

# THE REGULATORY FRAMEWORK FOR SOLID MINERALS DEVELOPMENT IN NIGERIA

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June 20, 2008

# INTRODUCTION I

## FEATURES OF A MINING PROJECT

<b>Activity</b>	<b>Duration</b>	<b>Cost (USD)</b>
Greenfield Exploration	1 – 3 years	\$400,000 – \$1.5 million
Exploration to pre-feasibility	2 – 4 years	\$1.5 million – \$15 million
Feasibility	2 – 4 years	\$15 million – \$150 million
Permitting	1 – 3 years	\$15 million – \$100 million
Mine Development	1.5 – 2 years	\$750 million – \$7.5 billion
Operations	10 – 50 years	-----
Closing & Reclamations	3 years to perpetuity	\$15 million – \$150 million

# **INTRODUCTION II – LEGAL ISSUES AFFECTING A MINING PROJECT**

- Security of tenure
- Ability to acquire and retain exploration rights
- Ability to convert exploration rights to mining rights
- Duration of exploration and mining rights
- Ability to transfer exploration and mining rights
- Conditions to obtaining permits for mining operations
- Land access and rights of other land users
- Ownership of extracted minerals
- Ability to market and sell minerals
- Tax and royalties

# THE MINING SECTOR - PRE 1999

## •Unattractive investment climate

- Policy and legislation not conducive to private sector led development as these issues were not adequately addressed
- Government parastatals dominated mineral exploration with minimal results
- Geologic information outdated
- 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 GDP
- 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

- An attempt by government to revive mining sector
- Failed to achieve the favourable regulatory dispensation required to attract investment
  - Did not 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
  - Restrictions on title transfer - did not allow the grant of security interest on mineral titles
  - Environmental provisions were inadequate

**Result** – No mineral investment

# SOLID MINERALS

- Virtually virgin ground – very little exploration or mining operations has been conducted in the last 30 years.
- There is now a focus on solid minerals as an alternative foreign exchange earner for the country.
- Sector is now being reformed to provide an enabling environment for increased 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)

# KEY PRINCIPLES OF THE 2007 ACT I

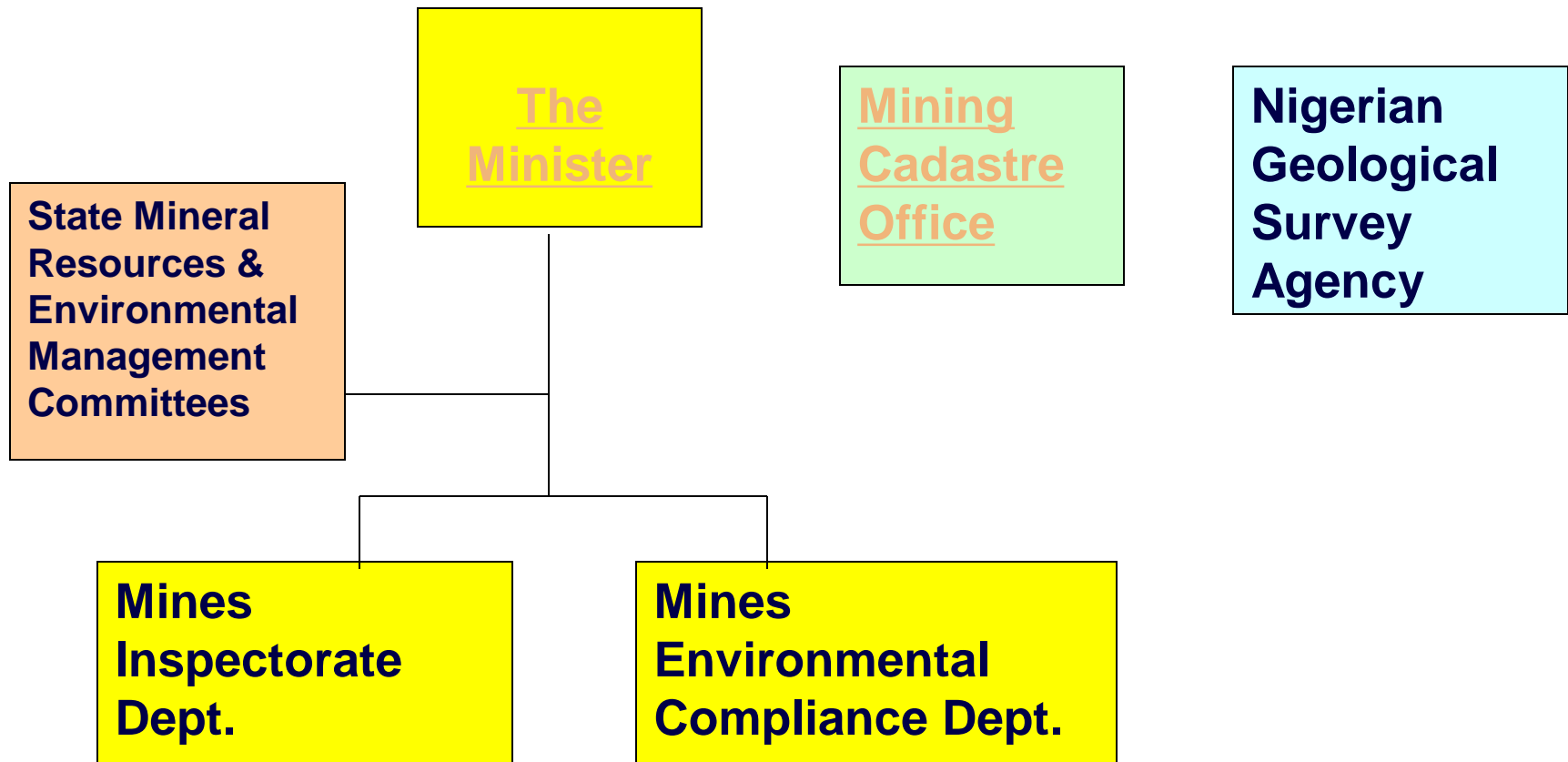
- Security of mineral rights / tenure
- Reduction of administrative discretion
- All minerals covered under the same licence
- Time frames for administrative decisions
- Unfettered rights to transfer and mortgage title
- No excessive obstacles to private investment:
  - Simple eligibility requirements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



