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# **DE-RISKING THE NIGERIAN MINING SECTOR FOR SUSTAINABLE DEVELOPMENT**



## Introduction

For a country that is rich in mineral resources, the Nigerian mining sector is a far cry from its potential both in terms of quantity of output and contribution to Gross Domestic Product (GDP). According to the National Bureau of Statistics, the mining sector contributes a paltry 0.3% to the country's GDP as mining operations have become largely informal and dominated by artisanal and small-scale miners. This may not be unconnected with weak regulatory framework, absence of geoscience data, and lack of sufficient incentive to attract the volume of investment required to set the sector on a growth path. Therefore, it is not surprising that the sector has suffered a dearth of investment because of the challenges that have plagued the sector. Against the above background, this article seeks to allay the fears of potential investors in the mining sector by highlighting strategic policies and measures that have been put in place by the Nigerian government to de-risk the sector and make it attractive for both foreign and local investment.

## Risk Factors and Countervailing Measures

Though there are a few other risk factors inherent in mining operations in Nigerian, the focus here will be on 3 – regulatory, technical, and financial risks. An appreciation of these 3 key risk factors and the countervailing measures that are available in curtailing them will put an intending investor in an informed position in their attempt to explore and exploit the opportunities locked up in the sector.

### Regulatory Risk

The chaotic regulatory environment characterized by the duplicity of institutional functions and inefficient bureaucracy resulted in the prohibitive costs of obtaining mining licenses and subsequently carrying on mining operations.

In response to these regulatory challenges and the resultant investor apathy that greeted the sector, the Federal Government undertook a holistic reform of the sector starting with the enactment of a new law to regulate the sector.

The Nigerian Minerals and Mining Act 2007 ("the Act") was enacted and was shortly followed by the Nigerian Minerals and Metal Policy (2008). The Act vests ownership and control of mineral resources in Nigeria in the Government of the Federation. The Minister of Mines and Steel Development is charged with the overall administration of the Act with primary responsibility to ensure the orderly and sustainable development of Nigeria's mineral resources and develop a well-planned and coherent programme of exploitation of minerals.

The Act establishes a proper institutional framework for the sector by setting up agencies with clearly defined roles and functions such as the Mining Cadastre Office (MCO), Mines Inspectorate Department (MID), Mines Environment Compliance Department (MECD), Metallurgical Inspectorate, and Raw Material Development (MIRMD), Artisanal and Small-Scale Mining Department (ASM) and Steel and Non-Ferrous Metal Department (SNFM).



Specifically, the Mining Cadastre Office (MCO) is solely responsible for the administration of mineral titles. The MCO considers applications for mineral titles and permits; issues, suspends and, subject to the Minister's approval, revokes mineral titles; receives and disposes of applications for the transfer, renewal, modification and relinquishment of mineral titles and extension of areas.

The Act also established the Mines Inspectorate Department (MID). The MID, amongst other functions, exercises general supervision over all reconnaissance, exploration and mining operations to ensure compliance with the Act; supervise and enforce compliance by mineral title holders with all mining health and safety regulations prescribed under the Act and any other law in force; carry out investigations and inspections necessary to ensure that all conditions relating to mineral title and the requirement of the Act are complied with.

The Mines Environmental Compliance Department (MECD), created under the Act, is mandated to review all plans, studies, and report required to be prepared by holders of Mineral titles in respect of their environmental obligations; audit, monitor and enforce compliance by holders of mineral title with all environmental requirement and obligations under the Act.

Other supporting agencies under the Ministry include the Metallurgical Inspectorate and Raw Material Development (MIRMD), Artisanal and Small-Scale Mining Department (ASM) and Steel and Non-Ferrous Metal Department (SNFM). The collective efforts of the agencies and departments mentioned above have led to a significant improvement in the Ministry's service delivery.

