

UNDERSTANDING FOREIGN INVESTMENT REGULATIONS IN NIGERIAN MINING INDUSTRY*

Abstract

The Nigeria's investment law regulates investment into all sectors of the economy. To appreciate the governing laws for foreign investment in the Nigerian mining industry, one need to study both the investment as well as the mining regulations. The objective of this study is to provide a guide to the understanding of Nigeria's investment regulations in the mining industry so as to help foreign investors have an informed decision before venturing into the industry. It also aims at pointing out the prospects and challenges of Nigeria's investment regulations in the mining sector so as to guide policy makers in making policies that will attract foreign investors. The analytical method of research is adopted and both primary and secondary data were employed for data collection. The findings of the study show that good and adequate investment regulations in the mining industry are available in Nigeria but the performance of the relevant regulatory agencies in enforcing the law is below average, hence, the need to empower the agencies more; financially and technically. There is also need for the Ministry of Mines and Steel Development to exercise its supervisory powers over the relevant agencies and to collaborate with other ministries and States for the actualization of a better investment environment in the mining industry.

Keywords: Nigeria, mining, minerals, investment, regulations

1. Introduction

In Nigeria, the investment legislations which regulate foreign investment¹ are distinct and different from the legislations that regulate mineral mining operations.² The investment legislations provide framework for inflow and establishment of foreign investment while the mining legislations provide framework for mining operations. To understand the Nigerian foreign investment regulations in mining industry, one has to study the country's investment legislations and regulatory agencies alongside the mineral mining legislations and regulatory agencies.

2. Ownership of Minerals in Nigeria

The Constitution of the Federal Republic of Nigeria 1999,³ and the Nigerian Minerals and Mining Act 2007,⁴ vest the ownership and control of all mineral resources occurring naturally anywhere in Nigeria, in the Federal Government of Nigeria for the benefit of all Nigerians. This is the same, whether the mineral is found in, under or upon a State or Federal land, contiguous continental shelf, territorial waters or exclusive economic zone of Nigeria.⁵ Where minerals are found in commercial quantities in a land within the jurisdiction of a State, the Governor of the State shall revoke any right of occupancy granted on such land and the Federal Government shall acquire the land in accordance with the Land Use Act.⁶

3. Framework for Foreign Investment Inflow and Establishment in Nigeria

The following are the relevant legislations and agencies established for the regulation and control of foreign investment in Nigeria's mining industry:

Nigerian Investment Promotion Commission (NIPC) Act 1995 [Cap NI17 LFN 2004]

The NIPC Act is the principal legislation that regulates foreign investment in Nigeria. It is general investment legislation applicable to Nigerians as well as foreign nationals and companies.⁷ It provides for a liberal and open business environment for all investors. Section 17 of the Act provides that 'except as provided in section 18 of this Act, a non-Nigerian may invest and participate in the operation of any enterprise in Nigeria'. The Act provides for 100% foreign ownership of enterprise in Nigeria,⁸ except the few exempted enterprises (the negative list) which any person or group of persons, whether Nigerians or foreigners are restrained from venturing, on account of public policy and public security. The exempted enterprises are investments for the production of narcotic drugs and psychotropic substances, arms and ammunition, military and paramilitary wears and accoutrement.⁹ The NIPC Act

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¹ Such as the Nigerian Investment Promotion Act LFN 2004, the Companies and Allied Matters Act 2004, the Nigeria Immigration Act 2015 and the Investment and Securities Act 2007

² Such as the Nigerian Minerals and Mining Act 2007, Nigerian Minerals and Mining Regulations 2011, National Minerals and Metals Policy 2008, Nigerian Extractive Industries Initiative Act 2007 and the Land Use Act 1978

³ CFRN 1999 s44; See also: 2ndSch, Pt I (Exclusive Legislative List), Item 39, CFRN 1999

⁴ NMMA 2007 s1(2)

⁵ Nigerian Exclusive Economic Zone Act 1978 s2(1)

⁶ NMMA 2007 s22(1) & (2) and the LUA 1978 s28

⁷ See NIPCA 1995 ss4(b), 17 & 21

⁸ *Ibid* s21(1) & (2)

