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## 1. Introduction

As it is generally known, the mining sector is becoming highly dynamic in Argentina. Substantial exploration during the last 15 years has confirmed great potential for the development of projects related to the extraction of copper, gold, silver, and lithium. Lithium is a promising industry in Argentina due to the large existing reserves and also to favorable legislation which provides a limited intervention of the State.<sup>1</sup>

In this context, the ESG factors play a significant role in the development of sustainable mining which ultimately benefit the performance of the mining companies and the development of the local communities as well.

## 2. Regulations concerning ESG factors

Although there is an increased demand at global and local levels to incorporate the ESG factors, mining companies are not legally required to report them.

Nevertheless, Resolution No. 896/2021, issued by the Argentine Securities and Exchange Commission, approved the Guidelines for the Issuance of Social, Green, and Sustainable Bonds for socially responsible investments, (the "Guidelines").

The Guidelines highlight the importance of incorporating the ESG factors into decisions concerning allocation of capital. They also stress the fundamental role they play in integrated reports, corporate business strategy, and decision-making processes.

In addition, the Guidelines emphasize that the ESG factors contribute to the company's profitability and provide concrete examples of responsible investments.

Moreover, the federal legal framework on public procurement includes a special section which considers sustainable principles, which are the foundation of the ESG practices and factors.<sup>2</sup>

Likewise, some regulations enacted at provincial level, as is the case of the City of Buenos Aires and the Province of Mendoza, introduced sustainability principles, granting preference or additional points over equal offers in tender processes.

Finally, the Argentine Securities and Exchange Commission announced that it is working on the legal framework for the mandatory reports of the ESG factors.<sup>3</sup>

### 3. ESG metrics

Although the reporting of the ESG factors is not mandatory for public mining companies, some are adopting them voluntarily.

To that end, the Sustainable Development Goals and the Global Reporting Initiative (GRI) are the most used standards.

There are also sector specific standards, namely the Sustainability Accounting Standards Board<sup>4</sup> and the GRI<sup>5</sup> which have become the most prominent in the mining sector. Both organizations have developed documents specific to the mining sector.

As regards climate change policies, the Climate Change Protocol adopted by the Organization Towards Sustainable Mining is used by mining companies to assess and measure the progress and management of climate-related risks and opportunities, including associated mitigation and adaptation strategies.<sup>6</sup>

Mining companies also observe the standards of the International Council on Mining and Metals and the Extractive Industry Transparency Initiative standards, endorsed by the Argentine Chamber of Mining Companies (*Cámara Argentina de Empresarios Mineros*).<sup>7</sup>

Thus, it is vital that mining companies become familiar with these metrics to incorporate them into their business models, measure all the actions implemented concerning the ESG factors and disclose the relevant information in the financial reports.

### 4. Implementation of the ESG factors

As regards the implementation of the ESG factors in the mining sector, it is worth mentioning that Argentina was the first country in Latin America to adopt the Initiative “Towards Sustainable Mining”, a corporate social responsibility program developed by the Mining Association of Canada to improve environmental and social practices in the mining industry.<sup>8</sup>

In line with this initiative and the ODS objectives<sup>9</sup>, mining companies are adopting measures to reduce their carbon footprints and efficiently use the water resources alongside with other sustainable practices.

Moreover, there are a plethora of laws and regulations -enacted at both federal and provincial levels- concerning the management of hazardous waste, the protection of biodiversity, water use, and other aspects, closely observed by the mining companies.<sup>10</sup> Also, international standards related to the operation and maintenance of tailing dams<sup>11</sup> and federal guidelines concerning the waste management and the procedure for the mine closure are observed<sup>12</sup>.

Concerning the “S” factor, the Argentine General Environmental Law provides that the provinces must establish a mandatory consultation procedure or public hearings to authorize mining projects.<sup>13</sup> Citizen participation should precede the authorization of the mining projects. Besides, Argentina has signed the ILO Convention that guarantees the rights of indigenous and tribal peoples and the Escazu Agreement<sup>14</sup>, both of which promote the public participation in the environmental decision-making process.

