011 (the **Mining Regulations**) and the Guidelines on Mineral Titles Application, January 2014 (the **Guidelines**). Secondary legislations regulating the mining industry are the Environmental Impact Assessment Act; Foreign Exchange (Monitoring and Miscellaneous Provisions)

Act; Nigerian Investment Promotion Act; and the Nigerian (Export Incentives and Miscellaneous Provisions) Act. Below is a summary of the major legislations affecting the mining sector.

The Constitution.

The Constitution is Nigeria's overarching law and the basis upon which law and government is organised in the country. The Constitution vests the entire property in and control of all minerals, mineral oils, and natural resources under or upon any land in Nigeria in the Government of the Federation.¹

The Mining Act.

The Mining Act is Nigeria's major legislation governing the mining sector. It regulates all aspects of the exploration and exploitation of solid minerals in Nigeria. The Mining Act mirrors the provision of the Constitution providing further that minerals are vested in the Federation on behalf of the people of Nigeria.² The Mining Act also provides that all lands in which minerals have been found in commercial quantities shall be acquired by the Federal Government in accordance with the Land Use Act.³

The Mining Act provides that the property in the mineral resources shall pass from the Federal Government to the person who has

¹ Section 44(3) of the Constitution.
² Section 1 of the Mining Act.
³ Section 1(2) of the Mining Act.

lawfully won them, upon their recovery in accordance with the Act.⁴

The Mining Regulations.

The Mining Regulations are the subsidiary legislation issued under the Mining Act. The Regulations contain detailed provisions for the administration of mineral titles by the Mining Cadastre Office, including the procedure, duration and documentation required for the application of a small-scale mining lease and for the application for a permit to export minerals for commercial purposes. The Mining Act and the Mining Regulations are administered by the Ministry of Mines and Steel and the Mining Cadastre Office.

The Land Use Act.

The Land Use Act is Nigeria's legislation governing land acquisition and ownership. However, the use of land for mining purposes is considered as constituting an overriding public interest.⁵ The Governor of a State is empowered to revoke an existing statutory right of occupancy for mining purposes or for any purpose connected therewith.⁶ However, the Mining Act also provides for contractual arrangements applicable to the lawful use of any land for mining purposes.

3. LICENCES AND PERMITS APPLICABLE TO THE MINING SECTOR

Under the Mining Act, a person is authorized to search for and exploit mineral resources when he or she has obtained a

⁴ Section 2 of the Mining Act.

⁵ Section 28 (2)(c) and 28(3)(b) of the Land Use Act.

⁶ Section 28(1) of the Land Use Act; and Section 22 of the Mining Act.

mineral title to do so. The different mineral titles available under the Act are: **Reconnaissance Permit, Exploration Licence, Small-Scale Mining Lease, Mining Lease, Quarry Lease and Water Use Permit.**⁷ It is an offence under the Act to undertake or be involved in the search or exploitation of mineral resources without having the requisite mineral title.⁸

Reconnaissance Permit

A reconnaissance permit is usually granted for the purpose of carrying out preliminary prospecting of a mineral through aerial, geophysical or geo-chemical surveys and geological mapping.⁹ In Nigeria, a reconnaissance permit allows the holder of the permit to only obtain access into, enter or fly over any land within Nigeria to search for mineral resources on a non-exclusive basis and to remove surface samples in small quantities¹⁰ The holder of a reconnaissance permit is not permitted to engage in drilling, excavation or other sub surface techniques when carrying out reconnaissance activities.¹¹ A reconnaissance permit is issued for an initial period of one year and renewable annually.¹²

⁷ Section 46(1) of the Mining Act.

⁸ Section 46(2) of the Mining Act.

⁹ Surya Sarathi Ray. Mines Min may retain Clause for Reconnaissance Permits. *Financial Express*. Retrieved from <https://www.financialexpress.com/economy/mines-min-may-retain-clause-for-reconnaissance-permits/177700/#:~:text=A%20reconnaissance%20operation%20is%20defined%20as%20one%20undertaken%20for%20preliminary,drilling%20or%20sub%2Dsurface%20excavation> accessed on 1 September 2020.

¹⁰ Section 58(1) of the Mining Act.

¹¹ Section 55(1)(b) of the Mining Act.

