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INTEGRITY DUE DILIGENCE ROADMAP (AN ABRIDGED VERSION)



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NMA INTEGRITY DUE DILIGENCE ROADMAP

Goal: To enhance the National Mineral Agency's (NMA) integrity due diligence procedures (IDD) in the mining license application administration and management

STEP 1: PRIORITISE MINERAL LICENSE APPLICANTS FOR INTEGRITY CHECKS

The application stage is the point in the licensing process when NMA has the most leverage over companies i.e. they can refuse to issue a license. However, with four staff responsible for processing license applications in the Mining Cadastre Office (MCO), NMA does not have capacity to run integrity checks on all license applicants, instead they must prioritize.

The most reliable way to prioritise future license applicants for integrity checks is based on their potential contribution to mining revenues.

STEP 2: UPDATE LICENSE AND REPORTING FORMS TO COLLECT IDD INFORMATION

For NMA to begin to conduct integrity checks on mining investors to Sierra Leone, they must first update mineral license and reporting forms to require disclosure of information relating to reputation and integrity; including, but not limited to, criminal convictions, tax avoidance, human rights abuses, and industrial relations disputes. Without this information, there are very limited data points from which NMA can commence integrity checks. Of the information currently collected by NMA, the list of shareholders, as well as details on directors and related parties, are most relevant to conducting IDD, however, the requirements are limited, and, thus, the results are relatively superficial.

LICENSE APPLICATION FORMS TO BE AMENDED INCLUDE:

- [Form B1, B3, B15, B18: Application for a reconnaissance, exploration, small-scale, or large-scale mining licence;](#)
- [Form B2, B4, B5, B17, B20: Application for renewal of a reconnaissance, exploration, small-scale, or large-scale mining licence;](#)
- [Form B8, B23: Application to part-surrender, wholly surrender or augment production to a Large-Scale mine, reconnaissance or exploration licence.](#)
- [Form B11, B25: Request to transfer ownership of an exploration or large-scale licence;](#)

REPORTING FORMS TO BE AMENDED INCLUDE:

- [Form C3: Form to accompany submission of an annual report on exploration licence;](#)
- [Form C18: Form to accompany annual report on a large-scale mining operation.](#)

NMA should amend these forms to include a section where license holders are required to provide any relevant updates regarding directors, officials, shareholders, related parties, and criminal / civil activity. This is simply adapting the data fields for license application forms outlined in Annex 1, to the reporting forms.

There is no clear legal basis for NMA to collect beneficial ownership information from license applicants. Sections 57(a), 70, and 106(a) of the Mines and Minerals Act (2009) require applicants for exploration, reconnaissance, and large-scale mining licenses to disclose 'shareholder[s] who [are] the beneficial owner[s] of five per cent or more of the issued share capital'. This requirement does not create a basis for beneficial ownership disclosure; it relates to shareholders who are beneficial owners of shares, not beneficial owners who indirectly own a stake in the company (i.e. are not legal owners as is the case with shareholders). This interpretation of the Act is reflected in the form companies must complete when making licence applications, where they are only asked to list their shareholders.

STEP 3: ESTABLISH A 'WATCH LIST' OF EXISTING LICENSE HOLDERS REQUIRING ONGOING INTEGRITY MONITORING

The business profile of a license holder may change over the course of the licence, for example, the license holder may enter a joint venture, or there may be a sale of asset, making it necessary to conduct IDD at regular intervals. However, given the volume of licenses (175 industrial and 2,078 trading) it is not feasible for NMA to conduct ongoing IDD on all license holders. A 'watch list' of 10-12 license holders would be feasible for ongoing monitoring.

STEP 4: INTEGRATE DUE DILIGENCE PROCEDURES INTO THE MINING LICENSE MANAGEMENT PROCESS

The Director of Mines should have ultimate responsibility for overseeing the implementation of IDD procedures; beyond this the MCO and Compliance Unit should be tasked with conducting integrity checks on new and existing license holders.

The MCO already validates applications (checking that the application form is complete, and that the license area is available); integrity checks should be added to this process, and the specific results included in the report provided to the Director of Mines, and ultimately the Minerals Advisory Board (MAB).

