

Mining 2021

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Mining 2021

Contributing editors**Darrell Podowski, Brian Dominique, Brandon Manhas
and Lauren White****Cassels Brock & Blackwell LLP**

Lexology Getting The Deal Through is delighted to publish the seventeenth edition of *Mining*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapter on Ireland, Nigeria and Uzbekistan.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Darrell Podowski, Brian Dominique, Brandon Manhas and Lauren White of Cassels Brock & Blackwell LLP, for their assistance with this volume.



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MINING INDUSTRY

Standing

1 | What is the nature and importance of the mining industry in your country?

The development of the mining industry is crucial for the economic diversification of the Nigerian economy, which is currently largely dependent on revenue from crude oil. For this reason, the federal government embarked on a series of legal, regulatory, institutional and fiscal reforms for the mining sector. Key initiatives in this regard include the enactment of a new mining law in 2007, the issuance of mining regulations in 2011, the establishment of a cadastral system for mineral title administration, a geological data acquisition programme and the establishment of a solid mineral development fund to fund data acquisition, among others.

Target minerals

2 | What are the target minerals?

A broad range of minerals are known to occur across the country. However, the federal government has identified iron ore, gold, limestone, baryte, bitumen, coal and lead-zinc as strategic minerals for Nigeria's industrialisation requirements. Based on the recent discoveries of lithium, titanium, tungsten, cobalt and rare earth deposits, the federal government has also announced an intention to prioritise the development of minerals used in battery technology or renewable energy.

Regions

3 | Which regions are most active?

The north-west, south-west and middle belt regions in Nigeria are the most active areas.

LEGAL AND REGULATORY STRUCTURE

Basis of legal system

4 | Is the legal system civil or common law-based?

The legal system is common law-based.

Regulation

5 | How is the mining industry regulated?

Nigeria is a federation and title to minerals are reserved by the constitution to the federal government. Thus, the mining industry is regulated at the federal level. However, access to land (surface title) is regulated by the state governments.

6 | What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws? Were there any major amendments in the past year?

The principal law is the Nigerian Minerals and Mining Act 2007 (Chapter N162 Laws of the Federal Republic of Nigeria (LFN) 2004 (the Mining Act) and the Minerals and Mining Regulations 2011 issued pursuant to the Mining Act. The principal regulatory bodies are the Ministry of Mines and Steel Development (MMSD) – comprising the Mines Inspectorate Department and the Mines Environmental Compliance Department (MECD) – and the Mining Cadastre Office (MCO). The Federal Ministry of Environment and the ministry of responsible for environmental matters in the relevant state for the mining operations co-regulate environmental matters.

Other relevant laws include the Nuclear Safety and Radioactive Radiation Protection Act (Chapter N142 LFN 2004), administered by Nigerian Nuclear Regulatory Agency; the Explosives Act (Chapter E18 LFN 2004), administered by the MMSD; and the Land Use Act (Chapter L5 LFN 2004), administered by the relevant state agency.

Classification system

7 | What classification system does the mining industry use for reporting mineral resources and mineral reserves?

There is no legal requirement to use a specific classification system for reporting minerals. Parties are at liberty to use any of the generally recognised systems to demonstrate the existence of a commercial discovery. However, in practice, the JORC Code is widely used by exploration companies.

MINING RIGHTS AND TITLE

State control over mining rights

8 | To what extent does the state control mining rights in your jurisdiction? Can those rights be granted to private parties and to what extent will they have title to minerals in the ground? Are there large areas where the mining rights are held privately or which belong to the owner of the surface rights? Is there a separate legal regime or process for third parties to obtain mining rights in those areas?

By virtue of the Constitution of the Federal Republic of Nigeria 1999, and the Nigerian Minerals and Mining Act 2007 (Chapter N162 Laws of the Federal Republic of Nigeria (LFN) 2004 (the Mining Act), the federal government has title to all mineral resources beneath or upon any land within Nigeria, including Nigeria's continental shelf, territorial waters and exclusive economic zone.

Private parties can acquire mining rights from the federal government. However, these rights do not confer the private party with title to

the minerals in the ground. Title to minerals transfers from the federal government to the mining rights holder upon the lawful extraction of such minerals from the ground.

There are no areas in Nigeria where mining rights are privately held.

