



International Environmental
Law Research Centre

Draft District Mineral Foundation Trust Deed

This document is available at ielrc.org/content/e5706.pdf

Note: This document is put online by the International Environmental Law Research Centre (IELRC) for information purposes. This document is not an official version of the text and as such is only provided as a source of information for interested readers. IELRC makes no claim as to the accuracy of the text reproduced which should under no circumstances be deemed to constitute the official version of the document.

DRAFT

DISTRICT MINERAL FOUNDATION TRUST DEED

THIS DEED OF TRUST EXECUTED AT -----ON THIS THE -----DAY OF _____ IN THE YEAR TWO THOUSAND FIFTEEN.

BY

THE STATE GOVERNMENT OF -----, represented by the _____ Secretary, Department of Mines, Government of _____ having its Headquarter at _____, herein after called “the SETTLOR”, OF THE ONE PART.

IN FAVOUR OF

The following TRUSTEES of the OTHER PART which expression shall, unless repugnant to or inconsistent with the context, mean and include the successors occupying the posts by designation:

Sl. No.	Name	Designation in the Governing Council
To be decided by the State Government		

WHEREAS Section 9B of the Mines and Minerals (Development and Regulation) Act, 1957 provides for establishment of a District Mineral Foundation Trust by the State Government, a non-profit body, with an objective to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government, and

WHEREAS the SETTLOR for this purpose has decided to set up a trust as an entity under the State Government for “no profit” and for playing an important role for common good of the community and for using the fund of the trust for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government, and WHEREAS the SETTLOR being desirous of establishing the District Mineral Foundation Trust has placed under the control of the TRUSTEES a sum of Rs.1,000/- (Rupees one thousand only), which sum is hereinafter referred to as the “INITIAL SETTLEMENT”.

NOW THIS DEED OF TRUST WITNESSETH AS FOLLOWS:

1. INTERPRETATION & DEFINITIONS;

- (1) IN THIS DEED OF TRUST wherever the context permits, the following word shall have the meaning mentioned herein:
 - (i) 'Act' means the Mines and Minerals (Development & Regulation) Act, 1957
 - (ii) “Auditors” the Auditor/Chartered Accountant appointed by the Trustees, and include the Accountant General of the State or other Auditors nominated by the Settlor.
 - (iii) “Beneficiaries” mean the persons and areas affected by mining related operations undertaken in the area.

- (iv) "Contribution" means the contribution to be collected from the holders of:
- (a) mining lease or a prospecting licence-cum-mining lease under the provisions of sub-section (5) of section 9B of the Act;
 - (b) mining lease under the provisions of sub-section (6) of section 9B of the Act; and
 - (c) minor mineral concession under the provisions of section 15A of the Act
- in the District as may be prescribed by the Central Government or State Government, as the case may be;
- (v) "Contribution Fund" means the Contribution Fund to be collected from the holders of
- (a) mining lease or a prospecting licence-cum-mining lease under the provisions of sub-section (5) of section 9B of the Act;
 - (b) mining lease under the provisions of sub-section (6) of section 9B of the Act; and
 - (c) minor mineral concession under the provisions of section 15A of the Act
- in the District as may be prescribed by the Central Government or State Government, as the case may be;
- (vi) 'District Magistrate' means the Head of the Revenue Administration at the District level whether designated as Deputy Commissioner or Collector.
- (vii) 'District Panchayat' means and includes District Council or any other authority entrusted with the similar functions in the areas under the Schedule-V and Schedule-VI of the Constitution of India.
- (viii) "Governing Council" means all the trustees of the District Mineral Foundation Trust.
- (ix) "The Trust" means the (name of the District) District Mineral Foundation Trust created by the SETTLOR.
- (x) "Year" means a financial year beginning April 1 and ending March 31 of the following year or part period thereof ending on March 31.
- (2) Words in the singular shall include words in the plural and words in the plural shall include the singular.
- (3) Words importing the masculine gender shall include female and neutral gender.
- (4) The headings and sub-headings to this Deed are inserted only for reference to the provisions here of and shall not affect the construction of such provisions.

2. NAME OF THE TRUST: The Trust shall be known as the (name of the District) District Mineral Foundation Trust, and its office would be located in the office of the District Panchayat of the District.

