



MINING & METALS Team

"...AN IMPRESSIVE RANGE OF EXPERTISE..."

Who's Who Legal



As global interest in mining activities continues to soar, the Nigerian mining sector has emerged as a pivotal player, attracting both domestic and international investors. UUBO, with its dedicated Mining Team, stands at the forefront of this dynamic landscape, offering unparalleled expertise and a proven track record dating back to 1996.

Our involvement in the Nigerian Mining sector is exemplified by our strides in advising on numerous major transactions within Nigeria's mining sector. Presently, we represent prominent companies listed on the Toronto Stock Exchange (TSX) and the Australian Stock Exchange (ASX:KFE), respectively. We also represent companies from Asia and LATAM.

Notably, our founding partner, now of counsel, was a member of the Presidential Committee established to review the national policy on solid minerals Development in 1995. In 2016, he also developed the economic recovery and growth plan, which included a proposal to diversify the Nigerian economy through the reform of various sectors, including solid minerals.

Our team consists of experts who are able to navigate the evolving regulatory and legal framework that govern the Nigerian mining industry, bringing to bear our expertise in the extractive industry, energy, finance, tax and policy advocacy.

KEY CONTACT



LOLADE OSOSAMI

Partner

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Summary of Notable Transactions (2019 – 2024)

- Advised a US-owned entity on the establishment of a lithium processing plant in the south-western region of Nigeria (2024 – ongoing)
- Advised a TSX (Toronto Stock Exchange) company with operations in Canada and Latin America on the acquisition of mineral rights for lithium exploration (2023)
- Advised a Nigerian entity on the structuring of a joint venture for lithium exploration (2023)
- Advised a Hong Kong entity on the structuring of a mine development and beneficiation project in the northern region of Nigeria (2023 – ongoing)
- Advised a Singaporean entity on the structuring of a joint venture with a Nigerian company for the exploration of zinc (2022)
- Advised on the acquisition of several mineral rights by a Singaporean entity (2021)
- Advised on a proposed establishment of a gold refinery project by a UAE entity (2021)
- Advised a Nigerian company on a joint venture with another Nigerian company for the exploration of tantalite (2020 – 2021)
- We advised and currently represent a company listed on the Australian Stock Exchange and its Nigerian subsidiary on an iron-ore exploration and mine development project (2006 – date)

MEET THE TEAM



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The background of the slide is a photograph showing the silhouettes of an oil pumpjack on the left and a worker wearing a hard hat on the right. The worker is pointing towards the horizon. The sky is a vibrant orange and yellow, indicating a sunset or sunrise, with some clouds visible. The overall scene is industrial and evocative.

An Overview of the Legal & Regulatory Framework of the Nigerian Mining Sector

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Overview of the Nigerian Mining Sector

The Nigerian mining sector is evolving. Before the discovery of crude oil in the early sixties, the solid minerals and agricultural sectors were the largest contributors to Nigeria's GDP. The Nigerian Mining Corporation, which was established in 1972 as the national mining company Nigeria, and its subsidiaries are on the list of assets that the Nigerian government is seeking to privatise under its medium term privatisation programme. Government has been trying to revamp the sector by attracting private domestic and foreign investment into the sector. The Nigerian government estimated that total revenue from the mining sector reached N2.9 billion in 2022, and was expected to increase by 25% to N3.6bn in the following year. Although the revenue generated from the mining sector in 2023 is yet to be known as of the date of this publication, the National Bureau of Statistics reported that the mining & quarrying sector grew nominally by 31.90% (year-on-year) in Q3 2023. Based on reports from the Ministry of Solid Minerals Development, Nigeria is abundantly endowed with 44 different types of minerals available in commercial quantities across more than 500 locations in the 36 states of the Federation, including the Federal Capital Territory, Abuja.

Legislation

The principal laws that regulate the Nigerian mining industry are the Constitution of the Federal Republic of Nigeria (the Constitution), the Nigerian Minerals and Mining Act, 2007 (the Mining Act), the Nigerian Minerals and Mining Regulations, 2011 (the Mining Regulations) and Guidelines that govern various aspects of mining and related activities. Other relevant laws include laws that govern environmental issues, land use, water use, nuclear safety, and radiation protection, amongst others.



Regulation

The sector is primarily regulated by the Ministry of Solid Minerals Development (the MSMD), the Mining Cadastre Office; the Mines Inspectorate Department; and the Mines Environmental Compliance Department. Other relevant federal regulators that have a measure of regulatory oversight over mining activities include the Federal Ministry of the Environment (the FME), the relevant state ministries of land and the National Environmental Standards and Regulations Enforcement Agency (the NESREA).

