Practical Transactional Issues in Financing Mining Projects in Nigeria

Introduction

Nigeria's solid minerals sector has been underfinanced for as long as it has been under-explored. The Federal Government's Solid Minerals Roadmap, the establishment of the Nigeria Solid Minerals Company, the reconfiguration of the fiscal framework under the Nigeria Tax Act 2025, the intensifying global competition for critical minerals, and the continued inflow of Chinese, Indian, and increasingly Western capital have, however, begun to reshape that landscape in material respects. The question is no longer whether capital is available to Nigeria's mining sector; it is whether the Nigerian legal and regulatory architecture can accommodate that capital on terms acceptable to its providers. This article examines the practical transactional issues that arise in financing mining projects in Nigeria, the specific legal and commercial obstacles that sponsors, lenders, and their counsel must navigate to bring a transaction to financial close, and the structural reform agenda those obstacles imply.

The Sources Landscape

The capital stack available to a Nigerian mining sponsor is narrower and more idiosyncratic than that available in many mature mining jurisdictions. Commercial bank debt from Nigerian banks remains the structural backbone for smaller transactions, but local bank appetite is constrained by tenor mismatch, capital adequacy considerations, and a thin mining-specialist credit bench; tickets above approximately US$30 million typically require syndication or development finance institution ("DFI") participation. DFIs, principally the IFC, AfDB, Afreximbank, and BOI provide longer tenors, technical assistance, and the comfort that draws in commercial lenders.

Strategic equity, particularly Chinese, Indian, and Western critical-minerals capital, has displaced domestic equity as the principal driver of mine development equity in lithium, gold, and battery minerals. The Solid Minerals Development Fund, under reconstitution alongside the Solid Minerals Corporation, is positioned to assume a more material role than its historical capitalisation permitted. Streaming and royalty financing are nascent but growing components for resource-stage projects unable to support conventional debt; offtake-linked prepayment and capital markets instruments remain theoretically available but materially underused.

The post-2023 FX liberalisation is the operative overlay on every category above. Deal economics that worked on a managed naira no longer work on a freely floating naira; refinancing risk, currency mismatch, and hedging cost have all repriced upward. The financing model for any new Nigerian mining transaction must be built on FX assumptions that are, by recent historical standards, materially more conservative.

Security Package Architecture: The Core Legal Challenge

The security package supporting a mining project finance transaction in Nigeria operates across four distinct asset categories, each subject to its own legal regime. The bankability of the whole is determined by the weakest link.

Security over mineral titles

The mineral title is the principal asset of a mining venture and the asset most resistant to conventional security.

Section 11 of the Nigerian Minerals and Mining Act 2007 (NNMA) expressly restricts the transfer of mineral titles without the consent of the Minister, and sections 162 to 164 impose parallel restrictions on assignment. A charge or assignment of a mineral title as security therefore requires Ministerial (or, in delegated cases, Mining Cadastre Office) consent both at the time of grant and again on enforcement. Lenders take security in the form of a deed of assignment with a covenant to procure consent and a step-in right, but the security is, in practice, conditional and contingent rather than self-executing. In simple terms, a lender cannot rely on the mineral title without the Ministry's approval at the point enforcement is needed. This is a built-in feature of the legal framework, not a one-off transaction problem.

Security over land and surface rights

The bifurcation between federal mineral title and state-administered land control generates a parallel security problem. Security over the surface land requires the consent of the relevant Governor under section 22 of the Land Use Act 1978.[1] Governor's consent, like Ministerial consent for mineral titles, is a transaction with its own timing, cost, and political risk profile. An integrated security package over the project site and the mineral title therefore requires two separate consent processes, neither of which can be guaranteed at financial close.

Security over moveable assets, accounts, and receivables

The Secured Transactions in Movable Assets Act 2017 (the "STMA"), administered by the National Collateral Registry, has materially improved the framework for security over plant, equipment, and other moveable assets.[2] The STMA is now the operative regime for security over mining equipment, vehicles, and processing infrastructure, but it does not extend to mineral titles, land, or shares. Charges over project accounts (operating, debt service reserve, distribution) and assignments of offtake receivables form the cash-flow security spine of the package; the principal issues are the location of the accounts (onshore versus offshore, given FX controls), the perfection mechanics for assignments, and the enforcement of charges on insolvency under the modernised regime of the Companies and Allied Matters Act 2020.[3] The business rescue and administration framework introduced by CAMA 2020 has improved enforceability but remains untested in mining-sector cases of any scale.

Intercreditor architecture and sponsor support

When more than one lender is involved, usually a DFI together with commercial lenders; agreeing the intercreditor terms becomes a major part of the transaction. Lenders also increasingly require sponsor support, such as completion guarantees, cost overrun support, debt service support, and commitments to inject equity, to cover the limits of the underlying security package.

