

The Federal Ministry of Mines and Steel Development (the 'Ministry') recently issued new mining regulations titled the Nigerian Minerals and Mining Regulations 2011 (the 'Regulations') which is intended to establish a more coordinated and accountable solid minerals sector in the country and to stamp out the discretionary grant of mineral titles.

The Regulations were issued for the purpose of setting out the rules, procedures and processes for the acquisition of mineral titles, and to give effect to the Minerals and Mining Act No. 20 of 2007 (the 'Act').

#### Types of Licences

The various types of licences under the Regulations include:

- **Reconnaissance Permit**  
Reconnaissance Permit is issued for a period of 1 year and may be renewed upon satisfactory application.

The grant of a Reconnaissance Permit enables the holder to carry out reconnaissance on a non-exclusive basis, conduct reconnaissance activities in an environmentally and socially responsible manner. The holder shall however, not engage in drilling, excavation or other subsurface techniques.

Reconnaissance Permit terminates upon expiration of the term granted unless it is revoked. Reconnaissance Permit shall not be granted over any land that is or has become subject to an exploration licence, small scale mining lease, mining lease or water use permit.

- **Exploration Licence**  
The holder of an exploration licence has exclusive right to conduct exploration upon the land within the area of his licence. An exploration licence is granted in respect of an area not exceeding 200 square kilometres. The duration of an exploration licence is for 3 years and it may be renewed for two further periods of 2 years each so that the term and any renewal do not exceed 7 years.

An application for exploration licence will be accepted unless the area is already under existing titles or closed to mining operations.

In the case of partial overlap, an applicant will be given an opportunity to redefine the areas applied for.

Successful applicants will be issued the exploration licence if it is shown that they have paid the Annual Service Fee specified in the Schedule.

A title holder may apply to the MCO to suspend the work obligation for a particular year. Where the application for suspension is granted, this will in turn have

an impact on the amount of fees and royalty payable by the title holder under the Regulations.

- **Mining Lease**  
A mining lease confers on the holder (among other rights) the right to obtain access and enter the mining lease area, the exclusive use, occupation and the carrying out of mineral exploitation within the mining lease area.

The duration of a mining lease is usually for the term applied for by the applicant but not exceeding 25 years in the first instance. Renewal may be granted for a further term not exceeding 25 years for each renewal, subject to the holder complying with the minimum work obligations and commitments. There is no limit to the number of times that a mining lease could be renewed.

The applicant is required to identify the mineral resources located in the area being applied for and list the type to be mined.

- The application must also be accompanied by prefeasibility study which shall include:
- ü A general description of the proposed mining scheme.
  - ü The planned commencement date of commercial mineral resources production;
  - ü The planned production profile and capacity;
  - ü The characteristics and nature of the final product.

Mining operations can be conducted in all areas within the land borders, territorial waters the continental shelf and in the exclusive economic zone of Nigeria, except areas that are already under existing mineral titles or closed to mining operations by virtue of the Act, Regulations or any other law in force.

- **Small Scale Mining Lease**  
This licence gives the holder the right to conduct artisanal operations which does not involve the use of extensive and continued use of explosives, toxic chemicals or agents.

Holder will usually not employ more than 50 workers and would not have underground workings more than 7 meters below surface nor galleries extending more than 10 meters from a shaft.

An applicant holding an exploration licence may apply for a small scale mining lease or make a fresh application for issue of same. Small scale mining lease is granted for a period of 5 years and may be renewed upon application for another term of 5 years.

- **Quarry Lease**  
Quarrying under the Act applies in relation to all naturally occurring quarriable

minerals, such as asbestos, china clay, fuller's earth, gypsum, marble, limestone, mica, pipe clay, slate, sand, stone, late rite, gravel, etc. which may also be lawfully extracted under mining leases.

A quarry lease is granted in respect of a land area not exceeding 5 square kilometres and covers a 5 year period unless renewed.

A quarry lease confers on its holder the right to carry out quarrying operations on the land within the area of the lease and to remove and dispose of any quarriable mineral specified in the lease.

An application must be accompanied by a prefeasibility study and a receipt of payment of quarry lease application processing fee.

#### Manner of Grant

Mineral exploration licence or mining leases are granted by the Minister either through Priority application or Competitive Bidding.

- **Priority**  
The MCO maintains a register which is strictly administered for competing applications for the same exclusive area.

In situations where there are several applications for the same area or overlapping areas, the first-come, first-serve approach will be used to determine which person will be regarded as an applicant for the purpose of granting an exploration licence or a mining lease; provided the application is complete and properly submitted.

- **Competitive Bidding**  
The Minister determines areas in respect of which an exploration licence or a mining lease would be granted based on competitive bidding. The areas which mineral titles may be granted by competitive bidding include:
  - ü Areas free of any valid existing mineral titles;
  - ü areas in which 'security minerals' have been found, that is radioactive minerals which contains at least 0.05% of uranium, thorium or any combination thereof including monazite, sand and other ores containing thorium, caronite, pitch blend, and other ores containing uranium.

