

**MODEL**  
**DISTRICT MINERAL FOUNDATION**  
**(TRUST) RULES, 2015**



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## Foreword

In 2008, the Centre for Science and Environment (CSE) published a detailed report on the mining sector titled: *Rich Lands, Poor People: Is sustainable mining possible?* We pointed out that minerals are found where there are forests, from where water comes and where adivasis and the poorest of India live. These are also the places where Naxalism is spreading. We intervened to ask for a new social and environmental contract in the mining sector, keeping in mind the need to utilize mineral resources, but also the interests of the people and the environment.

Such considerations fructified in the form of the Mines and Minerals (Development and Regulation) Bill (MMDR), 2011. But due to disagreements within the United Progressive Alliance (UPA) government and pressure from the industry, the Bill was allowed to lapse in February 2014. We believe that the MMDR Bill, 2011, made an attempt to balance all concerns. There were lacunae in it, but it recognised the need to incorporate community interests and environmental protection. In this way, there was a movement forward in the 2011 Bill from the MMDR Act of 1957.

Now we have the MMDR Amendment Act, 2015, which was passed by the Parliament in March 2015. Though the amendments introduced to the 1957 Act leave much to be done with respect to ensuring a sustainable mining future, it does create an opportunity to address the injustice that has been inflicted upon communities in the mining areas. It provides for the establishment of the District Mineral Foundation (DMF), a Trust that would function as a non-profit body to “work for the interest and benefit of persons, and areas affected by mining related operations”. The Act further states that the objective and functioning of the DMF should be guided by Constitutional provisions as it relates to Fifth and Sixth Schedules for governing tribal areas. It should also be guided by the provisions of the Panchayats (Extension to Scheduled Areas) Act (PESA), 1996, and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 – in short the Forest Rights Act (FRA).

The Act also broadly outlines an amount that lease holders are required to pay to the DMF annually with regard to major minerals. It requires the holders of a mining lease or prospecting licence-cum-mining lease (granted on or after the commencement of the Act) to pay the DMF an amount not exceeding one-third of the royalty of the respective mineral being mined. Existing mining lease holders are required to pay the DMF an amount not exceeding the royalty.

If applied to its best intent, the DMFs have huge potential for improving the lives and livelihoods of some of the poorest communities of India. However, this can only happen if the Rules guiding the DMF are developed appropriately and implemented with proper planning, oversight and accountability. The states have a central role in this.

The Act empowers the State Governments to make rules for regulating the functions of the DMF. In addition, the states are to determine the amount of payment concession holders of minor minerals will make to the DMF. The states are also in the best position to identify the needs of the poor and the community at large.

We at CSE, have been engaged with the government on a number of occasions regarding the reform of our mining laws, the latest being with respect to the MMDR Amendment Act, 2015. Given our long-term engagement and experience, we have developed Model Rules for DMF. We believe that the Model Rules we are proposing will serve the best interest of the law and realise the objective for which it has been instituted. The Model Rules include the following:

- Rules to define the process of identification of affected persons and areas;
- Rules for the setting up and functioning of the Trust, to ensure effective utilisation of funds for the benefit of persons and areas affected by mining or mining related operations;
- Rules to define how and on what the funds will be spent so that it is for the interest and benefit of persons and areas affected by mining or mining related operations;
- Rules to ensure that affected persons have a role in deciding how the funds are spent so that it ensures their interests and benefits them;
- Rules to ensure that certain funds are kept aside for the future, to prevent communities from becoming impoverished once mining operations cease in the district;
- Rules to ensure that the Trust operates with best principles of transparency and accountability;
- Rules to ensure that there are safeguards and penalties for non-compliance with the payments to the Trust;
- Rules to set up an Ombudsman as an overseer of the functions of the Trust.

After years of deliberation, the establishment of DMF provides an opportunity to rewrite the contract between people and the mining industry. The blueprint of the contract has been drafted, now it is time to adopt the means to set it right.

