



# ESG: Our pathway to a stronger, greener mining sector

Environmental, social and governance factors are rapidly transforming the mining sector, presenting investors, mining operators and industry participants with a range of challenges and opportunities across the value chain. The way forward is clear – we must engage with these issues head on, or risk being left behind. So are you on track?

Regardless of your stage in the ESG journey, it can be difficult to keep up to date with this fast evolving space, and determine where – and how – you should be investing your energy. But get the formula right, and it could be a game-changer for your business.

From identifying ESG opportunities in M&A and moving towards cleaner mining operations, to managing the risks of novel claims, we break down our top eight ESG considerations that mining companies need to be across now.

[Speak to our mining experts today](#) for a comprehensive assessment of your ESG roadmap, our predictions for 2022, and steps you can take now to stay ahead of the pack.

## 1 Climate-related M&A

With major companies divesting, and private capital seeing short term value, we anticipate a significant amount of trading in coal assets. Conversely, given the low levels of supply of future facing commodities (such as copper, nickel and lithium), global demand for these commodities will be strong, with most mining companies seeking growth through acquisitions.

We act for clients of all sizes operating across the full spectrum of commodities, and have unparalleled visibility to the latest trends in both public and private M&A. So where to for your business, and when?

**We can help you to:**

- Understand commodity and asset trends that are shaping the global M&A scene
- Identify suitable divestment and demerger strategies
- Future-proof your portfolio, drawing on our extensive market knowledge

## 2 Pressure to reach net zero by 2050

There has been a proliferation of government, corporate and project-level net zero commitments by 2050, or more ambitious timeframes. The drivers vary, but include the Paris Agreement, Intergovernmental Panel on Climate Change, shareholder expectations, and demonstrating environmental acceptability. The level of ambition in net zero commitments isn't static and we are seeing an increasing focus on delivering emissions reductions sooner, as well as transitioning aspirations to firmer outcomes.

So how should mining companies respond to the continued pressure for meaningful 2030 emissions reductions targets and alignment to net zero by 2050? And with a domestic offset market that is continuing to mature, what are the challenges and opportunities for achieving these commitments?

**We can help you to:**

- Better understand the challenges and opportunities in the current market
- Navigate the net zero landscape and develop the right strategy for your business
- Stay across the latest developments in this space, and what's likely to be around the corner

## 3 Developing and maintaining climate change policies

ESG-focused policies and sustainability reporting are well established in the mining sector – but no global, standardised ESG reporting/benchmark requirements currently apply, resulting in a broad spectrum of approaches. Best practice, as well as the expectations of shareholders, financiers, insurers and other stakeholders, continues to evolve. Increasingly, focus is being placed on performance and tangible outcomes achieved, not just the policy position that has been adopted.

So what should a mining company's ESG policy framework look like today? There is no 'one size fits all' approach, and we are seeing different levels of maturity within the mining sector. Opportunity exists to develop a proprietary approach to ESG processes and integration within your business.

**We can help you to:**

- Understand how your policy framework should treat climate change risk and resilience, and topics like carbon emissions
- Manage competing social impacts across divergent areas such as supply chain practices and equitable transition
- Develop an ESG framework that supports your business now and into the future



## 4 | Contracting provisions

Mining companies face increasing pressure to decrease not only their own scope 1 and 2 emissions, but also scope 3 emissions associated with the end use of their commodities by their customers.

As decarbonisation efforts become more widespread across industries, is it possible for miners to future-proof supply chain contracts and sales contracts for the risks of climate change? Is market practice evolving in terms of what is reasonable to require of suppliers and customers?

**We can help you to:**

- Understand trends that are shaping both industry standard contracts and bespoke contracts
- Explore different options for your business, across the full spectrum of:
  - Incentives to improve efficiency or sustainability, and reduce environmental impact;
  - Risk sharing regimes; and
  - Hard contractual measures with penalties for poor performance.

## 5 | Navigating directors' duties

ESG presents complex and multifaceted issues for energy and resources companies. While the nature of the challenges is evolving, it is clear that climate change, human rights and indigenous heritage risks will be important factors in many short, medium and long-term decisions for mining companies.