Ownership of Minerals

By virtue of section 44(3) of the Constitution, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the exclusive economic zone of Nigeria is vested in the government of the federation and shall be managed in such manner as may be prescribed by the National Assembly. There are no foreign ownership restrictions that are specific to the Nigerian mining sector. As a general rule, however, section 78 of the CAMA requires any foreign company that intends to carry on business in Nigeria to incorporate a separate entity in Nigeria for that purpose. Until so incorporated, the foreign company must not carry on business in Nigeria or exercise any of the powers of a registered company or have a place of business or an address for service of documents or processes in Nigeria for any purpose.



Local Content

There is a Nigerian Content Development and Enforcement Bill (the “Bill”) currently before the House of Representatives (Nigeria’s lower legislative chamber) and if the Bill is passed into law, Nigerians will have to be given first consideration for employment and training in any project executed by any operator or project promoter in the Nigerian Solid Minerals sector. As at the date of this update, the Bill has passed the first reading at the lower house. Further, The Mining laws and regulations do not provide for foreign ownership restrictions in the industry. By section 78 of the CAMA, foreign companies that intend to conduct business in Nigeria must incorporate a separate entity in Nigeria for that purpose. Until so incorporated, the foreign company must not carry on business in Nigeria or exercise any of the powers of a registered company or have a place of business or an address for service of documents or processes in Nigeria for any purpose.

However, there is some local content to the extent of individual ownership. For instance, individuals applying for a small-scale lease must be Nigerian citizens. A foreigner can only make such an application through a Nigerian entity, notwithstanding that it is foreign-owned.



Acquisition of Mining Rights

The Mining Act and the Mining Regulations provide the framework by which persons acquire title for the conduct of exploration and exploitation of solid minerals in Nigeria as well as for the regulation of mining activities in Nigeria. Under the Mining Act, mineral rights and titles are granted to Nigerian citizens who have not been convicted of criminal offences, companies incorporated in Nigeria and mining co-operatives. Mining rights are granted through licences, permits and leases. The mining rights that are granted under the Mining Act are: Reconnaissance permit: 1 (one) year term (renewable annually); Exploration licence: 3 (three) year term (renewable for 2 terms of 2 years each); Small scale mining lease: 5 (five) year term (renewable every 5 years); Mining lease: 25 (twenty-five) years (renewable every 24 years); and Quarry lease: 5 (five) years (renewable every 5 years). Water use permits are also granted for periods underlying the type of licence granted. Permits are also required for buying, selling and refining minerals.

Mineral Rights

Mining rights are the rights granted to a person to explore, prospect, or mine for minerals in Nigeria. They are primarily granted on a first come, first served basis by the Minister of Mines and Solid Minerals Development ("Minister") through the issuance of mineral titles such as:

- a. **Reconnaissance Permits:** This is a non-exclusive right to carry out reconnaissance work on an area of land for a period of one year, subject to an annual renewal. This permit allows the holder to have access to, enter, fly over and even obtain surface samples of minerals in reasonable quantities. To obtain this permit, an application is made, and a prescribed fee is paid to the Mining Cadastre Office (the "MCO"). The MCO is expected to give its approval within 30 days of receiving the application.



- b. **Exploration Licences:** This gives the holder an exclusive right to carry out exploration activities in an area of land for a maximum period of three years, subject to a renewal for a maximum of two additional periods of two years each. The licence usually covers a mining area of not more than 200 square kilometres. An application for this licence is made, and a processing fee is paid to the MCO. The MCO shall, within thirty days of receiving a valid application from a qualified applicant, grant and issue an exploration licence to the qualified applicant.
- c. **Mining Lease:** This lease confers on the holder an exclusive right to explore, prospect, and mine mineral resources in an area of land for a maximum period of twenty-five years. An applicant for this lease must demonstrate under conditions stated in the Mining Regulations that there are mineral resources in commercial quantities in the area over which the lease is sought and list the minerals to be mined. The term is renewable for a maximum of two additional periods of 15 years each. The mining lease only covers an area not exceeding 50 kilometres. The MCO is to within 45 days of the receipt of a valid application, grant and issue a mining lease.
- d. **Small-Scale Mining Leases:** A small scale mining lease allows the holder to conduct artisanal mining operations that do not involve the use of mechanised methods of exploration, extraction and processing of mineral resources. To obtain this lease, an applicant is required to submit an application and pay a processing fee to the MCO. The MCO is expected to give its approval within forty-five days of receipt of a valid application. Where the level of operation of a small-scale lease exceeds the specified area, the small-scale mining lease can be converted into a mining lease by the holder making a written application to the MCO.



