

Chapter 16

NIGERIA

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I OVERVIEW

Nigeria is endowed with a variety of mineral deposits² including, but not limited, to vast deposits of columbite, coal, precious metals, precious stones and industrial metals. Some of these deposits have been mined since the last century, however, organised mining of tantalite, columbite, bitumen, lead-zinc and ores commenced in 1903. The rapid development of the mining industry in Nigeria during this period led to the enactment of the Minerals Ordinance in 1946 quickly followed by the Coal Ordinance of 1950.³ These early enactments provided for the legal and regulatory regime for the mining of solid minerals in Nigeria.

Subsequent events, including the discovery of oil in Oloibiri in the Niger-Delta region of Nigeria in 1958, the civil war in the 1960s and the indigenisation policies of the Federal Government in the 1970s, led to a sharp decline in mining investments in Nigeria as most foreign direct investments preferred the burgeoning oil and gas sector, which has to date remained the mainstay of the Nigerian economy.

The various oil shocks in the 1980s, 1990s and more recently have culminated in oscillating oil prices that have plunged the Nigerian economy into a state of comatose and necessitated the diversification of this economy. At the heart of the current administration's agenda is the quest to transform the solid minerals sector in Nigeria through the attraction of foreign direct investments. To this end, the government has urged the review of the sector's policy and the legal and regulatory framework governing same with a view to attracting foreign direct investment.

The principal law governing the sector is the Nigerian Minerals and Mining Act of 2007⁴ (the Act) and the Minerals and Mining Regulations of 2011⁵ (the Regulations). While the formation of mining policies remains vested in the Ministry of Solid Minerals, Mines and Steel Development (the

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² The occurrence of solid minerals is widespread across the entire breadth of Nigeria with evidence of numerous minerals in various regions. Some of the known minerals include the following: gold, coal, bitumen, iron ore, tantalite, columbite, lead, zinc, sulphides, barytes, cassiterite, gemstones, talc, feldspar and marble with most of these occurring in the schist belt which includes Northern Nigeria.

³ Scoping study on the Nigerian Mining Sector, prepared by the Geological Survey of Denmark and Greenland in association with the Bureau of Minerals and Petroleum (Greenland), Minre Associates (Nigeria) and Meyetty Nigeria Limited (Nigeria), October 2011.

⁴ The Minerals and Mining Act No. 20 of 2007 is the principal legislation regulating all aspects of exploration and exploitation of solid minerals in Nigeria and the Act repealed the Minerals and Mining Act, No. 34 of 1999.

⁵ The Minerals and Mining Regulations 2011 provide the guidelines for operations in the solid minerals sector.

MMSD), institutions such as National Geological Survey Agency⁶ and the Mining Cadastre Office (MCO)⁷ have since been established to promote the identification and exploration of minerals and the administration of mineral titles on an open and transparent basis respectively.

The Act and the Regulations adequately address the legal and regulatory risks associated with mining investments but other risks such as security risk, currency risk and political risk continue to hamper the drive for foreign investments in the sector. Having had uninterrupted democratic governance for 16 years leading to the successful change in political power in 2015 from the ruling party to the opposition party, it can be said that the political risk has been surmounted. The issue of insecurity in the mineral-rich northern region of Nigeria, given the insurgencies in the area, is presently receiving the desired attention and the unstable monetary policy giving rise to exchange rate fluctuations, though being addressed by the Central Bank of Nigeria (CBN), is yet to achieve the desired result.

Some of the recent developments in the mining sector include the establishment of the proposed Mining Intervention Fund (MIF) by the Ministry in collaboration with the Banker's committee of the CBN and the Bank of Industry. The MIF is part of the many strategies being put in place by the present administration to diversify the economic base of the nation and reduce the over-dependence on oil and gas. The fund is also meant to serve as incentive for local miners and investors as well as boost local production of solid minerals. This is in addition to the already existing memorandum of understanding entered into between the Federal Government of Nigeria and a consortium of Chinese and Nigerian investors to enable the consortium mine coal for the purposes of generating up to 1,200MW of electricity. The MCO also confirms that at least seven licensed companies comprising Chinese, Australian and Nigerian investors are in the process of raising finance through the capital markets for the purposes of financing their mining projects. These companies include the Dangote Group (coal), Kogi Mines Limited (iron ore), Segilola Nigeria Limited (gold), Mines Geotechniques Nigeria Limited (gold), Northern Numero Resources Limited (gold), West African Polaris Investment Limited (tin and columbite) and Tongyi Allied and Mineral Services Limited (lead and zinc ore). The mining activities of these companies are to span the Kogi, Benue, Osun, Kebbi, Nasarawa and Plateau states in Nigeria. Furthermore, the Ministry confirmed that the government has entered into bilateral agreements with several countries including South Africa, China and Liberia while there are ongoing discussions with Canada and Brazil all aimed at furthering the development of the mining and steel sector in Nigeria.

