

The Effectiveness of ESIA in Meeting Project Financing Requirements - A Mining Sector Perspective

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Abstract

Current market conditions in the mining sector are resulting in reduced time and financial resources for project development and associated ESIA processes. This paper draws on direct experience from conducting and reviewing ESIA processes in the mining industry to consider the effectiveness of ESIA in meeting project finance requirements under these current market pressures. This paper identifies common limitations in approaches to environmental and social risk management and summarises the evolution of approaches used to bridge gaps to meet investor requirements.

Introduction

As the mining industry continues to suffer from a global downturn, measures to cut costs and improve efficiencies are being extended to all stages of a mining project's life, including project development. Over the last few years in particular, there has been a growing trend for faster and cheaper project development programmes to bring exploration projects into production. This has resulted in the need for focussed and cost-efficient Environmental and Social Impact Assessments (ESIAs) that address key impacts from and risks to the project.

At the same time, there has been an increasing pressure on mining companies to localise the procurement of goods and services to the country where the mine is located, including ESIA services. In some countries, the domestic environmental and social consulting industry has not had previous exposure to mining, or experience of assessing and managing environmental and social risks related to mining projects. This paper aims to consider whether these changing market conditions are affecting the effectiveness of ESIA in the mining industry, specifically with respect to meeting the expectations of the financing community.

Meeting requirements of project financiers

Mining projects require significant investments to move from exploration into construction and operation. ESIA and other project documentation for international mining projects are reviewed on behalf of the mining project financiers (equity investors and banks providing loans) who are considering providing funding to the project. While the specific requirement of each review audience varies depending on the financing scenario, the basic objective of the reviews is the same: to identify material environmental and social risks to the project and, therefore, to the investment.

From a financier's perspective, material risks are considered to be those that:

- affect the ability of the project to proceed and repay the loan, for example obtaining project approvals (credit risk);
- are a major concern to stakeholders, such as local communities, authorities or employees among others (reputational risk); or
- are environmental and social impacts that pose, or could require, significant costs to manage or remedy (liability risk).

From an environmental and social perspective, the material risks for a mining project depend on the regulatory context, the project's planned activities and the site specific environment within which the mine is located. If an ESIA process is properly scoped and executed, it can be used to identify and assess key impacts and risks associated with the project in this context, in parallel with project design. It should also communicate how these risks will be managed by the project proponent to decision makers and stakeholders, as well as potential investors. The quality of the ESIA can therefore indicate to financiers whether impacts and risks associated with the mining project risks are understood by the project and are being appropriately addressed.

Within the current trend for faster and cheaper ESIA processes, reviews of mining projects have found that many projects are focussing limited resources on delivering an ESIA that meets requirements of authorities who are responsible for making the decisions on whether the project can proceed. Although this controls regulatory risks, in jurisdictions that have weak regulation or weak implementation of regulations, many ESIA's are failing to move beyond compliance and address reputational and liability risks, as the examples in the following sections explain.

Weaknesses in addressing reputational risks

The ability to identify issues of major concern to local communities and key stakeholders requires an inclusive and well-managed stakeholder engagement process. Listening and proactively responding to concerns helps to manage reputational risks by building constructive relationships between the mining company and stakeholders.

A common weakness of ESIA processes reviewed is insufficient stakeholder engagement, particularly at the scoping stage. With limited resources, adequate time and attention is not given by ESIA consultants to the stakeholder engagement programme and opportunities to optimise project design and address key concerns are missed. Examples of insufficient engagement have included delays in the timing of scoping engagement so that feedback occurs too late to influence decisions on the project, limited disclosure of project information to elicit meaningful feedback and poor recording of issues raised so that stakeholder concerns remain largely unexplored. In fact in many of these cases, engagement was generally viewed by the mining companies as a risk in itself rather than an opportunity for proactive risk management.

Weaknesses in addressing liability risks

In the context of project development, liability risks can include the potential for remediation of past contamination but also potential costs associated with retrospectively managing significant negative impacts that could occur. Appropriately managing risks that have significant cost implications requires an accurate identification and assessment of impacts.

A key risk area in mining projects that can have major cost implications if not managed appropriately is impacts on surface water and groundwater resources and surrounding water users. Well-planned data collection programmes focussed on key risk areas are essential to provide a reliable and representative baseline on which meaningful impact assessments can be based. The quantitative assessment of water impacts is essential for realising opportunities to avoid impacts through modifying project design and to understand the nature and scale of residual management measures required to minimise adverse effects.

