BANWO & IGHODALO

SOLID MINERALS: HARNESSING NIGERIA'S VIABLE ALTERNATIVE RESOURCE TO CRUDE OIL

On record, by a marginal growth of 0.55 percent in gross domestic product (**"GDP"**) in the second quarter of 2017 (driven primarily by improved performance of agriculture, manufacturing and trade sectors of the economy coupled with the gradual rise in global commodity prices and relative stability in domestic crude-oil production), Nigeria crept out of its worst recession in more than two decades; which had been precipitated largely by persistent falls in international oil prices.

Recognizing the precarious nature of an oil-dependent economy, emphasis has thus continued to be laid on diversification through development of the non-oil sector, as a sure way for the country to stay on a steady recovery path in the short term; stabilize the economy in the medium term; and build a formidable economic bulwark against external shocks (such as oil price volatility) in the long term.

This article takes a critical look at solid minerals as a viable alternative resource to Nigeria's crude oil and presents an overview of the policies and strategies of the Government for harnessing the potentials in non-oil natural resources, as well as the dynamics of the mining landscape in Nigeria.

SECTOR REVIEW

In spite of the abundant and diverse solid mineral deposits in Nigeria (about 44 different types of non-oil mineral resources including gold, copper, iron-ore, limestone, bitumen, lignite, coal, lead/zinc, gypsum, kaolin, sapphire, granite, laterite, sand, and clay) abound across the 36 States of the country and the Federal Capital Territory, Abuja, contribution of the solid mineral sector to overall GDP remains abysmally low and lags behind the figures for major African peers such as Guinea, Botswana, Democratic Republic of Congo (DRC), Ghana, Cote D'Ivoire and South Africa.

The annual *Nigeria Extractive Industries Transparency Initiative ("NEITI") Solid Minerals Audit Report* put total revenue from the sector in 2013 at ₦33.86 billion, and in 2014 at ₦55.82 billion accounting for just 0.11 percent of GDP. In 2015, a marginal growth was recorded in solid minerals mining with accrued revenue hitting ₦69.2 billion and amounting to 0.33 percent contribution to GDP. However, figures published by the National Bureau of Statistics ("NBS") showed that the minerals and mining sector contributed 0.55 percent to Nigeria's GDP in 2016 while the corresponding figures were 40 percent, 25 percent and 18 percent respectively for Botswana, DRC and South Africa for the same period. Currently, solid minerals sector contributes averagely about 0.5 percent to GDP, accounts for about 0.3 percent of national employment and 0.02 percent of exports. This contribution is a reversal of historically higher percentages of up to 5 percent in the 1960s–70s, when the economy was largely sustained by agriculture and exploration of solid minerals.

LEGAL AND REGULATORY FRAMEWORK

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) vests total ownership and control of all minerals, mineral oils and natural gas in, under or upon any land, territorial waters and the Exclusive Economic Zone of Nigeria in the Federal Government ("FG"). Consequently, the main governing legislation, Nigerian Minerals and Mining Act, 2007 ("the Act") follows this constitutional position. The FG exercises its absolute ownership and control by granting Exploration and Mining Licenses, Leases or Permits to applicants through the Mining Cadastre Office under the supervision of the Ministry of Mines and Steel Development ("the Ministry"). Other subsidiary legislation made pursuant to the Act and governing the minerals and mining sector include Nigerian Minerals and Mining Regulations (2011); National Minerals and Metals Policy (2008); and the Guidelines for Mineral Title Applications.

The regulatory, supervisory and institutional authorities in the Nigerian mineral and mining sector include the Ministry (led by the Honourable Minister); Mining Cadastre Office ("MCO"); Mines Inspectorate; Mines Environmental Compliance; Artisanal and Small Scale Mining Department; Metallurgical Inspectorate and Raw Materials Development; Steel and Non-ferrous Metals Department; Nigerian Geological Survey Agency; Nigerian Institute of Mining and Geosciences; Nigerian Metallurgical Development Centre; National Steel Raw Materials Exploration Agency; Council of Mining Engineers and Geoscientists; and the State Governors, who grant Right of Occupancy over lands that are mining areas.

GOVERNMENT POLICY AND GROWTH PROSPECTS

The solid mineral sector holds true as a game changer and growth driver for the Nigerian economy. The current goal of the Government to raise non-oil revenue through diversification would be better achieved by building a competitive mining value chain capable of contributing to wealth creation through employment generation and domestic industrialization. As envisioned by the FG, the minerals and mining sector could rake in more than US$25 billion by 2025 and contribute up to 3 percent of GDP. There have been a number of policies drawn by the Government towards the realization of these lofty goals.

