



Solid Minerals and Mining
June 13th 2018.



REPOSITIONING THE NIGERIAN MINING SECTOR THROUGH IMPROVED REGULATORY AND INCENTIVES FRAMEWORK ¹

1. INTRODUCTION

The quest for the diversification of the Nigerian economy towards activating other sources of revenue, given the country's vast human and natural resources and against the backdrop of the decline in oil revenue is currently on the upswing. One key sector which offers great potential in achieving diversification is the solid minerals sector. Consequently, the government of Nigeria has affirmed its commitment to the exploration and development of solid minerals and metals by approving a ₦30billion financial intervention, and prioritized for exploitation seven strategic minerals of vital importance to the economy, i.e., coal, bitumen, iron ore, barites, gold and lead/zinc which are available in ample qualities to sustain mining activities.²

The potential of the Mining sector to significantly contribute to Nigeria's economy cannot be over-emphasized. An attestation to this fact is the increase in the contribution of mining and quarrying to the nation's Gross Domestic Product (GDP) which now stands at 23.54% as at Q1 2018.³ In addition to this, international investor interest in the sector continues to improve by the day with the federal government also recognizing the sector as a potential prime income

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² C. Nwachukwu & C. Agom-eze "Mining in Nigeria – Regulation and Incentives" (2017) Aina Blankson News Letter/Journal; <http://ainablankson.com/mining-in-nigeria-regulation-and-incentives/> (accessed 18th May 2018).

³ As recently reported by the Nigerian National Bureau of Statistics; <http://nigerianstat.gov.ng/> ; <http://nso.nigeria.opendataforafrica.org/gwqnr1g/gross-domestic-product> (accessed 12th June 2018).

generator away from oil.⁴ Given the large mineral deposits in the country, Nigeria has the potential to be a market leader in the mining sector. The Roadmap for the Growth & Development of the Nigerian Mining Industry of 2016⁵ highlights the potential for increase in the sector's contribution to GDP from 5% in 2015 to 10% by 2020, thus supporting forecasts that a concentrated exploration of Nigeria's solid minerals wealth may in the short term exceed her oil wealth. It is envisaged that this shift would translate to increased public and private sector investment, more employment creation for the citizenry and overall economic and financial stability for the economy.

The use of Incentives as a veritable tool in sustaining investors' interest has become increasingly recognized globally, as most countries of the world, irrespective of their stages of development, now employ a wide variety of inducements in pursuing their economic goals. The application of incentives now exists virtually in all sectors of the economy like industries, agriculture, manufacturing, petroleum, solid minerals, energy, tourism and others. There are different kinds of incentives; and the three basic categories are financial, fiscal, and regulatory which are variously employed by most governments. The financial incentives are public-support mechanisms in the form of grants or repayable subsidies. It is common with developed countries, while developing countries prefer fiscal incentives because of the fact that they are easily affordable in promoting investment and do not require up-front utilisation of government funds.⁶ Regulatory incentives on the other hand are in the form of concessions, exemptions from labour or environmental standards and subsidized infrastructure which are also applicable in most countries.

This article presents an overview of the legal framework and various investment incentives available in Nigeria's solid minerals and mining sector as well as the challenges bedeviling the development of the sector.

2. STATUTORY REGULATIONS IN THE MINING SECTOR

The Nigerian Minerals and Mining Act⁷ (the "Act" or "Mining Act") is the principal legislation which regulates the Nigerian mining sector. The Act has made provisions in relation to licensing, ownership and control of minerals, and implementation.⁸ There are other legislative and policy instruments which further regulates Nigeria's mining sector in addition to the primary legislation.

⁴ <http://www.nigeriaminingweek.com/Nigeria-mining-minister-Kayode-Fayemi-determined-to-grow-local-mining-sector> (accessed 17th May 2018).

⁵ Ministry of Mines and Steel Development Roadmap for the Growth & Development of the Nigerian Mining Industry August, 2016-Publication of the Ministry; http://www.minesandsteel.gov.ng/wp-content/uploads/2016/09/Nigeria_Mining_Growth_Roadmap_Final.pdf (accessed 12th June 2018).

⁶ Central Bank of Nigeria (CBN's) Fiscal Sector Division Occasional Paper No. 47 on "Fiscal Incentives in Nigeria: Lessons of Experience" September 2013; https://www.cbn.gov.ng/out/2015/rsd/ocp_47_fiscal%20incentives%20in%20nigeria_lessons%20of%20experience.pdf (accessed 12th June 2018).

⁷ No. 20, 2007.

⁸ Through the establishment of the Mining Cadaster office to centralise mineral title administration and overcome the hitherto arduous licensing regime, improve the framework for enhanced geoscience data collection across Nigeria, the establishment of control departments for Mines Environmental Compliance, and the recognition and establishment of a regime for Artisanal and Small Scale Mining.

