



NAVIGATING

ESG

SOCIAL LICENSE TO OPERATE

**Why dialogue with local communities
is vital for mining companies.**

At its most narrow definition, a social license, or Social License to Operate (SLO), is the level of acceptance a company receives from the local community where it operates. Rather than a formal agreement, at the core of the concept is an assumption that companies whose operations have an impact on either the environment or society where they operate, require not only regulatory approvals, but also a social approval. In this article we look at the theory of SLO and how it has manifested itself in the mining sector.

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SLO is a term that has emerged over the past two decades particularly in the context of extractive industries. An increasing number of mining companies that failed to consider the need for an SLO in their pre-feasibility studies have found themselves in prolonged legal battles and significant delays to production.



WHILE EACH MODEL SUGGESTS A UNIQUE POINT OF VIEW, THE CONCLUSION OF ALL OF THEM REMAINS THE SAME; IT IS ONLY THROUGH TRANSPARENT DIALOGUE WITH LOCAL STAKEHOLDERS THAT COMPANIES CAN GUARANTEE APPROVAL, OR AT THE VERY LEAST ACCEPTANCE, FROM THE LOCAL COMMUNITY.

However, the ambiguity surrounding the term and the various approaches to it have resulted in widespread misperceptions about SLO. In the absence of a single agency to set a regulatory framework around it, various experts, scholars, and organisations have developed different models to approach it. While each model suggests a unique point of view, the conclusion of all of them remains the same; it is only through transparent dialogue with local stakeholders (such as municipalities, labour unions, local NGOs and indigenous community leaders) that companies can guarantee approval, or at the very least acceptance, from the local community.

THE SLO MODELS

There are currently three major models that attempt to explain SLO. While none of them serves as a stand-alone explanation of what a social license is, a comprehensive review of all three models can help one get a general sense of the term's meaning.

1. PYRAMID MODEL

In the first model, each level of a pyramid represents a different response a company could receive from a local community – moving bottom up from 'withheld' to 'psychological identification'. Here, the lowest level is a company having its social license withheld or withdrawn. This could mean restricted access to labour, infrastructure or essential resources, including raw materials. The next level is acceptance of the project, which is the most common level of SLO granted. If and when a company establishes its credibility within a community, the social license could then rise to the level of approval. Over time, if a community's trust in the company is established, the social license could rise to the level of psychological identification. The latter reflects an ideal situation, where the relations between the company and local stakeholders (such as municipalities, labour unions and community leaders) are based on an ongoing regard for each other's interests.

2. THREE STRAND MODEL

This model sees the social license as simply one of three interacting factors, impacting a company's operational legitimacy – social, legal and economic. The social license is defined as the demands of local, national, and international environmental activists, local community groups, and sometimes the general public. The other two factors considered are the company's: legal license, representing regulatory permits and statutory approvals from regulators, legislators, and judges; and finally, economic license, or the profitability demands of top management members, lenders, and investors. The model suggests that the three strands could have interactive impacts on each other. For example, environmental groups could seek to impact a company's social license directly through protesting against it and attracting adverse publicity. They could influence a company's economic license by

organising, for example, consumer boycotts of environmentally damaging products. Lastly, they could target a company's legal license through, for example, citizen lawsuits or political pressure for regulatory actions.

3. TRIANGLE MODEL

Whereas the Pyramid Model sees the SLO as an outcome and the Three Strand Model considers it one of three interlinked factors, the Triangle Model conceives of social license as resulting from a threefold set of "acceptance processes." This model, which was developed particularly for the renewable energy sector, sees social acceptance as building confidence, familiarity, and trust in environmentally friendly, yet unproven technologies. The three levels of acceptance in the 'triangle model' consist of: socio-political acceptance, or the broadest, most general level of social acceptance of a company's policies and technologies by the public and policymakers; community acceptance, referring to the specific acceptance of projects by local residents and local authorities; and market acceptance, or the process of widespread adoption of a renewable energy innovation.

CHILE: COUNTRY OF LARGE COPPER RESERVES AND ROBUST ENVIRONMENTAL REGULATION

The International Copper Study Group (ICSG), an intergovernmental organisation of copper producing states, reported that Chile accounted for almost a third of world copper mine production in 2020 with mine output of 5.7 million tonnes copper. The country currently has an estimated copper reserve of 200 million tons, almost a quarter of the 870 million estimated worldwide.