¹² Section 57 of the Mining Act; Regulation 33 of the Mining Regulations

A reconnaissance permit shall not be granted over any area that is designated as closed to mining operations.¹³ In addition, an area that is the subject of an exploration licence, mining lease, small-scale mining lease, quarry lease, or water-use permit is excluded from reconnaissance.¹⁴ Only a citizen of the Federal Republic of Nigeria or a company that has been duly incorporated under Nigerian law or a mining co-operative is qualified to apply for a reconnaissance permit in Nigeria.¹⁵ A reconnaissance permit is not transferrable or assignable to a third party under any circumstance whatsoever¹⁶ and where the holder of the permit becomes mentally incapacitated or diseased, the permit shall be revoked.¹⁷

Exploration Licence

An exploration licence gives its holder the exclusive right to conduct exploration activities within the area permitted.¹⁸ In Nigeria, an exploration licence is granted for an initial period of three (3) years and may be renewed for two further periods of two years.¹⁹ In order to be qualified to apply for an exploration licence, an applicant has to be either a company that has been duly incorporated under Nigerian law or a mining co-operative or the holder of a reconnaissance permit already granted in respect of the area which is the subject of the exploration permit application.²⁰ An applicant is also expected to show proof of

sufficient working capital for the exploration of the area applied for.²¹

A person who is a former exploration licence titleholder and whose licence has been revoked for the same exploration area or any part therein applied for, if such application is made within 2 years from the date of such revocation, shall be ineligible to apply for an exploration licence. In addition, a person shall be ineligible to apply for an exploration licence where any of the members or directors of the applicant or shareholder holding a controlling interest in the applicant has been convicted of a felony or an offence under the Mining Act or Mining Regulations.²²

Application for exploration licences will be refused for areas that are held to be sacred or areas which contain any thing which is the object of veneration²³ or which, as at the time of application for exploration licence is under an exploration licence, mining lease, small-scale mining lease, quarry lease or water use permit held by another licensee or lessee²⁴ or closed to mining operations.²⁵ Royalty is liable to be paid on any mineral obtained from exploratory activities or mining operations. Where such mineral is explored, exploited, or mined solely for the purpose of export for experiment or as a specimen, such mineral qualifies for waiver from royalty payment upon application to the Minister.²⁶

¹³ Section 3(2) of the Mining Act.
¹⁴ Regulation 87 of the Mining Regulations.
¹⁵ Section 47 of the Mining Act.
¹⁶ Section 56(4) of the Mining Act; Regulation 91(3) of the Mining Regulations.
¹⁷ Regulation 92(1)(b) of the Mining Regulations.
¹⁸ Section 60(1) of the Mining Act.
¹⁹ Section 62 of the Mining Act.
²⁰ Section 48 of the Mining Act.

²¹ Section 54 of the Mining Act.
²² Regulation 35(17) of the Mining Regulations.
²³ Section 98 of the Mining Act.
²⁴ Regulation 35(8)(a) of the Mining Regulations.
²⁵ Regulation 35(8)(b) of the Mining Regulations.
²⁶ Section 33 of the Mining Act.

Exploration licences shall not be granted for any area exceeding 200 square kilometres.²⁷ Where the holder of an exploration licence sells any mineral resources, he shall be subject to the payment of royalty as if the mineral resources were obtained under a mining lease.²⁸

Small-Scale Mining Lease

Small-scale mining is defined under the Mining Act as '*artisanal, alluvial and other forms of mining operations involving the use of low-level technology or application of methods not requiring substantial expenditure for the conduct of mining operations within a small-scale.*'²⁹ In order to be eligible to apply for a small-scale mining lease, an applicant is required to be a citizen of Nigeria with legal capacity who has not been convicted of a criminal offence or a mining co-operative or a corporate body duly incorporated under the Companies and Allied Matters Act or the holder of an exploration licence in respect of the area subject of the application.³⁰

The holder of a small-scale mining lease has the right to conduct an artisanal or small-scale mining operation which excludes the use of extensive and continued use of explosives or toxic chemicals and which does not employ more than 50 workers in a typical work day.³¹ A small-scale mining business is not permitted to have underground workings of more than 7 meters below the surface of the ground or galleries extending more than 10 meters

from a shaft.³² A small-scale mining lease is transferrable to a third party upon application to the Mining Cadastre Office and approval by the Minister.³³

