AN OVERVIEW ON THE LEGAL AND REGULATORY FRAMEWORK FOR MINING IN NIGERIA

In recent years, developing nations have become a beehive of activities for solid mineral investors. This is due mainly to two major factors, attractive geology and investment friendly regulatory frameworks. Nigeria has recently enacted an all-encompassing law on solid minerals.


2. OWNERSHIP OF MINERALS AND MINING RIGHTS

Mineral resources are state owned in Nigeria and only companies duly incorporated in Nigeria may be granted a Mining title. There are two major types of mining rights namely, prospecting rights and mining lease. They are further subdivided into the following:

(i) Prospecting right
(ii) Exclusive Prospecting Licence
(iii) Special Exclusive Prospecting Licence
(iv) Temporary Mining Lease
(v) Mining Lease
(vi) Special Mining Lease

3.1. PROSPECTING TITLES

The Act provides in section 26 that nobody shall prospect for any mineral unless he has a prospecting right or an exclusive prospecting licence issued to him in accordance with the provisions of the Act. There are three types of prospecting titles which was Prospecting Right, Exclusive Prospecting Licence and Special Exclusive Prospecting Licence.

A prospecting right authorizes the holder to prospect and erect beacons on any land that has been declared closed for prospecting. This is usually granted for a period not exceeding one year, unless it is revoked or determined before the expiration of that period.

Exclusive prospecting Licence is usually granted to a holder or an agent who is the holder of a prospecting right on its behalf, who has beaconed the area to be covered by the licence. It is granted in respect of an area of 20 square kilometers or less and for a period of two years or less. This period may be renewed for a further term of one year or more in some special cases.

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1 Cap 350 LFN, 1990
2 Private ownership is practiced in U.S.A and South Africa, though South Africa recently enacted a new Mineral Law that confers the ownership to the Government.
3 Section 32 (3)
4 Sections 34
5 Section 34(5), 35, & 40
The Minister may also grant a special exclusive prospective licence for an area exceeding 20 sq metres and this is renewable for one year each for a period of five years. The terms relating to an exclusive prospecting licence are applicable to special exclusive prospecting licence with such special terms and conditions as the Minister may impose.  

The discovery of any radioactive mineral or any mineral, which is reasonably thought to be a radioactive substance, should be reported to the Minister.

3.2. **MINING LEASE**

A mining lease confers on the lessee the right to enter on land within the area of lease and the exclusive right to mine in the land and to remove and dispose of the minerals specified in the lease on the payment of the prescribed royalties. Only persons granted mining lease may carry out mining operations. During the processing of the application for a mining lease, a temporary mining lease may be granted pending the grant of the lease.

The Minister may grant a mining lease to a company if he is satisfied that the company has in its employ, persons who possess adequate professional qualifications and experience in mining operations. Such a lease would be cancelled if the persons cease to be in the employment of the company. Unless the Minister is satisfied that the absence is of a temporary nature or the company shall cease operations until a suitable supervisor is available or the continuation of mining would not have a detrimental effect on mineral resources in Nigeria.

The Minister may grant a mining lease to a holder of a prospecting right, who has beaconed the area over which an application is made or a holder of an exclusive prospecting licence in respect of any land lying within an area covered by the licence. The mining lease sought to be granted should specify the mineral which the lessee is entitled to mine and such a lease. On the expiration of the mining lease, if it appears to the Minister that the:

   a) lessee is carrying on work in normal and business like manner;
   b) mining lease is not at that time liable to be forfeited under the provisions of this Act; and
   c) lessee has given the Minister six months notice in writing in that behalf,

the lessee shall be entitled, on payment of the prescribed fee to renew the lease on such terms as may be approved and for a period not exceeding ten years.

The Minister shall before granting the mining lease on any private or state land, cause the owner or occupier of the land to state in writing within a period specified by the Minister, the rate of annual surface rent which the owner desires that should be paid to him by the lessee for land occupied or used by it for or in connection with its mining operations. The owner usually fixes this rate. But in any case whether the owner or the Minister fixes it, it is still subject to review by the Minister from time to time.

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6 Sections 40 and 41  
7 Section 57  
8 Sections 50(1), (2) & (3)  
9 Section 48  
10 Section 51  
11 Section 59
Such a holder of a mining lease may not cut, or take any protected tree except with the consent of a proper forestry officer and on the payment of fees and royalties prescribed under forestry law of the relevant state, though he may cut, take or use any tree in the course of mining operations that is not protected.\textsuperscript{12}

3.3. INCENTIVES

In Nigeria, certain investment incentives have been put in place, which are calculated at attracting investors. These incentives are necessary considering that mining of minerals involve heavy capital investment and a long-term cash flow. They are:

FISCAL INCENTIVES

(a) depreciation or capital allowance of 75\% of certified true capital expenditure incurred in the year of investment and 50\% in subsequent years

(b) losses in each financial year not exceeding value of capital allowances for the year which may be carried forward;

(c) investment allowance of 5\% and can capitalize all his expenditure on prospecting and exploration if this is approved by the Minister.