Legal framework

Mines and Minerals, by virtue of the second schedule of the 1999 Constitution of the Federal Republic of Nigeria (as Amended), are under the exclusive legislative list thus the National Assembly is saddled with the responsibility of passing laws relating to mining. The principal legislation regulating the mining industry in Nigeria, as earlier stated, is the Minerals and Mining Act 2007 (the Act) and the Mineral and Mining Regulations, 2011 (the Regulations) to give effect to the provisions of the Act. By virtue of the provisions of the Act and Regulations, the Minister of Solid Minerals, Mines and Steel Development (the Minister) is charged with the responsibility of ensuring the orderly and sustainable development of Nigeria's mineral resources and creating an enabling environment for both local and foreign investors in the mining sector. Other departments in the Ministry established by the Act to see to the regulation of the mining industry are the Mines Inspectorate Department (MID) charged with the responsibility of ensuring that mining operators adhere strictly to the laws and regulations in the course of their mining operations, the Mines Environmental Compliance Department (MECD) and the Mining Cadastre Office (MCO) charged with the issuance of mining licenses. Equally as important are the complementary legislations that impact the mining industry and these include the Environmental Impact

⁶ The Agency was established by the Nigerian Geological Survey Agency (Establishment) Act 2006.

⁷ The Mining Cadastre Office was established by Section 5 of the Nigerian Minerals and Mining Act 2007. In 2009, it resumed the issuance of mineral titles after suspending same for the purposes of a revalidation exercise.

Assessment Act,⁸ Land Use Act,⁹ Explosives Act,¹⁰ Foreign Exchange (Monitoring and Miscellaneous Provisions) Act,¹¹ Companies and Allied Matters Act,¹² Labour Act,¹³ Employees Compensation Act¹⁴, Immigration Act,¹⁵ Nuclear Safety and Radiation Protection Act,¹⁶ Mines and Quarries (Control of Building etc.) Act,¹⁷ Company Income Tax Act,¹⁸ Schedule to the Taxes and Levies (Approved List for Collection) Act (Amendment) Order 2015, Water Resources Act¹⁹ and National Environmental Standards, Regulations Enforcement Agency (Establishment) Act.²⁰ These legislative instruments are administered by various government agencies or departments including but not limited to the Federal Ministry of Environment, the Federal and State Inland Revenue Services, the Nigeria Nuclear Regulatory Agency and the Federal and State Ministries of Land.

All of the legislative instruments listed above address various aspects of mining operations in Nigeria. Though there are no legal classification provisions for the reporting of mineral resources and mineral reserves in any of the legislative instruments, what obtains is the prescribed reporting requirements under the Regulations that mining titleholders are expected to abide by.²¹ However, in consequence of government's policy to revamp the mining sector the Act has come under scrutiny and an amendment is currently in the offing as there are bills –seeking to amend the Act to provide for the establishment and operation of processing facilities in Nigeria as a pre-condition for the grant of mining lease and license and another bill to make the mineral title holders more responsible and accountable to the host communities –pending before the National Assembly. The Federal government also seeks to review existing privatised mining enterprises to ascertain their state and whether their operations are in conformity with the government's planned diversification agenda.

In relation to international treaty obligations affecting the mining industry, Nigeria is still not a signatory to any mining specific treaty and conventions. However, Nigeria is a signatory to several

⁸ Environmental Impact Assessment Act No. 86 of 1992 CAP E12 Laws of the Federation of Nigeria 2004.