A small-scale mining lease shall not be granted in an area which is the subject of an exploration licence, small-scale mining lease, mining lease, quarry lease, or water use permit or any area close to mining operations.³⁴ A person shall be ineligible to apply for a small-scale mining lease if it is shown that any of the members of directors of the applicant or a shareholder holding a controlling share has been convicted of a felony or a offence under the Mining Act and the Mining Regulations or in the case of a small-scale mining lease application does not proceed from an exploration licence, where the applicant is the holder of a former mining lease or small-scale mining lease title whose lease has been revoked for the same area.³⁵

Proceeds recovered from small-scale mining activities are required to be sold to a licenced mineral procurement centre known as "Mineral Buying Centre."³⁶ The Minister may revoke a small-scale mining lease where mining operations has been discontinued for a continuous period of six months.³⁷ The area covered by a small-scale mining lease shall not be less than 5 acres and not more than 3 square kilometres.³⁸ A small-scale mining lease is granted for a period of 5 (five) years and may be renewed for further 5 (five) year periods.³⁹ An

²⁷ Regulation 40 of the Mining Regulations.

²⁸ Section 63 of the Mining Act.

²⁹ Section 164 of the Mining Act.

³⁰ Section 49 of the Mining Act.

³¹ Regulation 48(1) of the Mining Regulations

³² Regulation 48(1)(c) of the Mining Regulations.

³³ Regulation 91(2) of the Mining Regulations.

³⁴ Regulation 33(9) of the Mining Regulations.

³⁵ Regulation 46(13) of the Mining Regulations

³⁶ Section 95 of the Mining Act.

³⁷ Section 151(h) of the Mining Act.

³⁸ Section 90 of the Mining Act.

³⁹ Regulation 50 of the Mining Regulations.

applicant for a small-scale mining lease shall be notified of refusal or approval of this application within 45 days of receipt of application for registration.⁴⁰

Mining Lease

A mining lease grants the holder of the mineral title the right to obtain access and enter the mining lease area to carry out exclusive exploration and exploitation of mineral resources activities.⁴¹ The holder of a mining lease also has the right to export mineral resources found within the mining lease area.⁴² Unless authorised by any other law, the holder of a mining lease is not permitted to remove beyond the mining lease area for commercial gain any of the timber or other forest produce, fish or water obtained from or raised on the mining lease area.⁴³

In Nigeria, only a corporate body duly incorporated under the Companies and Allied Matters Act or any other legal entity which has demonstrated that a commercial quantity of mineral resources exists in an area is qualified to apply for a mining lease.⁴⁴ A mining lease shall not be granted to any company that does not have in its employ, a person with adequate professional qualification and experience in mining⁴⁵ or where it is shown that any of the members or directors of the applicant or a shareholder holding a controlling share of the applicant has been convicted of a

felony or an offence under the Act or the Regulations.⁴⁶

An applicant for a mining lease whose application is successfully granted is expected to commence mine development within 18 months in the case of a mining lease for mineral resources and 12 months in the case of a mining lease for mineral water.⁴⁷ The holder of a mining lease is also expected to commence production no later than thirty-six months for a mining lease for mineral resources and twelve months for a mining lease for mineral water.⁴⁸ A person who has been granted a mining lease is required to pay annually, surface rent in such amount as may determined from time to time by the Minister for lands to be used in connection with its mining operations.⁴⁹

Mining leases are required to be granted or denied by the Minister within 45 days of application. A mining lease is valid for a period of twenty-five years and renewable every twenty-five years⁵⁰ and shall not be granted in respect of any area within an exploration licence area or a small-scale mining area except to the holder of the exploration licence or small-scale mining lease covering such area.⁵¹

Quarry Lease

Quarry leases in Nigeria are granted in respect of all naturally occurring quarriable minerals such as asbestos, china clay, fuller's earth, gypsum, marble, limestone,

⁴⁰ Regulation 46(17) of the Mining Regulations.
⁴¹ Section 68 of the Mining Act.
⁴² Section 68(g) of the Mining Act.
⁴³ Section 69 of the Mining Act.
⁴⁴ Section 50 of the Mining Act.
⁴⁵ Section 73(1) of the Mining Act; Regulation 57(14) of the Mining Regulations.