In December 2016, the FG launched a *"Roadmap for the Growth and Development of the Nigerian Mining Industry",* which introduces institutional and regulatory reforms, sets clearly defined targets and provides for incentives as well as strategies for public-private-partnership for orderly development of the Nigerian mining sector, with a view to increasing its contribution to the GDP from the US$2 billion in 2016 to about US$27 billion by 2025.

Prior to this, a few interventions towards addressing the funding gap in the sector were made. In the last quarter of 2016, a US$30 billion intervention fund was approved from the country's Natural Resources Development Fund (NRDF) and released for the facilitation of exploration activities and formalisation of artisanal miners. Plans have also reached advanced stages for the sourcing of capital from the capital market for the financing of solid minerals development in the country. The Ministry in conjunction with the Nigeria Sovereign Investment Authority (NSIA – operator of the country's Sovereign Wealth Fund), recently negotiated the floating of a US$ 600 million mining fund with the Nigerian Stock Exchange.

The FG also recently announced the commencement of a policy that pays to State Governments 13% derivation from minerals mining revenue (similar to what currently obtains in the oil sector). This policy is geared towards encouraging States' cooperation through financial participation and revenue sharing while a $US150 million World Bank's assistance was also recently secured by the Government, for its *Mineral Sector Support for Economic Diversification ("MSSED" or "MinDiver")* program. According to the Ministry, the World Bank support is a critical component that will provide technical assistance for the restructuring and operationalisation of the Mining Investment Fund (MIF), which would make finance available to artisanal and small scale operators through developmental finance, micro-finance, and leasing institutions.

Furthermore, the FG recently initiated a framework for partnering with State Governments, investors and host communities for the exploration and exploitation of bitumen. Focus is being placed on granting licences to investors with proven track records and demonstrable work-plan, financial strength and technical capacity to build processing plants. As recently hinted by the Minister, expression of interest by prospective investors in Nigeria's bitumen reserves will soon commence. In a similar vein, negotiations have been reopened with foreign investors (consortia of some Chinese and Russian companies) on the privatisation of Ajaokuta Steel Rolling Mills.

In April 2017, the FG launched its Economic Recovery and Growth Plan ("ERGP") which hinges the strategies for recovery on the diversification of the nation's economic base from oil to the non-oil sector and targets a 7 percent economic growth by year 2020 with a more aggressive growth rate of 8.54 percent for the solid minerals sector for the same period. As part of efforts to diversify the economy, Government is planning a $7 billion investment in mining and steel for the next 10 years with a projected phenomenal increase in the sector's contribution to GDP. There are ongoing plans to develop the extractive industries generally with range of incentives both for local miners and foreign investors.

Also, Government is pushing for legislation that will continue to guarantee 100% foreign ownership of mining projects in Nigeria, to attract foreign direct investments (FDI). There is also plan for the creation of a new super regulatory agency independent of the Ministry, which will merge and take over the roles of existing regulatory units, to facilitate transparency and certainty in the regulatory and taxation regimes. The Ministry is also looking to establish a *Council of Mining and Mineral Resources*, which will meet quarterly to promote collaboration between the FG and State Governments in improving the mining landscape. Currently, the over 40 minerals (industrial and energy) found in the country, as identified by the Ministry, are still largely untapped. These developments show that the sector is poised for a phenomenal growth.

ACHIEVING SET TARGETS FOR THE SOLID MINERALS SECTOR

There are high prospects of growth for the solid minerals sector. However, critical challenges trail the actualization of the vision of the Government for the sector. The 2016 Roadmap must be faithfully implemented by the Government and the development partners in order to fully address the inherent crises within the sector's three key and broad areas namely, geosciences data and regulatory regime; stakeholder engagement; and institutional reforms.

1. Geosciences Data and Regulatory Regime

Whilst the provisions of the various mining legislation are generally consistent with international standards and provide a robust framework for solid minerals investment, investors in the sector nonetheless continue to face challenges in relation to the implementation of the laws and regulations, particularly in relation to licensing processes, and this has engendered investor apathy.