⁹ *Ibid* ss18 and 32

established the Nigerian Investment and Promotion Commission¹⁰ and empowered it to coordinate, monitor and regulate all investment promotion activities. The Commission collects, collates and disseminates information about investment opportunities in Nigeria. It provides advice to investors on sources of investment capital, availability and suitability of form of business organization. It also registers and keeps records of all business enterprises to which NIPC Act applies.¹¹

The Commission established a One-Stop-Shop Investment Centre (OSIC) in 2006, a centre that houses all the relevant authorities for granting entry permits, licences and business approvals for foreign investors in one place. This is aimed at coordinating, facilitating and simplifying the entry processing for investors. The NIPC Act makes provisions for investment incentives in strategic areas in conformity with government policies.¹² Mineral mining is one of the strategic areas which are chosen for their economic importance to assist government in its economic diversification policy¹³ and vision 2020.¹⁴ Therefore, a foreign investor in mining industry in Nigeria could enjoy mining investment incentives provided for the development of the industry.¹⁵ Thus, the NIPC Act provides guarantee for transferability of foreign capital in case of sale or liquidation, profits or dividends and other remittances,¹⁶ guarantee against expropriation,¹⁷ and procedures for dispute settlement.¹⁸ After a mining company with foreign participation is incorporated or registered, it shall be registered with the NIPC and obtain Certificate of Registration with Foreign Participation (Business Permit) before it commences businesses.¹⁹

Companies and Allied Matters Act (CAMA) Cap C20 LFN 2004

The Companies and Allied Matters Act 2004 is the main company legislation in Nigeria. It established the Corporate Affairs Commission (CAC)²⁰ and empowers it to regulate and supervise the formation, incorporation, registration, management and winding-up of companies in Nigeria.²¹ A foreign mining company incorporated outside Nigeria cannot carry on mining activities in the country unless it is locally incorporated (whether by incorporating it as a local company, local branch or subsidiary, or by merging with, taking over or acquiring an existing company) or registered in Nigeria and obtained Certificate of Incorporation.²² However, a foreign company may be exempted from local incorporation under any Bilateral Investment Treaty to which Nigeria is a party²³ or if it is exempted by the President of the Federal Republic of Nigeria, in accordance with the provisions of the Act.²⁴

Foreign Exchange (Monitoring and Miscellaneous Provisions) (FEMMP) Act 1995 [Cap F30 LFN 2004]

The FEMMP Act 1995 also has an important role in promoting foreign investment in mineral mining industry in Nigeria. It established an autonomous foreign exchange market²⁵ and empowered the Central Bank of Nigeria to regulate activities and operations in the market.²⁶ Section 15 of the Act empowers any investor, whether Nigerian or foreign, to invest in any business enterprise by importing foreign currency into the country as capital for the enterprise, through an authorized dealer.²⁷ The authorized dealer issues the investor a Certificate of Capital Importation (CCI) which the investor can use to have access to foreign exchange market to enable him transfer profits, capital or other remittances to his home country with any foreign currency at an official rate.²⁸

¹⁰*Ibid* s4

¹¹*Ibid*

¹² NIPCA 1995 s23(1)

¹³ Ministry of Mines and Steel Development, *National Minerals and Metals Policy* (2008) 33-36

¹⁴ Ministry of Mines and Steel Development, *Report of the Vision 2020 National Technical Working Group on Minerals and Metals Development*, (2009) 55-57 & 70

¹⁵ See NMMA 2007 pt III ss23-42 for details on the available mining fiscal incentives

¹⁶ NIPCA 1995 s24; See also: NMMA s27

¹⁷ NIPCA 1995 s25

¹⁸ NIPCA 1995 s26(1)&(2); NMMA s141(2) also provides that where bona fide investment dispute has not been resolved amicably as provided under sub-s1 of the section, the provisions of the NIPCA shall be applicable

¹⁹ NIPCA 1995 s20(1)

²⁰ CAMA s1(1)

²¹*Ibid* s7(1)

²²*Ibid* s54(1)

²³*Ibid* s54(3)(b)

²⁴*Ibid* s56(1)-(6)

²⁵ FEMMPA 1995 s1(1)

²⁶*Ibid* s1(2)

²⁷ An authorized dealer is any bank licensed under the Banks and Other Financial Institutions Act, and such other specialised bank issued with licence to deal in foreign exchange; see the FEMMPA 1995 s41

²⁸*Ibid* s15(4)(a)-(c)