⁴⁶ Regulation 57(12)(a) of the Mining Regulations.
⁴⁷ Section 70(a) of the Mining Act.
⁴⁸ Section 70(b) of the Mining Act.
⁴⁹ Section 102 of the Mining Act.
⁵⁰ Section 66 of the Mining Act.; Regulation 60 of the mining Regulations.
⁵¹ Section 65 of the Mining Act; Regulation 57(16 and 17) of the Mining Regulations.

mica, pipe clay, slate, sand, stone, laterite and gravel.⁵² A quarry lease shall not be granted in any area of land exceeding 5 square kilometres and shall remain in force for a period of not more than five years from the date of the lease was granted.⁵³ A quarry lease grants the titleholder the exclusive right to enter the land over which the lease was granted to carry out quarrying operations, remove and dispose the quarriable minerals.⁵⁴

An applicant for a quarry lease is required to have in his employment, a person who possesses a minimum qualification of a certificate in mining or quarrying related field.⁵⁵ A quarry lease may proceed from an exploration licence if made by the exploration titleholder during the term of the exploration licence and the entire area requested for inclusion in the quarry lease is a contiguous area from within the exploration licence.⁵⁶ A person shall be ineligible to apply for a quarry lease if it is shown that any of the members or directors of the applicant or a shareholding holding a controlling share of the applicant has been convicted of a felony or an offence under the Mining Act or the Mining Regulations.⁵⁷ A quarry lease applicant is also deemed ineligible if he is a former quarry lease titleholder whose lease had been revoked for the same quarry or any part therein applied for when such application is made 12 months from the date of such revocation.⁵⁸

Application for a quarry lease shall be rejected or approved within 45 days of application.⁵⁹ Areas the subject of other mineral titles or which have been closed to mining operations are not eligible to be granted quarry leases.⁶⁰

Water Use Permit

Only the holder of or an applicant for an exploration licence, small scale mining lease, mining lease, or quarry lease is qualified to apply for a water use permit under the Mining Act and the Mining Regulations.⁶¹ An applicant for a water use permit is required by the Mining Act and the Mining Regulations to have in his employment, a person who possesses adequate qualification and experience and registered with the Council for Mining Engineers and Geoscientists and any other relevant professional body.⁶²

A person shall be ineligible to apply for a water use permit if it is shown that any of the members or directors of the applicant or a shareholder holding a controlling share of the applicant has been convicted of a felony or an offence under the Mining Act or the Mining Regulations.⁶³ A water use permit applicant is also deemed ineligible if he is a former water use permit holder whose permit had been revoked for the same water use permit area or any part therein applied for when such application is made 12 months from the date of such revocation.⁶⁴ A water use permit shall not be granted for areas which are the subject

⁵² Section 75 of the Mining Act;
⁵³ Section 77 of the Mining Act.
⁵⁴ Section 78 of the Mining Act.
⁵⁵ Regulation 26(iii) of the Mining Regulations.
⁵⁶ Regulation 67 of the Mining Regulations.
⁵⁷ Regulation 68(14)(a) of the Mining Regulations.
⁵⁸ Regulation 68(14)(c) of the Mining Regulations.

⁵⁹ Regulation 68(21) of the Mining Regulations.
⁶⁰ Regulation 69 of the Mining Regulations.
⁶¹ Section 52 of the Mining Act.
⁶² Regulation 26(ii) of the Mining Regulations.
⁶³ Regulation 78(18)(a) of the Mining Regulations.
⁶⁴ Regulation 78(18)(c) of the Mining Regulations.

of existing mineral titles held by persons other than the applicant for water use permit or areas closed to mining operations.⁶⁵

The validity of a water use permit is for as long as the small-scale mining lease, mining lease, quarry lease or exploration licence for which use it was granted and shall expire upon revocation or expiry of the small-scale mining lease, mining lease, quarry lease or exploration licence for which use it was granted.⁶⁶

4. CONSIDERATIONS FOR MINING OPERATIONS

Before the commencement of mining operations by a mineral titleholder, there are certain legal considerations that a person interested in mining business in Nigeria must take into cognizance such as: lands excluded from mining operations, surface rent and compensation, outright ownership of mining land, annual service fees and royalties.

