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## NIGERIAN MINING SECTOR BRIEF 2014

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<td></td>
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Nigeria is endowed with vast reserves of solid minerals, including, but not limited to, precious metals, stones and industrial minerals. The country was a major exporter of tin, columbite and coal in the early 1970s. However, activities in this sector nose-dived considerably when crude oil production began to take the centre stage, and became a major source of foreign exchange for the country.

With the return to democracy in 1999, the need to diversify the revenue base of the country became paramount. A new national focus and strategy on mining evolved such that in 2007, the Nigerian Minerals and Mining Act (the Act) was enacted to revitalize the Nigerian mining industry.

There are over 40 different types of minerals spread across the country, including gold, barite, bentonite, limestone, coal, bitumen, iron ore, tantalite / columbite, lead/zinc, barites, gemstones, granite, marble, gypsum, talc, iron ore, lead, lithium, silver, etc. However, not all the minerals are available in commercial quantities.

As part of the strategies to reform the sector, the Ministry of Mines and Steel Development (MMSD)\(^1\) has identified seven (7) strategic minerals, namely, Coal, Bitumen, Limestone, Iron Ore, Barites, Gold and Lead/Zinc for priority development as further discussed below.

1.1 Coal

Nigerian coal has been found suitable for boiler fuel, production of high caloric gas, domestic heating, briquettes, formed coke and the manufacture of a wide range of chemicals including waxes, resins, adhesives and dyes.

Coal can be found in the central, middle-east and south east regions of the country (Anambra, Kogi, Benue and Enugu States). A reasonable estimate in these regions is put at a total of 396 million metric tonnes, while the unproven reserves are estimated to be in the region of 1,134 million tonnes.

\(^1\)http://www.bukisa.com/articles/630143_highlights-on-ppmcnnpc-warri-area-operations
The government has recognized the need to revive the country’s coal mining subsector, which could provide fuel for power generation and domestic use. Consequently, the coal resources were marked out into ten prospective blocks and placed for bid by companies with proven financial and technical competence.

Nine of the blocks were put up for a bid round out of which four have been sold to successful bidders. The remaining five (5) blocks have been earmarked by government for the proposed coal to power project.

Although the government’s plan for the development of these mines remains uncertain, there is a likelihood that the mines may again be put up for bids, or the government may engage private partners in the development of the blocks for power generation.

1.2 Bitumen

In Nigeria, bitumen typically occurs both on the surface and sub-surface. The estimated probable reserves of bitumen in Ondo State (south-west region of Nigeria) is 16 billion barrels, while that of tarsands and heavy oil is estimated at 42 billion barrels. The probable reserve of bitumen and heavy oil in the entire tarsand belt is expected to double the reserves in Ondo State. The bitumen belt has been marked out into six (6) blocks with an average of 600 sq km each, four of which have been sold to investors. The remaining two blocks are to be placed for bidding in future.

Currently, the bitumen used in Nigeria is processed from imported heavy crudes, in addition to bitumen imported to supplement local consumption. Heavy and extra heavy crude can be extracted from Nigerian tarsands, and sulphur and phenol can be derived from these crude grades. They are also suitable for production of lubricants for plain and roller bearings.

Three potential project types are envisaged for the tarsand resources:

- Small scale project: Asphalt Concrete (strip mining techniques)
- Medium size project: Synthetic crude production (in-situ mining)
- Large size project: Mega mining project (open mining technique)

1.3 Limestone

The largest and purest deposits of lime stone are found in the south-west and middle belt regions of the country. Limestone in the south west region of Nigeria has been estimated at 31 million tones. Most limestone mining activities are mainly for cement production.

1.4 Iron Ore

Iron ore deposits have been found in various locations in Nigeria, but mainly in the north-central, north-east and south-east regions. Iron ore deposits in Nigeria typically occur in the following forms: hematite, magnetite, metasedimentary, bands of ferruginos quartzites, sedimentary ores, limonite, maghemite, goethite and siderite.