A number of ESIA's recently reviewed have failed to collect appropriately detailed baseline data and quantitatively assess impacts to water users. This has been due to shorter periods of baseline data collection due to compressed ESIA timeframes, or an unfocussed baseline programme design due to weak scoping of key issues. In these cases, data required to prepare an appropriate quantitative assessment are not collected, and limited, if any, feedback is provided to the project engineering team on opportunities for avoiding or minimising impacts at source. Where project reviewers have little

confidence that the impact assessors accurately understand the impacts from the project, this raises concerns over whether the management measures identified, and costed within the financial model for the project, are appropriate.

Changing approaches

A range of approaches have been used in the mining industry to overcome the differences between national requirements for ESIA and the expectations of project financiers. Over the last 10 years, the most common approach has involved the appointment of international industry consultants to conduct an ESIA process in lieu of, or in parallel with, a national permitting process. Although this approach frequently meets the needs of investors and may exceed national regulations, it sometimes results in inconsistent outcomes between the 'national' and 'international' processes, including variations or conflicts in environmental management commitments. Many parallel or 'international' processes have also been expensive and lengthy, and have therefore been decreasing in popularity in the current economic climate.

A more recent approach to bridging the gap between national requirements and investor expectations has been to conduct a 'fast-track' ESIA process. This involves a high-level scoping exercise, completing an assessment of impacts using secondary or limited primary baseline information, and developing detailed management commitments or action plans that address the gaps that need to be filled to meet good international industry practice. However, the success of this approach depends on the implementation of established commitments and there needs to be commitment from the developer to ensure implementation. A disadvantage of the 'fast-track' assessment is that it commonly occurs subsequent to the project design process, which means the outputs from the assessment occur too late to influence project design concepts. This can result in the requirement for costly management measures to minimise impacts identified or even a costly re-design process.

A third emerging approach is partnering. Partnering industry consultants with national consultancy teams to deliver the ESIA process in parallel with project design can offer an effective way of meeting project financing requirements and managing environmental and social risks to the project.

Partnering

The benefits of partnering result from the different experience and backgrounds that consultants bring to a team.

National consultants bring an in-depth knowledge of the policy and regulatory context of the jurisdiction, together with established relationships with regulators and key stakeholders. This can assist the regulatory engagement process at scoping and optimise environmental permitting process, keeping overall project timelines to a minimum. National consultants also have links to specialists who are well respected in the locality of the project and are familiar with the state and flux of the immediate environmental and social setting. These specialists can provide local context that can inform the scoping of key environmental and social issues at an early stage.

Industry consultants bring a detailed understanding of the mining life cycle and inherent risks and impacts associated with mining projects. This experience can be used to identify risk areas on projects that require specific focus in ESIA and direction of scarce financial resources on these risk areas. Industry consultants can also act as an effective communication channel to the project engineering team, proactively using feedback from the ESIA process to avoid and minimise impacts and risks through project design, further reducing costs in the long term.

Partnering can take multiple forms. At the most basic level, industry consultants can review scopes of work and final deliverables produced by national consultants at each stage of the ESIA process. Through this review, the industry consultant is able to identify the key environmental and social risks to the project and advise whether material risks are being appropriately considered within the ESIA

process. Where gaps to effective management are identified, a work plan can be developed to fill the gaps as the ESIA process progresses.

The level of partnership can be increased to providing on-going external advice and guidance throughout the ESIA process so that issues are proactively identified and addressed as they arise. For example, the industry consultant may attend workshops to help define the baseline or impact studies required or help develop specific scopes of work for key environmental components, such as water, to confirm that the information collected and processed will be focussed and appropriate to the assessment required. This sliding scale of review can also increase to the development of integrated teams of consultants conducting the ESIA process in partnership.

While partnership has demonstrable benefits, certain challenges need to be overcome to maximise the effectiveness of the approach. To establish an effective partnership structure in the context of ESIA's, the developer and consulting teams need to work together to develop a clear understanding of project requirements from the outset and allocate responsibilities in a manner that optimises skill sets to meet project-specific needs. Effective partnerships also require regular communication and interactions between consulting parties to align expectations and develop common understanding. Finally, members of the partnership need to recognise the value brought by each participating group and maintain a mutual respect of roles and skill sets to deliver effective team work during the ESIA process.

Conclusions

Approaches to ESIA in the mining sector are constantly evolving in response to changes in legislation and market conditions. In some cases, changing conditions have led to ESIA's being prepared that fail to identify and establish mechanisms to manage material risks to the project and therefore meet the needs of potential project financiers. Key weaknesses include limited identification and management of reputational risks from stakeholders and a lack of focus on key areas that can incur high costs and result in liability risks, such as water management. Developing partnerships between consultancy teams offers an effective approach to addressing these weaknesses and delivering time and cost effective ESIA's. Partnerships can maximise the strengths of different parties to minimise permitting delays and also focus efforts and limited resources on managing the key environmental and social risks to the project. If executed effectively, this approach can meet the needs of project investors while optimising the use of time and financial resources.