Publicly available information and data

9 | What information and data are publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency, or securities commission regulating public companies, which collects mineral assessment reports from private parties? Must private parties file mineral assessment reports? Does the agency or the government conduct geoscience surveys, which become part of the database? Is the database available online?

The Nigerian Geological Survey Agency (NGSA) maintains a database of geological data, which includes geological, mineral resources and geochemical maps, aeromagnetic data, and radiometric data. This geological data is publicly available to private parties. The NGSA conducts geoscience surveys that become part of the data base.

Mining rights holders must provide: to the NGSA, all geoscientific data acquired in the course of their operations for storage and archiving (this data includes maps, coring and samples); and to the Mining Cadastre Office (MCO), records of every mineral found and ore reserves calculated within a mineral title area.

Boundary, geological, topology, transportation and hydrology maps are available on the website of the Ministry of Mines and Steel Development.

Acquisition of rights by private parties

10 | What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have? If exploration or reconnaissance licences are granted, does such tenure give the holder an automatic or preferential right to acquire a mining licence or more senior tenure? What are the requirements to convert to a mining licence?

Private parties may acquire the right to search for or exploit minerals through one of the following mining titles:

- reconnaissance permit, which confers a non-exclusive right to enter on or fly over any land in Nigeria to conduct reconnaissance activities; holders of this permit may remove surface samples in small quantities but are prohibited from engaging in subsurface activities such as drilling;
- exploration licence, which confers an exclusive right to carry out exploration activities within the licence area, which shall not exceed 200km²;
- mining lease, which confers an exclusive right to occupy and carry out mineral exploration and exploitation within the lease area, which shall not exceed 50km²; and
- small-scale mining lease, which confers an exclusive right to carry out artisanal, alluvial or other forms of mining operations involving the use of low-level technology or methods within the lease area, which shall not exceed 3km².

Mining titles are primarily granted on a first come, first served basis. However, the Mining Act grants the Minister of Mines and Steel Development (Minister) with the power to designate certain areas where a mining lease or exploration licence may be granted further to a competitive bidding exercise.

Holders of mining titles are required to:

- comply with all applicable laws, regulations and conditions imposed on the title;

- ensure that exploration and mining operations are conducted in a safe and skilful manner;
- minimise and manage any environmental impact resulting from their activities;
- rehabilitate or reclaim all disturbed land; and
- pay rent and royalties that may become due.

In addition, mining lease holders are required to secure an approved environmental impact assessment report and work programme in respect of proposed mining operations; conclude a community development agreement with its host community before the commencement of mine development or extraction; commence mine development within 36 months from the date of the aforementioned approvals in the case of a mining lease for exploiting mineral resources, or within 12 months in the case of a mining lease for exploiting mineral water; and keep in continuous employment a person who possesses adequate professional qualifications and experience in mining to supervise mining operations.

An exploration licence confers an exclusive right to apply for a mining lease in respect of any part of a licence area. To convert to a mining lease, an exploration licence holder must demonstrate a commercial discovery and have fulfilled all the conditions attached to the exploration licence. The holder of a small-scale mining lease may also convert to a mining lease provided it meets the qualification requirements for one.

Renewal and transfer of mineral licences

11 | What is the regime for the renewal and transfer of mineral licences?

All mining titles are renewable provided the holder complies with the requirements of the Mining Act and its regulations and, in the case of an exploration licence and mining lease, its minimum work obligation commitments.

A mining title is transferable subject to the approval of the Minister and registration at the MCO. The Minister shall approve an application for transfer if the transferee is a qualified person to hold the type of mining title in question and the transferee submits an acceptance of transfer or assignment attestation to the Minister, completes all information required and pays the specified fee. If the Minister denies the application, any aggrieved person may lodge an appeal at the Federal High Court within 60 days of being notified of the denial. No approval is required for a change of control of a title holder or its parent.

Duration of mining rights

12 | What is the typical duration of mining rights? Is there a requirement to relinquish a portion of the mining rights to the government after a certain number of years?

A reconnaissance permit is valid for one year and is renewable for subsequent terms of one year. An exploration licence is valid for three years and is renewable for a maximum of two subsequent terms of two years. A small-scale mining lease is valid for five years and is renewable for further periods not exceeding five years. A mining lease is valid for term not exceeding 25 years and is renewable for further terms not exceeding 25 years.