Below are some of the notable iron ore deposits in central Nigeria:

<table>
<thead>
<tr>
<th>S/N</th>
<th>Deposit Area</th>
<th>Estimated Reserves (million tons)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Itakpe</td>
<td>310</td>
</tr>
<tr>
<td>2</td>
<td>Ajabanoko</td>
<td>60</td>
</tr>
<tr>
<td>3</td>
<td>Agbado-okudu</td>
<td>60</td>
</tr>
<tr>
<td>4</td>
<td>Tajimi</td>
<td>20</td>
</tr>
<tr>
<td>5</td>
<td>Anomaly K-3</td>
<td>30</td>
</tr>
<tr>
<td>6</td>
<td>Anomaly K-2</td>
<td>20</td>
</tr>
<tr>
<td>7</td>
<td>Ochokodoko</td>
<td>12</td>
</tr>
<tr>
<td>8</td>
<td>Agbaja</td>
<td>370.5</td>
</tr>
</tbody>
</table>

Rich ore constitutes more than 4.5% of the total reserves with medium grades estimated at 85.4% and lean ore at 13.1%.

1.5 Barites

In a survey carried out by the Nigerian Geological Survey Agency, proven reserves for Benue and Nassarawa States (central region of Nigeria) have been estimated at 111,000 tonnes while the estimated probable (unproven)
reserves across the country, where mining is considered viable, is estimated at 21,123,913 metric tones. Barites is suitable for glass, paint, and paper making. Also, it is used in petroleum well drilling.

1.6 Lead-Zinc

Lead-Zinc ores are usually found together. They are often associated with copper and silver. Lead-Zinc is found along the northeast and southwest trending belt. They occur in commercial quantities in the northeast and central region of Nigeria. The estimated reserve is well over 100,000 tonnes of lead and 80,000 tonnes of zinc. Lead-zinc ores are used in the production of batteries, electrical cables, solders glass and even protective coatings for other metals.

1.7 Gold

Gold is associated with the northwest, central and southwest regions of Nigeria, although there are smaller occurrences beyond these major areas.

The preliminary exploration and identification of deposits which is still ongoing has confirmed ten sites to be holding reserves of over 50,000 ounces² of high quality gold.

Till date, over 30 licences have been issued to co-operative societies and companies for mining of gold in the country. Most of the concessions are still at the exploration stage.

2. Legal and Regulatory Framework

The Act is the principal legislation that regulates the Nigerian mining sector. The Act vests the control, regulation and ownership of all mineral resources in the Federal Government of Nigeria (FGN).

The provisions of the National Minerals and Metals Policy and the Minerals and Mining Regulations also regulate the sector. The Mining Regulations contain specific provisions with respect to royalties, fees and compensation payable by holders of mining rights.

2.1 Mines Inspectorate Department (MID)

The MID has overall responsibility for operations in exploration, evaluation, mine development and production. Some of the functions include:

- General supervision of mining, quarrying and explosives matters to ensure safe mining operation and enhance high production of minerals and revenue generation.
- The development of a database of all mining and quarrying operators.
- Ensuring preparation of mineral returns by operators as required by the government prescribed by regulations.
- Supervision and enforcement of compliance by mineral title holders with all work programmes and safety regulations prescribed under the Act and any other laws in force.
- Production of records of all mineral production nationwide.

2.2 Mines Environmental and Compliance Department (MEC)

The main function of the MEC is to ensure that companies adopt and maintain procedures that are environmentally friendly in their operations. It performs the following other functions:

- Establish environmental procedures and requirements applicable to mining operations.
- Review all plans, studies and reports required to be prepared by holders of mineral titles in respect of their environmental obligations under the Act.
• Monitor and enforce compliance by holders of mineral titles with all environmental requirements and obligations as required by law.
• Maintain regular environmental audits to ensure the adoption of environmentally sound practices in all mining operations.

2.3 Mining Cadastre Office (MCO)

The functions of the MCO include, but not limited to, the following:
• Consider applications for mining titles and permits.
• Issue, suspend and may revoke mining titles, subject to government’s rules and regulations.
• Receive and dispose applications for transfer, renewal, modification and relinquishment of mineral titles.
• Maintain a chronological record of all applications for mineral titles in a priority order.
• Maintain a register, and a general registry book.

