



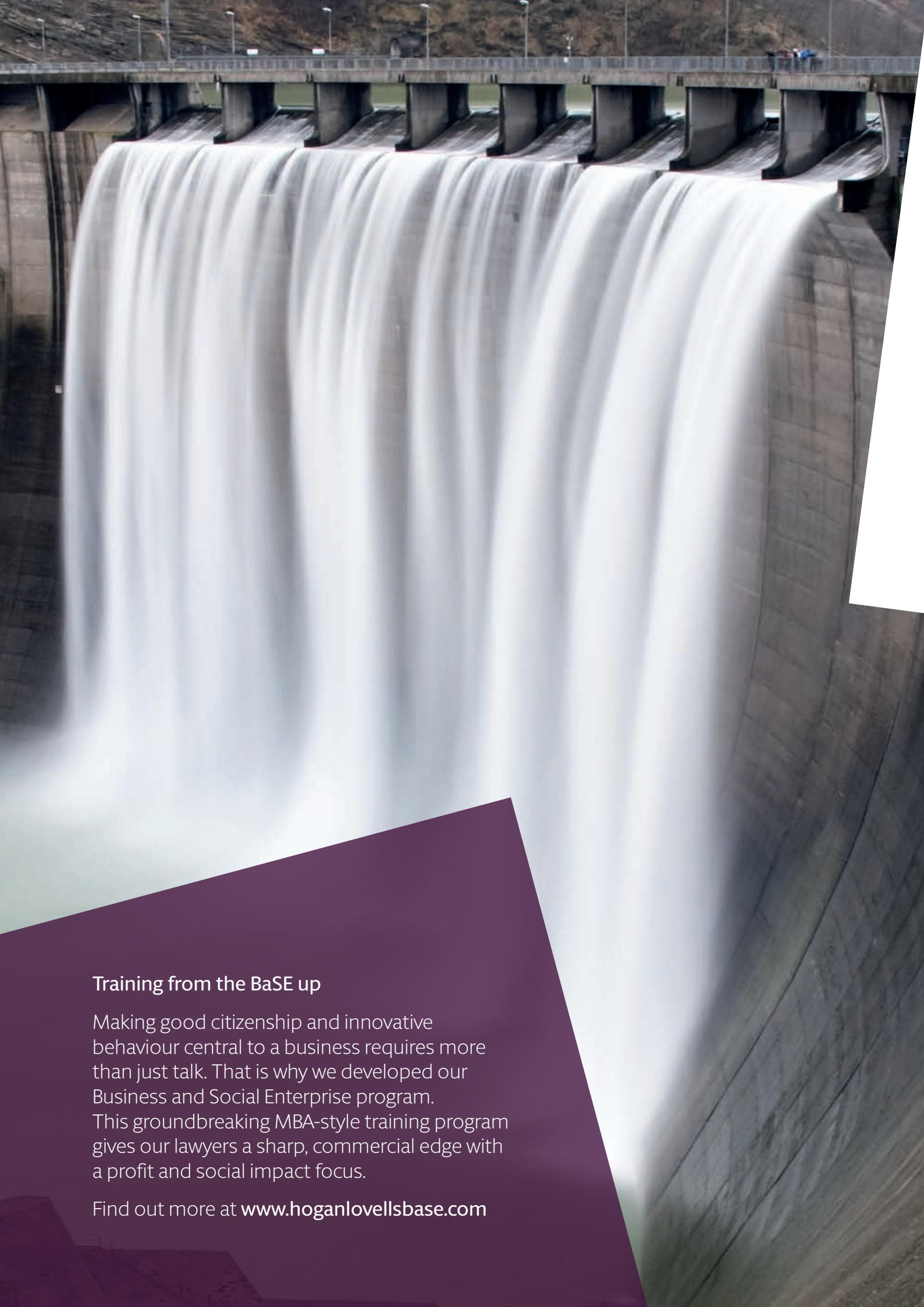
# Business integrity and sustainable development

Energy, natural resources,  
and social impact

2020

**Hogan  
Lovells**





## Training from the BaSE up

Making good citizenship and innovative behaviour central to a business requires more than just talk. That is why we developed our Business and Social Enterprise program. This groundbreaking MBA-style training program gives our lawyers a sharp, commercial edge with a profit and social impact focus.

Find out more at [www.hoganlovellsbase.com](http://www.hoganlovellsbase.com)

# Business integrity

## Driving your markets

### Good business. The right way.

We believe that doing good business means doing things the right way. The world in which we operate has changed. Consumer demand and strong financial performance go hand in hand with business integrity and positive societal impact.