The process for administration of mining titles by the MCO is fraught with delays and generally inefficient. For instance, whilst paragraphs 44(17) and (18) of the Mining Regulations prescribe a 45 day period for the MCO to notify its approval or rejection of an application for the conversion of an exploration license to a small scale mining lease, there have been cases where the MCO's responses to such applications were not received for nearly 2 years. The timeline for such approvals, in practice, will frustrate investors in the sector as they will be unable to proceed with the exploitation of minerals which have been proven to exist by virtue of exploratory activities carried out by such investors pursuant to an exploration license. Furthermore, the *"use it or lose it"* principle entrenched in the mining legislation has not been effectively enforced by the MCO. The sector is replete with complaints about mining licenses being granted by the MCO without adequate enforcement of the terms and being revoked in certain cases without compliance with the procedure specified in the body of mining legislation.

To this challenge, we advocate amendment of the Mining Regulations to accommodate new reliefs. For instance, there is need to introduce the concept of "deemed grant" in order to protect the interests of investors, who are seeking to convert their exploration licenses to mining leases where there is delay on the part of the MCO to grant such approvals after the specified period. This will provide some element of comfort to investors against any delay that may be occasioned by inaction on the part of the MCO. The government should also consider deploying additional resources at the MCO, including the creation of a virtual and seamless connection between headquarters of the MCO in Abuja and the zonal offices located across the country. This will aid and improve the process of administration of mining titles in Nigeria.

The dearth of reliable and bankable geological data on the available solid mineral resources in Nigeria discourages potential investors and poses real threat to the realization of the Roadmap. Given that mining is capital intensive, investors will typically be reluctant to expend resources unless there is reasonable basis to believe that the minerals present in a particular area exist in commercial quantities. This is important considering that financiers are generally averse to risks associated with financing the exploration phase of mining projects. As the Government has repeatedly emphasized in his various policy documents and development plans, investment in geological mapping to provide reliable data that will be useful for the participants in the sector will definitely improve the bankability of mining projects. This planned investment should be implemented through clearly drawn and well implemented PPP templates to achieve quick and efficient results. In this way, the credit rating of mining projects in the country will improve and banks will thus be confident to advance more credit to the sector.

Also very important is the need for the Government to address the areas of conflict between the land ownership system and the regime for exploitation of solid minerals in Nigeria. Whilst the Land Use Act (1978), the primary legislation regulating land ownership in the country vests the radical title of all land in a State in the Governor of the State, the Constitution and the Act both vest ownership of all mineral deposits in the FG. The dichotomy between States' ownership of Lands and Federal ownership of minerals makes investors face a convoluted regime of regulations and long, time-wasting approval processes; which are not helping the ease of doing business in the Nigerian mining sector. There should thus be legislative reform of the whole legal framework to bring about a convergence of the processes for acquiring title to Land and the licensing of solid minerals' miners.

We advocate a new regime whereby the discovery of minerals in commercial quantities on a parcel of land in any State should qualify as overriding public interest and any right of occupancy in respect of such land can be revoked by the Governor in accordance with the process specified in the Land Use Act, including prompt payment of fair and adequate compensation to the grantee of the right of occupancy sought to be revoked.

Also, the Government could consider a special regime for securing interests in land for the benefit of potential investors during the exploration phase of a potential mining project. Specifically, relevant amendments may be made to the Act to secure compulsory, but short term, interests in land for prospective investors during the exploration phase of the applicable mining project where it can be shown (by strict compliance with specified conditions) that the presence of solid minerals in commercial quantities on the land is almost certain. The proposed amendments will also specify conditions which will protect and or assure the reversionary interests of the landowner where minerals in commercial quantities are not eventually discovered on the land including requirements for payment of rents and restoration of the land to its original condition.

Whilst the Mining Regulations contain framework for a simplified licensing process for artisanal miners, some of the requirements (particularly the ongoing compliance obligations) are still onerous for small scale miners to comply with. Thus, we advocate amendment of the Act and the Mining Regulations to simplify the licensing regime for artisanal and small scale miners (“ASM”). Also, the timeline and process for the procurement of licenses as well as ongoing compliance obligations should be streamlined to reduce the administrative burden on small scale miners.

Furthermore, the FG, through the Ministry, should actively engage with State Governors to create a special mechanism for encouraging States in promptly granting the required statutory consent to Minerals titles.

2. Stakeholder Engagement

The Government needs to fully engage all stakeholders i.e. those engaged in Exploration & Production (Majors, Junior Explorers, ASM, and illegal miners); those engaged in Logistics & Transportation; those in the business of Refining & Processing; as well as those engaged in Trading, Manufacturing/Wholesale and Retail Activities.