The bankability of the sponsor support package is, in many transactions, more determinative of the financing outcome than the security package itself. The corollary is that sponsor balance-sheet strength is, in practice, a precondition to debt access in the Nigerian mining market, a constraint that materially narrows the field of viable indigenous sponsors.

Conditions Precedent and Regulatory Consents

The conditions precedent ("CP") list in a Nigerian mining finance transaction is materially longer than in most jurisdictions because of the layered regulatory consent architecture. Beyond Ministerial consent for security, lenders require confirmation of title from the Mining Cadastre Office ("MCO"), evidence of compliance with the minimum work programme,[4] confirmation of payment of annual service fees, and confirmation that no surrender, suspension, or revocation proceedings are pending. Foreign capital imported into Nigeria must be evidenced by an e-Certificate of Capital Importation ("e-CCI") issued by an authorised dealer bank;[5] the e-CCI is the operative document for repatriation of dividends, principal, interest, and capital, and its proper issuance is a non-negotiable CP for any foreign-financed transaction. Post-2023 FX reforms have streamlined some of the e-CCI process, but defects in e-CCI issuance carry cascading enforcement consequences. The Governor's consent under section 22 LUA, the host Community Development Agreement under section 116 NMMA, environmental impact assessment certificates, and, in some states, additional state-level mining consents collectively form a separate workstream from federal approvals.

Tenure, Title, and the Bankability Question

Mineral tenure under Nigerian law is structurally adequate for most project lifecycles but contains specific bankability frictions. Exploration licences run for three years renewable for two further periods of two years; mining leases for twenty-five years renewable for further periods of twenty-five years; small-scale mining leases for five years renewable.[6] For mining lease transactions, the tenure is sufficient to support a ten- to fifteen-year debt tenor with a reserve tail.

The friction points are at renewal and during enforcement. Renewal is conditional on compliance with the minimum work programme and discretionary even where compliance is established. There is no statutory cure period for tenure breaches and no statutory standstill protection during enforcement of security. Each is typically addressed through covenant architecture, sponsor support, and step-in arrangements, but each represents a residual risk that materially affects credit appetite. Exploration-stage projects present a particular challenge: the exploration licence does not confer a right to mine, and conventional debt against an exploration-stage asset is commercially unavailable.

1. Land Use Act 1978 (LUA), s 22.

2. Secured Transactions in Movable Assets Act 2017 (STMA), administered through the National Collateral Registry maintained by the Central Bank of Nigeria.

3. Companies and Allied Matters Act 2020 (CAMA), Parts XXVII–XXIX, introducing the modernised insolvency, business rescue, and administration framework.

4. NMMA, s 47; cf. ss 105–106 on surrender, suspension, and revocation for non-compliance.

5. Central Bank of Nigeria, Foreign Exchange Manual (2018 edition, as amended by subsequent CBN circulars including the post-2023 FX market reforms).

6. NMMA, ss 65 and 71; see also s 90 on renewal of mining leases.

The financing toolkit is accordingly limited to equity, convertible instruments, royalty financing, or earn-in arrangements. The maturity of the Nigerian mining capital market will be measured, in part, by its capacity to bridge this gap.

Tax, Fiscal, and Capital Structure

The Nigeria Tax Act 2025 and the Nigeria Tax Administration Act 2025 have materially recast the fiscal regime applicable to mining, displacing the previous patchwork under Companies Income Tax Act and the fiscal provisions of the NMMA.[7] The principal changes; the consolidated tax regime, revised treatment of royalties, recalibrated capital allowances, and express provision for tax stability arrangements in qualifying mining projects, alter both project cash-flow modelling and the security package's reliance on tax-related comfort. Assumptions imported unmodified from pre-2025 transactions will likely, in most cases, materially misrepresent project economics.

Mining of solid minerals would no longer be eligible for pioneer status under the Industrial Development (Income Tax Relief) Act, which previously conferred a tax holiday of up to five years.[8] Royalty rates vary by mineral and are payable to the NRS on behalf of the Federal Government, with state-level royalties not currently recognised under the federal framework — a position that, given the rising assertiveness of state mineral development corporations, may not hold indefinitely. Withholding tax on interest payable to foreign lenders is generally ten per cent (subject to treaty relief), and on royalty payments ten per cent. Stamp duty across the multiple security instruments — deeds of assignment, mortgages, STMA filings, share charges, account charges, generates a cumulative cost that is non-trivial in absolute terms and that, in some transactions, materially affects the structuring decision between security categories. Most cross-border investment continues to flow through offshore holding platforms (Mauritius, the Netherlands, Singapore, the UAE) for treaty benefits and the protection of foreign investment law arrangements; the interaction of BEPS Pillar Two with the new Nigeria Tax Act regime is, at the time of writing, an unsettled area with material structuring implications.