All mining titles are renewable provided the holder complies with the requirements of the Mining Act and its regulations and, in the case of an exploration licence and mining lease, its minimum obligation commitments.

Mining rights cannot be revoked or cancelled pre-emptively by the government.

Acquisition by domestic parties versus acquisition by foreign parties

- 13 | Is there any distinction in law or practice between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?

Foreign parties that wish to acquire mining rights in Nigeria may only do so through a company incorporated in Nigeria. This company may be 100 per cent foreign-owned. Companies that are 100 per cent foreign owned are not restricted from obtaining mining rights. It is also not necessary for a foreign party to have a domestic partner.

Protection of mining rights

- 14 | How are mining rights protected? Are foreign arbitration awards in respect of domestic mining disputes freely enforceable in your jurisdiction?

Nigeria has an independent judicial system, and the courts are governed by rules that ensure adherence to the rule of law and due process. Holders of mining rights have recourse to the Federal High Court if judicial action is required to protect these rights.

Investment disputes between a mineral title holder and the government may be referred to arbitration under the UNCITRAL Arbitration Rules. Additionally, Nigeria is a signatory to the Multilateral Investment Guarantee Agency Convention, the Treaty on the International Centre for the Settlement of Investment Disputes and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which confer an obligation on domestic courts to recognise and enforce foreign arbitral awards.

Surface rights

- 15 | What types of surface rights may mining rights holders request and acquire? How are these rights acquired? Can surface rights holders oppose these requests or does the holder of the mineral tenure have priority over surface rights use?

Under the Mining Act and the Land Use Act, a requirement for land for mining purposes is a priority land use and a matter of overriding public interest for which the government may exercise its rights of eminent domain and compulsorily acquire such land.

With the exception of the reconnaissance permit, mining titles in Nigeria confer varying degrees of surface rights on their holders. The holder of an exploration licence can enter the licence area to carry out exploration activities and erect such plant and machinery as may be necessary. However, where any land within the area is subject to a right of occupancy, he or she must give prior notice to the lawful occupier and the local government chair of the area where the land is located and must pay compensation for damage caused.

Subject to the payment of compensation and surface rent and to any limitations that the Minister may impose, a mining lessee has the right to exclusively use, occupy and carry out mineral exploitation on the land; to use water and wood and other construction materials as may be necessary; and to grow plants or keep animals for use by its employees.

The consent of the landowner must be obtained before a mining title can be granted over an area of land that is occupied under a right of occupancy. If consent is not obtained, the mining title area will exclude the land in question.

Participation of government and state agencies

- 16 | Does the government or do state agencies have the right to participate in mining projects? Is there a local listing requirement for the project company?

The government does not have the right to participate in a mining project. There is no local listing requirement for mining project companies.

Government expropriation of licences

- 17 | Are there provisions in law dealing with government expropriation of licences? What are the compensation provisions?

This issue is addressed by the Constitution and the Nigerian Investment Promotion Commission Act (Cap N117, LFN 2004). There is a guarantee of freedom from expropriation, nationalisation or acquisition by any government of the federation. The exceptions would be where such expropriation is undertaken in the national interest or for a public purpose and under a law that makes provision for the payment of fair and adequate compensation and a right of access to the courts for the determination of the investors' interest or right and the amount of compensation to which he or she is entitled.

Protected areas

- 18 | Are any areas designated as protected areas within your jurisdiction and which are off-limits to mineral exploration or mining, or specially regulated?

Exploration and mining is prohibited in land set aside for military purposes; land within 50km of any oil pipeline licence area, railway, public road, reservoir, dam or government or public buildings; land occupied by a town, village, market or cemetery, ancestral, sacred or archaeological sites, national park and land subject to the provisions of the National Commission for Museums and Monuments Act, Chapter N19, LFN 2004; and any area designated as closed to mining operations.

DUTIES, ROYALTIES AND TAXES

Duties, royalties and taxes payable by private parties

- 19 | What duties, royalties and taxes are payable by private parties carrying on mining activities? Are these revenue-based or profit-based?

Corporate tax at 30 per cent (a reduced rate of 20 per cent applies to companies with turnover of between 25 million Nigerian naira and 100 million naira, while companies with turnover of less than 25 million naira are exempt from corporate tax) and an education tax of 2 per cent are payable on taxable profits by companies engaged in mining activities. VAT of 7.5 per cent applies to taxable goods and services. However, certain goods and services including exports are exempted from VAT.

