

Solomon Islands Sustainable Mining Development Technical Assistance Project (SMDTAP)
Fiscal and Trade Regulation Specialist (Component 1.1.v)
Terms of Reference

1.0 Purpose

Engagement of a Fiscal and Trade Regulation Specialist to review, harmonize and produce guidelines and protocols into current fiscal and trade policies and regulations consistently and competitively. This will build the capacity of government regulatory institutions to fulfil their functions fairly, consistently, transparently and effectively in developing fiscal and trade policies that are specific and competent to the minerals sector with the primary objective of attracting genuine and experienced foreign mining and related investors, and to fairly allocate the benefits accruing from the exploitation of minerals to all stakeholders, especially the national and provincial governments and the landowners.

2.0 Background and Rationale

For over two decades the development of Solomon Islands' mineral resources has been talked about as a new and immediate source of economic growth and diversification, since the major revenue earner, the logging industry is waning. The country is prospective for a range of precious and base metallic minerals, especially gold, copper and nickel, and hosts bauxite in several locations. Yet even while the mining sector globally enjoyed several bumper years on the back of mineral-intensive growth in emerging economies earlier this century, the country failed to take advantage of this opportunity. The mining sector makes only a minor or insignificant contribution to the economy of Solomon Islands today, far below its potential. The sector has accounted for less than 1% of GDP, except for the period 2011-2013 when it jumped to some 5% while the Gold Ridge mine was temporarily in full production. Since the mine shut down in 2014, the share of mining in GDP has fallen to preceding levels and in 2018 was just 0.5%.

Mining operations have the potential to become a vital part of the Solomon Islands economy due to its plate tectonic setting, and hence to account for an increased share of gross domestic production, exports, and government revenues.

At present, the existing fiscal and trade regulations found in the Mines and Minerals Act, the Income Tax Act, the Custom and Excise Act, the Foreign Investment Act, etc., are either lacking or out of date and will/should be considered for reviews, improvements or amendments immediately.

3.0 Key Objectives for the Fiscal and Trade Regulation Consultant

The Consultant will assist MMERE and Ministry of Finance (MoF) and other relevant regulatory authorities as the Foreign Investment Division of the Ministry of Commerce, etc to prepare or review regulations, guidelines and protocols on matters beyond the scope of mining legislation to better harmonize mining-relevant regulation of taxation and trade, to include (a) mineral royalties, taxes and fees; (b) mineral revenue collection; and (c) mineral revenue allocation among provinces and area councils.

Specifically, the specialist should achieve the following objectives:

- i. That the consultant be working closely with the Mines Division (of MMERE), Economic Reform Unit (ERU), Inland Revenue and Customs and Excise Department under the Ministry of Finance, the Department of Foreign Investment, in the Ministry of Commerce and Labour, etc in reviewing the existing Fiscal and Trade Regulations for the mining sector, especially on the issues stated above (3(a-c)).

- ii. That the consultant to assists the regulatory authorities stated above in any consultation processes, if required, in the drafting or completion of any draft Fiscal and Trade Regulation or policy or guidelines on the subjects stated above (3(a-));
- iii. That the consultant, working together with the technical personnels, assist the MMERE and other regulatory authorities in providing advice and inputs when corresponding or giving feedbacks to the AGC and those in higher authorities for finalizing any policy or regulations.

4.0 Scope of Work/Expected Outputs

The consultant is assigned to implement the following activities:-

- i. Tax incentives carefully designed and effective (that is, to achieve their policy objective) and efficient (the policy goal is achieved at the minimum cost to government revenue).
- ii. Set standards and fiscal and regulatory conditions for mine reclamation
- iii. Propose new fiscal regime for mining, which adds a new “land tax” on top of existing royalties and the bonus tax on reserves, constitutes double, if not triple, taxation.
- iv. Transparent taxation (including license fees, surface rents, royalties, etc.), fiscal incentives (if any), qualification standards, and compliance procedures, at rates competitive with international norms;
- v. Proper governance, oversight, and equal treatment of upcoming SOEs that may engage in mining activity, and a clear path to eventual privatization of these companies.
- vi. Propose fair tax and regulatory regimes, if any, to be imposed by provincial governments or area councils.
- vii. Recommend policies and guidelines on the fair distribution of mineral revenue to all stakeholders, especially to the provincial government, the landowners and affected communities.
- viii. To define and recommend the role of someone at MMERE whose task is to ensure that fiscal and trade policies of Governments are clearly defined and implemented, a job similar to that of a mineral economist.

5.0 Deliverables

- i. A review report of existing Fiscal and Trade regulations with recommendations for improvements/amendments based on the issues identified in the scope of work above;
- ii. Draft regulations or amendments to regulations based on (i) to the affected regulations and policies, especially the Mines and Minerals Act and the current Mining Bill, or any other relevant legislations covering taxes, royalty or revenue sharing as the Income Tax Act, the Customs and Excise Act, the Foreign Investment Act, etc., and other policies/plans;
- iii. Conduct training/workshop on subjects specific to areas of royalty policies, mineral pricing, mineral taxation, revenue sharing/allocation etc.

6.0 Resources Required

~~None~~. The Consultant will be providing his/her own working tools such as laptops.

