

FEDERAL REPUBLIC OF NIGERIA
MINISTRY OF MINES AND STEEL DEVELOPMENT

MINERAL SECTOR SUPPORT FOR ECONOMIC DIVERSIFICATION PROJECT (MinDiver)

**Terms of Reference for the Engagement of an Advisory Firm for the Institutional and
Administrative Restructuring of the Solid Minerals Development Fund**

1.0 INTRODUCTION

The Federal Government of Nigeria has obtained a credit from the International Development Association (IDA) to fund the Mineral Sector Support for Economic Diversification (MinDiver) Project. The project has the following development objectives:

- a. To improve the attractiveness of the Nigerian Mining sector, as a driver for economic diversification, for long-term private sector investment in the exploration and production of minerals.
- b. To create a globally competitive sector capable of contributing to wealth creation, providing jobs and advancing our social and human security.

2.0 BACKGROUND

The Federal Government of Nigeria has embarked on an economic diversification campaign with the aim of leveraging on the Nation's vast natural resources to diversify the economy from the oil and gas sector to achieve economic emancipation.

The sector's growth and contributions to GDP have remained less than ideal, accounting for only about 0.33% in 2015. To address this, the Ministry of Mines and Steel Development (MMSD) recently developed a roadmap for mining growth and development with objectives to deepen sector reforms, attract new investors and collaborate with a wide network of partners and stakeholders to rejuvenate the sector and build a prosperous economy propelled by inflows from the solid minerals sector. The overall objective of the MinDiver Project is to link with the Roadmap and enhance the mining sector's contribution to the economy by strengthening key government institutions, improving information infrastructure and knowledge, and fostering domestic investment in the sector. The Project consists of the following parts:

Part A. Establishing a Strong Foundation for Mining Sector Development

1. Carrying out of a program of activities designed to strengthen the MMSD's capacity for governance and administration of the mining sector;
2. Carrying out of a program of activities designed to strengthen the Nigerian Geological Survey Agency as well as geological knowledge and information infrastructure for the mining sector,
3. Implementing a program of activities designed to strengthen the Recipient's capacity for management of environmental, health and social impacts in the sector

Part B. Facilitating Downstream Sector Development and Enhancing Competitiveness

1. Strengthening administration of the artisanal and small scale mining sub-sector,
2. Implementing a program of activities designed to leverage the mineral sector for regional development
3. Implementing a program of activities designed to enhance value addition to mineral products (including upstream development of industrial minerals and dimension stones domain) in the mining sector,
4. Implementing a program of activities designed to advance proof-of-concept investments and to attract private sector investments

Part C. Project Management and Coordination

1. Strengthening the capacity of the MMSD for implementation, supervision and management of the Project through the provision of goods, consulting services, non-consulting services, operating costs and training for the purpose.
2. Supporting quality control of Project activities and outputs as well as monitoring and evaluation of Project outputs and results.

The key results of the project will include:

- i. Increased availability of precompetitive geo-science data enhancing mineral transactions;
- ii. Institutional information systems integrated with multi-sector planning tools;
- iii. Incentives created for Artisanal and Small-Scale Mining (ASM) formalization;
- iv. Improved environmental and social compliance by mining industry operators

3.0 BACKGROUND ON THE SOLID MINERALS DEVELOPMENT FUND

The Solid Mineral Development Fund (SMDF) was established under the Nigerian Minerals and Mining Act 2007, and formalized in 2013 to provide funding and interventions in the key segments of the mining sector value chain. According to the Act, the Fund shall be utilized for the following: (a) development of both human and physical capacity in the sector; (b) funding for geo-scientific data gathering, storage and retrieval to meet the needs of private sector-led mining industry; (c) equipping the mining institutions to enable them to perform their statutory functions; (d) provision of infrastructure, and (e) funding for the extension services of artisanal and small-scale mining operators.

Through the restructuring of the SMDF, it is envisaged that the SMDF will operate independent of annual budgetary cycles to support mining projects, providing capital grants, and government guarantees as credit enhancements to improve the commercial viability of projects. As part of the efforts to quickly provide access to funding to private sector operators, the MMSD plans to establish multiple private sector-focused mining funds as special purpose vehicles (SPV) under the SMDF to attract larger amounts of capital and investor interest in the mining sector. While the SMDF and other government institutions will provide the 'seed funding' for the SPVs, other sources of finance are envisaged, including commercial sources, Development Finance Institutions, Export Credit Agencies, donor agencies, and so on.