However, the MCO is advised to pass applications made by private companies (i.e. companies not listed on a public exchange) to the Compliance Unit for integrity checks. This is because integrity checks on private companies are particularly complex, and therefore time consuming, which may result in delays to the processing of other license applications received by the MCO. Once the Compliance Unit has completed integrity checks of private company applicants, it must link up with the License Assessment Officer to make a final recommendation to the Director of Mines, for submission to the MAB.

STEP 5: COMMENCE INTEGRITY CHECKS ON LICENSE APPLICANTS AND 'WATCH LIST' COMPANIES

Integrity checks: investigating the background of prospective or current mining license holders, to determine whether they are likely to pose a risk to the mining sector in Sierra Leone.

To be able to conduct IDD checks on license applicants, the MCO must first enter the IDD information from the license application forms into MCAS. According to MCO staff, this will add 15 minutes per application

A) BASIC PROFILE CHECK (Registered Companies)

The basic profile check applies to both public and private license applicants, and is based solely on information available within Sierra Leone, either from GoSL agencies, or physical observation.

Before a company can apply for an industrial mineral license from NMA, it must first be registered with the Corporate Affairs Commission (CAC). As proof, the MCO requires license applicants to provide the Certificate of Incorporation, Certificate of Registration, and Articles of Association. The MCO needs to do more than this; it needs to request CAC company filings to crosscheck against license application forms.

SPECIFIC DOCUMENTS TO REQUEST FROM CAC INCLUDE

- Company status report (2-3 pages) – update on all the company's activities since registration;
- Recall form – documents any changes to the company's original application for incorporation, this is particularly relevant if the company has been registered for a long time prior to applying for a mineral license.

SPECIFIC INFORMATION TO CROSS-CHECK AGAINST CAC COMPANY FILINGS -

- Business name;
- Date of incorporation;
- Registration type (e.g. limited liability company);

- Contact details (telephone number and email);
- Description of business activity;
- Details of management, staff, legal representative;
- Shareholders (name, DOB, nationality, % of shares).

In addition to checking CAC company filings, the MCO should -

- Check the applicant's Tax Identifier Number with the National Revenue Authority (NRA);
- Physically verify the applicant's business address i.e. check it's a real business;
- Contact the landlord of the applicant's business address to confirm that the company is paying rent;
- Check company history with Financial Intelligence Unit, and Transnational Organised Crime Unit.

B) INDIVIDUALS APPLYING FOR DIAMOND EXPORTER LICENSES

According to the Mines and Minerals Act (2009), an individual, or a registered company, may apply to NMA for a precious minerals exporter's license, although, in most cases, applications are made by private companies.

To conduct basic profile checks on individuals, NMA should do the following –

- Check the individual's Tax Identifier Number with the National Revenue Authority (NRA);
- Physically verify the individual's business address i.e. check the person/business exists;
- Check the individual's history with Financial Intelligence Unit (FIU), the Transnational Organised Crime Unit (TOCU);
- Verify the police clearance certificate submitted by the applicant, with the Sierra Leone Police (SLP).

Beyond basic profile checks, NMA should check the individual against global sanction and enforcements lists, (see Public Companies (d), adverse media, and litigation searches (see Private Companies (d)).

PUBLIC COMPANIES

There is less reason for the MCO to spend a lot of time running integrity checks on public companies. To achieve and maintain a listing on a public exchange, the company is subject to numerous regulatory requirements that tend to improve the integrity and transparency of the enterprise, in comparison with usually unrelated private companies.

For public companies listed on a public exchange the MCO should conduct the following checks:

- NMA should require license applicants to provide details of parent company listings i.e. the name of the exchange, the stock exchange code, a link to where the listing can be found

A list of securities regulatory agencies can be found on the public website of the [International Organization of Securities Commission](#) (IOSCO). Reuters also provide a useful [list of stock exchanges and regulatory authorities](#) by jurisdictions.

- Once the listing has been identified on the exchange the MCO should crosscheck the details provided by the license applicant with the listing. The MCO can expect to find a combination of the following information for listed companies
 - Name; Registered address; Directors; Contact details.

