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LEGAL PRACTITIONERS

An Appraisal of Business Potentials and Legal Framework in Nigeria's Solid minerals Sector

Nigeria is richly endowed with a variety of solid minerals of various categories varying from precious metals to stones and also industrial minerals. Much of these minerals are yet to be exploited. Statistically, the level of exploitation of these minerals is very low in relation to the extent of deposits found in the country. Recent policy reforms have brought the solid minerals sector to the fore. The emphasis is on encouraging massive foreign investor's participation in the sector.

There are tremendous opportunities for investment in the solid mineral sector in Nigeria. Solid minerals are found in commercial quantities in the country for possible investment and exploitation. For instance, there are over 40 million tonnes deposits of **talc** identified in Niger, Osun, Kogi, Ogun and Kaduna States. Again, there is over 3 billion metric tonnes of **iron ore** deposits found in Kogi, Enugu and Niger States as well as the Federal Capital Territory. Iron Ore is being mined at Itakpe in Kogi State.

Furthermore, an estimated 10 million tonnes of **lead/zinc** veins are spread over 8 States of Nigeria. **Bentonite** and **Baryte** are the main constituents of the mud used in drilling of all types of oil wells. The Nigerian baryte has specific gravity of about 4.3 million. Over 7.5 million tonnes of baryte have been identified in Taraba and Bauchi States. Large bentonite reserves of 700 million tonnes are available in many States of the Federation ready for massive development and exploitation.

In addition, there are proven reserves of both alluvial and primary deposits of **gold** in commercial quantities spread across several parts in the northwest and southwest of Nigeria. There are also a number of smaller occurrences beyond these major areas. The occurrences of **Bitumen** deposits in Nigeria are indicated at about 42 billion tonnes almost twice the amount of existing reserves of crude petroleum.

When fully developed, the bitumen industry will no doubt meet local requirements for road construction and also become a foreign exchange earner for the country.

Besides, Nigerian **coal** is one of the most bituminous in the world owing to its low sulfur and ash content. It is environment friendly. There are nearly 3 billion tonnes of indicated reserves in 17 identified coalfields and over 600 million tonnes of proven reserves. In the same vein, **limestone** occurrences are reported in almost all the 36 States of the Federation with extensive deposits in Sokoto, Gombe, Benue, Kogi, Oyo, Ogun and Cross River States. Other Solid Minerals that can be found in Nigeria include; **Rock salt, Gemstones, Kaolin, Tantalite, and Gypsum.**

Legal Framework

Exploitation and exploration of Solid Minerals are governed by the **Nigerian Minerals and Mining Act 2007 (“the Act”)**, and the **Nigerian Minerals and Mining Regulation 2011**. The Act vests control of all properties and minerals in Nigeria in the States and prohibits unauthorized exploitation or exploration of minerals. According to the Act, all lands in which minerals are found in commercial quantities shall from the commencement of the Act be acquired by the Federal Government in accordance with the Land Use Act. Property in mineral resources shall pass from the government to the person who lawfully acquires a right over the exploration or mining of the mineral resources.

The Act also provides for the establishment of the Mining Cadastre Office (MCO) which is responsible for the administration of mineral titles and the maintenance of the cadastral registers, and empowers the Minister of Mines and Steel (“**the Minister**”), by regulation, to determine areas eligible for the grant of an exploration or mining lease based on a competitive bidding process. The Federal Ministry of Mines and Steel Development is the body which is responsible for prospecting licenses for both local and foreign investors to participate in the exploitation of the vast mineral resources in Nigeria.

The Regulation streamlined the procedures for granting licenses to investors and guaranteed access to mining sites with minimal encumbrances. The regulation provided for the right to search for, or exploit minerals in Nigeria which is obtained through any of the following Licenses;

- (a) Reconnaissance Permit:
- (b) Exploration License
- (c) Small Scale Mining License
- (d) Mining Lease
- (e) Quarrying License
- (f) Water Use Permit

Reconnaissance Permit

A **Reconnaissance Permit** confers on the holder the right to-

- (i) Obtain access into, enter on or fly over any land within the territory of Nigeria available for mining purposes to search for mineral resources on a non-exclusive basis; and
- (ii) Obtain and remove surface sample in small quantity.

A qualified applicant for Reconnaissance permit is either a citizen of Nigerian with legal capacity and who has not been convicted of a criminal offence or, a body corporate duly incorporated under the Companies and Allied Matters Act; or a Mining Co-operative.