The SMDF's vision is to serve as a world-class intervention agency for the transformation and development of Nigeria's mining industry to be the leading mining destination in Africa. The SMDF will work with the MMSD to carry out specific projects and interventions, which link with the MMSD's Roadmap for the Growth and Development of the Mining Industry.

Financing	Knowledge & Capacity Development	Environmental & Social	External Linkage	Infrastructural Development
<ul style="list-style-type: none"> • Loan Guarantees • Equipment leasing • Loans and grants to mining cooperatives • Equity Investments in landmark/ pioneer projects • Co-investing with major International Development Finance Institutions (IFD, DFID, etc) 	<ul style="list-style-type: none"> • Funding of major market studies • Extension services for Artisanal and small scale miners • Development of Geo-sciences data • Support for mining institutes • Support for local mining conferences and fora • Development of database of priority projects 	<ul style="list-style-type: none"> • Funding of remediation projects to address adverse impact of past mining • Support for development and implementation of community Development Frameworks • Resettlement Initiatives for designated major mining areas • Support for regional Environmental Impact Assessments (EIAs) 	<ul style="list-style-type: none"> • Coordination with major DFIs (IFC, World Bank, DFID, etc. • Liaising with private local & international investors • Cross-sectoral coordination with other MDAs • Developing strong linkages with key stock market: <ul style="list-style-type: none"> – Nigerian Stock Exchange – Abuja Commodities Exchange – AIM (London) – TSX (Toronto) – ASX (Australia) – JSE (South Africa) 	<ul style="list-style-type: none"> • Funding of PPP projects in mining areas: <ul style="list-style-type: none"> – Toll Roads – Dams – IPPs – Rail line spurs etc • Development of for-profit pooled mining assets in targeted areas: <ul style="list-style-type: none"> – Mineral Processing facilities – Strong Rooms – Advanced Mineral Testing Centres

Figure 1: Proposed SMDF Projects and Interventions

SMDF and its ‘facilitator fund’ is identified as a potential beneficiary of the MinDiver Project which will benefit from technical support for strengthening the SMDF governance and operations as well as establishing the facilitator funds.

Other sub-components of the MinDiver Project have been designed to address access to finance and mineral sector investment climate constraints in the mining sector. This will involve the development and implementation of reforms, (in collaboration with the Trade & Competitiveness Ministry) to address access to finance and investment policy constraints and improve Nigeria’s competitiveness in the global mineral market.

3.0 OBJECTIVES

The objective of this advisory work is to develop an appropriate institutional, governance, and administrative framework for the management and operation of the SMDF to enable it achieve the following:

1. Be re-established as a world-class, transparently governed development and investment public institution with a social and private sector driven philosophy, and;
2. Become a partner of choice for local and international financing institutions.

4.0 SCOPE OF WORK

It is against this background that the Ministry of Mines and Steel Development (MMSD) is engaging the services of an Advisory firm to provide assistance to the SMDF in realizing its objectives of transforming into a public-sector entity with a social and private sector philosophy within a transparent decision-making hierarchy and broad stakeholder support. This advisory work will be complemented with the following separate advisory consultancies:

- Designing, developing, operationalizing, and launching an appropriate public-private sector funding framework; and structuring several publicly-seeded and privately scaled mining investment funds;
- Developing a Small Grants Manual for the Mining and Steel Sector with the view to ensure that the overall objective of the SMDF is achieved.