These other legislative and policy instruments include the Nigerian Extractive Industries Transparency Initiative Act,⁹ the National Minerals and Metals Policy,¹⁰ the Minerals and Mining Regulations,¹¹ and the Guidelines on Mineral Titles Application.¹² These legislative and regulatory policies stipulate strategies, rules and guidelines in respect of matters provided under the Mining Act.

3. THE ROADMAP¹³

The quest on the part of government to develop the mining sector and its commitment to diversification of the economy through mining influenced the issuance of a mining roadmap for the growth and development of the Nigerian mining industry.¹⁴ The roadmap is a comprehensive policy which underscores the potential for an increase in the sector's contribution to GDP. The roadmap also articulates the federal government's strategy to develop the mining sector as a key frontier of the Nigerian economy and supports the forecast that a concentrated exploration of Nigeria's solid minerals wealth may in the short term exceed her oil wealth.

The objectives of the roadmap include among others: (i.) building a stronger and more aligned regulatory framework for the industry by resolving regulatory conflicts in the existing legal and regulatory framework of the industry, (ii.) improving policy consistency and direction, (iii.) improving the environmental sustainability of the industry, and (iv.) improving enforcement of existing regulations.¹⁵ It is noteworthy to state that the objectives of the roadmap are directed towards a substantive direct and indirect contribution of mining and its related sectors to Nigeria's GDP. There is also the Mining Implementation and Strategy Team responsible for implementing the roadmap and ensuring the survival of the roadmap through the exigencies of government/administrative changes.

4. BACKGROUND TO INCENTIVES

Generally, the investment incentives provided under the various relevant laws and regulations in Nigeria include investment allowances, tax exemptions, duty drawbacks, subsidies, export expansion grants, double taxation reliefs, investment promotion and protection agreements, tax holidays, tax credits, capital allowances, and export development funds, among others.¹⁶

⁹ No. 36 A1121 2007; <https://nass.gov.ng/document/download/5836> (accessed 12th June 2018).

¹⁰ 2008; http://www.minesandsteel.gov.ng/wpcontent/uploads/2016/04/National_Minerals_and_Metals_Policy.pdf (accessed 12th June 2018).

¹¹ 2011; http://www.minesandsteel.gov.ng/wpcontent/uploads/2016/04/Nigerian_Minerals_and_Mining_Regulations_2011.pdf (accessed 12th June 2018).

¹² January 2014; <http://www.minesandsteel.gov.ng/wp-content/uploads/2016/10/Guidelines-for-Mineral-Title-Applications.pdf> (accessed 12th June 2018).

¹³ See n. 5 above.

¹⁴ See n. 5 above.

¹⁵ <https://www.olaniwunajayi.net/wp-content/uploads/2017/10/Mining-Newsletter-October-2017-Final.pdf> (accessed 18th May 2018).

¹⁶ <http://www.banwo-ighodalo.com/grey-matter/doing-business-in-nigeria-some-of-the-incentives-available-to-investors> (accessed 18th May 2018).

The principal legislation enacted for the purpose of encouraging investments in Nigeria is the Nigerian Investment Promotion Commission Act (“NIPC Act”), 1995.¹⁷ The Nigerian Investment Promotion Commission (the “NIPC”) was established by the NIPC Act as the agency of the federal government charged with the responsibility of encouraging and promoting investment in the Nigerian economy and for other related matters.¹⁸ By the provisions of Section 21 of the NIPC Act, ownership of enterprises in Nigeria has generally been liberalized and to this effect, a foreign entity can generally invest in all or a portion of the shares of any Nigerian company¹⁹ in any convertible foreign currency. This provision has opened up the Nigerian economy to foreign investment capital.

4.1 **Incentives in the Mining Sector**

There are quite a number of incentives available to companies operating in the minerals and mining sector. One of these is that mining companies enjoy an accelerated capital allowance of 95 percent on qualifying capital expenditure incurred in the year in which the investment is made. There is also incentive in the form of loss relief such that losses can be relieved for a maximum period of four years after which all un-relieved losses are allowed to lapse. Furthermore, by the combined provisions of section 36 of the Companies Income Tax Act and section 28 of the Mining Act, a tax relief period of three years and a further extension of up to two years can be granted to companies engaged in mining operations.

By the provision of section 25 of the Mining Act, operators in the mining sector are granted exemption from payment of custom/import duties in respect of plants and machineries imported specifically and exclusively for mining operations. The Mining Act also gives allowance to a mining company to set up a tax deductible reserve for environmental protection, mine rehabilitation, reclamation and mine closure costs. It is equally important to note that where a holder of a mineral title earns foreign exchange from the sale of its solid minerals, it may be permitted by the CBN to retain a portion of same for use in acquiring spare parts and other inputs required for mining operations which otherwise would not be readily available without the utilisation of such earnings. Furthermore, mining companies may benefit from waiver of applicable royalties.²⁰ There is also the assurance that corporate income tax in the mining sector will range between 20 and 30 percent which is quite competitive in the international market.²¹

Apart from tax and other fiscal reliefs, a number of legislations provide for other forms of benefits, particularly to foreign investors, in that they protect investments from expropriation as

¹⁷ Cap N117, Laws of the Federation of Nigeria (“LFN”) 2004.