- e. **Quarry Leases:** This creates a proprietary interest over land and confers an exclusive right to mine and process construction materials (such as sand, gravel, and stone) in an area of land for a maximum period of five years. This term is renewable for two additional periods of five years each. To obtain this lease, an application is made, and a processing fee is paid to the MCO. The MCO is expected to grant its approval within forty-five days of receipt of the application.
- f. **Water Use Permits:** This permit is usually given to the holders of an exploration licence, a mining lease, a small-scale mining lease or a quarry lease who require water utilisation during their operations. It permits them to use water sources for their operations.
- g. **Possess or Purchase Licence:** As the name suggests, this licence allows persons that are not holders of mining licences or leases to directly trade and export mineral resources in Nigeria. This licence will be issued only to corporate bodies duly incorporated under the Companies and Allied Matters Act 2020 (as amended).
- h. **Export Permit:** This permit is granted to a holder of a mineral title (that is, all mineral titles other than a reconnaissance or an exploration licence) or licence to possess and purchase minerals for commercial purposes. It is solely for analysis or experiment or as a scientific specimen. An application for this permit is made to the Mines Inspectorate Department of the Ministry.



Export Regulations

The Nigerian government is currently reviewing the final draft of the Export Guidelines for solid Minerals. The Guidelines set out the procedures and documentation requirements for solid mineral exports in Nigeria. Pending the formal launch and implementation of the Guidelines, current rules will apply. Under the current rules, where the holder of a mineral title intends to export samples of any mineral for processing or analysis, it shall notify the Minister in writing and shall give a description of the mineral sought to be exported, the quantity, port of exits, destination, present the sample for inspection, and give reason for the exportation.

Also, a person who seeks to export minerals for commercial purposes must apply to the Mines Inspectorate Department for an Export permit. All mineral title holders, other than holders of reconnaissance permit or exploration licence, may apply for this permit. Apart from this, an exporter of minerals is required to comply with the general Nigerian export requirements.



Exchange Control regulation

The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act (Chapter F34) LFN, 2004 (the “FEMM Act”) requires a certificate of capital importation (a CCI) to be issued by an authorised dealer (i.e. a bank licensed by the Central Bank of Nigeria to deal in foreign exchange) to a foreign investor who brings foreign currency or capital to be invested in any enterprise in Nigeria. The CCI serves as evidence that foreign capital was brought into Nigeria for investment and enables the foreign investor to which it is issued to access the official foreign exchange market to purchase funds to repatriate dividends and profits on disinvestment out of Nigeria.

The Mining Act also guarantees mineral titleholders the right to freely transfer their funds in convertible currency through the Central Bank of Nigeria, in respect of payments for servicing foreign loans and remitting foreign capital in the event of sale or liquidation of mining operations.



Tax

A company engaged in mining activity is liable to companies' income tax at an applicable rate dependent on the company's gross turnover. They are also subject to tertiary education tax at 2% of their assessable profit, value added tax at the rate of 7.5% on all minerals sold in Nigeria, and royalties. The royalties are charged at an ad valorem rate on the sale of minerals and may vary between 3% and 5% depending on the type of mineral.

In addition, a capital gains tax is imposed on any gains realised from the transfer of a mineral title. The Capital Gains Tax Act (Chapter C1), LFN 2004 (as amended) imposes capital gains tax at 10% on gains made from a disposal of chargeable assets. Also, the Stamp Duties Act (Chapter S8), LFN 2004 (as amended) requires stamp duty to be paid on instruments executed in connection with the transfer of assets (in this case, the licence or lease), failing which such instruments shall not be admissible in evidence in any civil proceedings in any court in Nigeria. The Mining titleholders are entitled to various tax incentives under the Mining Act, such as a tax holiday for the first three years of operation, which may be extended for another two (2) years; a capital allowance of 95% of qualifying capital expenditure incurred on exploration, development, and processing; exemption from customs and import duties on approved plants, machinery and equipment imported specifically and exclusively for mining operations; and carry forward losses, among others.



ESG (Environmental Social and Governance)

ESG compliance is becoming increasingly crucial within the mining industry, considering its impact on sustainable development, relationships with stakeholders and the financial interests of investors. There is no doubt that mining activities are often associated with environmental degradation, conflicts within the affected communities, and governance concerns. In recent times, investors have taken into consideration the proper implementation of an ESG framework when making decisions.