Investment and Securities Act (ISA) [Cap I29] 2007

The ISA 2007, established the Securities and Exchange Commission (SEC)²⁹ and saddled it with the duty of reviewing, approving and regulating mergers, take-overs or acquisitions and to keep a register of investments in public companies. A foreign shareholder in a Nigerian company must apply and register his shares with the SEC.³⁰

Nigerian Immigration Act [No. 8] 2015

The Nigerian Immigration Act (NIA) 2015, established the Nigerian Immigration Service³¹ and charged it with the responsibility of enforcement of laws and regulations relating to control of persons entering or leaving Nigeria, issuance of travel documents to Nigerians, residence permits to foreign nationals in Nigeria and other related matters.³² The Nigerian Immigration Act prohibits foreigners from accepting employment in Nigeria without obtaining the written consent of the Comptroller-General of Immigration (CGI) (except if the employment is with the Federal, State or Local Government).³³ The Act also requires any foreign national wishing to practice a profession, establish, register or take over (whether individually or in partnership with others) any trade, business or limited liability company, to obtain the written consent of the Minister of Interior.³⁴

National Office for Technology Acquisition and Promotion (NOTAP) Act [Cap N62 LFN] 2004

This is a law that established the National Office for Technology Acquisition and Promotion (NOTAP),³⁵ and conferred on it the duty of registration and approval of all commercial contracts and agreements that involve transfer of foreign technology into the country.³⁶

Other relevant legislations include the Companies Income Tax Act [Cap C60 LFN] 2004 and the Personal Income Tax Act [Cap P8 LFN] 2004 (where the mining activities are carried out by an individual or partnership)

4. Entry/Work Permits

There are various entry or work permits provided under the Nigerian Immigration Act, which a foreign investor or a mining company wishing to employ expatriates may apply and obtain. However, the entry/work permit requirements are not applicable to nationals of ECOWAS member States³⁷, as they are eligible to enter and work in Nigeria without requisite entry visas or work permits.³⁸ The following are the relevant entry/work permits applicable to foreign nationals:

Short Visit Visas

These are visas issued to foreign shareholders or foreign executive directors of a company in Nigeria, to enable them attend short business meetings or visits to Nigeria. Short Visit Visas are non-renewable, issued for a visit not exceeding three months, and the recipients cannot engage in any paid employment.³⁹

Temporary Residence Visa/Permit

A Temporary Residence Visa is issued for aliens who wish to take up employment in Nigeria for a period not less than three months but not more than two years.⁴⁰ A non-Nigerian who enters Nigeria and wishes to reside and take up employment in the country must apply and obtain a residence permit known as Combined Expatriate Residence Permit and Aliens Card (CERPAC), which shall be valid for not more than two years and which can be renewed for another two years.⁴¹

²⁹ ISA 2007 s1(1)

³⁰ *Ibid* s13

³¹ NIA 2015 s1

³² *Ibid* s2

³³ *Ibid* s36(1)(a)

³⁴ *Ibid* s36(1)(b)

³⁵ NOTAP Act LFN 2004 s1(1)

³⁶ *Ibid* s4

³⁷ ECOWAS stands for Economic Community of West African States

³⁸ NOTAP Act s37(13)

³⁹ *Ibid* s37(9)

⁴⁰ *Ibid* s37(10)

⁴¹ *Ibid* s37(2)-(6)

Permanent Residence Permit

These are visas that have no limited duration, issued to non-Nigerians, who are either married to Nigerians or are foreign investors that have imported into Nigeria, an annual minimum threshold of capital for investment over a certain period as may be prescribed by the National Visa Policy or such other government policies from time to time. However, such permanent visa may be revoked where the investor withdraws his investment in Nigeria or where he violates any condition stipulated for the grant of the permit.⁴²

Expatriate Quota

A mineral mining company that wishes to employ an expatriate must apply and obtain 'Expatriate Quota' permit from the Comptroller-General of Immigration.⁴³ The application must be supported with evidence that the expertise required to be imported cannot be obtained in Nigeria and that the company undertakes to train Nigerians for immediate take-over of the job from the expatriates.⁴⁴ This is a technique designed to prevent persons or companies from unnecessary employment of aliens where there are qualified Nigerians that have the expertise and ready to take up the job.