Specialist Structures: Streaming, Royalty, and Offtake-Linked Finance

Streaming and royalty financing, significant components of the global mining capital stack for resource-stage assets, remain nascent but no longer hypothetical in Nigeria. A stream is a forward purchase of a defined percentage of mine production at a discounted reference price, paid for by an upfront deposit; a royalty is a participation in revenue or net smelter return without ownership of the underlying mineral.

Both raise distinctive Nigerian legal questions: characterisation under Nigerian law (true sale of production versus secured loan, with corresponding implications for security, insolvency, and tax), regulatory treatment under the NMMA and FX framework, security and step-in rights of the stream or royalty holder, and interaction with senior debt and intercreditor arrangements. Offtake-linked prepayment structures present a similar set of questions, with the additional complexity of price-setting mechanics, delivery obligations, and interaction with security taken by other lenders over the same receivables. The absence of established Nigerian precedent means that early transactions carry disproportionate legal risk; counsel will need to anticipate, rather than respond to, regulatory and judicial treatment, and to build defensive architecture into the documentation accordingly.

Risk Allocation, Insurance, and Political Risk

Under the Nigerian Insurance Industry Reform Act 2025, mining risks must first be placed with Nigerian insurers. Where local capacity is insufficient, additional cover may be sourced from insurance and reinsurance companies within the African sub-region, which the Act now recognises as part of "local capacity", before recourse is had to the wider international reinsurance market. In practical terms, the strength of the insurance package will turn not only on the scope of cover, but also on the quality of the reinsurance backing and the creditworthiness of the reinsurers involved. For DFI-supported transactions, political risk insurance from MIGA (the Multilateral Investment Guarantee Agency) or ATI/ATIDI (the African Trade and Investment Development Insurance Agency) is increasingly part of the financing structure, particularly to protect against expropriation, transfer restrictions, war and civil disturbance, and breach of contract by state entities. That political risk overlay is especially relevant for projects located in the security-affected belts of Northern Nigeria. Environmental obligations also form part of the bankability analysis. Section 30 NMMA requires mining companies to maintain a tax-deductible, annually funded reserve for environmental protection, mine rehabilitation, reclamation, and closure costs, whether through a dedicated account or a trust fund managed by independent trustees. This sits alongside the Environmental Protection and Rehabilitation Fund established under section 121 NMMA, which the Minister maintains as a broader safeguard for the environmental obligations of mineral titleholders. For projects seeking to meet DFI bankability standards, however, the relevant benchmark is unlikely to be the Nigerian statutory minimum alone; in practice, international standards, particularly the ICMM Mining Principles which will usually provide the operative reference point.

Conclusion: An Honest Assessment

The financing of mining projects in Nigeria is, in practical terms, more legally and structurally exacting than the surface narrative often suggests.

7. Nigeria Tax Act 2025 and Nigeria Tax Administration Act 2025. See further 'Gbite Adeniji, Jumoke Fajemirokun and Peter Okediya, Nigeria's Mining Fiscal Regime Under the New Tax Laws (Mondaq, 7 April 2026).

8. Rather than a multi-year income tax holiday, eligible companies are granted a 5% annual tax credit to be applied against Corporate Income Tax (CIT) over a 5-year period

The difficulty lies not in any single doctrinal defect, but in the cumulative effect of multiple, individually manageable, regulatory and contractual constraints: conditional security over mineral titles, parallel consent regimes for surface and subsurface rights, a layered stamp duty burden across the security package, an elongated conditions precedent process, a still-developing insurance market, and the residual political and security risks associated with parts of the resource belt.

None of those constraints is, in the writer's view, inherently fatal to the bankability of a properly structured Nigerian mining transaction. Their significance lies, rather, in their cumulative effect on transaction cost, execution timelines, and overall delivery risk. The reform priorities capable of materially reducing that burden are reasonably clear: a more predictable and accelerated MCO consent process; rationalisation of the dual security framework governing surface and subsurface rights; extension of the STMA architecture to mineral titles; further deepening of local insurance capacity; and clearer operational treatment of the interface between tax stability arrangements and the revised incentive framework under the Nigeria Tax Act 2025. Until those reforms are carried through, the task of bringing Nigerian mining financings to successful close will continue to depend, as a practical matter, on the structuring discipline, regulatory fluency, and execution capacity of sponsors, lenders, and their counsel.

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