Mission, branding, and social value.  
Sustainable development and ethical funding.  
Risk management and dispute resolution.  
Whatever your business needs, we can help you do good business, the right way.

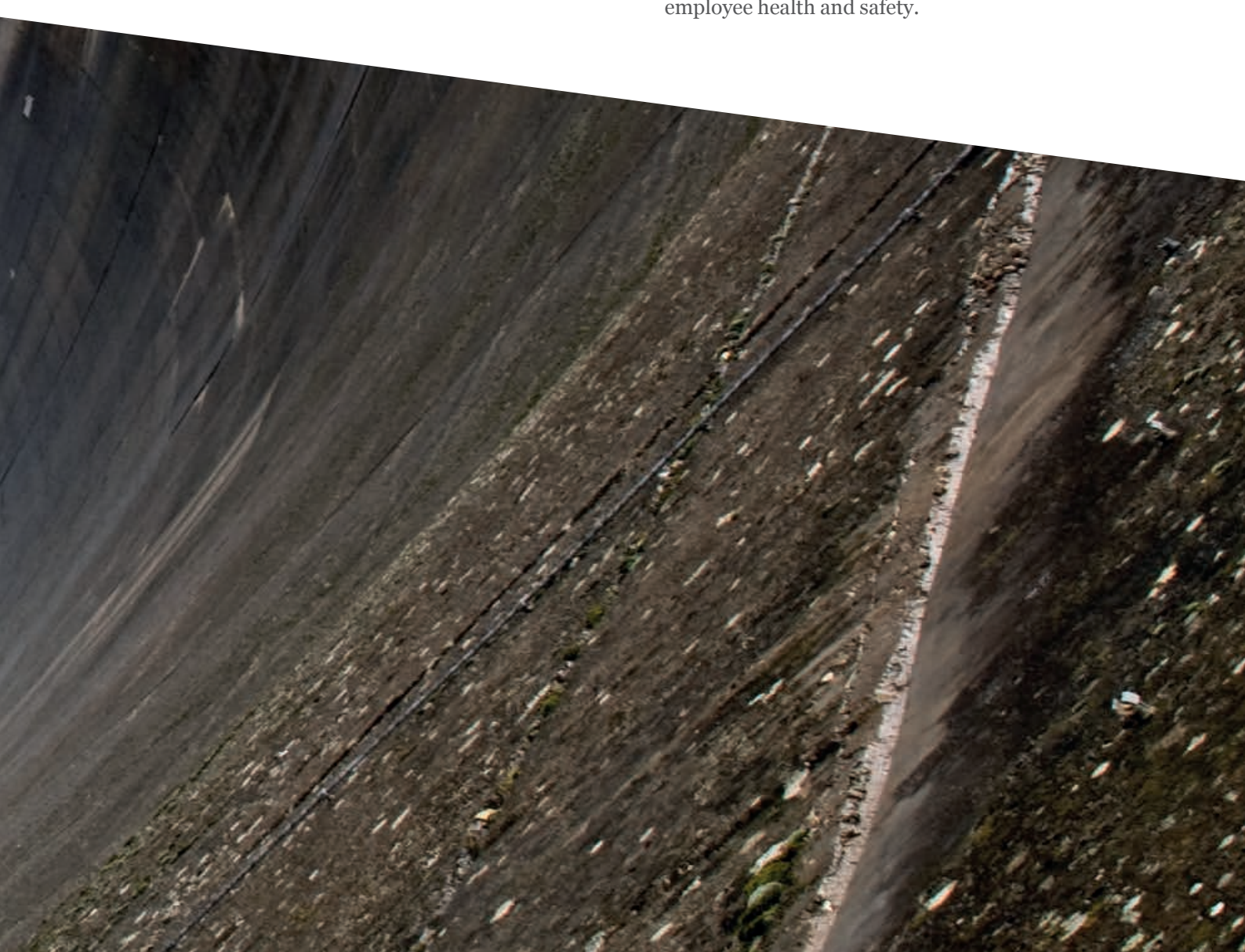
### Energy, natural resources, and social impact

Doing business the right way and creating positive social impact is integral to companies operating in the energy and natural resources sector.

Companies and investors that survive and thrive in the energy and natural resources sector adopt strategies and internal controls to ensure ethical operations, and incorporating international standards for sustainable development and business integrity as part of resource development agreements, financing arrangements, and other contracts.