¹⁸ See generally Section 4 of the NIPC Act.

¹⁹ Other than few business activities expressly prohibited by the NIPC Act referred to in the Negative List, i.e., (i) production of arms, ammunition etc., (ii) production of and dealing in narcotic drugs and psychotropic substances, (iii) production of military and paramilitary wears and accoutrement including those of the Police, Customs, Immigration and Prison Services, (iv) such other items that the Federal Executive Council may from time to time determine.

²⁰ Between 3%-5%, depending on the nature of minerals being mined.

²¹ Next to Australia (30%), Chile (20%), South Africa (28%) and the USA (40%).

well as guaranteeing the repatriation of proceeds of investments.²² For instance, the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act²³ provides a conducive regime for the repatriation of foreign capital inflow into Nigeria for investment purposes. Similarly, by virtue of section 24 of the NIPC Act, unconditional transferability of funds through an authorised dealer in freely convertible currencies are guaranteed to foreign investors with respect to dividends/profits on investments, payments made in servicing of foreign loans, and proceeds from sale of liquidation of enterprises. In section 25 of the NIPC Act, statutory guarantee is given against expropriation of any private business enterprise by the government. In effect, foreign investors are free from the fear of having their lawful and legitimate enterprises nationalised or taken away from them by any means whatsoever.

The Nigerian government, in collaboration with private sector stakeholders, is continually taking steps to review available investment incentives with a view to deepening economic competitiveness of the country. However, in addition to investment incentives, the Nigerian government should consider other salient ingredients such as security, consistency and sanctity of laws and policies, democratic values, the rule of law and anti-corruption, which are some of the key enablers of economic growth and factors which international investors evaluate when selecting investment destinations.

5. CHALLENGES AND RECOMMENDATIONS

Notwithstanding the quest and commitment of the present government to revamp the mining and solid minerals sector of the economy, there are still several notable challenges bedeviling the sector and if care is not taken, may truncate the positive efforts of the government so far. One major hindrance to development in Nigeria is the total neglect by a new government of the achievements and ongoing projects initiated by the previous government, i.e., the lack of continuity of government policies and projects. Improvements in the solid mineral sector needs to be seamless and continuous and all projects embarked upon by a previous administration need to be evaluated and concluded, while planning for the commencement of new ones.

It is important to note also that the development of the solid minerals sector is hampered by the lack of adequate funding to cater to the different stages of the life cycle of a typical mining operation. Needless to say that before returns can be generated from mining operations; the relevant operations need to go through the five stages of: exploration - development – mining – processing – and marketing; a cycle which takes averagely between 2 to 10 years or more. Most mines in Nigeria are typically green fields,²⁴ thus not necessarily attractive for funding by the traditional commercial banks. Therefore, establishment of a solid mineral development bank²⁵ will provide investor friendly loans, specifically designed to cater to the various stages of the mining life cycle. These will have interest rates and repayment terms designed around the

²² This definitely includes investments in the mining sector.

²³ Cap F34, LFN 2004.

²⁴ That is, the exploratory phase.

²⁵ This is without prejudice to the intervention funds made available for the sector by the federal government and Bank of Industry (BOI) as well as the technical assistance funds provided by the World Bank.

mining life cycle, making funding more accessible to miners, and repayment terms more reflective of the realities in the mining industry. Government can further provide special incentives for solid minerals development banks, or commercial banks having special packages for the solid mineral sector.

It is instructive to add that a well-developed mining industry thrives on well-established transportation network, which supports the movement of equipment to mining sites and the evacuation of minerals for sale and export. There is no gainsaying that supportive infrastructure is a key element for the success of any mining industry and federal government needs to take a holistic view regarding infrastructure development vis-a-vis the mining sector plan by executing same synergistically.

Finally, the absence of solid minerals sales centres have enabled the flourishing of illegal sale cartels, with resultant loss of solid minerals revenue from taxes and royalties. Therefore, and as a matter of urgency, the government should establish legitimate minerals sales centres across the relevant geo-political zones in the country. This will encourage in-country sales by artisanal miners, and production can be monitored for taxes and royalty collection.

6. CONCLUSION

There is need to re-establish the milestones for the roadmap and to take necessary incremental steps to ensure achievement of the set goals. The current roadmap appears to have been treated as a theoretical exercise by either not setting realistic targets or not practically working to achieve them. Therefore, there is an urgent need to develop as well as direct constructive efforts towards the solid minerals sector that can generate as much revenue as is currently being generated from crude oil. This can be achieved if adequate attention is directed towards its development. The Nigerian mining sector undoubtedly is still evolving and there are many areas of intervention required of the Federal Government²⁶ in order to address the operational and legal hurdles to boosting investor confidence, whilst increasing investment towards promoting Nigeria as a preferred mining destination.

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²⁶ With the co-operation of State and Local Governments and other private sector stakeholders.