**Chandra Bhushan**

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## MODEL RULES

### DISTRICT MINERAL FOUNDATION (TRUST) RULES, 2015

In exercise of the powers conferred by Section 9B, Section 15(4) and Section 15A of the Mines and Minerals (Development and Regulation) Act, 1957 (as amended in 2015) and guided by the provisions contained in article 244 read with Fifth and Sixth Schedules to the Constitution relating to administration of the Scheduled Areas and Tribal Areas and the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Government of \_\_\_\_\_ (*name of the state*) hereby makes the following rules, namely:-

#### 1. Short title and commencement

- (1) These rules may be called the \_\_\_\_\_ (*name of the state*) District Mineral Foundation (Trust) Rules, 2015.
- (2) They shall come into force from the date of their publication in the official Gazette.

#### 2. Application

- (1) These rules shall extend to the whole state of \_\_\_\_\_ (*name of the state*), and
- (2) They shall apply to all minerals, including minor minerals, as specified under the Mines and Minerals (Development and Regulation) Act, 1957 (including as amended in 2015), and any other minerals which the Central Government may by notification declare in the Official Gazette.

#### 3. Definitions

- (1) “Act” means the Mines and Minerals (Development and Regulation) Act, 1957 (as amended in 2015);
- (2) “affected areas” means areas affected by mining or mining related operations as identified by the district government. These will include directly affected areas and indirectly affected areas, as follows –
  - (a) “directly affected areas” means those areas where mining or mining related operations, such as beneficiation and waste disposal (such as overburdened dumps and tailing ponds, etc.), are actually taking place. These include –
    - (i) villages in which mining or mining related operations are taking place, including those within three kilometer radius from the boundary of the mine lease area. For small-scale mines with leases less than five hectares, the three kilometer radius is not applicable, except for cluster mining;  
*Explanation* – A cluster mining is one where the periphery of one lease area from the periphery of another lease area is less than one kilometer. The total lease area of all mines shall be equal to or more than 50 hectares.
    - (ii) villages (resettlement areas) in which at least 25 per cent of the affected families are resettled;
    - (iii) villages that significantly depend on the affected areas for meeting their economic needs and have usufruct and traditional rights over such areas e.g. for grazing, collection of minor forest produce etc;

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- (b) “indirectly affected areas” are block/blocks, excluding directly affected areas, in which mining or mining related operations are taking place within the district;
- (3) “affected persons” means only those persons directly affected by mining or mining related operations. These include people who have legal and occupational rights over the mined land, and also those with usufruct and traditional rights over such land. The following shall be identified as affected persons –
- (a) “affected family” that includes –
- (i) a family whose land or other immovable property has been acquired for mining or mining related operations;
  - (ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct rights, share croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land for mining or mining related operations, whose primary source of livelihood stand affected by such acquisition of land;
  - (iii) Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act), 2006 due to such acquisition of land;
  - (iv) families displaced by very old mines and resettled in a different village, as identified under Rule 12(3)(c)(ii);
- (b) “displaced family” means any family, who on account of acquisition of land for mining or mining related operations has been relocated and resettled from the affected area to the resettlement area;  
*Explanation* – Resettlement areas are where the affected families who have been displaced as a result of land acquisition are resettled by the appropriate Government.
- (c) Any other as appropriately identified by the Gram Sabha;
- (4) “beneficiaries” mean the affected persons as identified by the Gram Sabha;
- (5) “District Mineral Foundation” means a statutory trust established as a non-profit body by the Government in all districts affected by mining or mining related operations, in accordance with Section 9B of Act;
- (6) “Government” means Government of \_\_\_\_\_ (*name of the state*);
- (7) “Gram Panchayat” means an institution of self-government for the rural areas as defined under Article 243(d) and 243B of the Constitution (Seventy-third Amendment) Act, 1992;
- (8) “Gram Sabha” means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level as defined under Article 243(b) of the Constitution (Seventy-third Amendment) Act, 1992;
- (9) “Rules” means the District Mineral Foundation (Trust) Rules, 2015;

- (10) “Trust” means the District Mineral Foundation, which is a statutory trust as notified by the Government of \_\_\_\_\_ (*name of the state*) to be governed by its own rules and regulations so notified under these Rules.

#### **4. Objective of the Trust**

The Trust shall work for the interests, benefits and sustainable development of persons and areas affected by mining or mining related operations in the district in such ways as may be prescribed by these Rules, in an effective, transparent and accountable manner.