Temporary Work Permit

The Comptroller-General of Immigration may direct the issuance of a Temporary Work Permit to a person wishing to reside and work in Nigeria, which is outside and not covered by an expatriate quota. The CGI may provide conditions for the grant.⁴⁵

5. Framework for Mineral Mining Operations in Nigeria

After a mineral mining company has been established in Nigeria (whether by incorporating a local company, local branch or subsidiary, or by merging with, taking over or acquiring an existing company), there are certain legislations, regulations and agencies or departments established to regulate and coordinate mining activities, which are discussed below:

Nigerian Minerals and Mining Act (NMMA) [No. N20] 2007

The Nigerian Minerals and Mining Act is the principal statute for the regulation and coordination of mineral mining in Nigeria.⁴⁶ The Act vests the control and ownership of all mineral resources in Nigeria and its contiguous continental shelf in the Federal Government of Nigeria.⁴⁷ It charges the Minister of Mines and Steel Development with the responsibility of promoting investment in mineral resources by providing and ensuring conducive investment environment for private, domestic and foreign investors, for the achievement of sustainable development of Nigeria's minerals industry.⁴⁸ The Act spells out the various mineral titles that a mining investor can acquire,⁴⁹ the qualifications for the grant of the rights,⁵⁰ the granting authority,⁵¹ rights⁵² and duties of the mineral title holder⁵³ and conditions for revocation of the grant.⁵⁴ The Nigerian Minerals and Mining Act makes provisions for various fiscal incentives to mining investors to encourage them develop the industry.⁵⁵ To protect the environment from pollution as the result of mining activities and to ensure sustainable development of the mining industry, the Act charges mineral title holders while performing their mining operations, to take consideration of the effect of their activities on the environment and take necessary measures to avoid and prevent pollution of the environment.⁵⁶ Where an investment dispute arises between a mineral title holder and the Government of Nigeria in

⁴²*Ibid* s37(11)

⁴³*Ibid* s38(1)

⁴⁴Nigerian Immigration Service, 'Expatriate Quota: Revised Guideline(s) on Business Permit and Quota' <<https://portal.immigration.gov.ng/pages/about>> accessed on 18 November 2019

⁴⁵NIA 2015 s37(8)

⁴⁶Petroleum and water without mineral content are excluded from the purview of this Act, see the NMMA 2007 s164

⁴⁷NMMA 2007 s1(1)

⁴⁸*Ibid* s4

⁴⁹ These are Reconnaissance Permit, Exploration Licence, Small Scale Mining Licence, Mining Lease, Quarry Lease and Water Use Permit, see NMMA 2007 s46(1)

⁵⁰*Ibid* ss47-51

⁵¹*Ibid* ss55, 59 and 65

⁵²*Ibid* ss58, 60, 68 and 78

⁵³*Ibid* ss61 and 70

⁵⁴*Ibid* ss11&12

⁵⁵ For details of the incentives, see NMMA 2007 cap III ss23-42

⁵⁶*Ibid* s111

respect of the interpretation of the NMMA, the Act encourages amicable settlement of the matter, but where such amicable settlement cannot be achieved, the provisions of the Nigerian Investment and Promotion Commission Act 2007 shall become applicable.⁵⁷ By virtue of the powers given to him under section 21 of the NMMA to make regulations under the Act, the Minister of Mines and Steel Development made the Nigerian Minerals and Mining Regulations, 2011, to provide for the implementation of the NMMA and to prescribe for procedures and forms to be used in processing mineral titles in accordance with the Act. Other relevant regulations on mineral mining in Nigeria include also the National Minerals and Metals Policy 2008,⁵⁸ and recently the Roadmap for the Development of Solid Minerals and Metals Section 2012,⁵⁹ which are designed to provide for government policy direction and guidelines towards efficient and effective utilization of the country's mineral resources.⁶⁰

6. Mineral Mining Regulatory Agencies

Apart from the Ministry of Mines and Steel Development which the Act empowers to formulate mining policies and administer the provisions of the Act,⁶¹ the Nigerian Minerals and Mining Act established other agencies and departments to assist the Ministry in regulating and coordinating mining activities in Nigeria. The relevant agencies and departments for coordinating and regulating mining operations include the following:

Mining Cadastre Office (MCO)