Lands Excluded from Mining Operations

Certain lands are excluded from minerals exploration and exploitation and no mineral title may be granted over such lands. Examples of such lands include any land or area which is:⁶⁷

- (a). set apart for any military purpose, save with the President's approval;
- (b). within 50 (fifty) meters of oil pipeline licence area;

- (c). occupied by any town, village, market, cemetery, ancestral, sacred or archaeological site, appropriated for a railway or situated within 50 (fifty) meters of a railway, or a government or public building, reservoir, dam or public road;
- (d). subject to the provision of National Museums law and the National Parks Service Act;
- (e). over which a mineral title has previously been granted by the Mining Cadastre Office and the Mining Title is subsisting; and
- (f). that is designated as closed to mining operations.

Surface Rent and Compensation

The holder of a mineral title is mandated to pay an annual surface rent to the owner or occupier of the land(s) occupied by it in connection with its mining operations without demand and in such amount, at such place and in such form as shall be determined by the Minister.⁶⁸

The holder of a mineral title is also mandated to pay to the owner or occupier of land subject to a state lease or right of occupancy, reasonable compensation for surface rent of the owner or for any damage done to the surface of the land; and damage to economic crops, trees, buildings or works.⁶⁹ Compensation is also to be made to the owner or occupier of land within the lease area for removal or destruction of crops, economic trees,

⁶⁵ Regulation 79 of the Mining Regulations.
⁶⁶ Regulation 81 of the Mining Regulations.
⁶⁷ Section 3 of the Mining Act.

⁶⁸ Regulation 22(i) and 100 of the Mining Regulations; Section 102(1) of the Mining Act.
⁶⁹ Regulation 11(3)(a) of the Mining Regulations; and Section 71(d) of the Mining Act.

buildings or works.⁷⁰ Such compensation shall be paid on the basis of the ownership or development of the land and anybody who suffers any damage, loss or disturbance of his right by reason of the mining operations shall be entitled to be paid adequate compensation which shall be determined from the particular circumstances in question.⁷¹

Thus, before a mining lease is granted on a public or State land, the Minister will inform the owner or occupier of the land of his intention to grant a lease and also require the owner or occupier of the land where the mining operations will take place to state in writing, the rate of annual surface rent which he so desires should be paid by the lessee. The Minister, once he is satisfied that the surface rent is fair and reasonable, shall impose same on the lessee of the area where the mining operations is to take place and such rent shall be subject to revision every five (5) years.⁷²

If there is a question as to the proportion of the surface rent payable to the persons entitled to receive same, such question shall be referred to the Land Use and Allocation Committee (**LUAC**) of the relevant State for determination and the report of the LUAC will be taken into consideration by the Minister when making a decision.⁷³ Failure by the holder of the mineral title to pay surface rent as prescribed by the Minister implies that the mineral titleholder will not be able to surrender the mineral title when he wants to as the payment of all rents and fees

prescribed is a precondition to the approval of an application to surrender mineral title by a lessee.⁷⁴ The failure to pay surface rent is not a precondition to development of the mining site.

Ownership of mining land

The Mining Act and Mining Regulations do not exclude outright ownership of the mining land. Where a mineral title holder has outrightly purchased the land from the owners prior to mining, then the land will be owned by the mineral title holder and there will be no need to pay surface rent. The idea behind the payment of surface rent is to compensate the owners of occupiers of land who have mineral resources discovered on or under their land.

Annual Service Fees and Royalties

A mineral title holder other than a holder of a reconnaissance permit, shall pay an annual service fee to the Mining Cadastre Office equal to the number of Cadastral Units that comprise the title area multiplied by the fee per Cadastral Unit for that type of title.⁷⁵ A mineral title holder other than a holder of a reconnaissance licence and a water use permit shall be liable to pay royalties on any minerals obtained in the course of exploration or mining operations.⁷⁶ The royalty rate for over 60 solid minerals is set out [here](#). Where mineral is explored, exploited, or mined solely for the purpose of export for experiment or as a specimen, such mineral

⁷⁰ Regulation 11(3)(b) of the Mining Regulations.

⁷¹ Regulation 11(3)(c) and 11(4) of the Mining Regulations.

⁷² Section 102(2) of the Mining Act.

⁷³ Section 103(c) of the Mining Act.

⁷⁴ Section 150(2)(c) of the Mining Act.

⁷⁵ Section 10 of the Mining Act; and Regulation 98 of the Mining Regulations.

⁷⁶ Section 33 of the Mining Act; and Regulation 99 of the Mining Regulations.

qualifies for waiver from royalty payment upon application to the Minister.