#### **5. Composition and management of the Trust**

- (1) The Trust shall consist of a Governing Council and a Managing Committee.
- (2) The authority to manage the Trust shall vest in the Governing Council.
- (3) The Governing Council shall consist of –
  - (a) One adult female and one adult male from each village in the directly affected area, nominated by the respective Gram Sabha - Members;
  - (b) Mining company representatives of the mines operating in the district, no more than three, nominated by the mining companies or association thereof - Members;
  - (c) Head of district offices of Government departments as nominated by the Government, including the Departments related to Social Welfare, Rural Development, Women and Child Development, Mines and Geology, Labour, Agriculture, Land Reforms, Forests and Environment - Members.
- (4) At least 51 per cent of the members of the Governing Council shall be from villages of directly affected areas.
- (5) The tenure of members of the Governing Council shall be for a maximum of three years. Members and their immediate family members once elected can be re-elected only after a gap of 10 years.
- (6) The tenure of the government representatives in the Governing Council shall be three years or terminate when she/he ceases to hold that office or appointment, whichever is earlier.
- (7) The day to day functioning of the Trust shall vest with the Managing Committee.
  - (a) The Managing Committee shall consist of –
    - (i) District Magistrate - Chairperson;
    - (ii) One person from directly affected areas, nominated by the Governing Council - Co-Chairperson;
    - (iii) Five representatives from directly affected areas, with at least two women, nominated by the Governing Council - Members;
    - (iv) District Mining Officer and District Welfare Officer, nominated by the Government - Members;
    - (v) One representative from mining companies contributing to the Trust, nominated by the mining companies operating in such district or association thereof - Member;
    - (vi) Lead bank officer of district, nominated by the Governing Council – Member;

- (vii) Serving officer of the Government no lower than the rank of Class I officer or Additional District Magistrate with experience in disciplines of rural development or social welfare, to be appointed by the Government - Secretary.
- (b) The tenure of members of the Managing Committee shall be for a maximum of three years. Members and their immediate family members once elected can be re-elected only after a gap of 10 years.
- (c) The tenure of the government representatives in the Managing Committee shall be three years or terminate when she/he ceases to hold that office or appointment, whichever is earlier.
- (d) The tenure of the Secretary shall be for a maximum of three years, and may be renewed for an additional two years based on the decision of the Governing Council. It shall be non-renewable after tenure of three plus two years.

## 6. Power and functions of the Trust

- (1) The Governing Council shall be responsible for or vested with –
  - (a) Voting on the annual account;
  - (b) Coordinating with the Managing Committee on development of the annual plan (through the involvement of the Planning Committee of the Governing Council) and passing of the annual plan of the Trust;
  - (c) Nominating representatives from directly affected areas including the Co-chairperson, Coordinators (three in numbers, to be nominated from among the members of the Governing Council, for calling Requisition Meetings of the Governing Council, as and when required) and Treasurer to the Managing Committee.

*Explanation* – A Treasurer for the Managing Committee shall be appointed by Governing Council from among the members of Managing Committee. Tenure of Treasurer shall be co-terminus with his/her membership in Managing Committee.
  - (d) Ratifying the appointments of officers and auditors to run the Trust;
  - (e) Ratifying the audit reports presented by the Managing Committee;
  - (f) Deciding the salaries of appointed persons, excluding the Secretary of Managing Committee;
  - (g) The power to remove any/all members of the Managing Committee (excluding the Chairperson) by simple majority, where the quorum for such meeting shall be at least 50 per cent of the members of the Governing Council, with at least 51 per cent representation from directly affected areas;
  - (h) Power to file complaint and get offence registered against any member(s) of Managing Committee including the Chairperson by simple majority, where the quorum for such meeting shall be at least 50 per cent of the members of the Governing Council, with at least 51 per cent representation from directly affected areas.
  - (i) Conducting social-audits of the developmental schemes/works of the Gram Sabhas, with at least 10 per cent of all the Gram Sabhas social-audited in a year. The committee responsible for conducting the social-audit for each selected Gram Sabha shall comprise of five selected members of the Governing Council, excluding members from the Gram Sabhas which are to be social-audited in that year.
  - (j) Constituting sub-committees such as Planning Committee for assisting in preparation of annual plans of the Trust, as found expedient from time to time, for smooth functioning of the Trust.