3. OBJECTS OF THE TRUST: The object of the District Mineral Foundation Trust shall be to work for the interest and benefit of persons, and areas affected by mining related operations in the District in such manner as may be prescribed by the State Government.

4. **APPOINTMENT AND DECLARATION:**

(1) The SETTLOR hereby appoints the TRUSTEES as the trustees of The Trust which is hereby created and the TRUSTEES accept such appointment on the terms and conditions mentioned herein.

(2) The TRUSTEES hereby appointed by official designation shall continue as TRUSTEES during the period they are holding the post and the designation and would be deemed to have ceased to be the TRUSTEES once they cease to hold the office by virtue of which they were so appointed and their successors in office shall be deemed to have been appointed as TRUSTEES in their place with effect from the date of their acquiring such official designation.

(3) The term of appointment for the nominated trustees shall be for three years with effect from the date of their appointment as TRUSTEES and the nominating authority may thereafter renew their appointment for another term or may nominate other persons in their place.

Provided that the term of such nominated trustees shall in no case exceed three terms of three years each.

- (4) The SETTLOR may at any time increase the number of Trustees in any of the categories and for such term as might be deemed fit by the SETTLOR.
- (5) The SETTLOR may at any time remove any of the trustees and may appoint any other person as the TRUSTEE at its sole discretion. The trustee so removed by the SETTLOR, shall cease to be a TRUSTEE with effect from the date of such removal.
- (6) The TRUSTEES shall stand possessed of the Trust Fund upon which and subject to the powers and provisions herein declared and contained concerning the same and the TRUSTEES shall have the power at any time or times during the Trust Period to accept any Property from any person or persons by the provisions of any other trust or otherwise to the intent that the same shall be held by or on behalf of the TRUSTEES as an accretion to the Trust Fund.

5. MANAGEMENT OF THE TRUST: The Management of the Trust shall vest in a Governing Council, which shall consist of all the members of the Trust. However, the day to day management of the Trust shall be managed by a Managing Committee, as defined in paragraph 9 below. The SETTLOR may however decide to alter the composition of the Managing Committee at any time. The powers and functions of the Governing Council and of the Managing Committee shall be as contained herein.

6. DECISIONS OF THE TRUSTEES:

(1) All decisions by the TRUSTEES shall be taken in the meeting of the Governing Council and every meeting of the Governing Council shall be deemed to be a meeting of the TRUST.

(2) All decisions of the Governing Council shall be taken by the majority of the members present and voting. In case of tie the Chairman of the meeting shall have a casting vote.

(3) Unless agreed to by the SETTLOR the TRUSTEES shall not amend any part of this TRUST DEED.

(4) TRUSTEES, Governing Council and the Managing Committee shall act in accordance with the directions, guidelines etc. issued by the SETTLOR from time to time.

7. POWERS & FUNCTIONS OF THE GOVERNING COUNCIL: The Governing Council, consisting of all the TRUSTEES shall be responsible for,—

(1) Laying down the broad policy framework for the functioning of Trust and review its working from time to time.

(2) Drawing up and approving of Annual Action Plan and the Annual Budget for Trust. The Annual Action plan must be prepared and approved by the Governing Council at least one month before commencement of the year. The Annual Action Plan shall contain the list of schemes and projects with the tentative provisions thereof.

Provided that if for any reason whatsoever, the Governing Council does not prepare and accord approval to the Annual Plan and the Budget within the specified time, the Chairman shall have Annual Action Plan and the Budget of the Trust prepared to approve the same. The Budget so prepared shall be deemed to have been duly prepared and approved by the Governing Council.

Provided also that while preparing the annual plan for the next financial year, the sum total of the past commitment and liabilities spilling over shall be assessed. To maintain financial discipline and timely completion of project, the sum total of the past liabilities and commitments and the new schemes being proposed should not in any case exceed three times the expected inflows for the next financial year.

(3) Approving such other expenditure, in furtherance of the objects of the Trust from the available Trust Fund in such manner as may be prescribed by the SETTLOR.

(4) Approving the recommendations of the Managing Committee;

(5) Approving the annual reports and audited accounts of the Trust within 60 days of the close of the previous year;

8. MEETINGS OF THE GOVERNING COUNCIL:

(1) The Governing Council shall meet as often as necessary but at least once every quarter.