The Consultant Advisory firm is expected to carry out the following study phases and tasks in collaboration with the SMDF:

A. DUE DILIGENCE AND STRATEGY PREPARATION

In this phase of the TOR, the Adviser is to undertake a comprehensive due diligence audit of the SMDF, its mandate and operations, provide a review and assessment of principal restructuring and transformation issues and options and advise the Federal Government on the appropriate restructuring and transformation strategy for the SMDF. The scope of work for the due diligence and strategy preparation tasks includes, but is not limited to, the under-mentioned tasks, following which reports of each task should be submitted to SMDF by the date specified under the deliverables:

Pre-Restructuring and Transformation - Due Diligence Stage

1) *Legal and Corporate Governance Due Diligence*

This element will include the following tasks:

- Review of SMDF's mandate, including potential conflicts with the mandate of MMSD's departments and agencies and also other Ministries, Departments, and Agencies (MDA) of government. This should be considered in light of the ongoing

review of the Nigerian Minerals and Mining Act (NMMA), 2007, the MMSD Roadmap for the Growth and Development of the Nigerian Mining Industry, and all other relevant policies, laws, regulations, and national development plans and strategies;

- Review of compliance with Corporate Affairs Commission and any other relevant regulatory agencies policies/requirements/guidelines;
- Review of SMDF's current and proposed legal environment, including analysis of the existing regulatory framework;
- Conduct an inventory of all SMDF's assets, including those financed directly by SMDF or directly by MMSD together with their level of performance and maintenance requirements;
- Review the funding and cash flow relationships between MMSD and SMDF and between the Natural Resource Development Fund and the SMDF and other sources of funding defined in the NMMA;
- Review SMDF's existing contracts, especially those that may have significant implications for the restructuring and transformation process;
- Review Pending litigation involving SMDF with opinions on the likely outcome of all such major litigation; and
- Define the governance rules for ensuring the transparency and accountability of the fund based on the Santiago principles for natural resource investment funds covering the following among others:
 - Clear fund objectives;
 - institutional structure of the fund;
 - fiscal rules for deposits and withdrawals;
 - division of responsibilities;
 - transparency and accountability framework that will cover regular disclosures on fund management, investments, returns etc;
 - Independent oversight;
 - Investment rules.

2) *Assessment of SMDF Finance and Accounts, Information Technology (IT) and Management Information Systems (MIS) Performance*

This report will:

- Evaluate recent SMDF financial performance and provide an assessment of how its finance and accounts function is organised and managed, including a comprehensive review and analyses of its information technology, management information, accounting and financial systems, and
- Identify the political economy complexities inhibiting sustained funding of SMDF from budgetary allocations. The Adviser will recommend a pathway to negotiate through the political complexities inhibiting sustained funding of SMDF from budgetary allocations and would suggest actions that would insulate SMDF's project pipeline from political risk and policy changes.

The Adviser will also advise on the changes to SMDF's finance, accounting and taxation practices, IT/MIS systems that will be necessary to bring them into conformity with relevant Nigerian and international accounting, taxation, and IT laws, regulations and standards.

3) *Assessment of Operational Performance*

The Advisor will review and analyse SMDF's operating performance and current operating conditions. The Adviser will also undertake an assessment of SMDF's operating practices for its various units and their operational efficiencies and maintenance requirements. The findings will be compared with international industry benchmarks for this type of fund or similar funds. In addition the Adviser will advise on the changes to SMDF's operational structures that will be necessary to bring them into conformity with similar international funds and international fund management principles and standards.

4) *Insurance and Risk Management Issues including*

A review of SMDF's insurance risk management practices and an assessment of their efficiency will be conducted, including a discussion of measures that may be taken to improve SMDF's insurance risk management.

5) *Human Resources Issues*

The Advisor will:

- Review the current organisational structure of SMDF and the job descriptions for each position in that structure;

- Review a record of the number, qualification, position and remuneration and benefits of current SMDF personnel;
- Assess SMDF's optimal staff/manning levels post-restructuring, as well as of the current level of remuneration;
- A review of SMDF's social benefits, human resource, pension, recruitment, administration, performance evaluation policies and the extent of compliance with these policies;
- A review of relevant current legislation/practice related to redundancy/severance;
- Produce details of optimal organizational structure and required staff positions and qualifications post-restructuring;
- Provide options, recommendations and costs of upgrading the staff positions in SMDF and attracting qualified and experienced people post-restructuring. The recommendations should include the following:
 - i. Draft job descriptions and preparing Terms of Reference for recruitment purposes;
 - ii. Required skill-sets with the right blend of local knowledge, investment experience and passion for job;
 - iii. Team organization, roles and responsibilities.