For the Major and Junior Explorers, the right infrastructure, friendly operational environment, transparent and accessible domestic and export markets and seamless regulatory framework, are very vital incentives. Efforts should be made to further encourage the formalization of the ASM into cooperatives for proper integration and inclusion into the mining sector. Furthermore, the Government should consider introducing fiscal and other incentives (e.g. implementation of well-structured extension services to artisanal miners) in order to encourage them to seek licences and thereby formalize their activities. The government should also establish or facilitate the establishment of mineral buying centres (MBC) and lapidaries across the country especially in states where artisanal mining is common. This invariably would make illegal miners face difficulty in carrying out their illegal and unlicensed operations and make official joining of registered ASM groups better and more convenient with adequate beneficiation.

The designation of Solid Minerals Mining as a priority sector in the Government's ongoing ERGP should necessarily spur incentives to industry players. Access to stable foreign exchange and adequate financing models should be top on the agenda of Governments at all levels for the sector to grow. Whilst it is axiomatic for availability of reliable geosciences data and information to improve the bankability of potential mining projects, thus making them attractive to all manners of financiers like individual private investors, banks, private equity funds, hedge funds, export credit agencies, development finance institutions (DFIs) and the likes; we advocate, in addition, the full operation of the Solid Minerals Development Fund ("SMDF") established under section 34 of the Act as a veritable means by which the Government can address the funding gap in the sector for the benefit of industry operators. The SMDF is meant to consist of funds appropriated for solid minerals development under the Allocation of Revenue (Federation Account) Act and the Small and Medium Industries Equity Investment Scheme (SMIEIS) as well as any fund received as grant, donations, foreign loans, bonds and long term swaps; and any sums appropriated to it in the FG budgetary allocations. Besides, the Government can also collaborate with specialized banks like the Bank of Industry (BoI) and the Nigerian Export-Import Bank (NEXIM Bank), to establish structured funding opportunities to investors in the mining sector.

For the Host Communities, more stakes ought to be given to them in terms of derivation benefits and protection from the environmental and health hazards of mining, as well as in the payment of adequate compensation where lands are compulsorily acquired by the government for mining purposes. In preventing possible abuse, and enforcing the rights of communities and investors, there ought to be put in place specialized and reliable dispute resolution mechanisms for addressing conflicts in the sector. It is important that the skills required in mining are localized to enable community people secure jobs in mining projects and give them a sense of ownership. Adequate measures should thus be put in place to achieve a high degree of local content development while community people with their excellent local knowledge of the land should be engaged in community policing to stem the tide of insecurity at the sites of mining projects.

3. Institutional Reforms

Most of the organizational reforms proposed in the Mining Sector Roadmap are germane to the success of the Solid Minerals Sector and should be implemented to the letter. The proposed creation of a super regulatory agency that will merge some of the existing regulatory bodies and departments will bring about a seamless regime within the sector, leading to smooth operations for all stakeholders.

We note with commendation the establishment of the *National Council for Mining and Minerals Resources Development (NCMMRD)* as a national forum for policy deliberation and assessment; the *Mineral Resources and Environmental Management Committee (MIREMCO)* as a forum for synergy among the FG, State Governments and Local Government Areas with respect to solid minerals development, as provided in Section 19 of the Act; as well as the *Mining Implementation Strategy Team (MIST)* as an advisory think-tank and strategy incubator for the Ministry's actualization of the objectives of the mining sector Roadmap.

However, it is important that the Ministry creates formidable inter-agency alliances with critical stakeholders such as the Ministry of Environment (MoE), Military and para-Military bodies, and other law enforcement agencies to ensure a sustainable mining regime with low level of negative environmental impacts and for the enforcement of the laws against illegal miners who fail or refuse to apprise themselves of opportunities available to operate through formalized mining groups.

CONCLUSION

The solid minerals sector is poised to catalyze the nation's dream of diversification and industrialization on the back of the various ongoing legal and policy reforms. Whilst there are potential risks to the full implementation of the reforms and hence realization of the set goals (particularly social, economic and governance risks), it is generally expected that the quick wins, as well as the medium to long term gains of the current reforms, are able to place the country on the envisioned "Road to Shared Mining Prosperity".

The Grey Matter Concept is an initiative of the law firm, Banwo & Ighodalo

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