- (k) Allocating funds for the efficient working of the Ombudsman's office and conducting annual performance appraisal of Ombudsman. All such decisions relating to the office of the Ombudsman shall be determined by simple majority, where the quorum for such meeting shall be at least 50 per cent of the members of the Governing Council, with at least 51 per cent representation from directly affected areas. Provided that, the removal of the Ombudsman on the basis of unsatisfactory performance shall be determined by two-third majority of the quorum voting against the Ombudsman. For such purposes, the quorum for such meetings shall be at least 50 per cent of the members of the Governing Council, with at least 51 per cent representation from directly affected areas.
- (2) The Managing Committee shall be responsible for –
- (a) Coordinating, consolidating and developing the annual plan of the Trust as described under Rule 9;
  - (b) Approving the lists of beneficiaries as identified by the Gram Sabha;
  - (c) Distributing monetary benefits through bank transfer to the beneficiaries.  
*Explanation* – Families displaced by very old mines and resettled in a different village, as identified under Rule 12(3)(c)(ii), shall not be considered as beneficiary. For the purpose of this sub-rule, for distributing monetary benefits priorities shall be given to those living below poverty line, orphans, widows, single mothers, physically challenged persons, senior citizens, etc.
  - (d) Undertaking such other activities as are in furtherance of the objective of the Trust, including supporting livelihoods, essential services and maintenance of local infrastructure for socio-economic purposes in the affected areas;
  - (e) Appointing officers to run the Trust and auditors; however, these appointments shall require ratification by the Governing Council;
  - (f) Organising meetings of the Trust;
  - (g) Presenting audit reports for ratification to the Governing Council.

## 7. Meetings of the Trust

- (1) The Governing Council shall meet at least once every six months.
- (2) Requisition meeting(s) of the Governing Council may be called by the Coordinators of the Governing Council. The agenda of such meeting(s) must be shared with the Governing Council at least one month prior to the date of the meeting(s), and must be ratified by 51 per cent members of the Governing Council. The meeting(s) shall take place, giving 15 days notice to the Governing Council, at a place as found appropriate and convenient to the members.
- (3) The Meeting of the Managing Committee shall be held monthly and shall convene as decided by the Chairperson of the Managing Committee.
- (4) The quorum for such meetings, both for Governing Council and for Managing Committee, shall be 50 per cent of the total members, with minimum 51 per cent representation from directly affected areas.

## 8. Power and functions of the Gram Sabha of affected areas

- (1) The Gram Sabha shall identify beneficiaries according to the following process –
  - (a) Prepare a list of prospective beneficiaries and maintain a register containing relevant details of them.

- (b) Upon verifying the prospective beneficiaries, the Gram Sabha shall pass a resolution and forward the same to the Managing Committee. The Managing Committee can verify but not override the beneficiaries list. If the Managing Committee has any objection to the list as submitted, it shall send it back to the Gram Sabha with appropriate reasons and specific comments in writing. However, once a revised list is forwarded to the Managing Committee by the Gram Sabha addressing the concerns, it shall be approved and passed by the Managing Committee.
  - (c) The quorum of the Gram Sabha meeting where a resolution will be passed, shall not be less than 50 percent of all members of such Gram Sabha, and shall include members belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes and women in general proportion to their population. At least one-third of the members present must be women.
  - (d) The quorum of the Gram Sabha to pass any resolution with respect to identifying the beneficiaries would require the presence of at least 50 per cent of the claimants or their representatives. The resolution shall be passed by a simple majority.
- (2) The Gram Sabha shall be responsible for identification of developmental schemes/works for the village that may be supported by the Trust Fund formulation of criteria for fixing their priorities, and developing an annual plan as described under Rule 9.
  - (3) The Gram Sabha shall be responsible for the monitoring of the developmental schemes/works supported by the Trust Fund.

#### **9. Development of annual plan**

- (1) The Trust shall develop an annual plan which shall be operational for a financial year.
- (2) The annual plan shall include the type and quantum of developmental schemes/works for which the Trust Fund shall be used. Such developmental schemes/works shall be implemented within a defined timeframe for the benefits of affected areas and affected persons therein.
- (3) The fund allocation for various developmental schemes/works shall be as provided under Rule 12(2), and such allocations shall be guided by provisions of Rule 12(3) of these Rules.
- (4) The process of developing the annual plan shall strictly adhere to the principles of bottom-up approach, involving the Gram Sabhas of affected areas. The Governing Council and the Managing Committee shall be involved in respective capacities as provided under these Rules.
- (5) The Trust shall commence the annual planning process at the beginning of the fourth financial quarter every year, for the developmental schemes/works to be executed in the following financial year.
- (6) The Managing Committee at the beginning of the fourth financial quarter, shall inform respective Gram Sabhas of affected areas about the funds available

(provisional) for the year as provided under Rule 12(2)(c)[i,ii,iii]. Funds will be allocated to each Gram Sabha in such manner that it is proportionate to its population.