The bid committee conducts the bid through an open and transparent method and selects the bid which will promote the expeditious and profitable development of the mineral resources of the area.

#### Technical Competence

All applicants for an exploration licence and reconnaissance permit shall have in its employment persons who possess adequate qualification and experience in exploration and registered with the Council for Mining Engineers and

Geoscientists ('COMEG') and any other relevant professional body.

Applicants for a mining lease shall have in its employment person(s) who possess adequate qualification and experience in mining and who is registered with COMEG and any other relevant professional body.

Applicants for a quarry lease or small scale mining lease shall have in its employment persons who possess a minimum qualification of a certificate in mining or quarrying or related fields.

#### Financial Capability

Applicants for mineral titles are required to furnish the MCO with evidence of sufficient working capital by way of Bank statement and reference letter.

#### Minimum Work Obligations

The Mines Inspectorate Department ('MID') prescribes minimum annual work obligations for mineral title holders.

Mineral title holders are required to submit for approval details of work to be carried out under the supervision of personnel from COMEG to the MID. In addition Mineral title holders are required to submit reports and obtain approval from MID when needed on the quantity and means of production.

#### Relinquishment and Enlargement of Mineral Title

All applications for renewal, transfer, enlargement, relinquishment, consolidation, surrender and every other application by the holder of a mineral title shall be made to the MCO. Title holders of a small scale mining lease, mining lease, and quarry lease can apply to the MCO for the enlargement of area in which mining is carried out.

Apart from the holder of a Reconnaissance Permit all other mineral title holders can apply to the Director General for the relinquishment of a part, or all of the mining area.

#### Consolidation of Mineral Titles

Title holders of exploration licence, small scale mining lease, or quarry lease whose mineral titles are contiguous may apply to the MCO for the consolidation of separate mineral titles of the same type into a single mineral title.

An applicant seeking consolidation is required to submit to the Mines Environmental Compliance Department ('MECD') an environmental impact assessment statement approved by the Federal Ministry of Environment in respect of mining operations to be conducted within the consolidated mineral title area and an updated Environmental Protection and Rehabilitation Program.

#### Transfer and Assignment of Mineral Titles

The holder of any of the mineral title except a Reconnaissance Permit may apply to the MCO to transfer or assign the ownership of the mineral title. A Reconnaissance Permit title holder may not transfer or assign such permit to any party.

In the event of death or mental incapacity of an individual titleholder, while all other mineral titles may be transferred or assigned subject to the provisions of the Regulations, a reconnaissance permit shall be revoked.

#### Obligations of Mineral Title Holders

Mineral title holders are required to, pay rents due under the mineral title, use the land for mining purposes only, report details of discovered minerals, comply with all conditions and obligations in the Act and the Regulations applicable to mineral titles, comply with terms of any Community Development Agreement to which he is a party, observe all environmental, health and safety provisions stated in the Act and the Regulations.

They are also required to comply with all directives issued by the Ministry, agencies or authorized officers and allow authorized public officers to carry out inspection on the land or mining area.

#### Reporting Requirement

Mineral title holders are expected to meet the prescribed reporting requirements in line with Schedule 5 of the Regulations. Failure to meet the reporting requirements may lead to the revocation of the mineral title by the MCO upon receipt of notice to that effect from the MID.

#### Payment of Royalty

The holder of a mineral title other than a Reconnaissance Permit is required to pay royalty as prescribed in the Regulation. Failure to meet the prescribed royalty report and payment after receipt of notice from the MID, may lead to revocation of the title by the MCO.

#### Registration of Agents for Movement of Minerals

An application for registration as an accredited agent shall be made by the holder of a mineral title to purchase and possess minerals on behalf of the agent to the MID.

A qualified and accredited agent of a company shall be issued with a letter of identity by the MID to possess minerals on behalf of a lessee or licensee or holder of a licence to purchase and possess mineral.

#### Confidentiality of Information

Information submitted in reports by mineral title holders shall not be disclosed for a period of six months from the expiry or revocation of the mineral title except

with the prior written consent of the mineral titleholder.

All information submitted in support of applications and renewal for a mining lease, small scale mining lease quarry lease, water use permit shall be kept confidential.

#### Dispute Resolution

The Regulations stipulate that any dispute either amongst mineral title holders or between them and applicants or other third parties will be resolved by the Minister through the medium of setting up a committee in order to enquire into such disputes.

Where a party is not satisfied with the decision of the Minister, he can appeal such decision at the Federal High Court sitting within the jurisdiction of the mineral title.

#### Sanction for Breach of the Act and Regulations

The MCO may revoke a mineral title for any reason under the Act that requires revocation. A revocation becomes effective upon receipt of the Minister's written permission to the MCO and after 30 calendar days notice of intention to revoke the mineral title. The notice will contain details and grounds for the revocation and give the holder an opportunity to remedy the breach complained of.

#### Conclusion

It is hoped that with the enactment of the Minerals and Mining Regulations, the desired objectives will be achieved in the mining sector which will eventually promote the growth and development of the Nigerian economy at large.

For more information on the Nigerian Minerals and Mining Regulations 2011 or the Act, please contact:

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