At Hogan Lovells, we bring you diverse perspectives and support across:

- Sustainable development;
- Green financing, including green bonds;
- Socially responsible investing;
- Anti-bribery and corruption; and
- Business and human rights, including employee health and safety.





How we can help







# Sustainable development

## Obtaining a social license to operate

Host nations and local communities are increasingly invested in their business operations. They value structures and strategies that assure the benefits of resource development are captured over the long term — avoiding a “boom and bust” cycle.

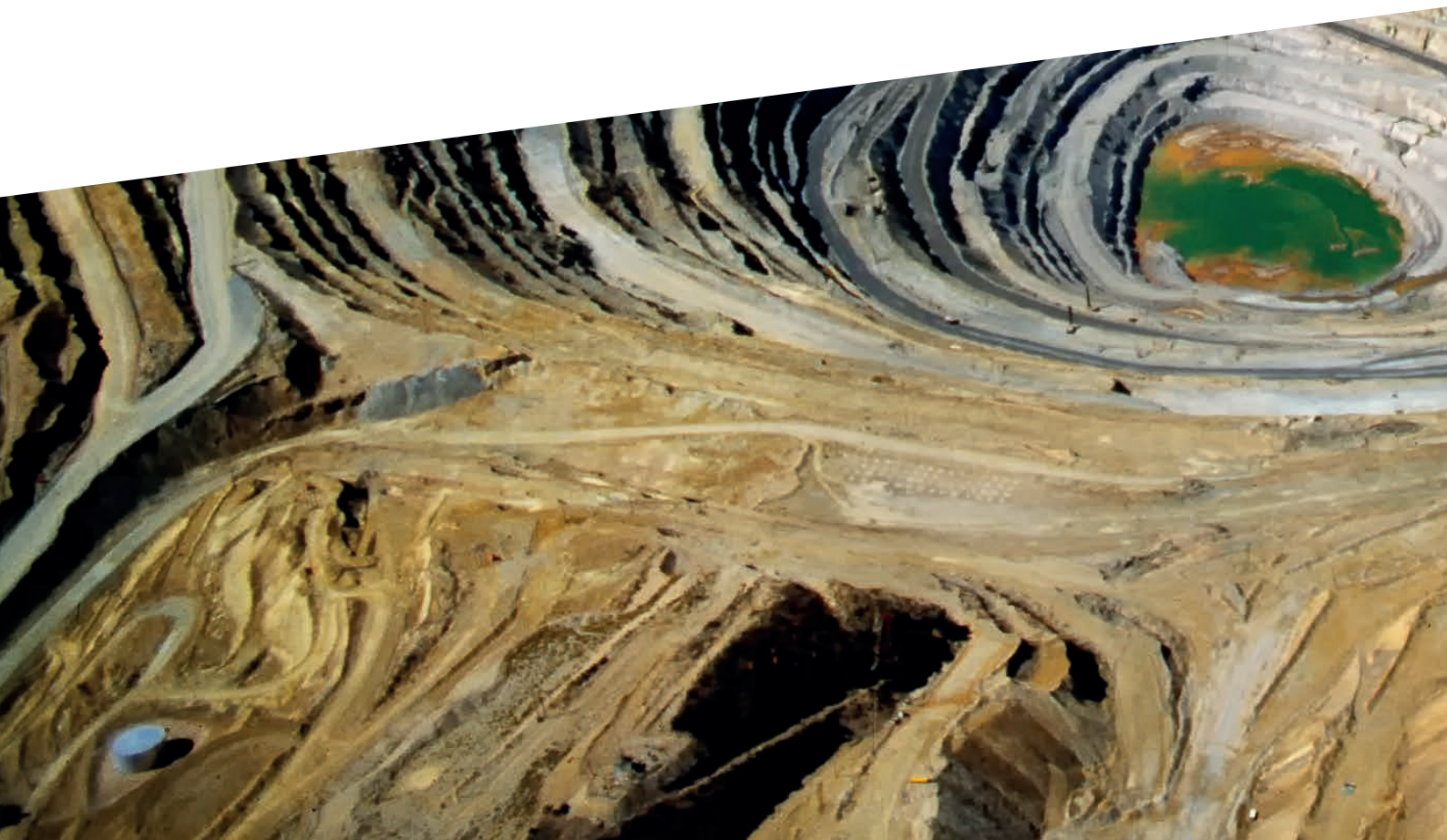
We work with both governments and private companies on the use of community development agreements and stakeholder engagement strategies for assuring a cooperative approach to resource development, helping to obtain a ‘social license to operate’ – a society-wide acceptance of the value and benefits of mineral development and energy infrastructure projects.