Royalties are payable on minerals obtained in the course of mining or exploration at rates ranging from 3 to 5 per cent of the market value of the mineral. The Minister of Mines and Steel Development (Minister) may waive the payment of royalty for any mineral exported solely for the purpose of analysis or experiment or as a scientific specimen. In addition, the Minister may, upon the approval of the Federal Executive Council, defer the payment of any royalty on any mineral for a specified period. Annual service fees are payable for the maintenance of mineral titles.

Tax advantages and incentives

- 20 | What tax advantages, tax credits and incentives are available to private parties carrying on exploration and mining activities?

Companies engaged in mining operations are entitled to a tax holiday for the first three years of operation, which may be extended for another two years; a capital allowance of 95 per cent of qualifying capital expenditure incurred on exploration, development and processing; carry forward losses; annual indexation of the unclaimed balance of capital expenditure by 5 per cent (for mines that commence production within five years of enactment of the Nigerian Minerals and Mining Act 2007 (Chapter N162 Laws of the Federal Republic of Nigeria (LFN) 2004); and exemption from customs and import duties on approved plants and machinery, equipment and accessories imported specifically and exclusively for mining operations.

Tax stabilisation

- 21 | Does any legislation provide for tax stabilisation or are there tax stabilisation agreements in force?

There is no legislation that provides for tax stabilisation and we are not aware that the government has entered into any tax stabilisation agreement that applies to mining operations.

Carried interest

- 22 | Is the government entitled to a carried interest, or a free carried interest in mining projects?

No.

Transfer taxes and capital gains

- 23 | Are there any transfer taxes or capital gains imposed regarding the transfer of licences?

Capital gains tax at the rate of 10 per cent of chargeable gains applies to the transfer of licences.

Distinction between domestic parties and foreign parties

- 24 | Is there any distinction between the duties, royalties and taxes payable by domestic parties and those payable by foreign parties?

There is no such distinction.

BUSINESS STRUCTURES

Principal business structures

- 25 | What are the principal business structures used by private parties carrying on mining activities?

The principal business structure used for mining activities is a limited liability company, which must be incorporated in Nigeria.

Local entity requirement

- 26 | Is there a requirement that a local entity be a party to the transaction?

There is no requirement that a local entity be a party to a mining transaction. However, the law requires that an entity must be incorporated in Nigeria before it can conduct business in the country.

Bilateral investment and tax treaties

- 27 | Are there jurisdictions with favourable bilateral investment treaties or tax treaties with your jurisdiction through which foreign entities will commonly structure their operations in your jurisdiction?

Nigeria has bilateral investment treaties with China, Finland, France, Germany, Italy, the Netherlands, Romania, the Republic of Korea, Serbia, South Africa, Spain, Sweden, Switzerland, Taiwan and the United Kingdom.

Nigeria has tax treaties with Belgium, Canada, China, Czech Republic, France, the Netherlands, Pakistan, Philippines, Romania, Singapore, Slovakia, South Africa and the United Kingdom.

FINANCING

Principal sources of financing

- 28 | What are the principal sources of financing available to private parties carrying on mining activities? What role does the domestic public securities market play in financing the mining industry?

The principal sources are equity and debt financing from local and international lenders. The domestic public securities market is not very active with respect to mining finance.

Direct financing from government or major pension funds

- 29 | Does the government, its agencies or major pension funds provide direct financing to mining projects?

The government provides funding through the Solid Minerals Development Fund (established pursuant to the Nigerian Minerals and Mining Act 2007 (Chapter N162 Laws of the Federal Republic of Nigeria (LFN) 2004) for geoscientific data gathering, storage and retrieval, provision of mines infrastructure and for extension services to small-scale and artisanal mining operators.

Security regime

- 30 | Please describe the regime for taking security over mining interests.

Taking security over a mining interest is permissible if the purpose is to secure financing for mining operations. The holder of the mining title must notify the Mining Cadastre Office (MCO) of the security interest within 30 days of the notice of encumbrance, following which, the MCO will register the notification in the relevant mineral title register. Parties wishing to take security over a mining interest must first confirm the status of the mining title with the MCO, otherwise the transaction may be rejected by the MCO.

RESTRICTIONS

Importation restrictions

- 31 | What restrictions are imposed on the importation of machinery and equipment or services required in connection with exploration and extraction?