2.4 Artisanal and Small-Scale Mining Department (ASM)

The ASM carries out the following functions, amongst others:
• Organize, support and assist small scale mining operations.
• Provide extension services to mining cooperatives on exploration, exploitation, mineral processing, entrepreneurial training, environmental management, etc.
• Improve sustainable livelihood in ASM communities.

3. Types of Mineral Titles and Licences

A mining title can be granted to an individual, a company or a co-operative. The grant of exploration licence or mining lease could be by competitive bidding or on individual request. In competitive bidding, the government consolidates various mineral locations into blocks, and offer the blocks for sale to international and local investors with sufficient financial and technical capabilities to carry on mining operations. The bidding procedure will normally include:
• An advertisement in both local and international media
• Data room due diligence process
• Receiving Expression of Interest (EOI)
• Selection of preferred investor
• Communication of selected investors to the National Assembly Committee on Solid Minerals
• Offer of the mineral title

The last bid round was conducted in 2006. It is uncertain when the government would offer new blocks/mineral concessions for competitive bidding.

The types of licenses and leases that could be granted are as follows:

3.1 Reconnaissance permits (RP)

This permit is awarded to individuals, incorporated companies and mining co-operatives. Its duration is for one year and is renewable annually. The permit confers on the holder the non-exclusive right to search for mineral resources and the area covered is not limited. However, drilling and other subsurface activities are not permitted. A holder is allowed to obtain and remove samples in small quantities only. This permit is not transferable.

3.2 Exploration Licence (EL)

The licence is awarded to incorporated companies, mining co-operatives and holders of RP in respect of a mining area. This has a duration of 3 years, renewable for 2 further periods of 2 years each (i.e., it shall not exceed 7 years). It confers on the holder the right to explore [discover, determine the characteristics and evaluate the economic value of mineral resources] on an exclusive basis for all mineral resources within the title area (established zone only). The mining activity is restricted to specified minerals.

The holder is allowed to remove, conduct bulk sampling and testing, export and sell mineral resources not exceeding established limits and the mining area is not more than 200 sq km consisting of one contiguous polygonal area.

3.3 Small-Scale Mining Lease (SSML)

The licence is awarded to individuals, incorporated companies, mining co-operatives and holder of exploration licence in respect of a mining area. The holder of the lease has the exclusive right to carry
out small-scale mining operations [mining operations involving low-level technology or methods not requiring substantial expenditure] within the title area. The mining area is greater than 5 acres but less than 3 Km.

3.4 Mining Lease (ML)

The licence is awarded to an incorporated company or any legal entity that has met the conditions for the issuance, in respect of a subject area of application, holders of EL and SSML. All mining leases are for 25 years, renewable for a maximum period of 20 years.

The holder has the exclusive right to carry out all mining operations within the mining lease area. The land area is determined in relation to the orebody defined in the feasibility study and additional area for working of materials.

The holder also has the right to market, sell, export or otherwise dispose mineral products from mining, and the right to use water, wood, etc found on land.

3.5 Quarry Lease (QL)

The licence is awarded to individuals, incorporated companies, mining cooperatives and construction companies that need to extract minerals for own use and holders of EL. Minerals usually quarried include gravel, asbestos and gypsum amongst others.

QL confers the exclusive right to carry out quarry operations within the lease area. The holder has the right to remove and dispose any quarriable mineral specified in the lease. The quarry area is less than or equal to 5 sq km.

3.6 Water Use Permit (WUP)

Exclusive right to obtain and convey water and/or occupy land for the conveyance of water. The permit is usually granted to holders of EL, ML, QL and SSML. The WUP is for the duration of the original licence granted.

An individual or a company can make an application to the MCO for a licence to explore for a particular mineral of interest. The requirements for applying for a mineral title are summarized in the Appendix below.