A mining cadastre is a public institution in a country, charged with the responsibility of management and administration of mining titles.⁶² Before the enactment of the NMMA in 2007, the Mining Cadastre Office was a mineral licensing authority operating as a subordinate office under the Mines Department. The Mines Department concurrently supervised mining activities. Thus, there was multiplicity of functions and conflict of interest. Coupled with the discretionary powers of the Minister and other officials of the ministry under the existing Nigerian Mining Act of 1999 at that time, there was an avenue for the arbitrary revocation and allocation of mining titles over the years.⁶³ As a result of lack of transparency and accountability, genuine local and foreign mining investors became discouraged from investing into the sector.⁶⁴ With the enactment of the NMMA therefore, established an autonomous Mining Cadastre Office under the Ministry of Mines and Steel Development,⁶⁵ with its headquarters in the Federal Capital Territory, Abuja, and zonal offices in various States for administrative convenience.⁶⁶

The MCO is the central agency responsible for receiving and processing applications for grant of mineral rights in form of licences, leases or permits,⁶⁷ based on transparency principle and the criteria of giving priority to first applicants.⁶⁸ The office approves successful applications for the grant of mineral titles, and suspends or revokes such grants in accordance with the Act.⁶⁹ MCO has the power of receiving, processing and granting or rejecting applications for the renewal, transfer, extension of areas or relinquishment of mineral rights.⁷⁰ To ensure efficiency and sustainability in service delivery and to prevent multiple and overlapping grants of mineral titles over a single area, the MCO keeps registers of mineral titles, transfers, extensions and revocations or relinquishments.⁷¹ It is the duty of the MCO to ensure that applicants or licence holders comply with payment of fees and other requirements in order to keep their mineral titles valid.⁷²

Mines Inspectorate Department (MID)

⁵⁷ *Ibid* s141(1)&(2)

⁵⁸ Ministry of Mines and Steel Development, Federal Republic of Nigeria, *National Minerals and Metals Policy*, (2008)

⁵⁹ Ministry of Mines and Steel Development, Federal Republic of Nigeria, *Roadmap for the Development of Solid Minerals and Metals Section*, (April, 2012)

⁶⁰ National Minerals and Metals Policy, (2008):4

⁶¹ By virtue of the powers of the Minister under sections 4 and 21 of the Act

⁶² E.O. Girones & A. Pugachevsky & G. Walsler, *Mineral Rights Cadastre: Promoting Transparent Access to Mineral Resources, Extractive Industries Development Series, No. 4* (Washington D.C, World Bank: 2009) 1

⁶³ M. Sada, 'An Extensive Analysis of Mining in Nigeria Using a GIS', (2015) accessed on 19 November 2019

⁶⁴ *Ibid*

⁶⁵ NMMA 2007 ss5(1) & 15

⁶⁶ *Ibid* s6

⁶⁷ *Ibid* s5(1)-(5); see also: NMMR 2011 pt II

⁶⁸ NMMA 2007 s8

⁶⁹ *Ibid* s5(5)

⁷⁰ *Ibid*

⁷¹ *Ibid* s7

⁷² *Ibid* ss10-13

This department is established under the Ministry of Mines and Steel Development,⁷³ to supervise field activities of mineral title holders and ensure compliance with the provisions of the NMMA and any other laws or regulations for the purpose of maintaining healthy and safe mining operations.⁷⁴ The Mining Inspectorate Department promotes healthy and efficient mineral productions, in order to optimize revenue generation for the government. It develops and maintains database for all licenced mining and quarrying operators, records of mineral production throughout the country and prepares records of mineral returns by operators, as may be required by the government.⁷⁵ Where any mineral resources are forfeited by a court of law in favour of the Federal Government of Nigeria, the MID takes custody of such mineral resources and may dispose with it for return, with the approval of the Minister.⁷⁶

Mines Environmental Compliance Department (MECD)

The Mines Environmental Compliance Department is charged with the duty of supervision and enforcement of compliance with environmental regulations in mining operations. It has the duty of reviewing the regulations from time to time and provides recommendations to the Minister. It cooperates with relevant environmental agencies to discuss and deliberate on environmental and social issues related to mines operations, closure or reclamation of land.⁷⁷

Artisanal and Small-Scale Mining Department (ASMD)

