

# **NIGERIA'S MINING ACT**

## **- A Case Study for Mining Reform**

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# RATIONALE FOR NEW MINING ACT

## - State Of The Mining Sector - Pre 2007

- **Investment environment for mining not attractive to private investors**
  - Policy and legislation not conducive to private sector led development
  - Government parastatals dominated mineral exploration with minimal results
  - Geologic information dated
  - Mining license & registration system opaque, disorganised and often discretionary
- **Result: Sector comatose**
  - Failure of the mining policy evidenced by decay and collapse of the monopoly corporations
  - Insignificant contribution of mining to national income and development
  - Almost total absence of private sector investment in exploration over the past 30 years
  - Nigeria totally missed the mining investment funds that poured into Africa in the 1990s.

# THE MINERALS AND MINING ACT 1999

- Failed to address security of tenure issues
- Gave broad discretionary powers to the Minister on matters relating to mineral titles
- Gave Government a right of pre-emption on all minerals extracted
- Did not allow the grant of security interest on mineral titles
- Environmental provisions were inadequate
- **Result** – No mineral investment

# WHAT WAS DESIRED

- Reliable geologic information
- An internationally attractive mineral policy / administrative framework
- The involvement of private sector explorationists
- Assurances of stability & protection of investment

# WHAT HAS BEEN DONE

- **Comprehensive Mining Sector Reform:**
  - Provision of basic geological information
  - Revision of the mining policy
  - Revision of legal and fiscal framework
  - Strengthening mining institutions
  - New focus on environmental management
- **Fundamental Shift**
  - Government as regulator / administrator
  - No longer owner / operator
  - Private sector now driving force in mining investment and development
- **Follows global trends in mining sector reforms: Latin America (Chile, Argentina, Peru) and Africa (Ghana, Guinea, Mali, Burkina Faso, Botswana, Namibia, Tanzania)**

# **THE MINERALS & MINING ACT 2007**

# KEY PRINCIPLES

- Security of mineral rights / tenure
- Reduction of administrative discretion
- All minerals covered under the same licence
- Time frames for administrative decisions
- Unfettered rights to transfer and mortgage title
- No excessive obstacles to private investment:
  - Simple eligibility requirements for mineral rights
- Non-discretionary and non-discriminatory procedures for grants and administration of mineral titles
- Provides procedures for settling disputes in the courts or by arbitration
- Creates a stable and competitive fiscal regime for investment

# KEY PRINCIPLES II

- Property in lawfully won minerals
- a specified duration together with a right of renewal for exploration licences and mining leases
- convertibility of exploration rights into mining rights
- Clearly defined grounds for the suspension or revocation of licences
- Mining Cadastre Office (MCO) granted sole responsibility for the administration of mineral titles
- An array of tax incentives, opportunity to defer payment of royalties, as well as guaranteed repatriation of funds



# THE INSTITUTIONAL FRAMEWORK

- The Ministry of Mines and Steel Development
  - The Minister
  - Mines Inspectorate Department
  - Mines Environmental Compliance Department
- The Mining Cadastre Office
- The Nigerian Geological Survey Agency
- The State Mineral Resources and Environmental Management Committee

# THE MINISTER

- Supervision of administration of the Act
- Formulation and issuance of policies
- Ensure the orderly and sustainable development of Mineral Resources
- Promote research and ensure the development of a geo-scientific data bank

# THE MINING CADASTRE

- The sole agency regarding all matters relating to the administration of Mineral Titles
- Key interface with investors re: Mining Titles – a “*one – stop*” window
- Exclusive authority and jurisdiction over the whole country
- Power to issue, suspend & revoke title
- Cadastre required to be independent & not subordinated to any Government or private agency.

# THE MINING CADASTRE SYSTEM

- The global standard in mineral title management  
[Argentina, Afghanistan, Bolivia, Botswana, Brazil, Burkina-Faso, Chile, China, Colombia, Algeria, Cameroon, Ghana, Guinea, Indonesia, Madagascar, Mozambique, Namibia, Peru, Philippines, Mauritania, Tanzania].
- Provides clear, fair and transparent procedures for granting rights [*‘first come first served’*] and transfers.
- Ensures exclusivity of the licensed areas [*“security of tenure”*].
- Encourages active exploration [*“come one, come all”*] and discourages hoarding for speculation [*“use it or lose it”*].
- *“Revolutionary”* – Peter Leon