3.7 Transfer of Mineral Title

Mineral titles, with the exception of RP, are transferable under the Act, subject to the approval of the Minister and registration of the transfer with the MCO. Rights arising from a mineral title that are transferable under the Act can be wholly or partially assigned, sub-leased, pledged, mortgaged, charged, hypothecated or subject to any security interest.

The approval of the MCO shall not be required for an assignment to an affiliate, where the obligations of the affiliate are guaranteed by the assignor or by a parent company.

4. Taxes, Royalties & Fees

Companies involved in mining activities are assessed to tax under the Companies Income Tax Act (CITA), Laws of the Federation (LFN) 2007, as amended. However, individuals and partnerships engaged in mining activities are liable to tax under the Personal Income Tax Act (PITA), LFN 2007 (as amended in 2011).

4.1 Corporate Income Tax (CIT)

The profit of a company engaged in mining activity is liable to CIT at the rate of 30%. The tax is applicable on the total profits of the company, after adjusting for non-tax-deductible items, unutilized losses from prior years and capital allowances (tax depreciation), if any. The CIT is payable to the Federal Inland Revenue Service (FIRS).

If a mining company's turnover is below N1million within the first five years of commencement of business, it will be liable to tax at the rate of 20%. However, this provision would not apply where such mining company is granted a pioneer status (see below).

4.2 Education Tax (EDT)

Nigerian companies engaged in mining activities are also liable to education tax (EDT) at the rate of 2% of their assessable profit. The EDT is also payable to the FIRS.

4.3 Treatment of Losses

Under the Act, losses incurred in a year of assessment can be carried forward and set-off against the assessable profits of the subsequent tax years (if any), up to a maximum of four (4) tax years, after which the loss shall lapse. However, the 4-year restriction only applies to losses incurred within the first three years of commencement of business, based on the amendment to CITA in 2007. Tax losses incurred after the first three years...
years of commencement of business can be carried forward indefinitely.

The potential conflict in the provisions of the two laws is yet to be resolved. However, since the CITA is the principal legislation governing the taxation of companies generally (other than companies engaged in the exploration and production of oil and gas), the provisions of the CITA with respect to the treatment of losses carried forward for tax purposes may prevail.

4.4 Minimum Tax Provision

CITA stipulates that:

• where in any year of assessment the ascertainment of total assessable profits from all sources of a company results in a loss, or
• where a company’s ascertained total profits results in no tax payable, or
• where the tax payable is less than the minimum tax,
• there shall be levied and paid by the company the minimum tax as prescribed under the CITA.

The exceptions to this rule are:

1. where a company is in its first four years of commencement of business
2. where a company is engaged in agricultural trade or business
3. where 25% or more of the company’s equity capital is imported and evidenced by a Certificate of Capital Importation (COCI).

Therefore, where a mining company meets the above conditions, it would be exempted from the payment of minimum tax, after the tax relief/pioneer period.

4.5 Personal Income Tax (PIT)

An individual or partnership carrying on mining activities is liable to PIT on any profit or gain from such activity in line with the provisions of PITA. The effective applicable tax rate is about 19% on the total income or profits. PIT is payable to the States’ Boards of Internal Revenue (SBIRs) where the individual or the partners is resident.

4.6 Valued Added Tax (VAT)

A mineral title holder is expected to charge VAT at the rate of 5% on all minerals sold locally. Minerals exported from Nigeria are, however, zero-rated based on the provision of the VAT Act.

4.7 Capital Gains Tax (CGT)

The Capital Gains Tax Act (CGTA), LFN 2007 (as amended) regulates payment of CGT in Nigeria.
The rate of tax is currently 10% and is levied on capital gains accruing on disposal of chargeable assets, irrespective of whether the asset is situated in Nigeria or not. Capital gains accruing outside Nigeria to a non-resident company or individual are subject to CGT only on the amount received or brought into Nigeria.

4.8 Stamp Duties

Stamp duties are payable on all dutiable documents and transactions. Stamp duties are applicable on the initial share capital of a company and on any subsequent increases in it. The current stamp duties rate on the authorised share capital of a company is 0.75%. This rate is, however, subject to periodic review by the Joint Tax Board (JTB).