### Case in point

- Providing training to the Government of Malawi as regards to sustainable development principles and best practices for international mining agreements.
- Advising Kumba Iron Ore Limited and its subsidiary Sishen Iron Ore Company (Pty) Ltd on the expansion of its Sishen Mine open cast mining pit in the Northern Cape Province, South Africa, which necessitated the relocation of the entire community of the town of Dingleton. The relocation followed an extensive

consultation process with the community and other stakeholders, and was done in accordance with Anglo American’s Social Way method and the International Finance Corporation’s sustainable performance standards.

- Representation of a solar company in siting utility scale project on Native American lands in the United States that would provide local construction jobs and an energy source for the tribal community and the national grid.
- Advising Continental Coal Limited in relation to the business rescue of the Continental Coal (South Africa) Group of Companies, including advising in relation to regulatory aspects, the placing of the operations into care and maintenance under the prevailing mining and employment legislation, compliance with social, environmental, and related responsibilities during business rescue, as well as mining work programmes.








### **The power of social license**

“The whole idea behind infrastructure [development] is to impact communities and people in a positive way. And so virtually every project the sector undertakes must secure and maintain a social license.”

*R. Boele, KPMG, ‘The power of social license’, 2016*





### Did you know?

The International Energy Agency estimates that limiting the rise in global temperature to below 2 Celsius by the end of the century will require an average of US\$3.5tn a year in energy sector investments until 2050, which is around twice current levels of investment.



# Green finance

## Committing to a sustainable future

Project developers and investors alike are increasingly responding to governments' calls for greener sources of energy. In recent years, interest into 'green' energy finance and investment has increased dramatically.

**Green bonds:** The energy sector offers numerous opportunities for the green securities market, and in particular the green bond market, to grow.

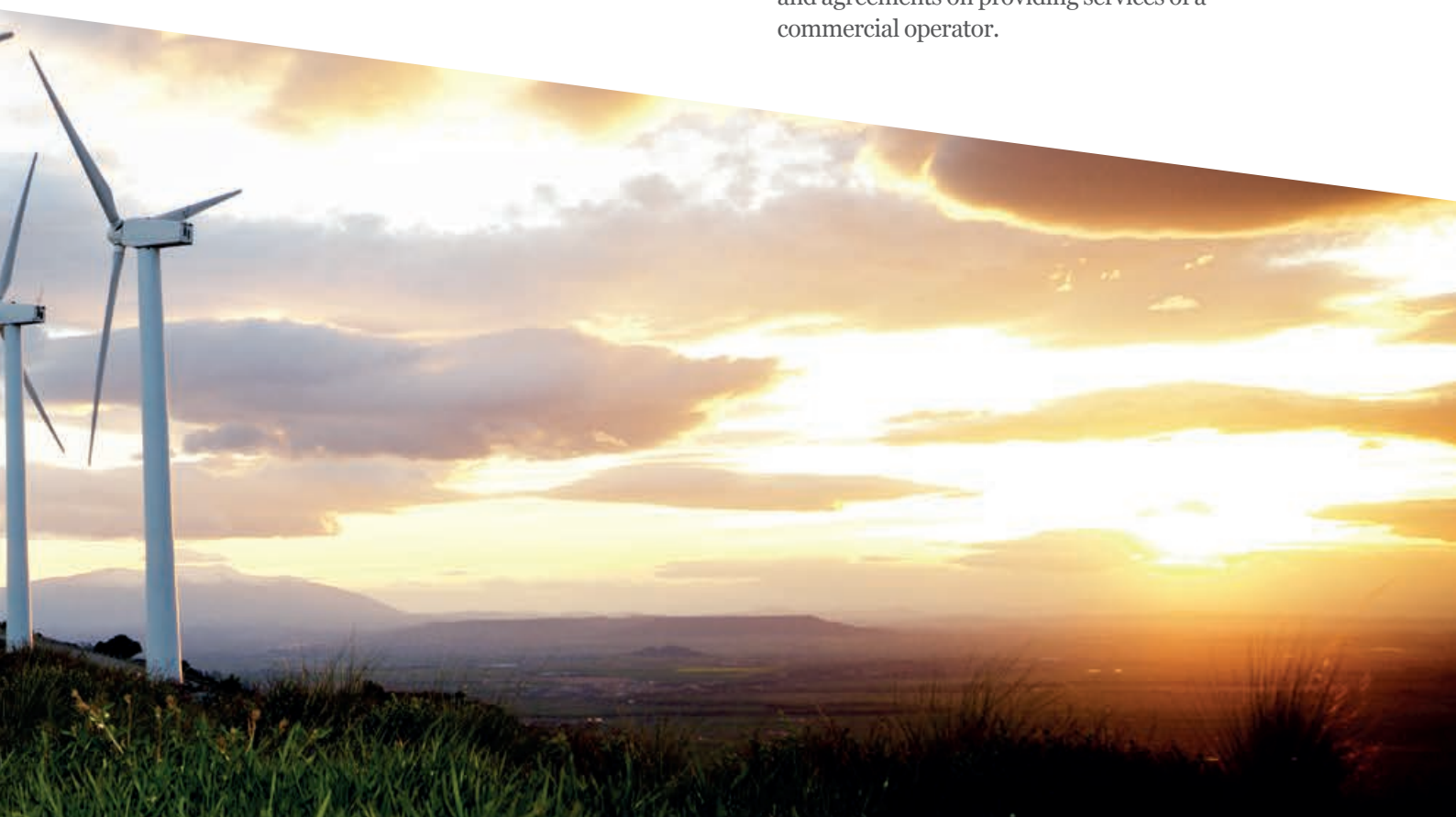
We are at the forefront of developments in this rapidly growing market, and understand the standards currently prevailing.