5. INCENTIVES APPLICABLE TO A MINERAL TITLE HOLDERS

A mineral title holder under the Mining Act engaged in mining operations under the Act and the Regulations is entitled to certain benefits.⁷⁷

Extension Services for small-scale and artisanal mining

The Federal Government, through the Ministry of Mines and Steel is mandated under the Mining Act to provide the following extension services to small-scale and artisanal miners including:⁷⁸

- (a). the provision of mineral testing standards and the determination of mineral grades;
- (b). provision of proven mineral reserve evaluation including feasibility reports;
- (c). assistance with mine design and planning suitable for the deposit;
- (d). teaching adequate skills in mining to small-scale and artisanal miners and regularly introduce them to new mining technology;
- (e). provision of teaching equipment and plant for hire on arrangement with manufacturers of leasing companies and proper linkage and guarantees provided;
- (f). introduction of appropriate mineral processing technology skills in

order to meet market demands and optimize profit;

- (g). provision of environmental impact assessment report and detailed guidelines on waste and tailing disposal;
- (h). introduction of health and safety procedures in the mines, provision of water and health facilities to large mining camps;
- (i). holding regular workshops to update miners' knowledge on legal, marketing, business skills and infrastructural support, facilitate mineral testing and the determination of mineral grades; and
- (j). facilitate the testing and determination of mineral grades.

Capital Allowances

In determining its total profits, a company engaged in mining operations is entitled to deduct from its assessable profits a capital allowance of 95% (ninety-five percent) of qualifying capital expenditure incurred in the year in which the investment is incurred including:

- (a). all certified exploration, development and processing expenditure including feasibility study and sample assaying costs; and
- (b). all infrastructure costs incurred regardless of ownership and replacement.

The company may further deduct the amount of any loss incurred to the farthest extent possible from the assessable profits

⁷⁷ Section 23 of the Mining Act.
⁷⁸ Section 91 of the Mining Act.

of the first year of assessment, after that in which the loss was incurred, an in so far as it cannot be so made, then from such amounts of such assessable profits of the following years up to a limit of four years.⁷⁹

Exemption from Customs duty and Other Benefits

All operators in the mining industry are entitled to the following benefits:

- (a). exemption from payment of customs and import duties in respect of plant, machinery, equipment and accessories imported specifically and exclusively for mining operation and approved by the Mines Inspectorate Department;
- (b). expatriate quota and resident permit in respect of the approved expatriate personnel; and
- (c). personal remittance quota for expatriate personnel, free from any tax imposed by any enactment for the transfer of external currency out of Nigeria.⁸⁰

Permission to Retain and Use Foreign Exchange and Free Transferability of Foreign Exchange

Where a mineral title holder earns foreign exchange from the sale of its minerals, especially on its export sale transactions, it may be permitted by the Central Bank of Nigeria to retain in a foreign exchange domiciliary account a portion of its foreign exchange earnings for use in acquiring spare parts and other inputs required for

mining for operations which would otherwise not be readily available without the use of such earning.⁸¹

The mineral title holder is guaranteed free transferability through the Central Bank in convertible currency of:

- (a). payments in respect of loan servicing where it has obtained a certified foreign loan for its mining operations; and
- (b). the remittance of foreign capital in the event of sale or liquidation of the mining operations or any interest therein attributable to foreign investment.⁸²

Pioneer Status and Tax-Deductible Costs

Companies engaged in the exploitation of mineral resources shall be entitled to a tax relief period from the date they commence mining operations, and the tax relief shall continue for three years. After the initial three-year period, the Minister may extend the period for a further period of two years.⁸³ Companies engaged in the exploitation of mineral resources are required to establish a tax-deductible reserve for environmental protection, mine rehabilitation, reclamation and mine closure costs.⁸⁴

6. REQUIREMENTS FOR MINERAL TITLE HOLDERS BEFORE COMMENCING MINING OPERATIONS

After obtaining the mining lease but before commencing mining operations, there are certain conditions a mining lessee is

⁷⁹ Section 24 of the Mining Act.

⁸⁰ Section 25 of the Mining Act.

⁸¹ Section 26 of the Mining Act.

⁸² Section 27 of the Mining Act.

⁸³ Section 28 of the Mining Act.