Stamp duties may also apply on agreements entered into in Nigeria depending on the nature of the agreement.

4.9 Withholding Tax (WHT)

Dividends, interest, rent, royalty and other qualifying payments to shareholders, vendors and lenders are liable to WHT deduction at the appropriate rate. The rates vary between 5% and 10%, depending on the nature of the transaction and whether the beneficiary of the payment is a natural person, partnership or a limited liability company.

The WHT rate on dividend, interest, rent and royalty, when the beneficiary is resident in a country with which Nigeria has a double tax treaty (DTT) is 7.5%, compared to 10% that is generally applicable on such payments.

Nigeria currently has DTTs with United Kingdom, Netherlands, Belgium, Pakistan, Romania, Philippines, Czech Republic, Canada, South Africa, China and France. The DTTs with South Korea, Spain, Sweden and Russia are yet to be completely ratified.

4.10 Royalty

Royalty is payable by companies engaged in mining activities in Nigeria. It is calculated on ad valorem basis. The applicable royalty rates range from 3% to 5% depending on the type of mineral. The Minister may grant concession to a mineral title holder to defer payment of royalty on any mineral for a specific period, subject to the approval of the Federal Executive Council.

4.11 Annual Service Fee

Holders of a mineral title, other than the holder of an RP, shall pay an annual service fee to the MCO equal to the number of Cadastral Units that comprise the title area multiplied by the fee per Cadastral Unit for that type of title. This fee is payable on the anniversary of the issuance of the mining title.

4.12 Annual Surface Rent

Holders of a small-scale mining lease, mining lease, quarry lease, or water use permit shall pay annual surface rent to the owner or occupier of the land, subject to the approval of the Minister. It is also subject to review by the Minister at intervals of five (5) years.

4.13 Other Application and Licence Fees

Other fees/levies may be imposed by the MCO and relevant state or local government authorities.

5. Applicable Incentives

The key incentives available to companies engaged in mining operations are summarized below:

5.1 Under the Mining Act

i. Tax holiday for an initial period of 3 years from commencement of operations and renewable for additional 2 years.

ii. Exporters of mineral products may be permitted to retain part of their foreign exchange earning in a domiciliary account for the purpose of acquiring spare parts and other mining inputs.

iii. Exemption from customs and import duties in respect of plant, machinery equipment and accessories imported exclusively for mining operations. However, the plant and equipment can only be disposed of locally upon payment of the applicable customs and import duties.

iv. Free transferability of foreign currency through the Central Bank of Nigeria (CBN) for the following:
   a. Payment for servicing of certified foreign loan,
   b. remittance of foreign capital in event of sale or liquidation of the business.
v. Grant of personal remittance quota for expatriate personnel free from any tax imposed by any enactment for the transfer of external currency out of Nigeria.

vi. All infrastructure cost provided by the mining company and approved by the MCO to be capitalized and capital allowance claimed at 95% in the first year of operation.

vii. Annual indexation of unutilized capital allowance carried forward by 5% for mines that commenced production within five (5) years from the date of enactment of the Act.

viii. Accelerated Capital Allowance on mining expenditure (95% initial allowance and retention of 5% until asset is disposed.

ix. The Minister may grant a concession for the royalty payable on any mineral to be deferred for a number of years, subject to the approval of the Federal Executive Council.

x. Actual amount incurred out of reserves made for environmental protection, mine rehabilitation, reclamation and mine closure cost shall be tax deductible, subject to certification by an independent qualified person.