Looking ahead, according to the International Energy Agency, the demand for copper is expected to double

in the next two decades, partly thanks to the need of copper in green energy projects and electric cars. Chile has therefore attempted to maintain its global leadership position by creating new copper extraction centres, evidenced by the Chilean Copper Commission, which reported that more than USD 5.6 billion is planned to be invested in copper mining projects in the Coquimbo Region of central Chile in the period between 2020 and 2029.

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Chile is widely considered to be one step ahead of its Latin American counterparts in terms of its environmental regulatory frameworks. The Environmental Performance Index (EPI) - a data-driven ranking published annually by the Yale University indicates robustness of countries' environmental policies and frameworks. In the 2020 EPI, Chile had the highest ranking in Latin America (55.3 out of 100), partly thanks to its regulatory quality. For example, in 2010 the Chilean government created the Environmental Assessment Service (Servicio de Evaluación Ambiental, SEA), an independent regulatory body, whose main responsibility is its management of the Environmental Impact Assessment System (Sistema de Evaluación de Impacto Ambiental, SEIA). The SEIA allows NGOs and citizens to directly file complaints on any type of mining or extraction projects if these fail to comply with environmental regulations.



CASE STUDY: DOMINGA CONCESSION

Dominga is a USD 2.5 billion iron and copper mining site in Chile. It is situated in the El Tofo mining district, approximately 16 kilometres northeast of La Higuera, in the north-central Coquimbo region of the country. The concession to operate Dominga has been held by the privately Chilean-owned company Minera Andes Iron SpA ('Andes Iron') since 2011.

Dominga is also located just 30 kilometres from the Humboldt Penguin National Reserve, an area with rich biodiversity, as it is inhabited by more than 500 species of animals. It is this penguin reserve that has become the epicentre of legal battles between Andes Iron, investors and various stakeholders in the mining industry, on one hand; and local communities and environmental organisations, represented by the 'Humboldt Alliance', on the other.

THE LEGAL HISTORY

- **2013** Humboldt Alliance uses the SEIA to challenge the Dominga concession, with members of the alliance claiming that the negative impact of the Dominga mine and Puerto Cruz Grande (another large project in the same region) on the Humboldt archipelago and its biodiversity could be irreversible. During the following four years, the SEA oversees a prolonged evaluation of the concession's environmental impact, consisting of more than 1,200 different assessments carried out by experts from both sides.
- **2017** The SEA's final report reaches the Coquimbo Environmental Assessment Commission (Comisión de Evaluación Ambiental la Región de Coquimbo), which decide to revoke Andes Iron's license. In August, this decision is escalated to the Chilean Ministers Committee. It is rejected by the government of then-President Michelle Bachelet (2014-2018).
- **2019** After a series of appeals from Andes Iron, in September the Chilean Supreme Court orders the First Environmental Court of Antofagasta to review the concession again.
- **2020-present** A committee of professionals and scientists appointed by the Antofagasta court review the site in 2020 and in April 2021 rule that Andes Iron had presented all the essential information for the project's correct environmental evaluation. In a vote held in August 2021 the committee, known as the Coquimbo Environmental Assessment Commission, officially vote in favour of the project's continuation. Shortly after, NGOs from the alliance declare they will appeal the decision to the Chile's Ministers Committee. Despite the approval from the environmental commission, there are currently five separate appeals against the concession before the supreme court, which would need to grant the concession's final stamp of approval.

IMPLICATIONS AND FUTURE LOOKOUT

Mining companies have historically performed poorly on Environmental, Social and Governance (ESG) indicators. What can be concluded therefore from the SLO principal and the Dominga case study?

First and foremost, a lack of dialogue with local communities often ends in a failure of obtaining a social license, whether that be at the acceptance, approval or support levels. As suggested by the Three Strand Model, beyond the mere resistance from local communities, the lack of a social license result in both legal and economic challenges for companies.

Secondly, as social media increases the availability of information and ease of communication, communities and NGOs are no longer required to put much effort in

order to put pressure on companies operating in their territory. In the Chilean case, technological solutions have even been developed by the government itself, where user-friendly digital platforms such as the SEIA make the filing of complaints against mining companies easier than ever before.

The answer seems to be based on dialogue, which would then result in trust. As suggested by the Pyramid Model, when a company prioritises its relationship with the local community, invests in its communication and engagement with it and creates awareness and a sense of a shared purpose, it can then reach the highest levels of approval, where the interests of the mining company and the local community converge. ▼



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