**Green purchase and supply agreements:** A green power purchase agreement (PPA) or electricity supply agreement (ESA) allows a business to directly purchase renewable electricity in place of the "brown" power it would traditionally purchase. In doing so, it directly supports the development of renewable generating assets and evidences a corporation's integrity and commitment to the environment.

We are experienced with the different approaches that can be used to document a green PPA or ESA and have a thorough understanding of the key issues to be considered in negotiations.

### Case in point

- Advising Électricité de France (EDF) on its market-first, precedent setting €1.4bn issue of green bonds to finance future renewable energy projects led by EDF Energies Nouvelles, a wholly-owned subsidiary of EDF.
- Advising a leading technology company on a registered green bond offering, committing it to its environmental priorities.
- Advising Mars on a 10-year ESA to purchase green electricity from Eneco's 20-turbine Moy Wind Farm, located south of Inverness in the Scottish Highlands – a strategic move towards making its global operations fully carbon-neutral by 2040. The Moy Wind Farm is owned and operated by Eneco UK and will generate the equivalent of 100% of the electricity required to power all 12 Mars UK sites.
- Advising Iberdrola on agreements for the sale of power and green certificates as well as power distribution and grid connection agreements and agreements on providing services of a commercial operator.





# Socially responsible investing

Responsible portfolios. Maximum returns.

Responsible investment is becoming a key concern for investors looking for ways to integrate environmental, social, and governance (ESG) issues into their investment practices.

ESG concerns, however, are broad and subjective. Whether working with energy or natural resource multinationals, financial institutions, or asset managers, we understand the unique concerns our clients face when looking to expand their portfolios in the energy and natural resources sector.

Our cross-border, multidisciplinary teams have the depth of experience to design successful structures and provide the insight you need, wherever you need it. Let us help you maximise impact without sacrificing investment performance.