Summary of capital allowances for a mining company is provided below:

<table>
<thead>
<tr>
<th>Description</th>
<th>Initial Allow</th>
<th>Annual Allow</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Com</td>
<td>Indv(^4)</td>
<td>Com</td>
</tr>
<tr>
<td>Indv</td>
<td></td>
<td>Indv</td>
</tr>
<tr>
<td>Mining Expenditure(^4)</td>
<td>95</td>
<td>20</td>
</tr>
<tr>
<td>Furniture and Fitting</td>
<td>25</td>
<td>15</td>
</tr>
<tr>
<td>Motor Vehicle</td>
<td>50</td>
<td>25</td>
</tr>
<tr>
<td>Building and Leasehold (not industrial buildings)</td>
<td>15</td>
<td>5</td>
</tr>
</tbody>
</table>

5.2 Under CITA

i. A new company engaged in mining activities shall be exempted from tax for the first three years of its operation.

ii. The profits earned by a mining company after the initial tax holiday period may be exempted from income tax under the following circumstances:

   a. If the minerals are exported from Nigeria, and the proceeds from such exports are repatriated to Nigeria and used exclusively for the purchase of raw materials, plants, equipment and spares.

   b. If the minerals produced are exclusive inputs for the manufacture of products for exports, provided the exporter gives a certificate of purchase of input to the company.

iii. Potential exemption of interest on foreign loan from income tax, subject to the conditions stipulated under CITA.

iv. Where a mining company records a turnover below N1 million within the first five years of commencement of business, it will be liable to tax at the rate of 20%.

v. Grant of Investment Allowance of 10% on qualifying plant and machinery.

vi. A company may also be entitled to claim an additional rural investment allowance on its infrastructure cost, depending on the location of the company and the type of infrastructure provided.
6. Doing business in Nigeria

There are different investment vehicles that could be used for carrying on business in Nigeria. These include partnerships, unincorporated joint ventures and limited and unlimited liability companies. However, the authorized mode of investment by foreigners in Nigeria is through limited liability companies.

Under section 54 of the Companies and Allied Matters Act (CAMA), the law that regulates company formation and operation in Nigeria, no foreign company may carry on business in Nigeria unless it incorporates a local subsidiary in the country. However the Federal Executive Council is empowered by section 56 to grant exemption from this mandatory requirement to foreign companies in the following categories:

- Foreign companies invited by or with approval of the Federal Government to execute special projects
- Foreign companies which are in Nigeria for the execution of specific loan projects on behalf of donor countries or international organizations
- Foreign government-owned companies engaged solely in export promotion activities; and
- Engineering consultants and technical experts engaged in specialist projects under contracts with any of the Governments of the Federation or any of their agencies or under contracts with any person where such contracts have been approved by the Federal Government.

6.1 Requirements for Incorporation of a company

The foreign company would have to conduct a name search at the Corporate Affairs Commission (CAC) to ensure that the preferred name has not been issued to an existing company, or is not a prohibited name.

The following documents are required to incorporate a company in Nigeria:

- Memorandum of Association
- Articles of Association
- Statement of Share Capital
- Declaration of Compliance with CAMA
- Notice of situation of the Registered Office of the company; and
- Return of Allotment of Shares and Particulars of First Directors

Stamp duty is payable at 0.75% on the authorized share capital of a company in addition to filing fees payable to the CAC.

Once the registration process is completed, the Registrar General of the CAC will issue a Certificate of Incorporation to a company certifying that the conditions for incorporation have been fulfilled. Thereafter, the
company would be required to register with the Federal Inland Revenue Service for tax purposes, and other regulatory agencies noted below.

It is quite possible for a foreign investor to acquire an already existing mining business, or form a strategic joint venture/technical partnership with a Nigerian entity to carry-on mining operations. Under these circumstances, the foreign investor may not be required to incorporate a subsidiary for the purpose of its operations in the country.

7. Other Regulatory Bodies and Legislation

7.1 Nigerian Investment Promotion Commission (NIPC)

The NIPC is responsible for registering foreign investments in Nigeria. It also acts as a liaison between investors and government ministries, departments, institutional lenders and other institutions concerned with business start-ups in Nigeria.

7.2 Nigerian Export Promotion Council (NEPC)

The NEPC is vested with the responsibility of administering export incentives in Nigeria.

Every exporter is required to register with the NEPC. This will entitle the exporter to qualify for the available incentives upon satisfying the prescribed requirements.