## **Types of Licenses under the Act**

The Act outlines the different mining interests/licenses that can be acquired by an investor and clearly spell out the application procedure for such interest as well as the modalities for carrying on mining operations within the scope of the acquired interest. The licenses are as follows:

- Reconnaissance Permit
- Exploration License
- Small Scale Mining Lease
- Mining Lease
- Quarry Lease

### **Reconnaissance Permit**

The holder has the right to obtain access into, enter on or fly over any land within the territory of Nigeria available for mining purposes to search for mineral resources on a non-exclusive basis. The permit also allows the holder permission to obtain and remove surface samples in small quantities. Subject to annual renewal, the permit is for a duration of one year. [1]

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[1] Section 57 & 58, Nigerian Minerals Mining and Act 2007



## Exploration Permit

This license confers on the holder an exclusive right to conduct exploration upon the land within the area of his license. The holder is allowed to remove, conduct bulk sampling and testing, export and sell mineral resources not exceeding established limits and provided the mining area is not more than 200sqkm. The license is valid for an initial period of 3 years and renewable for further periods of 2 years each. [2]

## Small Scale Mining Lease

By this lease, the government confers on the lessee the exclusive right to carry out small-scale mining operations within a mining area greater than 5 acres but less than 3km. The interest is valid for an initial period of 5 years and renewable for a period not exceeding 5 years. [3]

## Mining Lease

This interest can only be granted to holders of an exploration licence or small-scale mining lease in the area to be covered by the mining lease. The holder of a mining lease has the exclusive right of exploration in respect of the area covered by the lease. In terms of duration, a mining lease is valid for an initial period of 25 years and renewable every 24 years. [4]

## Quarry Lease

Quarrying under the Act applies to all quarriable minerals, such as asbestos, clay, fuller's earth, gypsum, marble, limestone, slate, sand, stone, gravel, etc., all of which may also be mined under the mining lease. A quarry lease is granted in respect of an area of land not exceeding 5 square kilometres and is valid for a period of 5 years. [5]

To further give effect to the Act, the Minerals and Mining Regulations 2011 (the Regulation) was enacted with comprehensive provisions for the effective administration of the Act.

Leveraging the established legal framework, the Federal Government developed the Road Map for the Growth and Development of the Nigerian Mining Industry, 2016 ("the Road Map"). Under the Road Map, the Federal Government conceived the Mineral Sector Support for Economic Diversification Project (MinDiver), a World Bank-funded project.

In 2019, through MinDiver, the Ministry of Mines and Steel entered into two contracts that are integral to attracting private sector investment into mining exploration. One of those contracts is with GAF-AG, a Munich-based remote sensing company to upgrade and automate the Mining Cadastre Office (MCO). The aim of the project is to enable online applications, e-recording, archiving and the establishment of MCO offices in the six geo-political zones in the country. This project is now on the verge of completion. [8]

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[2] Section 60, Nigerian Minerals and Mining Act; Nigerian Mining and Mineral Investment Brochure (August 2016)

[3] Section 90 Minerals and Mining Act

[4] Section 65 – 68 *ibid*.

[5] Section 77 *ibid*

[6] Ministry of Mines and Steel Development: MinDiver publication August 2019 Vol.1 No. 1.

[7] *ibid*

[8] Ministry of Mines and Steel Development: MinDiver publication August 2020 Vol.1 No. 1.





From the foregoing, it is safe to say that the regulatory and institutional framework of the Nigerian mining sector as constituted under the present administrative regime has, to a large extent, reduced the regulatory risks that investors were hitherto exposed to. Application and other procedures have become standardized, administrative efficiency has greatly improved and the regulatory regime is largely stable.

Though challenges still persist in the enforcement of laws, lack of adequate capacity and skill to execute technical functions, unstable leadership, and poor coordination with other government agencies, it is hoped that in the wake of the government's attention to the sector as a viable source of revenue, these challenges will be promptly addressed to make the regulatory environment a lot more business-friendly.

### **Technical Risk and Government Intervention**

Of equal concern to investors are the technical risks that are associated with mining activities in Nigeria. A notorious challenge in this regard is the paucity of geoscience data in respect of minable mineral resources.