## Case in point

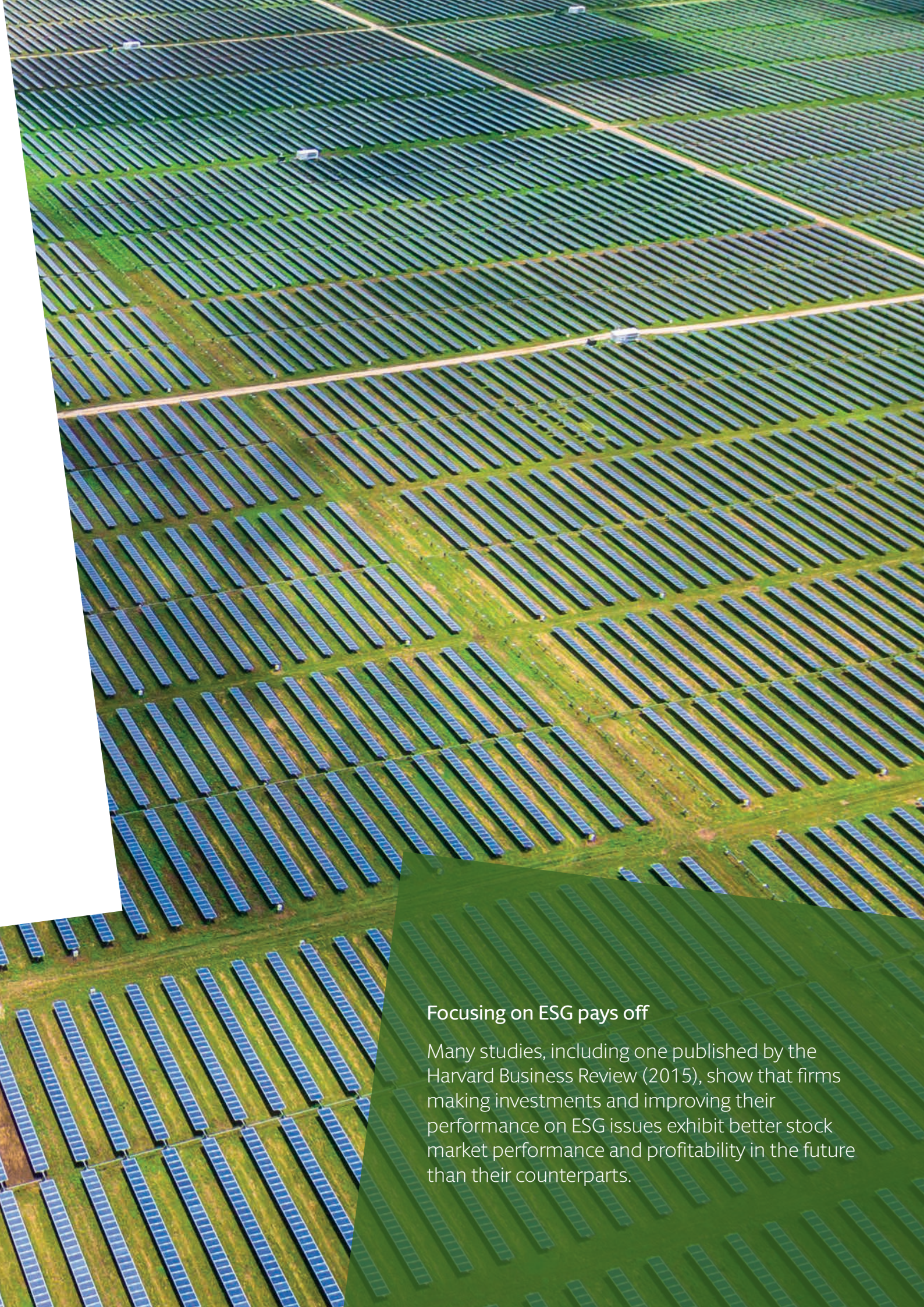
- Advising Electricité de France S.A. (EDF) on the introduction of a sustainability pricing mechanism indexing the margin of its €4 billion syndicated revolving credit facility to three of EDF's ESG criteria:
  - EDF's direct CO<sub>2</sub> emissions;
  - EDF's customers' use of its online consumption monitoring tools (as a proxy of EDF's success in getting French residential customers actively engaged on their consumption); and
  - EDF's electrification of its vehicle fleet.

The ESG-Indexed Credit Facility, which involved a syndicate of more than 20 banks, demonstrates EDF's commitment to innovate financing solutions by integrating key aspects of its Corporate Social Responsibility Goals that underpin its CAP 2030 strategic plan.

- Advising a “double-bottom line” private equity fund sponsor on the formation, fundraising, and maintenance of a U.S. domiciled fund established to make social and environmental impact investments in Latin America.
- Advising a consortium of social entrepreneurs and foundations on the “Solar for All” Fund, a novel fund raising venture capital to invest in developing businesses in Africa and Asia with the aim of providing off-grid power to millions of people in the developing world.
- Advising KGAL Group on the setting up and the first closing of its core plus European renewable fund ESPF 4. The fund's investment strategy focuses on greenfield renewable investments across Europe.
- Advising IFC and Shell Foundation (an independent charity established by the Shell Group) on their cornerstone investments in a >US\$30m Luxembourg energy fund. The fund was established to improve access to energy to off-grid communities in sub-Saharan Africa and South Asia by providing finance to businesses in the energy access sector.







### Focusing on ESG pays off

Many studies, including one published by the Harvard Business Review (2015), show that firms making investments and improving their performance on ESG issues exhibit better stock market performance and profitability in the future than their counterparts.



### Did you know?

In an independent study involving 604 senior professionals from multinational companies (“Steering the Course”), we found that 38% of CEOs in the energy, minerals, and resources industry do not consider anti-bribery to be one of their top priorities. At the same time, more than half (58%) of Chief Compliance Officers admit their advice to the CEO gets filtered by others.