Some of the existing incentives include:

- Export Expansion Grant (EEG)
  
  The EEG is a government policy tool to stimulate export activities that will lead to significant growth of non-oil exports in Nigeria. The objective is to facilitate increase in export volume and enable exporters to diversify export products and market coverage.

  The EEG is granted to eligible exporters that have repatriated in full, the proceeds from their export transaction, as confirmed by the Central Bank of Nigeria (CBN).

- Currency Retention Scheme

  The Foreign Exchange Act enables exporters to open and maintain a foreign currency domiciliary account into which their export proceeds can be paid and retained. Funds in the account can be sold in the inter-bank foreign exchange market or utilized by the exporter to pay for export related activities as may be prescribed by the NEPC in consultation with the CBN.

- Rediscounting of Short-term Bills

  This entitles an exporter to discount bills of exchange and promissory notes with his bank in order to increase his liquidity and minimize cash-flow problems before export proceeds are realized from overseas buyers.

7.3 Corporate Affairs Commission (CAC)

CAC is responsible for the administration of CAMA, including regulation and supervision of the formation, incorporation, registration, management and winding-up of companies. It also has the powers to arrange and conduct investigation into the affairs of any Nigerian company if and when the interests of the shareholders and the public demand.

Every Nigerian company must complete and file its annual returns with the CAC within 42 days after the Annual General Meeting (AGM) for the year.

7.4 The Federal Inland Revenue Service (FIRS)

The FIRS, established by the Federal Inland Revenue Service (Establishment) Act, 2007 is the regulatory body responsible for administering and collecting all taxes due to the FGN.

The FIRS is also empowered to conduct periodic review of taxpayers’ records with a view to ascertaining the extent of compliance and has the power to sanction erring tax payers.

7.5 Immigration Act

The Immigration Act precludes any person other than a Nigerian citizen from accepting employment in the country without the consent in writing of the Minister of Interior. This provision ensures that the Minister’s
consent in the form of expatriate quota (EQ) approval is obtained before a foreigner is employed in Nigeria. For expatriates engaged to work for a short period (e.g. 3 months), a Temporary Work Permit (TWP) is obtainable from the Immigration Department. The duration of the TWP is based on the approval granted by the Comptroller-General of Immigration. TWP is valid for only one entry and is normally not extendable. However, a foreigner seeking to take up employment in Nigeria would have to obtain an STR (Subject to Regularization) Visa and a Combined Expatriate Residence Permit and Aliens Card (CERPAC) based on his employer’s EQ approval.

7.6 Double Taxation Treaty (DTT)
DTTs seek to avoid the incidence of double taxation of the same income in different jurisdictions. Please refer to the section on WHT above for the list of countries that has DTTs with Nigeria.

Under the Treaties, the home country grants credit for taxes paid in the host country, by an entity having presence in both jurisdictions, where both jurisdictions have taxing rights over the same income.

8. Challenges in the Nigerian Mining Industry
The major challenges faced by the industry can be categorized into the following heads:

• Project funding
Due to the long period of inactivity and the slow implementation of the Federal Government’s reform agenda in the sector, multinational corporations have been reluctant to fund major mining projects in the country. However, the progress made in the regulatory reform, so far, is expected to stimulate activities by new investors in the sector.

• Infrastructure development
A major challenge to the development of the sector is the infrastructural imbalance within Nigeria, particularly, adequate electricity supply, and access roads to sites of mineral deposits.

However, the ongoing privatization of the national utility and reform of the power sector started in 2005 are stimuli for private investment in the sector. As capacity increases with new investments in the generation, transmission and distribution sectors, the shortages currently being experienced will be overcome. Meanwhile, mining investors can meet their power needs by engaging independent power producers for captive generation and supply of energy to the mines. Furthermore, access roads will ultimately improve with ongoing investments by the Federal and State Governments in road infrastructure. The ongoing rehabilitation of the rail lines will also facilitate product evacuation across the country for export.

• Security
The Niger Delta area of the country is now a peaceful region following the success of the on-going amnesty programme and law reform aimed at granting equity in petroleum companies to the host communities.