There are no restrictions imposed that are specific to machinery, equipment or services required for exploration or extraction.

Standard conditions and agreements

- 32 | Which standard conditions and agreements covering equipment supplies are used in your jurisdiction?

The FIDIC conditions of contract are commonly used in Nigeria, but their use is by no means exclusive.

Mineral restrictions

- 33 | What restrictions are imposed on the processing, export or sale of minerals? Are there any export quotas, licensing or other mechanisms that prevent producers from freely exporting their production?

There are no requirements that minerals be processed or sold domestically. Mining lease holders are at liberty to process, sell, export or otherwise dispose of minerals extracted, provided that royalties on the minerals are paid. To export minerals, a mining lease holder must register with the Nigerian Export Promotion Council, obtain an export permit from the Ministry of Mines and Steel Development and comply with other customs requirements. Exploration licence holders may sell specimens and samples obtained from exploration activities, bulk sampling or trial processing.

Import of funds restrictions

- 34 | What restrictions are imposed on the import of funds for exploration and extraction or the use of the proceeds from the export or sale of minerals?

Investors are required to import funds through a bank or other entity appointed by the Central Bank of Nigeria (an authorised dealer) in the Autonomous Foreign Exchange Market established by the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act (Chapter F34 LFN 2004). The authorised dealer thereafter issues a certificate of capital importation in respect of these funds.

Export proceeds must be repatriated into an export proceeds domiciliary account with a Nigerian bank within 90 days of the shipment of the exported goods. Access to foreign exchange is not tied to export performance.

ENVIRONMENT

Principal applicable environmental laws

- 35 | What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The principal laws are the National Environmental Standards and Regulations Enforcement Agency (NESREA) (Establishment) Act (No. 25 of 2007) as amended by Act No. 26 of 2018, administered by NESREA, and the Environmental Impact Assessment Act (Chapter E12 LFN 2004), administered by the Federal Ministry of the Environment (FMOE). The Nigerian Minerals and Mining Act 2007 (Chapter N162 Laws of the Federal Republic of Nigeria (LFN) 2004) and the Minerals and Mining Regulations 2011 (the Mining Regulations) also prescribe environmental obligations and standards.

Environmental review and permitting process

- 36 | What is the environmental review and permitting process for a mining project? How long does it normally take to obtain the necessary permits?

An approved environmental impact assessment (EIA) report is a precondition to the commencement of mining development. EIA reports are

reviewed and approved by the FMOE. The EIA Act, Sectoral Guidelines for Mining of Solid Minerals and the Mining Regulations specify the factors to be considered in an EIA report. As part of the review process, the FMOE invites comments from interested persons. Where the FMOE finds that the project is likely to have a significant adverse effect on the environment and this adverse effect cannot be mitigated, or where public concern about the environment warrants it, it may refer the project to mediation or a review panel, following which a decision shall be taken as to whether or not the project will be permitted, either in part or in whole, or with or without conditions.

The approved EIA report and an environmental protection and rehabilitation programme (EPRP) must be submitted to the Mines Environmental Compliance Department (MECD) prior to the commencement of mining operations or upon an application for extension of the term of a mineral title or upon its conversion.

The environmental review process may take up to one year or more.

Sustainability

- 37 | Do government agencies or other institutions in your jurisdiction provide incentives or publish environmental and social governance (ESG) guidelines for green projects?

No. However, the Nigerian Stock Exchange encourages listed companies to consider and adopt the practice of sustainability reporting. It recently issued Sustainability Disclosure Guidelines and it encourages companies to apply the recommendations contained in the guidelines.

Closure and remediation process

- 38 | What is the closure and remediation process for a mining project? What performance bonds, guarantees and other financial assurances are required?

An application must be made to the MECD for a partial or complete closure or abandonment of a mineral title area three months before the intended closure, with copies to the Mines Inspectorate Department and Mining Cadastre Office. The application shall be accompanied by a report outlining details of the intended abandonment and the reasons thereof, together with a plan showing the workings of the mine up to the time of the notice. It must also include an independent audit report on the environment surrounding the mine site. The applicant must ensure that all conditions specified in the approved EIA statement and the EPRP are strictly adhered to.