Find out more at [www.hoganlovellsabc.com](http://www.hoganlovellsabc.com)



# Anti-bribery and corruption

## Benchmarking your compliance program

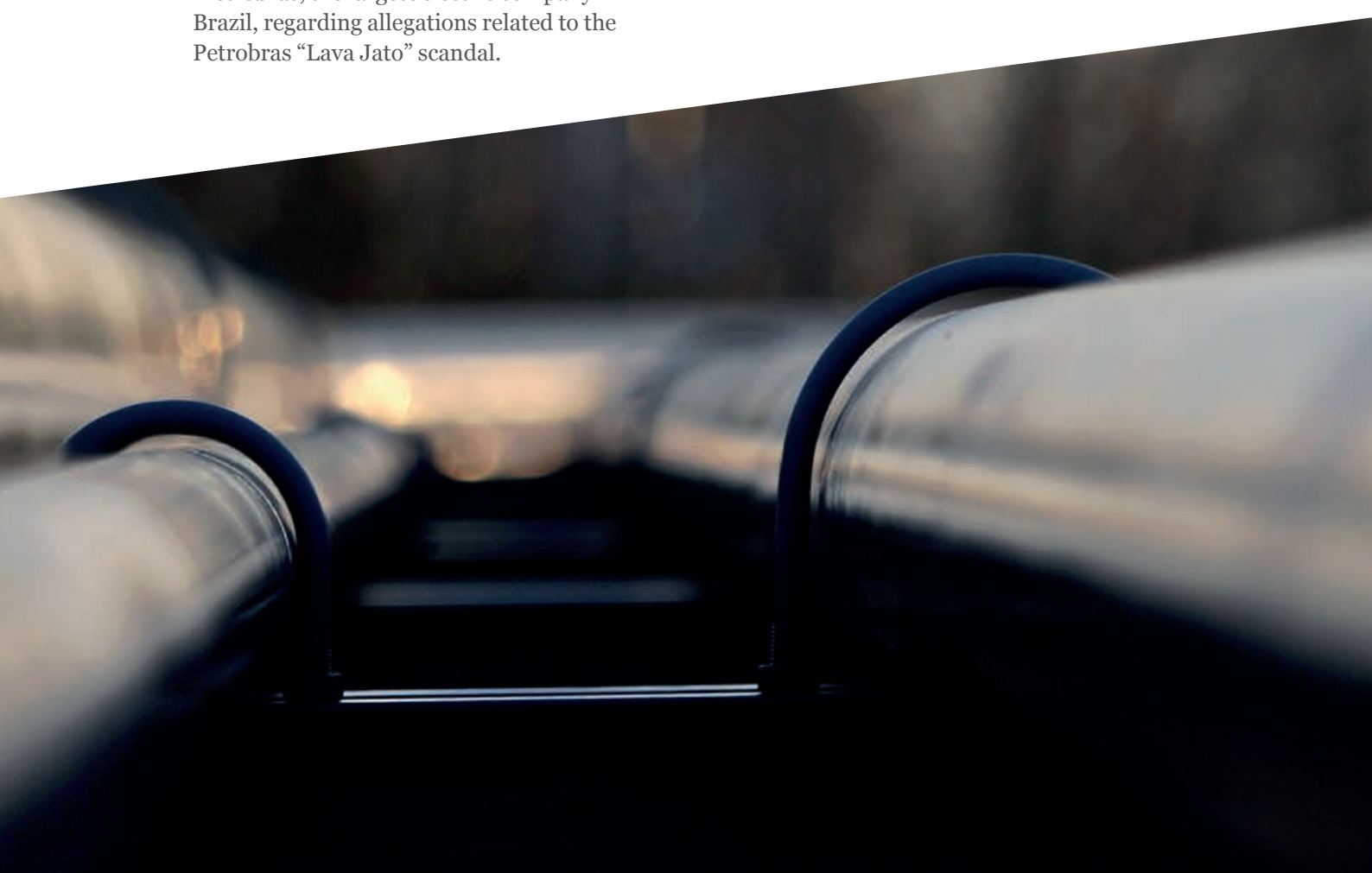
For energy, mining, and resources companies, the cost of corruption – and getting caught – is real. Companies engaged in the development of large projects often attract scrutiny of regulators, especially when working in countries where transparency is low and corrupt behaviour is common.

Our team offers international clients informed advice in a number of areas of risk, from reactive incident response measures to the development of proactive strategies for managing potential exposure through compliance programmes.