(2) The Meeting of Governing Council shall be convened as desired by the Chairman.

(3) The Quorum for such meeting shall be one third of the total membership.

9. MANAGING COMMITTEE:

1. The affairs of the Trust shall be managed by a Managing Committee, which shall consist of –

To be decided by the State Government

10. MEETINGS OF MANAGING COMMITTEE: The Meeting of the Managing Committee shall be held at least six times in a financial year and it shall be convened as decided by the Chairman of the Managing Committee.

11. POWERS AND FUNCTIONS OF THE MANAGING COMMITTEE:

The Managing Committee shall

- (1) Exercise due diligence in carrying out its duties for protecting the interests of the Trust.
- (2) Ensure timely collection of Contribution Fund from the concerned Mining Lease Holders in accordance with the provisions of the Act.
- (3) Prepare the Master Plan / Vision Document for the activities of the Trust.
- (4) Assist in the preparation of the Annual Plan and the Annual Budget of the Trust alongwith the proposed Schemes and Projects.
- (5) Supervise and ensure the execution of the Annual Plan and the approved Schemes and Projects.
- (6) Accord sanction to the projects, release and disburse the Trust Fund for the purpose.
- (7) Operate the TRUST FUND and to invest the same in a diligent manner and to open Bank Accounts in the Name of the Trust and operate such accounts and investments.
- (8) Monitor the progress of the utilization of Trust funds.
- (9) Place the audited accounts alongwith an Annual Report before the Governing Council for its approval within 60 days of close of financial year.
- (10) Do all other things which are necessary for smooth functioning and management of the Trust.
- (11) Lay down and / or approve rules and procedures for the functioning of the Trust.

12. TRUST FUND: The Trust Fund of the District Mineral Foundation Trust would include the following:-

- (1) The Initial Settlement made by the SETTLOR,
- (2) Any grant, contribution or other monies received from the SETTLOR or from any other Agency, Institution or Person,
- (3) The Contribution Fund to be collected from the holders of
 - (a) mining lease or a prospecting licence-cum-mining lease under the provisions of sub-section (5) of section 9B of the Act;
 - (b) mining lease under the provisions of sub-section (6) of section 9B of the Act; and
 - (c) minor mineral concession under the provisions of section 15A of the Act

in the District as may be prescribed by the Central Government or State Government, as the case may be,

- (4) Investments and other deposits and the interest accrued thereon and any other income derived therefrom,
- (5) all other Properties of the Trust and the Income derived therefrom or appreciation thereof.

13. OPERATION OF THE TRUST FUND: The Trust Fund shall be kept in one or more scheduled commercial Nationalized Banks only in the name of the Trust and all accounts shall be operated under the joint signatures of the Member-Secretary and another member of the Managing Committee to be authorized by the Managing Committee. The Trust shall maintain the books of accounts of this Fund.

14. EXPENDITURE FROM OF THE TRUST FUND: The Funds available with the Trust shall be used for:-

- (1) the overall development of the area affected by mining related operations in the District in accordance with the Annual Action Plan prepared by the trustees of the Foundation for the purpose;
- (2) Creation of local infrastructure for socio-economic purposes;
- (3) Providing, maintaining or upgrading of community assets and services for local population in the area affected by mining related operations;
- (4) Organising or conducting training programmes for skill development and capacity building for creating employment and self-employment capabilities. Provided that a sum not exceeding 6% of the total funds received by the Trust in the year may be spent by the Trust for meeting its administrative or establishment expenses.

Provided further that the trust fund or any part thereof shall not be used for advancement of any loan or grants in cash to any of the beneficiaries.

15. CHARGING OF EXPENSES: The TRUSTEES shall be entitled to charge the Trust Fund with the following expenses:

- (1). all expenses properly incurred in the operation or execution of the Trust and for the realisation, preservation or benefit of the investments and assets comprising the Trust Fund and for the protection of the interests of the Trust;
- (2). all expenses (including expenses incidental to execution and/or registration of any agreement or other deeds) incurred by the TRUSTEES for obtaining the Contributions and or any other resources; which may accrue.
- (3). all expenses in connection with any legal proceedings by or against the Trustor concerning the affairs of the Trust including professional fees and costs of any legal adviser;
- (4). all legal and statutory expenses incurred in the operation or execution of the Trust including all levies, duties and other charges paid/ payable in connection with the affairs of the Trust ;and
- (5). all expenses in connection with the holding of its meetings, and other proceedings.