⁸⁴ Section 30 of the Mining Act.

required to fulfil. These conditions require that a company involved in mining operations interface with other regulators beyond the Mining Cadastre Office, including the Federal Ministry of Environment and the State Mineral Resources and Environmental Management Committee.

Community Development Agreement

A company engaged in mining operations is expected to have entered into a Community Development Agreement with the host community where the land is located and the mining operations is to be carried out.⁸⁵ The purpose of the Community Development Agreement is to ensure the transfer of social and economic benefits to the host community. The Community Development Agreement is to be reviewed by the parties every five (5) years and shall be binding upon all parties until so reviewed.⁸⁶ The Community Development Agreement is expected to address the following:

- (a). programmes for the development of the community such as:
 - (i). educational scholarship, apprenticeship, technical training and employment opportunities for indigenes of the communities;
 - (ii). financial or other forms of contributory support for infrastructural development and maintenance such as education, health or other

community services, roads, water and power;

- (iii). assistance with the creation, development and support to small scale and micro enterprises;
 - (iv). agricultural product marketing; and
 - (v). methods and procedures of environment and socio-economic management and local governance enhancement.
- (b). modalities for the monitoring and implementation of the programmes contained in the agreement;
 - (c). environmental protection, compensation;
 - (d). conflict management or resolution;
 - (e). rights of the holder in relation to the mining area;
 - (f). any other relevant areas.

Persons freely chosen by the generality of the community, usually between 3 and 7 persons, whose names have been submitted by the head of the community to the Ministry of Mines and Steel Development for verification (through any of its agencies and in consultation with the State Mineral Resources, Environment Management Committee and the Chairman of the Local Government) shall be signatories to the Community Development Agreement.⁸⁷

⁸⁵ Section 116 of the Mining Act; and Regulation 193 of the Mining Regulations.

⁸⁶ Section 116(3) of the Mining Act; and Regulation 193(14) of the Mining Regulations.

⁸⁷ Regulation 193(6), (7) and (8) of the Mining Regulations.

Every Community Development Agreement is required to be duly signed by the mining lease holder and the authorised representatives of the host community and approved by the Minister⁸⁸ and a copy and report thereof submitted to the Mines Environmental Compliance Department for documentation and approval.⁸⁹ Where the mining lease holder and the host community are unable to agree on any aspect of the Community Development Agreement, such dispute shall be submitted to the Minister for resolution.⁹⁰ In implementing the Community Development Agreement, a mineral title holder is expected to hold regular consultations with the host communities.⁹¹

Community Development Action Plan

It is mandatory for every holder of a mining lease to submit a Community Development Action Plan to the Mines Environmental Compliance Department of the Ministry.⁹² The Community Development Action Plan is a document which is meant to address:

- (a). Implementation plan of all the social concerns raised in the Environmental Impact Assessment Study; and
- (b). The implementation plan of the contents of the Community Development Agreement.

Environmental Impact Assessment Statement

Environmental Impact Assessment Statement is another document that a company involved in mining operations is mandated to submit to the Ministry before commencement of its mining operations. Environmental Impact Statement, as it relates to the mining of mineral resources, is defined as a statement on the impact of mining operation on the environment approved by the Federal Ministry in charge of Environment.⁹³ Two hard copies and one soft copy of the Environmental Impact Assessment Statement, approved by the Ministry of Environment in respect of the exploration or mining operations to be carried out within the mineral title area, shall be submitted to the Mines Environmental Compliance Department for approval.⁹⁴

The Environmental Impact Assessment report shall contain information on the following matters or any other information as may be necessary:

- (a). A brief description of the project or the process which should include: the project and development objectives, targets and indicators; exploration and prospecting methods; selection of mine and spoil disposal sites; mine infrastructure, etc.
- (b). Project justification, that is, the project proponent shall briefly state the socio-economic and other benefits of the project.
- (c). Regulatory framework, that is, a review of local and international

⁸⁸ Regulation 193(10) of the Mining Regulations.
⁸⁹ Regulation 193(12) and (13) of the Mining Regulations.
⁹⁰ Regulation 193(11) of the Mining Regulations.
⁹¹ Regulation 193(2) of the Mining Regulations.
⁹² Regulation 193(3) of the Mining Regulations.