Strategic Options - Stage

6) *Market Opportunity and Industry Performance Assessment*

The focus will be upon the issues of the current market structure and performance of the Nigerian mining industry markets, the participants, business performance, and the overall stage of development and existing and potential viability of the different segments of the mineral value chain, including upstream and downstream markets in Nigeria for funding;

7) *Assessment of Future SMDF Competitiveness and Viability*

The above analyses will focus on the issues of the present viability and competitive position of the SMDF among other global funds. The principal foci of this report will be the prospective longer-term viability of SMDF; and further, how the competitive position of SMDF might change over time after restructuring and how it needs to operate in order

to attract credible domestic and international co-financiers into funding projects in the mining value chain.

8) Investment Strategy

This analysis will define SMDF's social and economic impact investment strategy, criteria, returns expectations, risk tolerance, geographical limits etc.

9) Assessment of SMDF Restructuring Issues, Options, and Recommended Strategy

This report will focus on the strategic issues and options associated with the SMDF restructuring program and how the SMDF will function in the future;

The Advisor will conclude with drafting an SMDF Restructuring implementation report that will be addressed to the Federal Government. The report will summarise all the findings and analyses undertaken under the due diligence and address various issues and propose restructuring options and strategies, including:

- SMDF corporate profile (legal position; management and employee issues; financial position; and financial performance since its establishment; etc);
- Legislative and operational changes to SMDF's objectives, mandate (including investment mandate), and functions that will be necessary to bring it into conformity with good-practice principles for Sovereign Wealth Fund (SWFs), particularly the Santiago Principles. This will include a detailed description of the funds' legal status, mandates, governance structures and processes, macroeconomic policy implications, investment and exit policies, project selection criteria, due diligence processes, investment decision processes, checks and balances, asset allocation, auditing and reporting, financial and economic benchmarking, as well as legal, regulatory, contractual aspects etc.
- Changes to constitutive documents such as the legal framework establishing SMDF), the accounting changes that will need to be undertaken together with the transfer of assets, property, and equity between the MMSD and the SMDF, to achieve the SMDF restructuring. This will also involve designing internal fund rules, compensation structure, treasury, IT, legal capabilities, SMDF compensation structure to ensure it can attract world-class professionals;
- Having considered the implications of the various material contracts to which SMDF is a party or beneficiary for its long-term commercial and financial viability,

- the Adviser will propose and implement options for dealing with any risks posed by these contracts;
- The Adviser will document its recommendations with reference to empirical evidence. Throughout the practical guide, the Adviser will make a concerted effort to link its analysis and recommendation to the Santiago Principles and other similar standards for Sovereign Wealth and Resources Based Investment Funds, with the objective of proposing actionable standards;
 - The steps necessary to transform the SMDF into a credible institution that operates transparently and is capable of attracting credible domestic and international co-financiers;
 - A proposed timetable for the implementation with short, medium, and long term timelines

10) Restructuring Implementation Tasks:

The Adviser will conclude this phase of the program by completing the following:

1. Summary of the findings from each work stream of the due diligence audit;
2. Summary of the critical issues for resolution arising from the due diligence;
3. Proposals on resolving these critical issues;
4. Conducting a workshop with key stakeholders for endorsement and finalization of the design for restructuring and operationalization of SMDF

B. IMPLEMENT THE SMDF RESTRUCTURING PLAN

Together with the SMDF, the Adviser will implement the agreed Restructuring Plan. This includes the following;

- Develop Draft Documents Required to Achieve the SMDF Restructuring, including designing the appropriate governance structure, organization, strategies and operations for effective management in meeting its current or redefined mandate;
- All other activities required to achieve the restructuring

C. ANY OTHER TASKS

The Adviser will also undertake any other task required to fulfil the SMDF's objectives

5.0 ADVISOR'S QUALIFICATIONS

The Advisor's team shall include all the necessary expertise required to complete the work as specified under the terms of reference for the assignment. SMDF expects that the Advisor's Team will include some members with the following:

