To
The Principal Secretary / Secretary,
In-charge Mining Department,
All State Governments, UTs.

Subject: Imposition of conditions in the lease deed in regard to FRA Compliance in the cases covered under Section 10A(2)(c) of MMDR Act, 1957.

Sir/Madam,

I am directed to say that as per the provisions of section 10A(2)(c) of the Mines & Minerals (Development & Regulation) (MMDR) Act, the applications saved under it shall be granted mining lease, subject to fulfilment of the conditions of the previous approval or of the letter of intent, before 12.01.2017, failing which, they would 

2. That, in order to expedite the grant of lease in these cases, the Ministry of Environment, Forest & Climate Change (MoEF&CC), vide their guidelines no.11-85/2016-FC, dated 30th Nov, 2016, has agreed to grant the Forest Clearance (FC) under section 2(iii) of Forest Conservation Act (FCA),1980 in the eligible cases for enabling the grant of lease, while mandating that the mining activity could commence only after obtaining FC under section 2(ii) of FCA for diversion of the forest land. The FC under section 2(iii) of FCA in these cases, is being granted by MoEFCC imposing the condition for compliance of the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) for grant of lease.

3. That, the matter was taken up with Ministry of Tribal Affairs for not insisting FRA compliance for grant of lease in such cases in view of the limited time available, where FC has been granted under section 2(iii) of FCA by MoEFCC, since the FRA compliance is mandated under the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act , for obtaining FC under section 2(ii) of the FCA, which is essential for diversion of forest land, before commencing the mining activity.

4. That, the Ministry of Tribal Affairs has concurred on the above to enable the grant of lease in the cases saved under section 10A(2)(c) of the MMDR Act, by
specifying certain conditions to be incorporated in the lease deed, to address their concerns for safeguarding forest rights. The following conditions have been stipulated by the Ministry of Tribal Affairs to be specified in the lease deed document:

i) Fulfilment of the conditions as mentioned in MoEF&CC’s circular no. 11-9/1998-FC(pt) dated 03.08.2009 has to be ensured by the project proponent.

ii) The physical possession of leased area will be handed over to the lessee only after the forest rights are settled as envisaged; and in any way, lease deed cannot create any right for the lessee till the forest rights are settled as envisaged under the extant provisions for FRA compliance.

iii) Lessee shall not confine the area and not restrict the entry to the area by villagers, by way of putting fencing or engaging guards etc.

iv) Lease deed will in no way affect / disturb the existing rights of tribals of access to forest resources as mentioned under Section 3 of FRA, which includes:

   a. Access to water bodies
   b. Fishing
   c. Grazing
   d. Collection and processing of MFP / NTFP (Tendu / Bamboo / Honey / Mushroom etc.)
   e. Auctioning, Trading and Transport of MFP / NTFP
   f. Access roads (if passes from the land provided under lease) etc.

v) Lessee shall not be entitled to cut any trees which disturbs the dependency of the local forest dwelling and forest dependent community.

vi) Lessee will neither start any work on the leased area nor do anything which affects the rights of forest dwellers.

vii) In compliance to Section 4(5) of FRA, no member of a forest dwelling Scheduled Tribes or Other Traditional Forest Dwellers shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.

viii) Lease deed shall not restrict the cultivation and habitation rights of the Scheduled Tribes and Other Traditional Forest Dwellers as mentioned under Section 3(1) of FRA.
ix) In compliance to Section 5 of FRA, power of holders of any forest rights, Gram Sabha and Village level institution to regulate access to Community Forest Resources and power of taking decisions to protect their resources from any activity affecting adversely on wild animals, forest and bio-diversity shall in no way be curtailed.

x) FRA covers Individual Forest Rights (IFR), Community Forest Rights (CR) and Community Forest Resources (CFR). These claims may be at various stages of FRA process such as Forest Right Committee, Gram Sabha for resolutions, Sub-division Level Committee (SDLC), District Level Committee (DLC). Some titles might have been approved by the DLC but may not have been corrected under Record of Rights (RoR) or physical boundary marking may not have been done. Further, there may be many other potential right holders who may have not filed their claim application. Thus FRA compliance has to take care of all the factors mentioned above.

xi) Lease deed will in no way affect the existing rights of tribals as envisaged under the extant provisions for FRA compliance.

xii) The execution of lease deed shall not be construed to dilute any provision of FRA.

xiii) In case the land on which FRA title has been recognized and vested overlaps with the approved patch of lease deed, the leased area shall be modified accordingly.

5. The State Governments may accordingly process the applications for grant of lease and expedite the grant of lease, incorporating the above conditions in the lease deed, within the timeline stipulated under section 10A(2)(c) of MMDR Act.

Copy to:

1. The Secretary, Ministry of Environment, Forest & Climate Change
2. The Secretary, Ministry of Tribal Affairs