In general, there has been a relatively low degree of conflict with the mining industry and, while they exist here and there, aboriginal, or social license issues have not been the prevailing feature in local mining projects.

Regarding labor policies, there is a plethora of laws and regulations, guaranteeing labors rights.<sup>15</sup> In particular, mining

workers are protected by collective bargaining agreements establishing specific conditions, obligations and rights applying to exploration and exploitation activities.<sup>16</sup>

Concerning diversity and inclusion programs, Argentina is part of International Women in Mining<sup>17</sup>, an organization focused on promoting gender diversity and female participation in senior positions.

Finally, as regards the “G” factor, public companies in Argentina must observe provisions on corporate governance, established in the regulations issued by the Securities and Exchange Commission (*Comisión Nacional de Valores* or CNV for its Spanish acronym), the Capital Markets Law and the General Resolution No. 606/12 issued by the Securities Exchange Commission, partially amended by Resolution No. 707/19.

Such resolutions established the Corporate Governance Code that provides several recommendations on matters related to the company risk, ethics, integrity of financial information, and transparency (i.e., access to information by the shareholders and support of their involvement). The board shall issue an annual report informing about the compliance with the Corporate Governance Code.

It should be noted that on the “G” side, there is a significant intersection between the “G” factor and the compliance programs. In practice, mining companies should understand the data itself related to the “G” factor (i.e. contracts signed, donations and contributions for environmental or social projects), monitor and track closely the resources allocated to social responsibility programs as well as any other relevant measure implemented.

Moreover, if mining companies outsource the manufacturing of some products or services, the control should also apply to the outsourced companies. Internal investigations and sanctions applied for non-compliance with any aspects related to the ESG Program should also be considered. Besides, policies related to gender equality, inclusion, labor rights and transparency should be monitored.

## 5. Final thoughts

ESG is a crucial concept that evolved gradually from the traditional notion of corporate social responsibility, driven by the need of institutional investors to make efficient investments. The false dichotomy between profitable and sustainable investments is no longer applicable since the financial performance and the companies’ values are currently aligned with the ESG factors.

In effect, mining companies are adopting ESG programs alongside with the compliance of a myriad of regulations and standards related to the environmental, social and governance aspects of the exploration or exploitation projects.

In this context, understanding the metrics is an important part of the puzzle. Mining companies should implement the adequate ESG factors related policies and measure them to identify any progress made or potential flaws in the ESG Program. Besides, they should consistently revise the policies adopted to make the necessary adjustments and finally disclose the relevant information concerning the ESG factors.

To conclude, the ESG factors are an inflection point in the financial and corporate sector which provide a significant opportunity for the mining companies to differentiate themselves. Although there is a road ahead in terms of the regulation and the applied taxonomy, the incorporation of the ESG factors will definitely contribute to the development of sustainable mining in accordance with the local regulations and international agreements adopted by Argentina.

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1. See Lithium mining in Argentina.

2. The General Regime for Public Procurement does not expressly consider the ESG factors. However, it provides that sustainability principles should be observed to award the relevant contracts.

3. Cfr. Information available here, last visited on March 22, 2022.

4. Metals and Mining, Sustainability Accounting Standards, December 2021, available here, last visited on March 22,

2022.