- Geoscience data is important for a number of reasons some of which are highlighted below.
- It assists investors in identifying areas with more favourable mineral potentials.
- It helps attract private sector exploration investment in frontier areas.
- It reduces the financial risk associated with mining.
- It serves as a basis for good government policies that may prove pivotal to business success.

It is apparent from the reasons listed above that the paucity of geoscience data constitutes a major drawback for investors that would otherwise be eager to tap into the potentials of a developing mining sector like Nigeria's.

Specific challenges relating to geoscience data include limited resource mapping and quantification as well as poor dissemination, archiving, and reporting of what geoscience data is presently available. [9] In response to the former, Nigeria completed a High-Resolution Airborne Geophysical Survey involving magnetic, radiometric, and limited electromagnetic surveys aimed at assisting and promoting mineral exploitation. [10]

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[9] Ministry of Mines and Steel Development: Road Map for the Growth and Development of the Nigerian Mining Industry, 2016

[10] Ibid P. 29



Though considered a step in the right direction, the initiative remains insufficient for initiating and building investor confidence in the mining industry. [11]

To further aid investment decision-making, the government, in its Road Map for the Growth and Development of the Nigerian Mining Industry, 2016, has identified 7 priority minerals for which data abounds around their commercial viability based on proven reserves. [12] The priority minerals are iron ore, coal, bitumen, limestone, lead/zinc, gold, and barite. The Ministry of Mines and Steel Development has since commenced an integrated Exploration Programme with the award of N15billion contracts to five exploration companies for the purposes of exploring priority minerals like gold, lead, zinc, iron ore, among others. Delineated areas arising from these activities would be blocked and concessioned to technically and financially competent mining investors. [13]

Concerning the problem of dissemination, archiving, and reporting of geoscience data, the Nigerian Geological Survey Agency (NGSA) had done a fairly good job of collecting and evaluating a substantial amount of information on the location and quantity of available minerals. The NGSA now has a functional website where geotechnical mappings and other relevant geoscience data of various states in Nigeria can be obtained. Also, under the MinDiver programme, the British Geological Survey (BGS) is set to establish a national electronic geo-data archiving management system (Nigeria Geo-data Center) at the NGSA. Furthermore, the BGS will integrate historical geo-data of Nigeria available in the UK, NGSA, and the National Steel Raw Materials Exploration Agency (NSRMEA) into the system. It is expected that as the capacity for data collection is further improved, more accurate information about the precise location and quantity of minable minerals will be made available to the investing public.

As a result of the efforts of the government highlighted above, there has been a significant reduction in the technical risk occasioned by the scarcity of geoscience data. This has made an investment in the exploration and winning of minerals a more attractive proposition as investment outcomes are becoming more predictable.

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[11] Ibid

[12] RMGD

[13] "NIGERIA BEYOND OIL- 3yrs Account of Stewardship in the Minerals and Metal Sector" accessed via <https://portal.minesandsteel.gov.ng/Home/ViewNews/34> on 8th August 2021

[14] <https://ngsa.gov.ng/>

[15] Ministry of Mines and Steel Development: MinDiver publication August 2019 Vol.1 No. 1.





## Funding Risks and Government Incentives

Mineral mining is a capital-intensive venture, albeit with huge potential returns on investment. But as with every investment, the promise of profit is often accompanied by the risk of loss which is particularly palpable in a developing sector like the Nigerian mining sector. The high-risk allocation in the early phase of mining projects means that activities such as exploration and reserve estimation have the most difficulty in obtaining funding from standard project finance sources. [16] Again, investors are usually weary of committing funds to a sector that is still budding with very little evidence of viability. It has therefore become necessary for the Government to encourage investment in the sector by assisting with investment funding and introducing investment incentives.