⁹ Land Use Act No. 6 1978 CAP L5 Laws of the Federation of Nigeria 2004

¹⁰ Explosives Act No. 34 1967 CAP E18 Laws of the Federation of Nigeria 2004

¹¹ Foreign Exchange (Monitoring and Miscellaneous Provisions) Act No. 17 of 1995; CAP F34, Laws of the Federation of Nigeria 2004.

¹² Cap C20, Laws of the Federation of Nigeria 2004.

¹³ Cap L1, Laws of the Federation of Nigeria 2004

¹⁴ Employee Compensation Act, 2010 was signed into law by the former President, Dr. Goodluck Jonathan on 21 January 2011.

¹⁵ No.8, 2015.

¹⁶ Nuclear Safety and Radiation Protection Act No. 19 1995 CAP N142 Laws of the Federation of Nigeria 2004.

¹⁷ Mines and Quarries (Control of Building etc.) Act No. 27 of 1967, CAP M13, Laws of the Federation of Nigeria 2004.

¹⁸ Cap C21, Laws of the Federation of Nigeria 2004.

¹⁹ Cap W2, Laws of the Federation of Nigeria 2004.

²⁰ National Environmental Standards and Regulation Enforcement Agency (Establishment) Act, No. 92 2007.

²¹ Schedule 5 Minerals and Mining Regulations 2011.

international treaties that seeks to protect foreign investment including investments in the mining sector. These treaties include, but are not limited to, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Multilateral Investment Guarantee Agency (MIGA) Convention and the Treaty on the International Centre for the Settlement of Investment Disputes. Nigeria has also entered into various bilateral investment agreements to facilitate the development of its mining sector notably with countries such as China, Turkey and South Korea.

Mining rights and required licences and permits

The ownership of all minerals occurring beneath or upon any land in Nigeria including its continental shelf and territorial waters are vested in the federal government.²² This ownership right of underground minerals as provided in the Act is derived from and consistent with the provisions of the Constitution of the Federal Republic of Nigeria, 1999.²³

Private parties may, in accordance with the Mining Act acquire mining rights through an application to the MCO under the Ministry. Mining titles are usually granted on a priority basis but may be granted through a competitive bidding process. For the grant of mining titles through a competitive bidding process, the Minister determines the areas, free of any validly existing mineral titles, to be designated for the bidding exercise. It is an offence, punishable upon conviction with a fine or a term of imprisonment or both, to engage in mining operations otherwise than in accordance with the provisions of the Act.²⁴

There are several different mining titles that a private party may acquire for the exploration and exploitation of mineral resources in Nigeria including:

Reconnaissance permit

This permit allows, on a non-exclusive basis, reconnaissance activities on all land within Nigeria that is available for mining operations. The permit is issued and valid for a period of one year and may be renewed upon satisfactory application for renewal of same.²⁵ Although the permit is granted for reconnaissance activities over all land in Nigeria available for mining operations, it does not cover land that is already the subject of a mining exploration licence, small-scale mining lease, mining lease or water use permit.

Exploration licence

The exploration licence, granted for a three year term and renewable for two consecutive periods of two year each subject to the fulfilment of the minimum work obligation and other relevant requirement of the Act, permits the holder to exclusively conduct exploration activities on a land area not exceeding 200 square kilometres and which is not subject to an existing exploration licence, mining lease or small-scale mining lease. The holder of an exploration licence has the exclusive right to apply for and be granted, subject to the provisions of the Act, one or more of a small-scale mining lease, mining lease or quarry lease in respect of any part of the exploration licence area.

Mining lease

The mining lease confers on the holder, among other rights, the exclusive occupation and use of the licence area for the purposes of exploring and exploiting mineral resources. The duration of a mining lease is usually for the term applied for by the applicant and does not exceed 25 years in the first

²² S. 1 of Minerals and Mining Act no 20. 2007.

²³ See Section 4 and Item 39, Part 1 of the 2nd Schedule of the Constitution of Federal Republic of Nigeria, 1999.

²⁴ Sections 131 to 140 of the Act. See also Regulation 20 of the Regulations.