The Act provides that the Mining Cadastral Office shall within 30 days of the receipt of the application of any qualified applicant and upon payment of prescribed fees, grant and issue to that person a Reconnaissance Permit to search for mineral resources. A Reconnaissance Permit is issued for a period of one year and is renewable annually provided that the requirements of the Act and its regulations have been met.

Exploration License

The holder of an **Exploration License** shall have the exclusive right to conduct exploration upon the land within the area of his license and after fulfilling all the conditions stipulated by the Act, shall be entitled to the grant of a Mining lease for any mineral for which he was authorized to explore (the authority not having been determined by a notice) under the provisions of the Act in respect of any portion of the area included in the license.

A qualified applicant for an Exploration license must be a body corporate duly incorporated under the Companies and Allied Matters Act; or Mining Co-operative; or the holder of a Reconnaissance Permit granted in respect of the area subject to the application; provided that the applicant has fulfilled all the conditions attached to the Reconnaissance Permit.

The duration of an Exploration License is 3 years and it may be renewed for 2 further periods of 2 years each provided that the titleholder has complied with the minimum work obligation commitment and all other requirements of the Act and its Regulation have been met.

Mining Lease

A grant of a **Mining Lease** to a prospective company is subject to proof of economic reserve of the mineral commodity for which a concession is sought. A qualified applicant for a Mining Lease is a body corporate duly incorporated under the Companies and Allied Matters Act or other legal entity that has-

- (a) Demonstrated under conditions stated in the Regulations that a commercial quantity of mineral resources exists in the area in respect of which the application is made; and
- (b) Has fulfilled all the conditions attached to the Exploration License in respect of the area subject to the application.

The following steps are to be followed;

- (i) Make an application to the Minister for Certificate of Entry into Mining Industry and attached the company's Certificate of Registration, evidence of technical competence and of financial capability.
- (ii) Apply and obtain a prospecting right (PR) to enable it carry out general and scientific prospecting for the categories of minerals within the prospecting right. If properly conducted, work on this right will guide the company towards zeroing into a particular mineral within a specific land area.
- (iii) Submit an application for an Exclusive Prospecting License (**EPL**) in the States Mines Office where the mineral is located. Exploration License for a particular mineral over a particular land area which, by law, should not exceed 22 square kilometers. Once granted, the area is held exclusively by the

company to confidently invest in mineral exploration work on the area without hindrance.

- (iv) Once the company has satisfied itself of the availability of the mineral in commercial quantity on the EPL, it will then apply for a grant of Mining License over the whole or part of the area covered by the EPL.

Quarrying License

A Quarry license confers on the holder the right to enter on the land within the area of the license granted, to carry out quarrying operation on the land within the area of the license, and to remove and dispose any quarriable minerals specified in the license.

A qualified applicant for a Quarrying license is-

- i. Any individual citizen of Nigeria with legal capacity and who has not been convicted of any criminal offence;
- ii. A Mining Co-operative; or
- iii. A body corporate duly registered under the Companies and Allied Matters Act; or
- iv. Any person extracting construction materials for the construction of roads, railway lines, dams and other engineering works or structure of public interest.

Water Use Permit

A Water Use Permit may be submitted in conformity with the provisions of the Act by-

- i. The title holder of a small scale mining lease, mining lease, quarry license or exploration license; or
- ii. An applicant for a small scale mining lease, mining lease, quarry license, for which the water use right will be required to be used.

A water use permit is usually applied for when a mining lease, a quarrying license or an exploration license is granted. It remains in force so long as the small scale mining lease, mining lease, quarry lease or exploration license or which use it was granted remains valid.

Mining Incentives

A comprehensive package of incentives has been put in place to create a favorable environment for investment into the Nigerian solid mineral sector and also encourage investor to invest in the sector. Some of the incentives include the following:

- (i) Deferred royalty payments
- (ii) Capital allowances of up to 95% of qualifying capital expenditure for mining operations.
- (iii) 3 to 5 years tax holiday as applicable; and tax concessions
- (iv) Possible capitalization of expenditure on exploration and surveys
- (v) Expatriate quota and resident permit in respect of the approved expatriate personnel
- (vi) Personnel remittance quota for expatriate personnel, free from any tax imposed by any enactment for the transfer of external currency out of Nigeria.