- (7) In accordance with the funds provisionally earmarked, each Gram Sabha shall prepare an annual plan for the deployment of such funds for various developmental schemes/works including distributing monetary benefits.
- (8) The Trust shall take initiatives for training and capacity building of Gram Sabhas of affected areas for preparation of such plans at the beginning of planning process.
- (9) The developmental schemes/works for which the funds shall be used shall be identified in a manner such that local needs and priorities of the affected areas are reflected. Every identified developmental scheme/work shall also have a verifiable and time bound outcome component.
- (10) The Gram Sabhas shall submit their respective annual plans to the Managing Committee by the middle of the fourth financial quarter. The Managing Committee shall consolidate all the annual plans received from Gram Sabhas of affected areas and prepare a consolidated annual plan for the Trust by the end of fourth financial quarter of the year.
- (11) The annual plan of the Trust shall include a compendium of such plans submitted by Gram Sabhas of affected areas besides other planned activities of the Trust for the financial year. The consolidated annual plan of the Trust shall also be guided by the principles contained in Rule 12(3) of these Rules for allocating the Trust Fund to various affected persons and affected areas.
- (12) The annual plan shall be finalized by the Managing Committee in consultation with the Planning Committee of the Governing Council by the end of the fourth financial quarter and submitted to the Governing Council. The Governing Council shall review and pass the annual plan unanimously as provided under Rule 6(1)(b).

## **10. Trust Fund**

- (1) The Trust Fund shall include –
  - a) Contributions from the holders of a mining lease, or a prospecting license-cum-mining lease, under the provisions of sub-section (5) of section 9B of the Act.
  - b) Contributions from the holders of a mining lease under the provisions of sub-section (6) of section 9B of the Act.
  - c) Contributions from the holders of minor mineral concession under the provisions of section 15A of the Act. The Government shall prescribe the contributions to the Trust Fund for all concession holders of minor minerals, in a manner, which shall not be less than one-third of the amount that the concession holders pay as royalty to the Government.
  - d) Any interests accrued to the bank accounts of the Trust Fund.
- (2) The Government may give financial assistance to any such Trust by way of loan, capital grants or other payments.

**11. Operation of the Trust Fund**

- (1) The Trust Fund shall be kept in one or more scheduled commercial Nationalized Banks through bank account(s) in the name of the Trust and all such account(s) shall be operated under the joint signatures of at least two of the three signatories; the three signatories being the Chairperson, the Co-Chairperson and the Treasurer of the Managing Committee.
- (2) The Trust shall maintain the books of accounts of this Fund.

**12. Expenditure from the Trust Fund**

- (1) The Trust Fund shall be strictly used for the benefit of persons and areas affected by mining or mining related operations and for their social and economic upliftment.
- (2) The total amount that the Trust Fund will receive in a year shall be earmarked specifically for various purposes as –
  - (a) Ten per cent to be deposited in an account of a Nationalized Bank for future use once mining activities cease in the affected areas. The fund must be strictly used for the purposes as described in Rule 12(1), as well as for emergency situations, such as natural calamities as considered necessary by the Trust;
  - (b) Five per cent shall be used for training and capacity building of the Gram Sabhas in the affected areas for planning, monitoring of developmental schemes/works, financial management, providing legal support etc.;
  - (c) Eighty-five per cent shall be spent in the following manner –
    - (i) No less than 65 per cent shall be spent on directly affected areas;
    - (ii) No less than 50 per cent shall be used for the upliftment of directly affected persons;
    - (iii) No more than 15 per cent shall be spent on indirectly affected areas;
    - (iv) No more than 10 per cent shall be spent for the development of the district, excluding directly and indirectly affected areas;
    - (v) No more than five per cent shall be given to the Chief Minister's Fund to be used only for remediation of pollution or other mining related calamities, in such other areas within the state, but not falling within the district under the Trust;
    - (vi) No more than five per cent shall be used as administrative expenses of the Trust, including the expenses for Ombudsman office.
- (3) The funds available with the Trust shall be used for –
  - (a) Benefit-sharing, by providing direct monetary benefit to the affected persons in following manner–
    - (i) Every person or family entitled to equal monetary benefit shall be paid either on a monthly or annual basis;
    - (ii) A bank account shall be opened in the name of the woman head of the family for such monetary transaction. In absence of a woman head, the account shall be opened in the name of any other suitable member of the affected family;
    - (iii) The amount of monetary benefit payable shall be decided by the Managing Committee of the Trust at the beginning of each financial year. However, such amount shall not be less than the amount a family may be entitled to under the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005.