In terms of funding, the focus has been on artisanal and small-scale miners as well as junior miners. The government has set up the Solid Minerals Development Fund (SMDF) with a mandate to “act as a catalyst to spur development of Nigeria’s mining sector by undertaking targeted sustainable, profit-oriented investments and interventions in key areas, in close coordination with stakeholders in the sector.” [17]

As required by the Act [18], the Board of the SMDF was reconstituted in 2017 by the then Minister of Mines and Steel Development and tasked with the function of funding key sector initiatives. The SMDF and the Bank of Industry (BoI) have since launched a N5 Billion fund to provide single-digit interest loans for mining projects. To achieve its objective of enabling the development of mineral assets by small-scale and junior miners, it is hoped that the Board will make the fund easily accessible to investors by setting out the criteria for eligibility in clear and achievable terms.

As for investment incentives, the mining sector is one of those sectors where the Federal Government has been most generous with incentives, a number of which are highlighted below.

[16] RMGD

[17] “SMDF to Invest \$500m in Mining Sector” accessed via <https://www.nipc.gov.ng/2020/10/16/smdf-to-invest-500m-in-mining-sector/> on 8th August 2021

[18] SMDF is established under section 34 of the Mines and Minerals Act, 2017

[19] “Unlocking the Potentials of the Mining and Steel Sector in Nigeria” by Cyril Azobu & Habeeb Jaiyeola accessed via <https://www.pwc.com/ng/en/assets/pdf/unlocking-potentials-mining-ngr.pdf> on 8th August 2021

[20] Section 28, Nigerian Minerals and Mining Act, 2007



## **Tax Relief**

Companies holding mineral titles are entitled to a tax holiday for an initial period of 3 years commencing on the date of operation and renewable for a further period of 2 years subject to the Minister's approval. [20]

## **Exemption from Customs and Import Duties**

All operators in the mining industry are exempted from payment of customs and import duties in respect of plant, machinery, equipment, and accessories imported specifically and exclusively for mining operations. [21]

## **Capital Allowance**

In determining its total profit for the purpose of paying tax, a mineral licence holder is entitled to deduct from its assessable profits a capital allowance of ninety-five percent of qualifying capital expenditure incurred in the year. Such qualifying capital expenditure shall include all certified explorations, development and processing expenditure, feasibility study and sample assaying costs; and all infrastructure costs incurred regardless of ownership and replacement. [22]

## **Retention and Use of Foreign Exchange Earnings**

Mineral title holders may be permitted by the Central Bank of Nigeria (CBN) to retain in a foreign domiciliary account a portion of their foreign exchange earnings from the sale of minerals for use in acquiring spare parts and other inputs required for mining operations. [23]

## **Free Transferability of Funds**

As an investment guarantee, mineral title holders are guaranteed free transferability through the CBN in convertible currency of payments in respect of loan servicing where a certified foreign loan has been obtained for mining operations. This guarantee also applies to the remittance of foreign capital in the event of sale or liquidation of the mining operations or any interest attributable to foreign investment.[24] The essence of this is to enable investors honour their repayment obligations in respect of foreign loans and to make for easy repatriation of funds in the event of a divestment.

## **Conclusion**

The Nigerian mining sector is without a doubt still fraught with challenges that may cause investors to exercise utmost caution in investing in the exploration and mining of minerals in Nigeria. However, the country is gradually and steadily eliminating these challenges and increasingly de-risking investment in the sector. New projects are taking off and hitherto comatose projects are now being executed. For investors that are looking to take advantage of the emerging opportunities in the sector, it is time to pay close attention to developments in the sector and begin to identify potential entry points whilst also developing strategies for protecting themselves against any possible risks in a nascent mining sector like Nigeria's.

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[21] Section 26 ibid

[22] Section 25 ibid

[23] Section 24 ibid

[24] Section 26 ibid



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While inadequate energy and infrastructure is hampering growth in Africa, it also offers significant investment opportunities. Sustained investment in the key sectors of transport, telecommunications and energy will also unlock economic growth and improved access to critical social infrastructure (including power, healthcare, education, water treatment and supply).

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