# KEY PRINCIPLES OF THE 2007 ACT 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



# MINERAL TITLES

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

# THE EXPLORATION LICENCE

- The right to explore on an exclusive basis for all Mineral Resources within a defined area
- *“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*
- Qualification Criteria:
  - Body Corporate
  - Mining Co-operative
  - Holder of R.P

# MINING LEASE I

- The right to exclusively carry out mineral exploitation within a defined area and to dispose of minerals resulting from mining operations
- *“Mineral Exploitation” means the operations and works related to the technical and economic utilization of mineral resources including mine development, extraction, treatment, processing and beneficiation of mineral resources as well as the activities necessary or related to the marketing of such minerals*
- Qualification Criteria:
  - Only available to holder of exploration licence in respect of the area

# MINING LEASE II - TRANSITING FROM EXPLORATION LICENCE

- **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
- **Conditions –**
  - 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 III

- **Pre-conditions for commencement of mine development and operations**
  - Approval of EIA and work programme
  - Payment of compensation to holder of surface title
  - Conclusion of community development agreement

# SMALL - SCALE MINING LEASE

- The right within the Small-Scale Mining Lease area to exclusively carry out small-scale mining
- A Small – Scale Mining Lease may be converted to a Mining Lease
- “Small-Scale Mining ” *means Artisanal, Alluvial and other forms of Mining Operations involving the use of low-level technology or application of methods not requiring substantial expenditure for the conduct of Mining Operations within a Small-Scale Mining Lease Area*



# QUARRY LEASE

- Right to carry out quarrying operations on land within lease area and to remove or dispose quarriable minerals specified in the land.
- Quarriable minerals – asbestos, china clay, fuller’ s earth, gypsum, mable, limestone, mica, pipe clay, slate, sand, stone, laterite, gravel, etc.
- Qualification Criteria:
  - Nigerian citizen
  - Body Corporate
  - Mining Co-operative
  - Person extracting construction material for construction works of public interest

# WATER USE PERMIT

- The right to obtain and convey such volume of water, occupy such land for a dam, reservoir or pumping station and for the conveyance of the water by means of pipes, ducts, flumes, furrows and construct and maintain any work for the collection, storage or conveyance of water
- Qualification Criteria:
  - Holder or applicant of any mineral title.

	<b>Maximum Size</b>	<b>Duration/Renewals</b>
<b>Reconnaissance Permit</b>	no area limit	1 year (renewable annually)
<b>Exploration Licence</b>	200 km <sup>2</sup>	3 years (renewable twice for 2 years each)
<b>Small-Scale Mining Lease</b>	3 km <sup>2</sup>	
<b>Mining Lease</b>	50 km <sup>2</sup>	25 Years (renewable every 20 years)
<b>Quarry Lease</b>	5 km <sup>2</sup>	5 years or less (renewable as often as required)
<b>Water Use Permit</b>	Not applicable	Same duration with lease

# 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

# 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

# DISPUTE RESOLUTION

- In accordance with the **Nigeria Investment Promotion Commission Act**
  - Where a dispute arises between an investor and any Government of the Federation in respect of an enterprise, all efforts shall be made through mutual discussion to reach an amicable settlement
  - Where the dispute is not amicably settled, it may be submitted by the aggrieved party to Arbitration.
- The decisions of the Minister as they affect the rights of a Mineral Title holder are subject to Arbitration.

# FINANCING MINING PROJECTS

## 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

# FINANCING MINING PROJECTS II

- Mining projects are usually financed on the basis of a Bankable Feasibility Study
- “Feasibility Study” - an analysis carried out to determine the feasibility of bringing a project into commercial production
- Key drivers of analysis:
  - quantity of reserves
  - amenability to processing – recovery rate
  - commodity price
  - costs of plant and infrastructure
  - operating costs
  - discount rate for NPV analysis
- “Bankable Feasibility Study” - quality and scope of analysis sufficient to allow a bank or other financial institution to make a lending decision



# FINANCING MINING PROJECTS III

- Risk issues should be considered at early stage
  - Ore Reserve risk
  - Completion risk
  - Operational risk
  - Market risk
  - Political risk
  - Legal risk
  - Environmental risk
  - Supply risk

# RESULTS OF THE REFORMS

- 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