In Nigeria, artisanal and small-scale mining dominates mining of minerals generally.⁷⁸ The Artisanal and Small-Scale Mining Department is therefore established under the Ministry of Mines and Steel Development,⁷⁹ to organize and assist small-scale miners (ASMs) to form and register mining cooperatives of artisanal and small-scale miners so as to benefit from various government programmes for the development of their skill and mining capabilities.⁸⁰ The department organizes workshops and extension services to ASMs on entrepreneurship and mining operation skills and techniques.⁸¹

Nigerian Geological Survey Agency (NGSA)

Geoscience or geological survey institutions generally gather, archive, process and store useful information about the earth's crust within a country.⁸² The institutions provide geoscience information service to public and private sectors, as well as interested individuals. Such information is used to harness available mineral resources or to prepare against anticipated natural disaster.⁸³ The Nigerian Geological Survey Agency is established to provide geoscience information for the promotion of the country's natural resource potentials that may attract investment from the private sector.⁸⁴ Specifically, the Nigerian Geological Survey Agency (Establishment) Act, 2006, and the Nigeria's National Minerals and Metals Policy enumerate the following as the objectives for the establishment of the agency;

- (i) Provision of geoscience information for social, economic and environmental development of Nigeria;
- (ii) Utilization of public funds to undertake regional mapping and mineral exploration, to promote further funding by the private investors for detailed exploration for minerals by the investors;
- (iii) Encouraging private sector for exploration of minerals by providing baseline data
- (iv) Promotion of active exploitation of industrial minerals, which have value to the economy but may not attract large-scale foreign investment, and;
- (v) Provision of such other geological services to the private sector.⁸⁵

⁷³ *Ibid* s16(1)(a)

⁷⁴ *Ibid* s17(a)&(b)

⁷⁵ 'National Minerals and Metals Policy', (2008) 13; see also: NMMA 2007 s17(c)

⁷⁶ *Ibid* s17(d)

⁷⁷ *Ibid* s18(a)-(d)

⁷⁸ Report of the Vision 2020 National Technical Working Group on Minerals and Metals Development, 'Nigeria Vision 2020 Economic Transformation Blueprint: Minerals & Metals Development', (2009) 44-45; see also: Environmental Law Institute, *Artisanal and Small-Scale Mining in Nigeria: Recommendations to Address Mercury and Lead Exposure*, (Washington D.C: 2014) 1-4; M.T. Ladan, 'Mineral Resources Law and Policy in Nigeria, *Professor Ladan's Law and Policy Review Research Working Papers*, (January-March, 2014) 42

⁷⁹ NMMA 2007 ss16(1)(c) and 90(3)

⁸⁰ NMMR 2011 reg230(1)-(3)

⁸¹ NMMA 2007 s91 and NMMR 2011 reg231(1)-(3)

⁸² National Minerals and Metals Policy, (2008) 9

⁸³ *Ibid*

⁸⁴ Nigerian Geological Survey Agency (Establishment) Act 2006 s1(1)

⁸⁵ *Ibid* ss8&9; see also: 'National Minerals and Metals Policy', (2008) 20

7. Types of Mineral Titles in Nigeria

We have discussed in the introduction that ownership of minerals in Nigeria is vested in the Federal Government of Nigeria. However, title may pass from the Government to a person (Nigerian citizen, mining co-operative or company incorporated in Nigeria) who acquires mineral right and wins mineral resources. The following are the relevant mineral titles in Nigeria for the purpose of its exploration and production in Nigeria.⁸⁶

Reconnaissance Permit

This is a non-transferrable permit that provides non-exclusive right to the holder, to search for, obtain and remove surface samples of minerals on all mining lands in Nigeria which are not subject of an existing exploration licence, small-scale mining lease, mining lease, quarry lease or water-use permit. However, a holder of a Reconnaissance Permit is not allowed to engage in drilling, excavation or other subsurface techniques. The duration of the Permit is one year, but can be renewed from year to year without limit to the number of time for such application for renewal.⁸⁷

Exploration Licence

Exploration licence provides an exclusive right to the holder, to conduct exploration of minerals specified in the licence within an area of land, which must not exceed 200km² and not covered by a pre-existing exploration licence, mining lease or small-scale mining lease. The licence is granted to a holder of a reconnaissance permit over the area, or to mining co-operatives or companies incorporated in Nigeria. The licence is granted for an initial 3 years, subject to 2 further renewals of 2 years each, so that the total duration does not exceed 7 years.⁸⁸ A holder of an exploration licence has the exclusive right in respect of the licensed area, to apply and obtain one or more small-scale mining leases, quarry leases or mining lease.