16. ACCOUNTS AND AUDIT:

- (1) (i) The Managing Committee shall maintain and /or cause to be maintained proper books of accounts, documents and records with respect to the Trust Fund to give a true and fair picture of the affairs of the Trust.
 - (ii) The accounts of the Trust shall be audited at least on completion of year by a qualified auditor.
 - (iii) The auditors of the Trust shall be appointed by the TRUSTEES from the List of approved auditors notified by the Accountant

General of the State in the meeting of the Governing Council, on such terms and conditions as decided by the Trustees.

(iv)The auditors may be removed and replaced by the TRUSTEES.

- (2) Notwithstanding the provisions of clause (1) above, the Settlor may appoint an auditor or auditors or may request the A.G. for audit of a particular year or period on such terms as the Settlor may so decide.
- (3) The Trust shall forward the approved Budget and Annual Plan alongwith Schemes and Projects for the next financial year, to the District Panchayat, District Administration and the State Government for publication on their respective websites.
- (4) The Trust shall prepare a quarterly progress report in physical and financial terms in respect of the approved Schemes and Projects within 45 days of the close of the quarter and forward it to the District Panchayat and District Administration, immediately thereafter for publication on their respective websites.
- (5) The Trust shall forward the approved Annual report and the approved Audit Report immediately after their approval by the Governing Council within 60 days of close of Financial Year to the District Panchayat, District Administration, and to the State Government along with Audit Report for publication on their respective websites.

17. ADMINISTRATIVE ARRANGEMENTS

(1) The State Governments shall provide services of the personnel under their control including employees working in the District Panchayat for management of the Trust and for execution of the Annual Plan as may be required for the purpose.

(2)The Trust may request the SETTLOR/State Government to provide required number of core personnel from its departments or from regular employees of the Zila Parishad or such other cadre, for providing administrative and technical assistance to the Trust. Services of such personnel shall continue to remain in their own respective cadres. The Trust may bear expenditure upto 3% of its accrued funds for this purpose. {This 3% would be within 6% given at para 14(4)}

(3) The Trust may also ask services providers to provide such services as may be needed for smooth functioning of the Trust and may provide for incurring contingent expenditure for its functioning.

18. LIABILITY OF TRUSTEES:

(1) The TRUSTEES shall not be liable on account of anything done in good faith, bonafide with due diligence. The TRUSTEES shall also not be liable or responsible for any banker, broker, custodian or other person in whose hands the same may, in good faith, be deposited or placed nor for the deficiency or insufficiency in the value of any investments of the Trust Fund nor otherwise for any involuntary loss.

(2) The TRUSTEES and every attorney or, agent appointed by the TRUSTEES shall be entitled to be indemnified out of the Trust Fund in respect of all liabilities, losses and expenses incurred in execution of the Trust or any of the powers, authorities, and discretions vested in or

delegated to them other than those arising out of gross negligence and/or wilful misconduct, provided however, that, such indemnity shall not in any event exceed the total of the Contributions.

19. TRUSTEES REMUNERATION: The TRUSTEES shall not be entitled to any remuneration for their services.

20. AMENDMENT: This Trust deed may be amended from time to time by _____ the TRUSTEES only with the prior concurrence of the SETTLOR and not otherwise.

21. THE SEAL OF THE TRUST: The TRUSTEES, in a meeting of the Governing Council may decide to provide a Seal for the purpose of the Trust and shall have power from time to time to destroy the same and substitute a new seal in lieu thereof. The Seal of the TRUST shall remain in the custody of the Chairman of the Managing Committee and the Chairman shall have the authority to use the same for and on behalf of the TRUST.

22. REVOCABILITY: This Trust is revocable at the discretion of the SETTLOR. The Trust shall continue to exist till such time as may be decided by the SETTLOR. At the time of extinguishment of the trust, all the assets and liabilities of the Trust shall be transferred to the State Government.

IN WITNESS whereof the parties hereto have executed this deed on the day and year first hereinbefore appearing.

Signed and Delivered on behalf of the SETTLOR.

(_____)

_____ Secretary,

Department of Mines, Government of _____.