²⁵ Sections 55 to 58 of the Act.

instance, though the term may be renewed for consecutive 25-year periods subject to satisfactory compliance with the minimum work obligations and any commitments that may be specified by the Ministry. The area of land in respect of which a mining lease can be granted is determined in relation to the ore body as defined in the feasibility study submitted in respect of the application for the mining lease together with an area reasonably required for the workings of the mine; such area must not exceed 50 square kilometres.²⁶ A mining lease holder is not permitted to commence work in the lease area until after he has submitted to the MECD all environmental impact assessment studies and mitigation plans required under applicable environmental laws and has procured the MECD's approval for the same; concluded a community development agreement approved by the MECD with relevant communities; and has paid all necessary compensation as required by the Act.²⁷ By the provisions of the Act, a valid application for a mining lease by a qualified applicant shall be granted within 45 days subject to the applicant meeting all the conditions for a grant.²⁸

Small-scale mining lease

The small-scale mining lease allows the holder of the lease to conduct artisanal mining operations that excludes the extensive and continued use of explosives, toxic chemicals or agents²⁹ on an area of land not less than 5 acres but not exceeding 3 square kilometres.³⁰ The holder of a small-scale mining lease is not allowed to employ more than 50 workers in a typical work day and not allowed to have underground workings more than 7 metres below the surface nor galleries extending more than 10 metres from a shaft.³¹ A small-scale mining lease is granted for a period of five years and may be renewed for further terms each of five years with no limitation to the number of renewals.³²

Quarry lease

A quarry lease is granted for the quarrying of all quarriable minerals such as asbestos, china clay, gypsum, marble, limestone, sand, stone and gravel as may be specified in the lease.³³ The quarry lease is granted in respect of an area not exceeding 5 square kilometres for a period of five years, which may be renewed for further terms each of five years with no limitation to the number of renewals.³⁴

Water use permit

This is a right granted to a mining titleholder to obtain water for use in mining exploration and exploitation.³⁵ The permit is granted for the period for which the relevant mining title is granted.³⁶

²⁶ See Section 67 of the Act.

²⁷ Section 71 of the Act.

²⁸ Section 65 of the Act.

²⁹ Regulation 48 (1) (a) and (b).

³⁰ Section 90 (1) of the Act.

³¹ Regulation 48 (1) (b) and (c).

³² Regulation 50 of the Regulation.

³³ Sections 77 and 78 of the Act.

³⁴ Regulation 71 of the Regulations.

³⁵ Regulation 77 of the Regulations.

³⁶ Regulation 81 (1).

The above mining rights once granted to a party are protected by the judicial system, which functions independently of both the executive and the legislative arms of government. In addition, there are numerous investment guarantees provided under various local legislations in Nigeria as well as international treaties to which Nigeria is signatory. Foreign investors, upon meeting all conditions and requirements for the application of a lease/license, are not restricted from acquiring mining rights. However, a foreigner cannot apply for or hold mining rights except such a foreigner incorporates a company in Nigeria, which may be 100 per cent owned by the foreigners, as provided under the extant company laws.

The applicants for mineral titles are required to demonstrate to the MCO evidence of sufficient working capital to conduct mining operations. Upon the grant of the mining title, holders of mining titles are under an obligation to carry on exploration and or exploitation of mining operations in a safe and skillful manner taking all necessary safety, environmental and pollution precautions. They are to minimise and manage any environmental impact resulting from mining activities and are required to rehabilitate and reclaim all disturbed land to its natural or predetermined state or such state as the laws and or regulations may prescribe. In this regard, an applicant is required, as part of its environmental impact assessment report for an application for mining rights, to submit an Environmental Protection and Rehabilitation Programme to the MECD.³⁷ The Environmental Protection and Rehabilitation Programme, which must be approved by the Ministry before the issuance of any mining title, must provide for specific reclamation and rehabilitation actions, citing the estimated cost and timetable for such rehabilitation.³⁸

A mineral titleholder who intends to abandon or cease operations in a leased area is required to provide notice to the MID and the MECD detailing the intended abandonment plan and the operations of the mine up until the notice for such abandonment or cessation of operations was issued. Upon receipt of the notice, recommendations are made to the Minister and should the titleholder still seek to abandon the mining site, he would be required to seal and cover every mineshaft; make safe all tailings and water retention areas; as well as demolish or lock all potential hazardous buildings, structures, plants or equipment.³⁹

Under the Act and the Regulations,⁴⁰ every mineral titleholder is also required to, in accordance with the amount specified in the Environmental Protection and Rehabilitation Programme approved by the MECD, to contribute to the Environmental Protection and Rehabilitation Fund to guarantee that the environmental obligations of mineral titleholders such as mine closure and remediation are met.