# MINERAL TITLES

- Reconnaissance Permit
- Exploration Licence
- Small – Scale Mining Lease
- Mining Lease
- Quarry Lease
- Water Use Permit

# THE EXPLORATION LICENCE

- An Exploration Licence confers on the titleholder the right to explore on an exclusive basis for all Mineral Resources
- “Explore” means *the operations and works aimed at the discovery, the determination of characteristics and the evaluation of the economic value of Mineral Resources within an Exploration Licence Area*

# TRANSITING TO MINING LEASE

- **Right to Mine after commercial discovery**
  - EL holder has exclusive right to apply for and be granted mining lease in respect of any part of exploration area
- **Condition –**
  - compliance with all obligations of the EL
  - demonstrate that a commercial quantity of mineral resources exists in the area
  - Must have in employment person with adequate professional qualifications to supervise operations

# MINING LEASE

- A Mining Lease confers on the holder the right to exclusively carry out mineral exploitation within the Mining Lease area and to dispose of minerals resulting from mining operations



# SUSPENSION OF TITLE

- Upon the written approval of Minister, the Mining Cadastre may suspend a Mining Lease for a period of not more than 60 days
- **Process:**
  - i- 30 days notice of the intention to suspend title
  - ii- notice to detail the grounds for suspension
  - iii- show that within the 30 days the holder has failed to remedy the breach or remove the grounds for suspension within the required period

# REVOCAION OF TITLE

- Mineral title may be revoked on the basis of grounds provided for in the Act
- **Process:**
  - i- 30 days notice of the intention to revoke title
  - ii- notice to detail the grounds for revocation
  - iii- show that the holder has failed to remedy the breach or remove the grounds for revocation within the cure period

# LAND ACCESS AND OCCUPATION

- The entire property in and control of mineral resources in, upon or under any land in Nigeria is vested in the Federal Govt for and on behalf of the people of Nigeria.
- All land within the territory of a state is vested in the governor of the state in trust for the use and common benefit of all Nigerians
- Use of land for mining operations is a “*priority land use*” and a matter of “*overriding public interest*”
- The Governor can revoke a Right of Occupancy for overriding public interest
- Compensation to be paid for damage to land and property and disturbance of surface rights and if title of occupier of land extinguished.

# THE FISCAL REGIME

- Tax relief period of 3 years renewable for further 2 year period
- 95% of Qualifying CAPEX deductible as Capital Allowance from assessable profits
- Annual capital cost indexation of 5% for mines starting production within 5 yrs of commencement of the Act
- Losses may be carried forward indefinitely
- Liberal exchange control regime
  - retention of FX earnings for procurement of spare parts
  - free transferability of funds for loan servicing & repatriation of capital
- Tax deductibility of environmental costs.
- Possibility of deferment of royalty

# IMPORTING EQUIPMENT

- Equipment imported specifically and exclusively for exploration and mining operations exempt from customs and import duty
- Application to be made to MMSD for exemption
- Customs and import duty becomes payable if licence holder disposes of equipment

# EXPORTING SAMPLES

- Export Permit required from MMSD:  
[Mines Inspectorate]
- Certificate of analysis to be forwarded to MMSD within 6 months after export of sample

# ENVIRONMENTAL MANAGEMENT

- Each Mineral Title has HS/E obligations imposed
- Detailed environmental obligations
- EIAs are compulsory – precondition to mining ops
- Environmental Protection & Rehabilitation Programs
- Environmental Protection Fund

# PROJECT FINANCING

## 1999 Act

- limited scope for title transfers
- limitations on right to create security interests in mineral title
- scope of The nature and rights in mineral title unclear

## 2007 Act –

- free transferability of mineral rights  
[Transfer includes a charge, sub-lease, pledge, mortgage, assignment or other security interest]
- property rights in the minerals once extracted



# RESULTS OF THE REFORMS AND THE NEW LEGISLATION

- Extensive geological data acquisition campaign initiated
- The country's geological database has significantly improved
- Positive response from both local and foreign investors to new system: increasing number of exploration license applications - over 2000 Exploration Licences issued in 2007
- Several exploration projects are underway

# RISK ISSUES

- Regulatory risk:
  - Mining law untested
  - Mining law unclear in parts
  - Potential for policy changes

# **THANK YOU FOR LISTENING!!**

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