(d) capitalisation of all approved expenditures on prospecting and exploration\textsuperscript{13}

OTHER INCENTIVES

(a) exemption from payment of customs and import duties on approved plant, machinery, equipment and accessories imported specifically and exclusively for mining operations.\textsuperscript{14}

(b) exemption from expatriate quota and resident permits for approved expatriate employees of the operation;

(c) personal remittance quota for expatriate personnel, free from tax imposed by any enactment for transfer of external currency out of Nigeria\textsuperscript{15}

(d) tax holiday for first three years of operations. The minister can extend this period for a further period of two years\textsuperscript{16} on the operator satisfying some conditions.

(e) Free transferability of funds for servicing foreign loans and in the event of sale or liquidation of mining operations where a foreign investment was used to finance the operation.\textsuperscript{17}

(f) holder of mining lease may obtain permission from the Central Bank to retain a portion of its earned foreign exchange in external account for use in acquiring spare parts and other inputs required for mining operations if such equipment would not be readily available without use of

\textsuperscript{12} Section 61
\textsuperscript{13} Section 18
\textsuperscript{14} Section 19(a)
\textsuperscript{15} Section 19
\textsuperscript{16} Section 22
\textsuperscript{17} Section 21
such earnings.  

(g) a foreign investor shall be guaranteed unconditional transferability of funds through an authorised dealer in convertible currency, of 

a) dividends or profits (net of 1995 taxes) attributable to the investment  
b) payments in respect of loan servicing where a foreign loan has been obtained, and  
c) the remittance of proceeds (net of all taxes) and other obligations in the event of a sale or liquidation of the enterprise or any interest attributable to the investment.  

(h) foreign investor is guaranteed against nationalisation and expropriation of his mining title, unless the acquisition was made in the national interest or for public purpose and under a law, which makes provision for payment of compensation and access to court.  

The last two paragraphs are reproduced from sections 24, 25(1) and (2) NIPC Act and section 15 of the FEMMPL Act.  

This is to assure foreign investors of the security of their investment.

PRESENT STATE OF MINING IN NIGERIA

At present, large scale mining is not prevalent in Nigeria, in other words, small-scale/illegal mining operations are more common.

Small-scale mining operations are carried out by small companies with limited financial resources and are therefore undercapitalized and are unable to exploit the full economic potential of their Ore deposits and leases. This leads to encroachment by illegal operators.

Illegal mining operation is characterized by lack of capital, unsafe mining methods which leads to significant environmental degradation and technical incompetence.

PROBLEMS FACED BY THE MINING INDUSTRY

1. A disorganized industry with neither organized exploration nor mining  
2. Suspension of and dormant mining titles through out Nigeria.  
3. Little or no revenue to the Government from illegal miners and smugglers.  
4. Cessation of legal mining with escalation of part-time and illegal mining.  
5. Widespread environmental degradation, poor resources conservation, social and health problems and economic loss to legal mining companies.  
6. Lack of access to financial assistance and non-recognition by relevant bodies.  
7. Low productivity exists with the attendant low returns due to use of crude implements.  
8. Wastage of minerals due to operation concentrating on the richest areas and exploiting only the shallow surface and sub-surface deposits and dumping the wastes often on potential Ore bearing grounds.

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18 Section 20  
20 Section 23  
21 Nigeria Investment Promotion Commission Act of 1995  
22 Foreign Exchange (Miscellaneous and Monitoring Provisions)
9. Illegal selling of unprocessed minerals, often at very low and exploitative prices.
10. Large population migration from one site to the other and working in both registered and unregistered lands.

PROFFERED SOLUTIONS

1. Legalisation/formalization of illegal and small-scale mining operations. This will serve as a vehicle for poverty eradication.
2. Establishment of licensed services for technical, financial, legal and other assistance.
3. Provision of extension services for technical, financial, legal and other assistance.
4. Extension of infrastructural support, such as road, schools, water supply, electricity etc
5. Enactment of enabling legislation of illegal and small-scale mining operations.

The Ministry of Solid Minerals Development has proposed the establishment of Mining Co-operatives and the licensing of mineral buying centres. This has been approved by the Federal Government.

CONCLUSION

There is no doubt that mining can and does contribute positively to both economic and mankind development, but these benefits do not come automatically. Investors require access to these mineral resources which the States alone can provide. The criteria and procedures which the States require determine whether access to these minerals are restricted or not. Traditionally, mineral exploration and exploitation rights are given to investors who offer the highest returns to the State and this is safeguarded by the inclusion into the mining law a requirement that applicants for rights demonstrate their financial and technical capabilities.

Presently, the Federal Government of Nigeria is putting in place appropriate reforms that will further improve the development of the solid minerals sector to become a major source of foreign exchange earnings and attract more foreign investors into the country.

The Minerals and Mining Act, 1999 is presently being reviewed with a view to improving it and revolutionalise solid minerals investments in Nigeria.

We expect that the proposed amendments when passed into law will usher into the sector great innovations and transformations which will guarantee and attract more foreign investments.

The proposed amendments and innovations in the solid minerals sector will pave way for the entrance of large international operators and ensure quality control in the industry and increase the foreign earnings of the country in solid minerals developments.