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- (b) Securing livelihoods of directly affected persons, including those receiving direct monetary benefit under the provisions of Rule 12(3)(a) –
    - (i) Providing education scholarships, health services, livelihood trainings and loans to establish small businesses;
    - (ii) Providing inalienable land to the absolute landless affected families (including those displaced by very old mines) with priority to shelter, and then for other land uses such as agriculture, fisheries etc. In all such cases land shall be given to the landless affected families or direct descendants of such families living in the same district;
    - (iii) Priority shall be given to support businesses of women;
    - (iv) A part of the Trust Fund used for administrative expenses shall also be used for capacity building of the affected persons to run the Trust, including fiscal training.
  - (c) Developing a village level fund for very old mines in cases where –
    - (i) Identifying beneficiaries is difficult because of out-migration of displaced people and influx of outsiders. Such fund shall be used for targeted expenditure;
    - (ii) Displaced people/families have settled in a different village. The fund shall be developed for the development of such villages where people/ families have been resettled to give benefits to the descendants of the displaced people/families. Such beneficiaries shall be identified by related Gram Sabhas (by the Managing Committee in absence of such Gram Sabhas) within three years of the commencement of these Rules.
  - (d) Investing in the future to help revive and sustain the economy of the affected areas in accordance with Rule 12(2)(a);
  - (e) Bearing the costs for legal support and awareness for the benefit of affected families and directly affected areas;
  - (f) Support to essential services and infrastructure such as drinking water and electricity;
  - (g) Maintenance of infrastructure, health services and education;
  - (h) Training and capacity building of Gram Sabhas for purposes as provided under Rule 12(2)(b);
  - (i) Urgent projects such as small bridges, small stretch of road, etc. that the Gram Sabha may propose to the Trust, subject to approval by the Governing Council.
- (4) The entitlement of districts from state coffers shall not be affected by the Trust coming into effect. The Trust Funds may be used as an ‘add-on’ (to supplement and not supplant the funds that district/blocks/villages would receive normally). For such purposes, there shall be mechanisms put in place to transfer the Trust Funds to other concerned Government departments that can implement and maintain these assets. There shall be a system developed by the Trust, as specified by the Managing Committee, within a year of commencement of these Rules, to verify and audit such contributions periodically.

### 13. Accounts and audits

- (1) For the purposes of the Right to Information Act, 2005, the Trust is deemed to be a public authority, open to the government as well as public audit and scrutiny.

- (2) The Trust shall maintain a register giving details of –
  - (a) The list of holders of a mining lease in the district and the annual payments made by them to the Trust;
  - (b) The list of beneficiaries in the district;
  - (c) The disbursal of benefits to the affected persons;
  - (d) Annual audited accounts of the Trust.
- (3) The Trust shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, income and expenditure and balance sheet in respect of the funds available with the Trust, in a manner as may be prescribed by the Government in consultation with the Accountant General of the state.
- (4) The accounts of the Trust shall be annually audited in a manner as may be prescribed by the Government in consultation with the Accountant General of the state.
- (5) In addition to the financial audit, there shall be an independent social-audit by the Governing Council under the provisions of Rule 6(1)(i). The parameters of such social audit could include coverage of mining affected people and families with respect to benefit sharing, timeliness of benefit payments, timeliness of developmental schemes/works undertaken, work completion rates, and any such related issues.
- (6) The Trust at the end of each year shall prepare an annual report on the activities it has undertaken and share it with the Government.
- (7) The accounts of the Trust together with the financial audit report, the social-audit report and the Annual Report shall be forwarded annually to the Government by the Trust. The Government shall cause the reports to be laid, as soon as it is received, before the State Legislature.
- (8) All information concerning the Trust, including accounts, fund disbursal and use, audit reports, annual report and meeting minutes, must be put in the public domain, which shall involve developing a website of the Trust for such purpose. The annual report shall be distributed to each Gram Panchayat in the local language.
- (9) The proceedings of the Gram Sabha meetings related to the Trust activities shall be certified by all Gram Sabha members and the original copy shall be kept with the two affected families' representatives of the Governing Council from each Gram Sabha. For other purposes, certified copies with the signature of these two representatives of Gram Sabha shall be made available as and when required by the Managing Committee.