Small-Scale Mining Lease

A small-scale Mining lease entitles the holder, the exclusive right to carry out artisanal mining operations that do not involve the use of toxic chemicals or explosives extensively. The lease is granted for a period of 5 years, renewable each time for another 5 years and no limit as to the number of renewals.⁸⁹

Mining Lease

A Mining Lease entitles the holder the exclusive right to enter, search for, exploit, market export and sell minerals extracted from the licensed area.⁹⁰ The lease is granted to a qualified applicant within 45 days of the receipt of the application, in accordance with the Nigerian Mining Act, 2007. Where the application is in respect of an area under an exploration licence or small-scale mining lease, then no person shall be granted mining lease in that area except the Exploration Licence holder or the Small-scale Mining Lease holder in respect of the area.⁹¹ Before a Mining Lease holder commences work on the leased area, he must undertake environmental impact assessment studies and mitigation plans in respect of the area, and conclude a community development agreement with the relevant communities, all of which must be submitted to Mines Environmental Compliance Department (MECD) for approval.⁹² The area for a Mining Lease must not exceed 50km² and its duration is generally the period applied for by the applicant, but the maximum period is 25 years, which may be renewed each time for a maximum of 24 years.⁹³

Water Use Permit

A Water Use Permit is granted to a mineral title holder or an applicant for such title (Mining Lease, Small-scale Mining Lease, Quarry Lease or Exploration Licence) to obtain and use water for the purpose of mineral exploration and exploitation.⁹⁴ The Permit remains effective for the life span of the relevant mineral licence or lease for which the use of the water is required.⁹⁵

⁸⁶ NMMA 2007 s46(1); One type of mineral title which is not discussed in the main text because it is not relevant to gold mining is Quarry Lease. A Quarry Lease is applicable to quarriable minerals, which s75 of the Act defines it to mean: asbestos, china clay, fuller's earth, gypsum, marble, limestone, mica, pipe clay, slate, sand, stone, laterite, gravel, etc.

⁸⁷ NMMA 2007 ss55-58; see also: NMMR 2011 reg33; Nigeria Mining Cadastre Office, *Guidelines on Mineral Titles Application*, (2014) claus2(1)

⁸⁸ NMMA 2007 ss59-64; see also: NMMR 2011ss35-40; Nigeria Mining Cadastre Office, (2014) claus2(2)

⁸⁹ NMMR 2011 regs45-55

⁹⁰ NMMA 2007 s68

⁹¹ *Ibid* s65

⁹² *Ibid* s71(1)&(2)

⁹³ *Ibid* ss66 and 67

⁹⁴ NMMR 2011 reg77

⁹⁵ *Ibid* reg81

8. Findings

From the preceding analysis on foreign investment regulations in the Nigerian mining industry, the following findings are revealed:

1. Currently, Nigeria allows 100% foreign ownership of gold mining enterprise. However, foreign companies are not allowed to carry on business in Nigeria, nor are they entitled to hold mineral rights. Only Nigerian citizens, mining co-operatives or companies incorporated in Nigeria are eligible to do business and hold mineral titles. Foreign companies must be incorporated locally in Nigeria before it can get a business and hold mineral title in Nigeria.⁹⁶
2. Nigerian Investment Promotion Commission operates a One-Stop Investment-Centre, where foreign investors can access in one place; the services of all the relevant agencies for the establishment mineral mining business at ease.
3. Apart from land allocation, State Governments are not involved in facilitating and promoting investment into mining industry. All the regulatory institutions are Federal Government establishments.
4. There are no restrictions for capital importation and repatriation, where the capital for mineral mining investment is imported through an authorized dealer.
5. The one year initial duration for Reconnaissance Permit and three years for Exploration Licence do not provide reasonable time to enable investors carry out some tangible work within the life-span of the Permit or Licence.
6. Generally, the Nigerian regulatory institutions are characterized by lack of commitment to exercise their powers of monitoring, enforcement and compliance.
7. The high rate of illegal mining activities over the years in Nigeria indicates that the Mines Inspectorate Department has been inactive.
8. Lack of reliable, accessible and up-to-date geological data on the volume of mineral resources in different parts of the country indicate the low performance of the Nigerian Geological Survey Agency.
9. The continued environmental degradation, erosion, deforestation and creation of surface pits caused by the unregulated activities of artisanal miners without any form of environmental rehabilitation indicates that the Mines Environmental Compliance Department does not perform its duties on the mine fields. This would send a bad signal to prospective investors about Nigerian mining environment.
10. There is lack of inter-ministerial and inter-departmental co-ordination between the Ministry of Mines and Steel Development and other ministries. Most of the basic infrastructures provided by other ministries or agencies are not available on mining sites. Accessible roads, rails, power and water supply, internet services among others are not connected to the mining sites.