All, except reconnaissance permits, of the mineral titles listed above can be consolidated and transferred or assigned to a third party upon application to the MCO, fulfillment of specified conditions and payment of all necessary fees. A holder of contiguous mineral titles is allowed to consolidate his titles of like kind to only one title upon application to the MCO and fulfillment of certain conditions. Also, small-scale mining leases and quarry leases can each be converted to mining leases if the holder of the quarry lease or small-scale mining lease is qualified under the Act and the Regulations to hold a Mining Lease. The term of the mining lease from such conversion shall be the shorter of the term requested by the applicant or the maximum term for the mining lease. On the other hand, a titleholder cannot create a charge or an encumbrance on the title or facilities that are part of the mining operations except such charge or encumbrance is to secure financing for the mining operations and such can only be done upon confirmation of the status of the title by the MCO. Notice of assignment, transfer or charge of a mining title is to be given to the MCO within 30 days of creation of the charge or

³⁷ Section 119 of the Act.

³⁸ Section 120 of the Act.

³⁹ Section 159 of the Act; see also Regulation 225 of the Regulations.

⁴⁰ Section 121 of the Act; see also Regulation 184 of the Regulations.

assignment.

Environmental and social considerations

The principal legislations that govern environmental and social considerations for mining operations in Nigeria are the Act, the Regulations, the National Environmental Impact Assessment Act,⁴¹ National Environmental (Mining and Processing of Coal Ores and Industrial Minerals) Regulations 2009, the National Environmental (Permitting and Licensing System) Regulations 2009, the National Environmental (Noise Standards and Control) Regulations 2009 and the National Environmental Standards and Regulations Agency (Establishment) Act.⁴² These laws and regulations are administered by officials of the Ministry, federal and state ministries of the environment and the National Environmental Standards and Regulations Agency (NESREA). The laws provide that prior to embarking on a mining project, a mining titleholder must submit an environmental impact assessment report to the Ministry of the Environment for approval. Upon submission of the report, the Ministry will seek the view of all stakeholders as to the siting of the mining project and what adverse effects, if any, such project would have on its immediate environment. Where there is likely to be a significant impact on the environment with no possibility of mitigation, the project may be referred for mediation or to a review panel who will be the final arbiter as to whether the project will be permitted or refused. Subsequent to the approval of the Ministry of Environment, the environmental impact assessment report must be submitted to the MECD before the commencement of mining operations or upon application for renewal of mining titles as the case may be.

The National Environmental (Mining and Processing of Coal Ores and Industrial Minerals) Regulations 2009, National Environmental (Permitting and Licensing System) Regulations 2009, and the National Environmental (Noise Standards and Control) Regulations 2009 are aimed at minimising environmental pollution from the mining and processing of coal, ores and industrial minerals. They prescribe the permitted requirements for mine emissions, noise above specified levels and for the discharge of effluent from a facility. These Regulations are administered by the NESREA. The time frame for the entire environmental review process for mining projects varies and may take up to one year but environmental conditions and requirements must be complied with throughout the life span of the mining title.

Mining operations are prohibited in areas that have been held to be sacred sites. Where mining activities affect such sacred sites, the mining titleholder may be liable to pay compensation to the community where such sacred sites lie. Sacred sites are determined by the MCO on the advice of the Mineral Resources and Environmental Committee.⁴³ Lawful occupiers of any land that is the subject of a mining title are entitled to fair compensation for any disturbance of their surface rights and for any damage done to the land including damage to crops, economic trees and buildings.⁴⁴ Failure to pay the occupiers of the land compensation may lead to the suspension or revocation of a mining title.⁴⁵

Occupiers of land compulsorily acquired for mining purposes are also entitled to the payment of compensation. The usual practice is that the holder of a mining title is required to provide security for the payment of compensation in the form of a deposit or to reimburse the federal government for any compensation paid to any state government or lawful occupier in respect of any land that is the subject of a mining title. The lawful occupier of any land within an area subject to a mining lease retains the right to graze livestock upon and to cultivate the surface of the land provided that the grazing or

⁴¹ Environmental Impact Assessment Act no.86 1997 CAP E12 Laws of the Federation of Nigeria 2004.