#### **14. Ombudsman**

The Government shall appoint Ombudsman for addressing the grievances related to the Trust. Any person, who has a grievance against any member, or the functioning of the Trust, or is aggrieved by any decision of the Trust; may, in person or through a representative, may file a complaint to the Ombudsman, in accordance with the procedure as given in the First Schedule of these Rules.

**15. Penalty and recovery of contribution to Trust Fund**

- (1) The licensee shall make the required payment to the Trust in the same frequency as the licensee is required to pay royalty to the Government.
- (2) In case the licensee fails to make the required payment to the Trust on time, then following shall apply –
  - (a) in addition to the principal amount so payable, a 12 per cent interest shall incur to the licensee from first date of the default, which the licensee will be required to pay for the following three months to the Trust as applicable;
  - (b) In case the licensee continues to default after the expiry of the stipulated three month period, then in addition to the principal amount so payable, a 20 per cent interest shall incur to the licensee for the next three months;
  - (c) In case of failure to make the required payment after six months from the date the licensee first started to default on the payment, the Government shall initiate appropriate legal proceedings against the licensee;
  - (d) In case the licensee does not make the required payment for one year, the mining license shall be suspended, and the lease shall be re-auctioned.
- (3) In case any member of the Trust found to steal, purloin or embezzle any money or other property whereby the Trust Fund may be exposed to loss, shall be subject to the same persecution and, if convicted, shall be liable to be punished in like manner as any (civil) person, not a member, would be subject and liable to in respect of the like offence.

**16. Review clause**

The Government shall review and revise the provisions declared under such Rules every ten years, to remain effective to uphold the "objective" of the Trust.



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## FIRST SCHEDULE

### Ombudsman

#### 1. Appointment, tenure and removal

- (1) The Government shall appoint Ombudsman for the Trust. Depending on the scale of mining or mining related operations, the Government shall appoint one person as Ombudsman for one or more districts-
  - (a) There shall be a separate Ombudsman for each district where royalty collected on an average is equal or more than Rs. 20 crore per year for the past three consecutive years.
  - (b) The Government may appoint, as it deems appropriate, one Ombudsman for more than one district in cases where the royalty for each such district is less than Rs.20 crore per year for the past three consecutive years, provided that the Government shall review such appointments every five years.
- (2) Appointment shall be based on the recommendations of the Selection Committee consisting of the following three persons:-
  - (a) Chief Minister of the State- Member;
  - (b) Leader of Opposition of the State – Member;
  - (c) Chair person of the State Public Service Commission- Member;The appointment of the Ombudsman should be based on consensus of the Committee members.
- (3) The Ombudsman so appointed will be from among persons of eminent standing and impeccable integrity.
- (4) The Ombudsman shall be appointed for tenure of three years extendable by two years based on performance appraisal or till the incumbent attains the age of 65 years, whichever is earlier. There shall be no reappointment. Annual performance appraisal shall be made by the Governing Council.
- (5) On unsatisfactory performance, the Ombudsman may be removed by the Government on the recommendation of the Governing Council.

#### 2. Salary and Allowance

- (1) The salary and allowances allocated to the Ombudsman shall be determined by the Governing Council but not less than that paid to an officer of the rank of first class Judicial Magistrate.
- (2) In case where one Ombudsman is appointed for a number of districts, the salary shall be as determined by the Government in consultation with concerned Governing Councils and contributions of various Trusts shall be proportionate to their annual royalties.

#### 3. Jurisdiction

The jurisdiction of the Ombudsman shall include all issues concerning the Trust.

#### 4. Location of Office

The office of the Ombudsman shall be located in the District Headquarters. In case where there is one Ombudsman for more than one district, in one of the districts.