Boards face heightened scrutiny on the standard of care to be exercised with respect to issues arising from ESG impacts – and this will only continue as market expectations and institutional shareholder positions evolve.

**We can help you to:**

- At a board level, approach ESG issues such as climate change or human rights in a way which complies with directors' duties, as well as additional requirements like disclosure obligations
- Identify how to assess climate change risks in making business decisions such as mine expansions, extending approvals, acquiring new mines and entering into new long term contracts

In navigating these issues, directors should take reasonable steps to identify and manage risks, formulate and implement integrated strategies across the company, ensuring they make appropriate disclosures on these issues and are able to deliver on their company's public disclosures and any ESG-related targets.

## 6 | Novel claims

Activist groups across the world are formulating novel claims with a greater frequency. Some of those novel claims have been brought with success, broadening the causes of action available to activists and other litigants. Others have not resulted in favourable judgments, but have succeeded in gaining publicity, obtaining leverage in negotiations, or influencing decisions.

Claims have been initiated on the basis of a wide range of actions, including human rights law, continuous disclosure obligations, directors' duties, criminal law, and tort law. Novel claims have recently targeted:

- New project approvals and investment decisions with emissions-intensive consequences;
- Government decisions, grants and policies impacting climate change;
- Companies' alleged failure to take action to reduce emissions; and
- Companies setting emissions reduction targets and making public statements alleged to give rise to 'greenwashing'.

**We can help you to:**

- Understand new legal duties which may affect business decisions
- Understand how threats of novel action can be brought to bear to change decisions, including through applying direct pressure on key stakeholders (including institutional investors and government)
- Develop risk mitigation strategies
- Stay across global trends in the novel claims space



## 7 | New ways of working

The effective management of human capital is key to strong performance against ESG criteria. This means enforcing minimum standards regarding pay and conditions, workplace conduct, and workplace health and safety.

Failure to pay minimum entitlements and ensure adequate working conditions (e.g. hours of work) has led to class action litigation, prosecutions, and proceedings against companies and their officers.

Workplace conduct issues such as bullying and sexual harassment, particularly at a senior level, can be expected to adversely impact share price and undermine confidence in corporate management and governance.

While mining companies are accustomed to prioritising the health, safety and welfare of their people, the concept of workplace safety is expanding to include mental health risks (e.g. excessive working hours, sexual harassment and bullying). Mining companies are expected to adapt to address these risks.

### We can help you to:

- Understand the trends currently unfolding across the industry, implications for your business, and our predictions for the coming months
- Assess where your business could be at risk, and explore proactive steps you can take now to safeguard your business

## 8 | Mining for new operating methods and technology

Mining companies are focussed on cleaner operations. This includes cleaner energy sources, projects for the deployment of technology, and joint ventures to investigate cleaner operating methods.

Our clients are at the forefront of some of the most innovative projects underway in the sector, globally. We have developed deep insights into the development models being used for these R&D type projects and some of the legal issues and challenges that have arisen as the pace of change in technological developments outstrips regulation and accepted industry standards.

### We can help you to:

- Understand the global trends currently unfolding in this space, and potential implications for your projects
- Explore appropriate risk mitigation strategies for your business

## Our mining ESG experts

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#### Areas of specialisation:

- Private M&A mining transactions
- Divestment and demerger strategies
- Joint ventures
- Operating, marketing and royalty agreements
- Development projects

#### Areas of specialisation:

- Corporate governance
- Shareholder rights and activism
- Directors' duties
- Climate-related litigation risks and mitigation

#### Areas of specialisation:

- Strategic operational mining matters
- Greenfield development and brownfield expansion projects
- Private M&A transactions
- Offtake and commodity sales arrangements



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#### Areas of specialisation:

- Environment, planning, heritage and native title regulation
- Mining approvals, regulatory and compliance issues
- Greenhouse gas emissions and climate change-related risks

#### Areas of specialisation:

- Regulatory disputes, investigations and public law
- Directors' duties
- Environmental and climate change issues, responding to shareholder activism and defending litigation, including novel claims

#### Areas of specialisation:

- Employment, industrial relations and safety law
- Large scale disputes and investigations
- Executive contracts and remuneration



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