ESG is implemented in the Nigerian mining sector through the Nigeria Extractive Industries Transparency Initiative Act 2007, which established a body known as the Nigeria Extractive Industry Transparency Initiative (NEITI). NEITI is charged, amongst others, with the responsibility to ensure transparency and accountability in the management of the investment of the Federal Government in all extractive industry companies; due process and transparency in the payments made by all extractive companies to FGN and statutory recipients; transparency and accountability in the application of resources from payments received from extractive industry companies.

Nigeria was assessed as achieving “satisfactory progress” in implementing the EITI Standard. It is one of eight countries that achieved this assessment, among the EITI’s 53 member countries. One of the ESG requirements for operating in the Nigerian mining sector is the need to execute a Community Development Agreement (CDA) with the host community where the operations are to be conducted. ESG is regulated by the Mines Environmental Compliance Department.



a. Environmental Health & Safety

The principal environmental, health and safety laws applicable to the mining industry are the Mining Act, the EIA Act, the NESREA Act, the National Environmental (Mining and Processing of Coal Ores and Industrial Minerals) Regulations, 2009, the National Environmental (Permitting and Licensing System) Regulations, 2009 and the National Environmental (Noise Standards and Control) Regulations 2009. The MMSD, through the Mines Environmental Compliance Department, is responsible for enforcing environmental best practices in mining. In addition, the federal and state ministries of the environment, as well as, the NESREA are responsible for monitoring and enforcing compliance with environmental and health standards in the mining sector. We also note that, with the enactment of the Climate Change Act (the “**CCA**”), the federal government is committed to the reduction of carbon emissions in Nigeria. The CCA imposes climate change obligations on government ministries, departments and agencies (“**MDAs**”), private entities and public entities. It is important to note that a private company that has up to 50 employees or more is mandated to appoint a climate change officer and put in place measures to achieve the annual carbon emission reduction targets in line with the Action Plan.

A company involved in mining activities is required under the EIA Act to obtain an approved environmental impact assessment (EIA) report as a precondition for the commencement of mining development. In addition, such companies (whose operations may potentially impact the environment) are required to apply for an environmental permit to comply with the NESREA’s environmental standards and regulations.



In addition, every mineral title holder (other than a reconnaissance permit holder), is required to submit to the Mines Environmental Compliance Department an EIS and an Environmental Protection and Rehabilitation Program for approval before commencing mining operations. This is done upon an application for an extension of a term or upon an application to convert a mineral title.

b. The “S” in ESG

The Nigerian government as part of its efforts in supporting the ESG framework issued the 2023 Community Development Agreement Guidelines to ensure that the activities of mining companies do not negatively impact host communities. We note that this reinforces the provisions of the Mining Act, which mandates every holder of a mining lease, small-scale mining lease or quarry lease to enter into a community development agreement (“CDA”) with the host community prior to the commencement of mining activity within the lease area. This mandate seeks to ensure that while carrying out their operations, mining companies address issues relevant to the host community including scholarships, employment and training opportunities for indigenes, financial other forms of contributory support for infrastructural development such as roads, water and health facilities, creation and support to small scale and micro enterprises, among others. Further, the Labour Act, Mental Health Act and other legislation governing employer-employee relationships in Nigeria sets out requirements in relation to employee welfare, engagement, diversity and inclusion, which mining companies that seek to carry out operations in Nigeria must comply with.



c. Governance-related matters

Mining companies seeking to do business in Nigeria are required to comply with the relevant corporate governance laws and regulations including the Companies and Allied Matters Act, the Nigerian Code of Corporate Governance 2018, among others. These laws lay down requirements in relation to the board structure, meeting, disclosure and filing obligations of companies. It is of interest to note that compliance with obligations as imposed by regulators is essential to ensuring sustainable practices because companies that fail to do so may incur penalties and fines. Companies within the mining industry are also required to comply with the anti-money laundering and combating the financing of terrorism laws as precious minerals could be used as vehicles for laundering.

Dispute/Protection Right

Upon the acquisition of the mineral title, the Constitution safeguards the person's right to any interest in such mineral title and prohibits the compulsory acquisition of such interest except in a manner prescribed by a law that requires prompt payment of compensation, and which gives the person claiming compensation a right of access to court for the determination of his interest in the mineral title and the amount payable as compensation. Likewise, the Nigeria Investment Promotion Council Act guarantees that no enterprise shall be nationalised or expropriated by any government in Nigeria, except in cases of national interest or for a public purpose, and under a law which makes provision for a right of access to court and payment of fair and adequate compensation.