The abandonment will be approved upon satisfactory consideration of the mineral title holder's abandonment plan and investigation of the matter. The mineral title holder shall be required to securely seal, fence or cover every mine shaft and make safe all tailings and water retention areas; demolish, fence or lock potentially hazardous buildings, structures, plants and equipment; and generally adhere to its approved EPRP and decommissioning and closure plan.

The Mining Act requires the Minister of Mines and Steel Development to establish an Environmental Protection and Rehabilitation Fund (EPRF) to guarantee the environmental obligations of mineral title holders, including obligations in relation to mine closure and remediation. Every mineral title holder is required to contribute to this fund in accordance with the amounts specified in its EPRP. The Mining Regulations specify the contribution as 5 per cent of the total project cost.

Restrictions on building tailings or waste dams

- 39 | What are the restrictions for building tailings or waste dams?

Mineral title holders are prohibited from commencing dumping operations without an approval from the MECD. In making a determination, the MECD considers a report submitted by the applicant specifying the

details required by the Mining Regulations, which include information on the materials to be dumped, the design of the dump, whether the dump is a 'classified' or 'unclassified' dump, and the safety precautions to be observed.

Mineral titleholders are required to appoint a competent person to supervise dumping operations in a 'classified dump'. No professional qualifications are specified. The competent person must maintain certain reports, which will be inspected by a mines inspector, and must notify the mineral title holder immediately of any pollution to the environment not initially detected or predicted for remedial action.

HEALTH AND SAFETY, AND LABOUR ISSUES

Principal health and safety, and labour laws

40 | What are the principal health and safety, and labour laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Minerals and Mining Regulations 2011 (Part IV) regulates mines health and safety. Principal labour laws are the Labour Act (Chapter L1 LFN 2004), the Trade Disputes Act (Chapter T8 LFN 2004), the Trade Unions Act (Chapter T14 LFN 2004) and the National Minimum Wage Act (Chapter N61 LFN 2004), all administered by the Ministry of Labour and Productivity; the Employees Compensation Act 2010, administered by the Nigerian Social Insurance Trust Fund; the Pension Reform Act 2014, administered by the Pension Commission of Nigeria; and the Immigration Act (No. 8 of 2015), administered by the Federal Ministry of the Interior (FMI) and the Nigerian Immigration Service.

Management and recycling of mining waste

41 | What are the rules related to management and recycling of mining waste products? Who has title and the right to explore and exploit mining waste products in tailings ponds and waste piles?

Mineral title holders and mine operators are required to have an effective management system for their tailings throughout the period of operation; make adequate arrangements to protect the general public from risks associated with tailings storage; ensure tailings and mines waste are properly treated before final deposit to prevent air and water pollution and contamination; and provide adequate measures to minimise air pollution.

The Ministry may from time to time prescribe the manner in which tailings should be managed by mineral title holders.

The discharge of tailings into a watercourse requires the permission of the Ministry, while the dumping of any material that is wholly or partly in solution or suspension over an area that is vertically above any mine workings is prohibited.

Use of domestic and foreign employees

42 | What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?

The Labour Act Cap places some restrictions on the employment of women and persons under 16 for underground work in a mine.

To employ foreign personnel, companies must obtain an 'expatriate quota' from the FMI specifying the number and positions to be filled with foreigners. Additionally, the Comptroller-General of the Immigration Department must consent to any employment of a foreigner. Foreigners must obtain a resident permit to live and work in Nigeria. Temporary work permits may be obtained for short-term engagements.

SOCIAL AND COMMUNITY ISSUES

Community engagement and CSR

43 | What are the principal community engagement or corporate and social responsibility (CSR) laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The principal law is the Nigerian Minerals and Mining Act 2007 (Chapter N162 Laws of the Federal Republic of Nigeria (LFN) 2004 (the Mining Act) and the Minerals and Mining Regulations 2011, which require holders of mining leases to conclude a community development agreement (CDA) with their respective host communities prior to the commencement of mine development and extraction. A CDA contains undertakings that will ensure the transfer of social and economic benefits to the community. The Mines Environmental Compliance Department approves CDAs.

Rights of aboriginal, indigenous or disadvantaged peoples

44 | How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

Lawful occupiers of any land subject to a mining title are entitled to compensation for any disturbance to their surface rights and for any damage done on the land, including damage to crops, economic trees and buildings. Failure to pay compensation may result in the suspension and revocation of the mining title. Lawful occupiers are also entitled to the payment of compensation where their land has been compulsorily acquired for mining purposes.

