

The Social License to Operate in the Extractive Industries: An International Law Perspective

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ABSTRACT

Structured in two parts, the presentation will give an international law perspective on the social license to operate. The first part deals with some recent developments that have occurred in international law, which address the concept of the social license to operate and which are relevant to the extractive industries. For example, the social license to operate is a foundational principle of the United Nations Guiding Principles on Business and Human Rights, a global standard of conduct applicable to corporations concerning the impact of their activities on human rights. Agenda 2030 for Sustainable Development also clearly states that the achievement of the 17 sustainable development goals can only be achieved in establishing a partnership between governments, international organisations, businesses and the civil society. The second part and the core of the presentation will show, by using recent case law from the practice of international investment tribunals, how failure to earn and maintain the social license to operate has had serious legal consequences for some companies operating in the extractive industries. For example, in certain cases, international investment tribunals have reduced the amount of damages awarded by more than 90%, precisely because of a failure to earn and maintain the social license to operate. The ultimate aim is to show how the adoption of a broader perspective that goes beyond project-specific domestic legal requirements may be beneficial not only to individual companies, but also for the industry as a whole.