1. Proven experience and excellent track record in the area preparing and managing organisational development and institutional restructuring programs of public sector agencies and evaluation methodology of programs and initiatives of natural resources and sustainable development;
2. Experience in the preparation of strategic plans for investment and natural resource development funds for government entities and other similar entities;
3. Prior experience in establishing sovereign wealth funds, sovereign investment funds, mineral resource development funds and similar funds;
4. Thorough knowledge of mining sector development issues and operations and current development trends (including legal, financial, investment, regulatory, policy, technical, business, economic, markets, and public administration trends) in the Nigerian, West African, and global mining industry, with examples of similar works undertaken in Africa and globally;
5. Demonstrable track record of undertaking due diligence studies on mining/mineral projects and in supervising mineral exploration, mineral economics and mining project development including the preparation of report of mineral reserves/resources estimations to an international codified standard (e.g. JORC/SAMVAL/SAMREC), by a qualified person;
6. Evidence of the preparation of Bankable or Definitive Feasibility Studies on mineral projects;
7. Experienced in working with government agencies in West Africa, and ideally in Nigeria, with case study examples of similar projects;
8. Able to rapidly analyze and integrate diverse information from varied sources into conclusions and recommendations;
9. Experienced in project management, and in using project management tools such as MS Project, Gantt charts, etc.

10. Knowledge of and experience in the African region or Emerging Markets and in other developing countries;
11. Team leaders and key staff should also include several Nigerian individual firms or advisors who have extensive experience as they relate particularly to Nigeria;
12. Fluent in spoken and written English which is mandatory

Requirements of the Project Manager

1. The Day-to-Day Project Manager should have at least a master's degree in economics, statistics, business administration, finance, law, or a similar field. The project manager should have sufficient knowledge and experience of establishment and/or restructuring of natural resource investment and development funds, sovereign wealth funds (SWFs), and investment management of such funds. A background in strategy, professional advisory, and investment banking will be an added advantage. Experience in mineral rich-countries with well-established investment funds and/or SWFs is a key requirement. Experience of working in Nigeria is an added advantage though wide international experience would be highly valued;
2. This senior position will involve responsibility for the day-to-day management of the project and for all joint planning with the officials of the MMSD, and other agencies and institutions. Interpersonal skills will be essential, including the ability to engage with policy and senior level representatives of Government. The manager will be equally responsible for establishing proper financing mechanisms and criteria for financial sustainability of the SMDF. It is a requirement of the assignment that the Project Manager work full-time on the assignment and spend at least one-half of the project duration in Nigeria;

Team Leaders and Key Staff

- 1) The Team Leaders should also have not less than ten [10] years of professional working experience in their respective fields, some of which should include relevant experience in the mining sector. They should also have a minimum education of a Master's degree in their field of experience as well as requisite professional certification and must be familiar with international reporting standards. They should collectively demonstrate an even spread of expertise in the required areas that will arise in executing the tasks outlined herein. Key staff should also include several Nigerian individuals who have extensive experience in the relevant legal, regulatory, accounting, and commercial issues as they relate particularly to Nigeria. The key staff

should have not less than seven [7] years of professional experience and proven track record in managing similar countries at a similar state of development.

- 2) Specifically, Team Leader and key staff are required for the following positions:
- a. Institutional Specialist- 1 Nos with at least a master's degree in economics, business administration, finance, law, or a similar field and at least 10 years of relevant professional experience in establishing natural resource investment fund and/or sovereign wealth funds management institutions; and with the legal and regulatory framework for establishing such institutions; and have core knowledge of key governance and accountability mechanisms in the operation of such funds as well as directing economic development programs. Experience in Africa and mineral-rich countries with well-established sovereign wealth funds will be an advantage;
 - b. Fund Specialist - 1 Nos with at least a master's degree in economics, business administration, finance, law, or a similar field and relevant professional experience in the design and operation of natural resource investment and development funds and/or SWFs; the specialist should be experienced in capital markets, investment management, transaction structuring, and strategic advisory. Knowledge of the development of the Nigerian SWF will be an added advantage.
 - c. Legal and Regulatory Specialist- 2 Nos with qualifications in law and required professional experience with relevant professional experience in financial regulations, financial, and capital markets. The specialist should have a strong background in developing and analysing legal and regulatory issues relating to natural resource fund management and/or SWF management institutions, financial markets, capital markets, and investment management.
 - d. Strategy Design and Execution - 1 Nos with educational qualification on economics, finance, accounting, finance, statistics or relevant qualification with professional experience in strategic planning and execution related to establishment of public institutions, capacity development activities, public management and performance transformation. Experience of establishing natural resource investment and development funds and/or SWFs will be an added advantage.