⁴² National Environmental Standards and Regulation Enforcement Agency (Establishment) Act, No. 92 2007.

⁴³ Section 98 of the Act.

⁴⁴ Section 107 of the Act.

⁴⁵ Section 109 of the Act.

cultivation does not interfere with mining operations in the area. A holder of a quarry lease, mining lease or small-scale mining lease is required to enter into a community development agreement with the host communities of the mining title area, which will ensure transfer of economic and social benefits to the communities as well as individual members of the communities.

It needs to be emphasised that due to the attachment of local communities to their land, a mineral titleholder may constantly have to deal with a host community, family or individual holder of land comprising the title area. As such, it is important for a mining titleholder to ensure that it has a robust relationship with such community, family or individual holder in respect to access to the area. Prompt payment of compensation and provision of employment opportunities and social amenities will facilitate a robust and lasting relationship with the community.

II OPERATIONS, PROCESSING AND SALES OF MINERALS

All plants, machinery, equipment and accessories imported for mining activities are subject to inspection at the respective port of entry. Such machinery or equipment is, however, exempted from payment of customs and import duties. To qualify for the exemption from payment of customs and import duties, such plant, machinery, equipment and accessories must be imported specifically and exclusively for mining operations and the MID must approve of such machinery or equipment prior to its importation.⁴⁶

For the purposes of mining activities, foreign investors are required to import their proposed operating funds through an authorised dealer in the autonomous foreign exchange market established by the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act.⁴⁷ The importation of operating funds through these means allows for the unconditional repatriation to the home country of the titleholder of dividends, profits and interests earned on funds imported into the country.

A mining titleholder is permitted to employ foreigners for its operations but, to do so, they must obtain a residence permit, work permit and an expatriate quota grant in accordance with the provisions of the Immigration Act.⁴⁸ Upon engagement, their terms of employment and welfare are regulated by the Labour Act⁴⁹ and other laws regulating employment relations and welfare of employees in the country. The Labour Act restricts the employment of women and children under the age of 16 from working in underground mines.⁵⁰ It should be noted that under the Nigerian Minerals and Mining Act, a mining titleholder is entitled to expatriate quota and resident permit in respect of expatriate personnel approved for his mining operations.⁵¹

Upon commencement of production, the mining titleholder has unrestricted rights to possess and export the minerals produced from the mines subject to the payment of the requisite royalties. To export the minerals won, the mining titleholder must register with the Nigerian Export Promotion Council, procure a permit to export minerals for commercial purposes from the MID (evidence of payment of the requisite royalty must be presented as a condition for its grant) and comply with any Nigeria Customs Service requirements.

In conducting mining operations, the common business structure often adopted by foreign

⁴⁶ Sections 25 (1) (c) and 25 (2) and (3) of the Act.

⁴⁷ See Section 1, Foreign Exchange (Monitoring and Miscellaneous Provisions) Act No.17 of 1995; CAP F34, Laws of the Federation of Nigeria 2004.

⁴⁸ Sections 36 to 38, Immigration Act No. 8, 2015.

⁴⁹ Labour Act No.21 1974 CAP L1 Laws of the Federation of Nigeria 2004.

⁵⁰ Sections 56 and 59 (5) of Labour Act.

⁵¹ Section 25 (1) (b) of the Act.

investors operating in the mining sector in Nigeria is a limited liability company that must be registered in accordance with the provisions of the CAMA, the principal law regulating businesses in Nigeria.⁵² Owners of such mining operations may be able to access financing for their mining operations on a debt and or equity basis from both local and international lenders and they may also approach the capital market to raise finance.

There exist guarantees under several enactments in Nigeria for the protection of foreign investments in the mining sector, like other foreign investments. For instance, the Nigerian Investment Promotion Commission Act guarantees a foreign investor rights to the unconditional transfer, through an authorised dealer in freely convertible currency, of his profits or dividends accruing from the investments, payments in respect of foreign loan servicing and proceeds from the sale or liquidation of the investment enterprise.⁵³ Furthermore, the same statute also guarantees that no enterprise is to be expropriated by any government of the federation and that any person who owns capital or investment enterprise cannot be compelled to surrender same to any other person. It must be noted that Nigeria is also a signatory to a number of international treaties aimed at protecting foreign direct investments in the country.