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 insofar as the grazing or cultivation does not interfere with mining operations in the area. Further, the Mining Act recognises that it may be the custom of some communities to win salt, soda, potash or galena from certain areas. It preserves the right of such communities to continue to win these minerals where this custom existed prior to the commencement of the Act. It further provides that where the right of these communities to win minerals is lost as a result of the grant of a mining lease to a third party, the holder of the mining lease must pay compensation to the members of the community for the loss of right.

International law

45 | What international treaties, conventions or protocols relating to CSR issues are applicable in your jurisdiction?

Nigeria is a signatory to the International Covenant on Economic, Social and Cultural Rights.

ANTI-BRIBERY AND CORRUPT PRACTICES

Local legislation

46 | Describe any local legislation governing anti-bribery and corrupt practices.

Several local laws govern anti-bribery and corrupt practices these include, the Corrupt Practices and other Related Offences Act, the Economic and Financial Crimes Commission (Establishment) Act, the Money Laundering Prohibition Act, the Dishonoured Cheque (Offences) Act, the Advance Fee Fraud and other Related Offences Act, the Nigerian Extractive Industries Initiative Act, the Criminal Code and the Penal Code.

Foreign legislation

- 47 | Do companies in your country pay particular attention to any foreign legislation governing anti-bribery and foreign corrupt practices in your jurisdiction?

Foreign and local companies pay particular attention to the United States Foreign Corrupt Practices Act, the UK Anti-Bribery Act and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Disclosure of payments by resource companies

- 48 | Has your jurisdiction enacted legislation or adopted international best practices regarding disclosure of payments by resource companies to government entities in accordance with the Extractive Industries Transparency Initiative (EITI) Standard?

Nigeria is a member of the EITI and it enacted the Nigerian Extractive Industries Transparency Initiative Act in 2007 as the local legislation adopting the principles of the EITI.

FOREIGN INVESTMENT

Foreign ownership restrictions

- 49 | Are there any foreign ownership restrictions in your jurisdiction relevant to the mining industry?

There are no restrictions on foreign ownership relating to the mining industry.

INTERNATIONAL TREATIES

Applicable international treaties

- 50 | What international treaties apply to the mining industry or an investment in the mining industry?

Nigeria is not a party to any international treaty that is specific to the mining industry. However, Nigeria is a party to several treaties and international agreements that aim to protect foreign investment. These include the Multilateral Investment Guarantee Agency Convention; the Convention on the Recognition and Enforcement of Foreign Arbitral Awards; the Treaty on the International Centre for the Settlement of Investment Disputes; and bilateral investment agreements and double taxation agreements with several countries.

UPDATE AND TRENDS

Recent developments

- 51 | What were the biggest mining news events over the past year in your jurisdiction and what were the implications? What are the current trends and developments in your jurisdiction's mining industry (legislation, major cases, significant transactions)?

The biggest news events in the past year were the commencement of construction of Nigeria's first commercial-scale gold mine at Iperindo in Ilesha, Osun State, and the launch of the Presidential Artisanal Gold Mining Development Initiative (PAGMI), an artisanal and small-scale gold mining development programme to foster the integration of artisanal gold mining into the formal mining sector. The catalyst for the integration is the provision of access to markets for the artisanal miners through a National Gold Purchase Programme, under which the Central Bank of Nigeria (CBN) will purchase gold locally for its external



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reserves, and the deployment of enhanced mining methods for artisanal and small-scale miners. July 2020 witnessed the first purchase by the CBN of the country's first artisanally-mined and locally refined gold bar. The gold bar weighed 12.8kg and was sold for approximately US\$705,000.

In a bid to de-risk the mining industry, the federal government, through the NGSA is undertaking the National Integrated Mineral Exploration Project, which involves the exploration of base metals, rare earth minerals and industrial metals across the country to develop reliable geosciences data that investors can base investment decisions on.

Coronavirus

- 52 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

In June 2020, the federal government developed the Economic Sustainability Plan (ESP) with a stimulus package of approximately US\$5.9 billion to address to the negative impacts of the pandemic across various sectors of the Nigerian economy. The ESP allocates approximately \$15 million to support artisanal and small-scale miners.

They have been no amendments to mining sector laws and regulations to address the impact of the pandemic.

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