⁹³ Regulation 2 of the Mining Regulations.
⁹⁴ Sections 119(c)(i) and 71(1)(a) of the Mining Act; Regulation 159 and 160 of the Mining Regulations.

laws relevant to the environmental status of the project.

(d). Description of the baseline environmental condition which shall involve field mapping sampling and laboratory analysis aimed at producing biological and physio-chemical data on the current status of the environment in the project area and shall cover subjects such as climatic conditions, soil studies, hydrology, hydrogeology etc.

(e). Risk assessment, that is, the project proponent should have risk associated with the project properly evaluated so that mitigation measures can be suggested in the Environmental Management Plan.

Environmental Protection and Rehabilitation Plan⁹⁵

When submitting the Environmental Impact Assessment Statement, every holder of mining lease is required to submit an Environmental Protection and Rehabilitation Plan which is aimed at achieving sustainable operation and management of the mining project. The Environmental Protection and Rehabilitation Plan shall include:

(a). an identification of the exploration or mining area concerned, its current uses and productivity prior to exploration or mining operations;

(b). mitigation measures to minimise the risks associated with the project; and

(c). quantity and nature of waste to be generated from any exploration or mining operation and the method of its final disposal;

(d). the reinstatement, re-levelling, re-vegetation, reforestation and contouring of the affected land; and

(e). the filling in, sealing or fencing off of excavation, shafts and tunnels;

(f). the use to which the land is to be put following restoration, including a statement of the utility and capacity of the restored land to support a variety of alternative uses.

Other Pre-Conditions for Commencement of Operations⁹⁶

Before commencing mining operations, a company involved in the business of mining is expected to also complete the following conditions:

(a). A detailed work programme to be undertaken in the mineral title area, submitted to the Mines Inspectorate Department for approval;

(b). Documentary evidence that the mineral title holder has notified, compensated or offered compensation to landowners and/or occupiers;

(c). A plan of mining operations, submitted to the Mining Cadastre

⁹⁵ Regulation 160(4) of the Mining Regulations.

⁹⁶ Regulation 118 of the Mining Regulations.

Office, Mines Inspectorate
Department and the
Environmental Compliance
Department;

- (d). Completion of placement of all demarcation point markers defining the boundary of the mineral title area; and
- (e). Evidence that the mineral title area is free from any unresolved boundary dispute.

Notice of Commencement of Mining Operations

A mineral title holder is required to inform the Mines Inspectorate Department in written form of commencement within 30 (thirty) days from the start of mineral production.⁹⁷

7. EXPORTING MINERALS FOR COMMERCIAL PURPOSES

A person must be licensed under the Mining Act to export minerals mined from Nigeria. A mineral title holder, other than a holder of a reconnaissance permit or an exploration licence, is qualified to apply to be issued a permit to export minerals for commercial purposes.⁹⁸ Application shall be made to the Mines Inspectorate Department for a permit to export minerals for commercial purposes by submitting the following documents:

- (a). Duly completed Application Form;
- (b). 3 (three) years Tax Clearance Certificate;
- (c). Evidence of registration with the Nigerian Export Promotion

Council (NEPC). This registration is completed on the NEPC website at www.nepc.gov.ng;

- (d). Evidence of source of supply;
- (e). Evidence of the payment of royalties on the minerals to be exported; and
- (f). Reason for exportation or contractual agreement with a foreign buyer.

An exporter of any mineral shall, before the mineral is entered for export, declare on the appropriate customs entry form, the State from which the mineral was extracted; and on demand by the appropriate authority furnish the information relating to any mineral which the exporter has exported.⁹⁹ Registration as an exporter with the NEPC entitles an intending exporter to an exporters certificate which is issued within 1 (one) working day of payment of registration fee. The NEPC registration fee for a new certificate registration is NGN13,500. Where minerals mined are to be sold locally by a mineral title holder, only persons who are licensed to purchase mineral resources are entitled to purchase same.¹⁰⁰

8. CONCLUSION

As Nigeria plans to take advantage of the inherent growth opportunities available in the mining sector and open the sector to private and foreign investment and investors, it is important for all players, new and existing players to be aware of the regulatory and commercial considerations for the mining sector in Nigeria.

⁹⁷ Regulation 119 of the Mining Regulations.

⁹⁸ Regulation 131 of the Mining Regulations.

⁹⁹ Section 143 of the Mining Act.

¹⁰⁰ Section 94 of the Mining Act

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