III DUTIES, ROYALTIES, TAXES AND INDEMNIFICATION

Mining companies, by virtue of various tax laws in Nigeria, are liable to a company income tax on their taxable profits and same is payable to the Federal Inland Revenue Services (FIRS) while individuals or partnerships are liable to personal income tax on any profit or gain from their mining activities payable to the relevant state revenue service. It is also worthy of note that by virtue of the Schedule to the Taxes and Levies (Approved List for Collection) Act (Amendment) Order 2015, mining companies may be liable to payment of mining, milling and quarry fees in states where they are imposed.⁵⁴ Mining companies are also liable to pay education tax which is assessed at 2 per cent of their assessable profit. Value added tax of 5 per cent is to be charged by a mineral titleholder on all minerals sold in Nigeria; however, minerals exported are exempted from value added tax. Education tax and value added tax are payable to the FIRS.

Royalties payable on minerals obtained from mining activities are prescribed by the Regulations.⁵⁵ Where minerals are sought to be exported solely for the purposes of analysis or experiment, the Minister may waive the payment of royalty on such minerals. It must be noted that concessions can be granted at the point of renewal to mining companies with evidence of yearly payment of royalties to the federal government throughout the duration of their license. Furthermore, the Minister may also defer the payment of royalties payable on minerals won for any prescribed period. The taxes and royalties rates do not discriminate between Nigerian companies wholly owned by foreign nationals or Nigerian companies wholly owned by Nigerians and apply equally to both. All holders of mining titles are required to pay annual service fees for their titles. In particular, holders of mining leases are required to pay surface rent at a yearly rate as may be prescribed by the Minister for their mining operations.

While the above represents the applicable taxes and royalties payable on minerals won, the mining titleholders are entitled to various tax advantages and incentives under the Act as well as under the Company Income Tax Act,⁵⁶ which are as follows:

⁵² S.54 of Companies and Allied Matters Act CAP 20 Laws of the Federation of Nigeria 2004.

⁵³ Section 24 of Nigerian Investment Promotion Commission Act, Cap N117, Laws of the Federation of Nigeria, 2004.

⁵⁴ See Paragraph 3 of the Schedule to the Taxes and Levies (Approved List for Collection) Act (Amendment) Order, 2015.

⁵⁵ Schedule 4 of the Minerals and Mining Regulations 2011.

⁵⁶ Cap C21, Laws of the Federation of Nigeria, 2004.

- a capital allowance of 95 per cent of qualifying expenditure incurred on exploration, development and processing;
- b exemption from customs and import duties on approved plants and machinery, equipment and accessories imported specifically and exclusively for mining operations;
- c tax holiday for the first three years of operation, which period may be extended for another two years;
- d expatriate quota and resident permit in respect of expatriate quota personnel;
- e personal remittance quota personnel for the transfer of external currency out of Nigeria;
- f free transferability of dividends or profits, payment in respect of servicing a foreign loan and foreign capital in the event of sale or liquidation of mining operations in any convertible currency;
- g grant of investment allowance of 10 per cent on qualifying plant and machinery; and
- h the investor may also be entitled to claim an additional rural investment allowance on its infrastructure cost. This will, however, depend on the location of the company and the type of infrastructure provided.

IV CURRENT TOPICAL ISSUES AND TRENDS

Other than various attempts at setting the policy blueprint and some road shows organized by the Minister, there has been little traction in the mining sector over the last one year. There are, however, recent topical issues in the mining sector that have all contributed to the renewed vigour to transform the sector and include the following:

- a. Clarity as to surface rights and mineral rights ;
- b. derivation amongst the mineral producing states in Nigeria;
- c. Eradication of illegal mining ; and
- d. revalidation and revocation of mining licenses by the MCO.

In conclusion, it is important to note that the federal government is determined to revitalise the mining sector as part of the ongoing efforts to diversify the economy. The proposed roadmap by the current administration will no doubt address many of the issues hindering the development of the sector..

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