Relevant documents and reports will be made available to the specialist when requested, but copies of the legislations and other relevant policy documents are available, which may include the following:

- a. Mines and Minerals Act 1990
- b. Mines and Minerals Regulation 1996

- c. National Minerals Policy
- d. Income Tax Act
- e. Foreign Investment Act
- f. Customs and Excise Act
- g. The Goods Tax Act

7.0 Reporting & Supervision

The consultant will be required to work closely with the Permanent Secretaries of the Ministry of Mines, Energy and Rural Electrification (MMERE), Ministry of Finance (MoF), and Ministry of Commerce (MC) and other relevant divisions or Ministries through their respective Directors for guidance on a day to day basis.

The Consultant reports to the Permanent Secretary of MMERE through the ~~and~~ Director of Mines at the end of every working month.

8.0 Requirement for Qualification & Experience

i. Minimum education qualification:

- The consultant should have the relevant professional qualifications in Mineral Taxation/Economics, Trade and Law or legislation drafting.

ii. Experience/Skills:

- At least 15 years working experience in fiscal and trade policies and regulations formulation, implementation and review relating to the mineral sector,
- Have experience working in the public sector,
- Have experiences in consulting with stakeholders, both domestically and internationally,
- Have successful experience and record in facilitating legal frameworks through national legislative processes.

8.3 Competencies:

- Has good inter-personal skills and present them in English
- Good analytical and expert judgment
- Ability to engage with partners in negotiations

9.0 Duration of Contract:

- Title: Fiscal and Trade Regulation Specialist
- Period: 6 Months (or 180 days)
- Commencing Date: April 2023

10.0 Environment and Social Frameworks (ESF).

The Annex below is part of this TOR. The applicant is expected to be familiar with and must comply with the content of this annex.

Annex A. Technical Assistance Environmental and Social Risk Management Clauses

1. Outcomes and outputs, such as policy, studies, recommendations and advice, must be consistent with the World Bank ESF and its standards, the project E&S risk management documents (SEP, LMP, POM, ESCP), IFC Environmental, Health, and Safety Guidelines for mining, Solomon Islands law and good mineral rights management principles,
2. Outputs must include an analysis of the compatibility of current relevant legislations/regulations and practices to identify gaps to be addressed and recommend gap filling measures (if relevant).
3. Recommendations must consider downstream impacts on community and worker health and safety and avoid recommendations that would negatively impact safe working conditions and/or community health and safety.
4. Recommendations must consider the downstream impacts on resource use efficiency and refer to relevant good international industry practice (GIIP), including the mitigation hierarchy, for pollution control.
5. Recommendations must consider the downstream impacts on land acquisition and access and livelihoods and where necessary, include a requirement for minimizing or avoiding involuntary land acquisition, involuntary resettlement or involuntary restriction of access to assets.
6. Recommendations must consider whether vulnerable and traditionally disadvantaged groups (as identified in the Project SEP) will be disproportionately impacted.
7. Recommendations must consider the downstream impacts on land clearance, natural habitats such as forests, and reduction in biodiversity.
8. Recommendations must avoid any negative downstream impacts of activities on critical natural habitats.
9. Recommendations must avoid direct or indirect impacts on both tangible and intangible cultural heritage, including burial sites, tambu areas etc.
10. If applicable, the consultant/s must undertake due diligence on any good, hardware, or software procured to ensure that it causes no adverse environmental, social or health and safety impacts.
11. The consultant/s must carry out a stakeholder gap analysis to identify any relevant stakeholders that might not have been identified during the development of the Project SEP.
12. The consultant/s must consult with and engage relevant stakeholders, and the public where necessary, throughout the activity to gather and share information in accordance with the Project SEP.
13. Consultations must be inclusive and those with barriers to participation given extra support. These include vulnerable groups, in particular women, youth, people with disabilities and ethnic minorities, as detailed in the Project SEP.
14. Free, prior and informed consultation (FPIC) of potentially affected people, stakeholders, traditionally disadvantaged and vulnerable groups is required in all community consultations and engagements. FPIC shall be adequately delivered, gender and youth inclusive, and well documented and in compliance with the Project SEP.
15. The consultant/s will submit any relevant outputs (studies etc.) to the PMU ESF and Stakeholder Engagement Officer to review for compliance with the World Bank ESF and its standards, the Solomon Islands Sustainable Mining Development Technical Assistance Project (P173018) ESF Instrument – Overarching Project Terms of Reference | March 2021 project E&S risk management documents (SEP, LMP, POM, ESCP), IFC Environmental, Health, and Safety Guidelines for mining, and Solomon Islands law.
16. The consultant/s, with the assistance of the PMU ESF and Stakeholder Engagement Officer, will disclose the outputs and studies developed which [the Project Director] determines are disclosable.
17. Workshops and outreach events must be COVID-19 safe. Events organized under this contract must avoid large group gatherings (20 people or fewer) and allow for adequate physical distancing (at least 1 meter of separation between participants). The consultant shall register

the attendance of all attendees for contact tracing purposes and require attendees to follow standard precautions such as hand hygiene, physical distancing, and mask wearing. Ensure to liaise with Ministry of Health and Medical Services -COVID 19 oversight focal contact prior to workshops and trainings.