5. GRI Sector Standards Projects for Mining, June 2021, available here, last visited on March 22, 2022.
6. Towards Sustainable Mining, Climate Change Protocol, available here, last visited on March 22, 2022.
7. Cfr. Information available here, last visited on March 22, 2022.
8. Cfr. information available here, last visited on March 22, 2022.
9. The Sustainable Development Goals adopted by the United Nation are the following: (i) no poverty; (ii) zero hunger; (iii) good health and well-being; (iv) quality education; (v) gender equality; (vi) clean water and sanitation; (vii) affordable and clean energy; (viii) decent work and economic growth; (ix) industry, innovation and infrastructure; (x) reduced inequality; (xi) sustainable cities and communities; (xii) responsible consumption and production; (xiii) climate action; (xiv) life below water; (xv) life on land; (xvi) peace and justice strong institutions; (xvii) partnerships to achieve the goals. See here.
10. For instance, the following laws and regulations apply at the provincial level: Water Code approved by Law No. 4,392 passed by the Province of San Juan; Hazardous Waste Law No. 6,665 passed by the Province of San Juan; Law No. 5,824 passed by the Province of San Juan and supplementary regulations concerning the protection of water resources; Hazardous Waste Law No. 3,742 passed by the Province of Chubut; Hazardous Waste Law No. 4,865 passed by the Province of Catamarca; Water Code Law approved by Law 2,577 passed by the Province of Catamarca and supplementary regulations; Hazardous Waste Law No. 2,567 passed by the Province of Santa Cruz and supplementary regulations; Water Resources Law No. 1,451 passed by the Province of Santa Cruz, amending and supplementary regulations.
11. Global Industry Standard on Tailings Management, August 2020, International Council of Mining and Metals, available here, last visited on March, 22, 2022.
12. Concerning the Guidelines for the appropriate management of the hazardous waste and for the mine closure, enacted at the federal level see the legal updates "Guidelines for the appropriate management of mining waste" and "Guidelines for mine closure".
13. The mandatory nature of the public hearings was considered by the Supreme Court of Argentina in the case "Villivar, Silvana C. Provincia de Chubut y otros", 04.17.07, available here.
14. The Escazu Agreement was approved by Law 27,566 passed on October 19, 2020.
15. Contracts of employment in Argentina are mainly governed by: (i) the Employment Contract Act (the 'ECA'), (ii) collective Bargaining Agreements and the (iii) individual terms of labor contracts between employers and their employees.

Labor legislation and Collective Bargaining Agreements provide for mandatory minimum employment conditions. If the parties agree employment conditions below those minimums, conditions established by labor legislation and Collective Bargaining Agreements will apply, regardless of what was agreed by the parties. The Argentine Constitution provides for the right to: (i) equal pay for equal work, (ii) protection against wrongful termination (Section 14 bis) and being admitted for employment if eligible (Section 16). The ECA: (i) forbids discrimination based on sex, race, nationality, religion, politics, union affiliation, or age (Section 17), (ii) provides the right for employees to express their points of view regarding political, religious, cultural, union, or sexual preference matters at the workplace. Employers may not assess employees on such matters (Section 73); (iii) establishes the same salary for equal or similar work. Different salaries may be allowed if based on objective reasons, such as being more productive or efficient than others (Section 81), (iv) provides for special protection regarding maternity, ill or injured employees, union representatives, among others.

Anti-discrimination Law No. 23,592 forbids discrimination on the grounds of sex, race, nationality, religion, political or union affiliation, age, social condition, economic position, and physical characteristics. Law No. 23,551 provides special protection to union representatives, Law No. 26,485 provides for the prevention, punishment, and elimination of violence against women and Law No. 26,390 forbids child labor and protects working teenagers. Moreover, the following international treaties have constitutional status (i) the American Declaration of the Rights and Duties of the Man (1948), (ii) The Un Universal Declaration of Human Rights (1948); (iii) the American Convention on Human Rights "Pact of San Jose, Costa Rica" (1969); (iv) the International Covenant on Economic,

Social and Cultural Rights (1966); (v) International Covenant on Civil and Political Rights (1966); (vi) the International Convention on the Elimination of All Forms of Racial Discrimination (1965); (vii) the Convention on the Elimination of All Forms of Discrimination against Women (1979) and the Convention on the Rights of the Child (1989).

16. Collective Bargaining Agreement No. 38/89 signed between the Argentine Mining Union (Asociación Obrera Minera Argentina or AOMA for its Spanish acronym) and the Argentine Chamber of Mining Companies (Cámara Argentina de Empresarios Mineros) applies to the mining extractive activities.

17. Cfr. information available here, last visited on March 22, 2022.

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