9. Conclusion and Recommendations

Generally, and in a global competitive market, a conducive investment environment of a country, including how an investor is received, how many administrative and procedural hurdles he has to surmount before he enters and operates, and how investment disputes are resolved are all important factors that influence investor decision-making on where to invest and how much contribution the investment will make to the host country.⁹⁷ These are the factors considered in this work in relation to Nigerian mineral mining industry. The overall findings of this research show although Nigeria established good regulations for foreign investment into its mineral mining industry, lack of law enforcement, weak institutions, lack of coordination and lack of basic infrastructures at the mining sites are impediments to foreign investment. From the result of the findings of this work, the following recommendations are hereby proposed:

1. Foreign companies incorporated outside Nigeria be allowed to carry on business and be eligible to hold mineral title in Nigeria. Requiring a foreign company to incorporate a local branch or subsidiary in Nigeria before it can carry on business and be eligible to hold mineral title will not only increase the cost of establishment of foreign investment, but will also bring about regulatory rigidity to the prospective mining investors. It is hereby suggested that sections 47, 48, 49, 50, 51 and 52 of the Nigerian Minerals and Mining Act 2007, which provide for the qualification for the grant of Reconnaissance Permit, Exploration Licence, Small Scale Mining Lease, Mining Lease, Quarry Lease and Water Use Permit respectively, be amended and a provision be made in each

⁹⁶ See MVC Ozioko & I. K. E. Oraegbunam, 'The Law of Economic Sovereignty and Foreign Investment in Nigeria: The Way Forward', *International Journal of Business & Law Research* 7(2):120-139, 2019.

⁹⁷ See MVC Ozioko & I. K. E. Oraegbunam, 'Foreign Investment, Human Rights and National Development: A Jurisprudential Approach', *African Journal of Law and Human Rights* 3(2) (2019), 1-14.

of the sections for the qualification of foreign companies to hold mineral title. The provisions of the Companies and Allied Matters Act pertaining the activities of foreign companies in the country should also be reviewed so that foreign companies could become eligible to do business in Nigeria without the need of necessary re-incorporating it as local company, provided that such foreign companies must register with the Corporate Affairs Commission before they start business in the country.

2. To integrate all stakeholders into the Federal Government's efforts to revive and develop the Nigerian mining industry, and to vigorously pursue investment from the grassroots into the industry, the State Governments should be empowered to promote and facilitate investment in mineral mining within their jurisdictions and a percentage from the revenue derived from the industry be allocated to the respective States. This will encourage the State Governments to take all necessary measures for the development of the mineral resources available within their jurisdictions.
3. The initial duration for Reconnaissance Permit should be increased from 1 to 2 years, and the Exploration Licence be changed from 3 to 6 years. This is to provide ample time for licensees to undertake some tangible work for mineral exploration before the expiration of the licensed period.
4. The Nigerian Geological Survey Agency should be equipped with trained and capable manpower and modern equipment that would assist it in its responsibilities of collection, storage and dissemination of accurate geological information on mineral resources in Nigeria.
5. Adequate infrastructural facilities should be extended to mining sites so as to make the environment more attractive to investors.
6. Mining regulatory institutions in Nigeria should be well financed and equipped with modern facilities, skilled and trained experts to undertake their duties efficiently.
7. The Ministry of Mines and Steel Development should exercise its powers of monitoring the affairs of the relevant regulatory institutions to ensure that they discharge their responsibilities effectively.
8. The Ministry should cooperate with other relevant ministries to extend their services to mineral mining sites so that mining business environment will be competitive and attractive to prospective foreign investors.