WHAT'S THE PURPOSE OF CONFIRMING A LISTING ON A PUBLIC EXCHANGE?

- To check the company exists;
- To confirm the address, contact details;
- To confirm directors, and shareholders;
- To monitor profitability.

PRIVATE COMPANIES

It is much harder to find information on private companies. The first place to start is company registers.

CHECK COMPANY REGISTERS

[Open Corporates](#) is a good way to begin the company register search. The objective of Open Corporates is to be the 'one stop' scraping shop for all company registers. It provides data on companies, including primary public sources from 105 jurisdictions and some 100 million companies. The data is searchable by company name, by country and by directors. The Compliance Unit simply needs to enter the company name, and country location and see if any matches to company registers are returned.

- Slate to translate the English company name into Chinese characters, or find the Chinese name on the company website;
- Go to the [National Company Search Register](#); copy paste the characters into the search box;
- Results may also be put into Google Translate to get the English translation.
- To do a formal translation it will be necessary to contract a translator.

OPTIONS FOR OUTSOURCING INTEGRITY CHECKS IN LIMITED CIRCUMSTANCES

Assuming the Compliance Unit has exhausted all the stages to do a background check on Private Companies and the need for more information is strong, it may be necessary to pay for closed source data from a commercial database, or enlist the services of a corporate due diligence firm. NMA should exercise caution before spending money on these options.

- Commercial Databases
- Corporate Due-diligence Consultancies

In most cases a standard due diligence report should be sufficient for NMA's purposes, and price point, unless NMA have very serious concerns about a company, or there are challenges to accessing company records. When purchasing a due diligence report, NMA needs to be very sure that it is getting the essential information it requires, and not being upsold on other less salient information. This includes:

- Company registration and status;
- Any adverse media results from English media searches (ideally local language media searches as well, depending on price);
- Sanctions, enforcements, and PEPs data;
- Basic information on directors;
- Basic information on shareholders;

ANNEX

ANNEX 1(A). IMMEDIATE AMENDMENTS TO INDUSTRIAL MINERAL LICENSE APPLICATION FORMS

Form B1, B3, B15, B18 - Application for a Mineral License

New requirements:

1. License applicants must disclose details of any previous criminal convictions and/ or findings of civil liability against the registered company, its directors, or shareholders. E.G. bankruptcy, fraud, dishonesty.
2. License applicants must disclose details of any current civil and/or criminal proceedings against the registered company, its directors, or shareholders.

Changes to Section 6: information on directors and officials -

Additional information requirements should include -

- usual residential address
- service address (this can be the same as the registered office)
- country/state of residence (i.e. country or state where the address is situated)
- occupation
- date of birth
- any former names (i.e. other names used for business purposes in the last 20 years). *Source: UK requirement for company registration.*

Changes to Section 7: information on shareholders –

This section should request separate information for natural persons and legal entities.

Natural person -

- Title,
- Specify first name, middle name, last name,
- Former names,
- Date of birth
- Residential and service addresses,
- Nationality,
- Sex.

Legal entity -

- company or firm name,
- registered office address,
- details of the legal form of the company,
- where it is registered,
- if applicable, its registration number,

- details of stock exchange listing (i.e. name of exchange, stock exchange company code, and link to listing)

For both natural persons and legal entities, more detail should be required on the nature of shareholdings -

- Class of shares,
- Number of shares/ percentage,
- Currency,
- Nominal value of each share.

Plus “prescribed particulars” -

- what share of dividends they get,
- whether they can exchange (‘redeem’) their shares for money,
- whether they can vote on certain company matters,
- how many votes they get.

Changes to Section 8: information on related parties –

- Group organogram/ structure
- Registered name of related party,
- Nature of relationship with license applicant (e.g. parent, affiliate, subsidiary)
- Location including residential and service address
- Country of incorporation
- Description of transaction (e.g. marketing services, financing, procurement, management support).

Form B2, B4, B5, B17, B20 - Application to Renew a Mineral License

Include new data fields mirroring Sections 6, 7 and 8 of the license application form (above), as well as a requirement to disclose criminal convictions/ findings of civil liability, and criminal/ civil proceedings.