The Federal Government security agencies are equipped to respond appropriately to social conflicts as and when they arise. Security concerns are, therefore, not of the magnitude that should discourage investors in the Nigerian mining sector. However, investors are well advised to have a robust corporate social responsibility programme to address the needs of their host communities.

• Illegal mining and community challenges
There are pockets of illegal mining activities in some of the regions, with the attendant risks and community challenges. However, with the enactment of the Mining Act, foreign investors with the necessary permits and licences are guaranteed unfettered operation of their legitimate business in the country.

9. Recent updates in the Nigerian Mining sector
9.1. Issuance of the roadmap for the development of the solid minerals and metals sector
The Ministry of Mines and Steel Development (MMSD) released a road map for the development of the solid minerals and metals sector in 2012. The roadmap was designed to take full advantage of the rise in commodity prices and to facilitate a private sector/investor-led mining sector growth. Some of the policy thrust of the mining sector (in the roadmap) includes:
• transparancy in granting of mining titles
• development of required infrastructural facilities
• Investment in proper and adequate geo-science data
• Facilitate local production of industrial raw materials resulting in substantial import substitution in the medium and long-term
• substantial job creation
• promotion of modern and sustainable mining practices
• increasing the sectors contribution to the country’s gross domestic product by 5% in 2015.

The roadmap also details the action plans/programmes for the development of the sector, as well as performance targets. These action plans are divided into short-term plans (January to December 2012), medium-term plans (January 2013 to December 2014) and long-term programmes (January 2015 to December 2020).

9.2. Revocation of mineral mining licenses

In a bid to revamp the mining sector the Mining Cadastre Office (MCO) of the MMSD has commenced revocation of licenses from companies which failed to meet certain prescriptions of the law. The prescriptions include; failure to undertake the mining activity for which the license was obtained and also failure to submit periodical reports to the MCO and the MMSD (and payment of the prescribed fees). Although, it is unclear how many mining titles have been revoked by the MCO since the introduction of the Mining Act in 2007; in December 2013, the MCO mentioned that about 593 mining titles have been revoked, comprising of 237 exploration licences, 302 quarry leases and 47 small-scale mining leases.

Mineral titles revoked will be reissued to new investors. The MCO is receiving applications for license as well as granting licenses. For instance a total of 1,858 applications for mineral licenses were received between January and September 2013 and 1,179 approvals for various mineral licenses were granted within the same timeframe.
Appendix

Requirements for Application for Mineral Titles

Mining Lease (ML)

Pre-grant conditions

- Duly completed application forms
- Pre Feasibility Report (with COMEG seal and signature)
- Prospective plan / reserve estimation
- Extant exploration licence
- Evidence of financial capability
- Evidence of technical competence
- Irrevocable consent from land owner(s) / land occupiers(s)
- Attestation of non conviction of criminal offences under the Act
- Evidence of payment of processing fee
- Certified true copy of certificate of incorporation
- Mineral(s) to be exploited
- Area specified to be surveyed in accordance with provisions of Survey Co-ordination Act
- Notice to land owner(s) with a response on rate to be paid

Post-grant Conditions

- Environmental Impact assessment
- Community Development Agreement. A copy to be submitted to the MCO and all relevant departments in the Ministry
- Compensation
- Mine closure / rehabilitation plan
- Reports from state bodies

Quarry Lease / Small scale mining lease (QL / SSML)

Pre-grant conditions

The same conditions as ML will apply with the exception of the two below:

- Prospecting plan / reserve estimation
- Extant exploration licence

Post-grant conditions

See conditions under ML

Exploration Licence

Pre-grant conditions

In addition to the mining pre-grant conditions, there is a requirement to submit a detailed work program (with COMEG stamp signature)

Reconnaissance Permit

Pre-grant conditions

- Duly completed application forms
- Description of the work area and activities to be carried out
- Attestation of non conviction of criminal offences
- Receipt of payment of processing fee
- Evidence of technical competence
- Evidence of financial capability
Contact us

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