- e. Accountant-1 Nos with educational qualification in accounting, finance, statistics and relevant professional qualification with experience in institutional restructuring, particularly of government institutions.

6.0 REMUNERATION AND PAYMENT TERMS

Remuneration of the Advisor is attractive and commensurate with those offered by international bodies for similar assignments. The assignment will be based in Abuja. However, the Advisor will also be reimbursed for operational expenses such as travel, accommodation, and telephone incurred while carrying out this assignment and in line with World Bank guidelines and procedures. Before reimbursement can be made, the Advisor will need to submit a statement of expenses supported by valid documentation.

The successful Advisor would be paid a lump sum amount, on monthly basis, in accordance with an agreed schedule of deliverables, on the agreed rate of professional fee and reimbursable expenses, subject to satisfactory performance, timely receipt and approval of deliverables.

7.0 DURATION OF SERVICE

It is expected that service of the Advisor is required for a period of eighteen (18) months and could be extended subject to requirement and satisfactory performance of the Advisor and based on necessity.

8.0 DELIVERABLES

The Advisor will produce the following reports:

- a. **An Inception Report** to outline the work plan of the Advisor, define its tasks and the planned implementation periods and schedules, identify target submission dates on each task. Particular attention will be given towards the planned coordination within other teams and preparation of a detailed schedule. Stakeholder mapping will be included in the Inception Report. The inception report will be submitted within one month of the commencement of the assignment and once approved and issued in its final form, will serve as the Advisor's baseline for the management and monitoring of the tasks;
- b. **Monthly Progress Reports** on engagements and findings with stakeholders in the industry; The Advisor shall prepare consolidated Monthly Progress Reports

- covering progress towards achieving the objectives in this ToR as well as identified areas of weaknesses and strategies for improvement. The reports shall provide a brief but comprehensive end-of-month progress assessment and details of impediment to the works and proposals for overcoming them. These reports shall be submitted within the first week of the succeeding month. The report will be assessed and appraised by the Executive Secretary SMDF and the MinDiver Project Coordinator.
- c. **Quarterly progress reports** of the activities carried out within the preceding quarterly period. The Advisor's Project Manager will prepare consolidated Progress Reports of the information contained monthly reports together with a summary of Advisor's activities and conclusions on all pertinent issues concerning the assignment. In addition the Quarterly Progress Reports will outline recommendations, for amendment or solutions to issues and matters raised or found in the course of the study and any other information considered necessary in respect of service delivery. These reports shall be submitted at the end of the first week of the succeeding quarter. The report will be assessed and appraised by the Executive Secretary SMDF and the MinDiver Project Coordinator.
 - d. **Specific Reports**, to meet the reporting requirements for tasks set out in the numbered subject areas of the Due Diligence and Strategy Preparation stage and the Implementation stage of this scope of works. Such advisory reports to be prepared following duly considered review and assessment and in line with schedule set out in the Inception Report. These reports will be assessed and appraised by the Executive Secretary SMDF and the MinDiver Project Coordinator.
 - e. **A Draft Final Report**, within the first week of the penultimate month of the assignment.
 - f. **Final Report** bound in three (3) copies and an electronic copy in CD, within the last week of the assignment.

All Reports Shall Be in English and Presented in Hard and Soft Copies for review and approval by the Project Co-coordinator

THE ADVISOR WILL SIGN A CONFIDENTIALITY and NON-DISCLOSURE AGREEMENT WITH THE PIU (Project Coordinator overseen by the World Bank). Noncompliance will subject to legal penalties not inferior to the Full Cost of the Contract.

NO FINAL PAYMENT WILL BE MADE UNTIL QA/QC HAS BEEN PASSED.

9.0 SELECTION METHOD

The Advisor will be selected according to a QCBS method.