These new data fields should be framed as updates to previous information disclosed in Forms B1, B3, B15, B18.

Form B11, B25 - Application to Transfer a License

Changes to Section 10: information on directors and officials -

Include additional data fields mirroring the changes to Section 6 of Forms B1, B3, B15, B18 (above).

Changes to Section 11: information on shareholders –

Include additional data fields mirroring the changes to Section 7 of Forms B1, B3, B15, B18 (above).

This form does not require disclosure of related parties. This should be amended in line with the Changes to Section 8 of Forms B1, B3, B15, B18 (above).

An official disclosure clause should be included in all application and reporting forms, this should read:

“False information may lead to disqualification from applying for a mineral license, and cancellation of license if false information is discovered post issuance.”

ANNEX 2. FUTURE AMENDMENTS TO MINERAL LICENSE APPLICATION FORMS

Form B1, B3, B15, B18 - Application for a Mineral License Form Form 15 – Application for Precious Minerals Exporter’s License

Individual with significant control

Ultimate beneficial owners (natural persons) of significant share of the entity

- First name + Middle initial + Last name
- Functional title & role
- Date of birth (at least the year)
- Place of birth (at least the country)
- Country of citizenship
- Country of residence
- National identity number
- description of current and expected roles and functions
- service address - building name/ street number, street, county/region, postcode, country
- residential address - same as above
- Are they a PEP? Reason for PEP designation including dates when they assumed and left office

1) Nature of Control For an Individual

Please indicate how the individual is a person with significant control over the company (tick each box that applies)

a) Ownership of shares

The individual holds, directly or indirectly, the following percentage of shares in the company (tick only one):

- more than 25% but not more than 50%
- more than 50% but less than 75%
- 75% or more

b) Ownership of voting rights

The individual holds, directly or indirectly, the following percentage of voting rights in the company (tick only one):

- more than 25% but not more than 50%
- more than 50% but less than 75%
- 75% or more

c) Ownership of right to appoint/remove directors

The individual holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company

d) Significant influence or control (Only tick if none of the above apply)

The individual has the right to exercise, or actually exercises, significant influence or control over the company

2) Nature of control by a firm over which the individual has significant control - tick each that apply.

The individual has the right to exercise or actually exercises significant influence or control over the activities of a firm that is not a legal person under its governing law, and:

a) the members of that firm (in their capacity as such) hold, directly or indirectly, the following percentage of shares in the company (tick only one):

- more than 25% but not more than 50%
- more than 50% but less than 75%
- 75% or more

b) the members of that firm (in their capacity as such) hold, directly or indirectly, the following percentage of voting rights in the company (tick only one):

- more than 25% but not more than 50%
- more than 50% but less than 75%
- 75% or more

c) the members of that firm (in their capacity as such) hold the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company

d) the members of that firm (in their capacity as such) have the right to exercise, or actually exercise, significant influence or control over the company

3) Nature of control by a trust over which the individual has significant control - Tick each that apply.

The individual has the right to exercise or actually exercises significant influence or control over the activities of a trust and:

a) the trustees of that trust (in their capacity as such) hold, directly or indirectly, the following percentage of shares in the company (tick only one):

- More than 25% but not more than 50% - more than 50% but less than 75%
- 75% or more

b) the trustees of that trust (in their capacity as such) hold, directly or indirectly, the following percentage of voting rights in the company (tick only one):

- more than 25% but not more than 50% - more than 50% but less than 75%
- 75% or more

c) the trustees of that trust (in their capacity as such) hold the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company

d) the trustees of that trust (in their capacity as such) have the right to exercise, or or actually exercise, significant influence or control over the company.

Legal entity with significant control

- Full company name
- Date of incorporation or creation
- Place of incorporation or creation
- Full address
- Nature of business

- First name + Middle initial + Last name
- Functional title & role
- Date of birth (at least the year)
- Place of birth (at least the country)
- Country of citizenship
- Country of residence
- National identity number+A1:C3
- description of current and expected roles and functions
- service address - building name/ street number, street, county/region, postcode, country
- residential address - same as above

-Are they a PEP? Reason for PEP designation including dates when they assumed and left office