#### 5. Office support

Ombudsman may employ or may keep on retainerhip the following, subject to approval by the Governing Council-



- (a) Legal officers with at least 5 years experience as an advocate;
- (b) Administrative staff to support the office;
- (c) Technical staff.

## **6. Powers and duties**

- (1) Receive complaints against the functionaries of the Trust on any matters specified in Section 7 of this Schedule.
- (2) Determine if such complaints are frivolous.
- (3) In cases of non-frivolous complaints, initiate and pursue the matter in the courts and follow it to the logical conclusion. The Ombudsman shall represent the case of the complainant before the Court, and shall present herself/ himself before the court as required.
- (4) Present the facts, witnesses and evidence before the Court to enable the Court to make a fair decision.
- (5) Prepare affidavits, and other documents as required in pursuance of the complaint.
- (6) Requisition of any public record or document or copies thereof from any Court or office.
- (7) To maintain confidentiality of any information or document coming into his knowledge or possession in the course of discharging his duties and not disclose such information or document to any person except with the consent of the person furnishing such information or document; provided that nothing in this clause shall prevent the Ombudsman from disclosing information or documents furnished by a party in a complaint to the other party or parties, to the extent considered by him/her to be reasonably required to comply with the principles of natural justice and fair play in the proceedings.
- (8) To furnish a report every year containing a general review of activities of the office of the Ombudsman during the preceding financial year to the Governing Council along with such other information that may be considered necessary. In the annual report, the Ombudsman, on the basis of grievances handled by him/her, will review the quality of the working of the Trust members/authorities/committees and make recommendations to improve functioning of the Trust and Trust Fund. The report shall be put on the website of the Government.

## **7. Grounds on which complaint can be filed**

A complaint pertaining to any one or more of the following subjects alleging deficiency in the implementation of the Trust can be filed with the Ombudsman–

- (1) Gram Sabha functioning related to the Trust
- (2) Discrimination on the basis of caste, religion, gender in relation to utilisation of Trust Fund
- (3) Quality of work of the Trust, its members or Committees
- (4) Engagement of contractors
- (5) Operation of accounts in the bank or post offices
- (6) Registration and disposal of complaints
- (7) Inspection of documents
- (8) Use of funds
- (9) Release of funds
- (10) Annual audits of the Trust
- (11) Social audit
- (12) Maintenance of records

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**8. Procedure for filing complaint and disposal thereof**

- (1) Any person, who has a grievance against the Trust Authorities or member(s), may, in person or through an authorised representative, make a complaint in writing to the Ombudsman.
- (2) The complaint shall be duly signed by the complainant and his authorised representative, if any, and shall state clearly the name and address of the complainant, the name of the office and official of the Trust against whom the complaint is made, the facts giving rise to the complaint supported by documents, if any, relied on by the complainant and the relief sought.
- (3) A complaint made through electronic means shall also be accepted by the Ombudsman and a print out of such complaint shall be taken on the record of the Ombudsman. A printout of the complaint made through electronic means shall be signed by the complainant at the earliest possible opportunity before the Ombudsman takes steps for disposal. The signed printout shall be deemed to be the complaint and it shall relate back to the date on which the complaint was made through electronic means.
- (4) Disposal of such complaint by Ombudsman shall be made at the earliest after considering all facts and evidences.
- (5) No complaint to the Ombudsman shall lie unless—
  - (a) It pertains to subjects or persons outside the purview of the Trust defined in these Rules.
  - (b) The complaint is not in respect of the same subject matter which was disposed by the Office of the Ombudsman in any previous proceedings whether or not received from the same complainant or along with any one or more complainants or any one or more of the parties concerned with the subject matter.
  - (c) No complaint shall be made to the Ombudsman on an issue which has been or is the subject matter of any proceeding in an appeal, revision, reference or writ before any Tribunal or Court.

**9. Register of complaints and annual report**

- (1) The Ombudsman shall maintain a register of complaints with details of related facts and evidences.
- (2) The Ombudsman shall prepare an Annual Report of its activities including number of complaints, relevant details thereof and the actions taken in a financial year. The report shall also include the amount received from the Trust Fund and details of expenditure incurred during the financial year.
- (3) The Ombudsman shall submit the Annual Report to the Governing Council.
- (4) The Register and Annual Report so prepared shall be put in public domain by the Ombudsman.



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