We also routinely advise clients on strategies to assure transparency in governmental engagement on large resource development and energy infrastructure projects, including for example the application and implications of the Extractives Industry Transparency Initiative.

### Case in point

- Performing global assessment of a global mining company's anti-bribery and corruption compliance program.
- Undertaking an internal investigation of Eletrobras, the largest electric company in Brazil, regarding allegations related to the Petrobras "Lava Jato" scandal.
- Undertaking a global risk analysis for a global oil and gas exploration and production company's operations (both operated and non-operated) and advising on their anti-bribery and corruption compliance program. The project involved interviews with senior staff in jurisdictions across Europe, Africa, Asia, the Middle East, and North and South America, and advice on a full range of corporate policies and procedures in anti-corruption matters.
- Advising a global industrial group on allegations of bribery at a number of African and Asian subsidiaries, including advising on issues arising under the UK Bribery Act and Dutch bribery laws.





### Did you know?

Our Business and Human Rights Group took home the prestigious **Award for International Legal Services** at the LexisNexis Legal Awards 2018.

For the latest legal updates on international business and human rights, visit our blog at [www.hlregulation.com/business-and-human-rights](http://www.hlregulation.com/business-and-human-rights)



# Business and human rights

## Managing risk and defending claims

Hogan Lovells has acted for energy and natural resource companies in some of the leading cases in the business and human rights field. Using this experience, we advise multinational companies on human rights risk and how this can translate into hard, legal risk.

We have worked with clients in the development of their sustainability programs, including the integration of human rights into their risk management systems in a manner consistent with domestic and international law as well as the UN Guiding Principles and other multi-stakeholder initiatives.

Our advisory services are provided by lawyers who have special knowledge and experience in domestic and international law relating to human rights, as well as issues that are unique to the energy and natural resources industry:

- rights to natural resources (environmental law);
- labour and employment (including health and safety);
- respecting the rights of indigenous communities; and
- operating in conflict-affected areas.

### Case in point

- Acting for Shell in relation to claims brought in the English courts in relation to environmental damage in the Niger Delta.
- Acting for Royal Bafokeng Resources Proprietary Limited in respect of six separate high-profile, fatal mine accidents at its North Shaft, South Shaft, and its Styldrift Mine in South Africa. Representation includes regulatory interaction with the Department of Mineral Resources, representation at inquiry related to terms of Section 65 of the Mine Health and Safety Act, and representation at all civil and criminal matters arising from the six fatal accidents.
- Advising an international oil company on the jurisdiction of the English courts over claims against it arising out of a terrorist attack in North Africa.



# Our commitments





## Our values

Our five values are a fundamental part of who we are: they reflect the principles by which we conduct ourselves, shaping what we do and how we do it. They are also real and reflect the ethos of our legacy firms.

**Clients come first:** Our aim is to satisfy our clients through a deep understanding of their needs, their businesses, and their industries, and by providing excellent, responsive, and innovative service.

**Excellence in all we do:** We combine technical excellence in our work with a business-oriented approach, the highest level of integrity, and a focus on solutions.

**One team worldwide:** We act as an integrated team across our entire firm worldwide, working together in an atmosphere of mutual respect, collegiality, and friendliness.

**Commitment to our firm's success:** We put intense effort into our work and actively look for ways to deliver the best results for our clients and so for our firm.

**Good citizenship:** We embrace our responsibility to give back to our communities through pro bono and community service work and we are committed to a diverse workforce that is inclusive and welcoming.

These values guide us as we continue to build Hogan Lovells into a major force in the global legal marketplace. They are embedded into the operations of our business as well as our underlying culture.



# Transforming our world

## International Senior Lawyers Project (ISLP)

**Giving back to communities and society is fundamental to good business. And, it's part of our core.**

We have long partnered with The International Senior Lawyers Project (ISLP), a leading international non-profit organization that delivers pro bono legal services to governments and civil society organizations in developing countries, in support of projects that foster just, accountable, and inclusive development.

### Natural resource management and Hogan Lovells

ISLP supports least-developed country governments to manage their resources to the benefit of their people by advising on the negotiation of resource-related contracts, training and mentoring government officials, and drafting or revising relevant laws, regulations, and policies.

Through ISLP, we have advised:

- The Ministry of Natural Resources of the Republic of Rwanda (MINIRENA) with reviewing and revising its mining law and mining regulations to bring them in line with Rwanda's mining policy and in accordance with best practices.
- The Government of Liberia in its negotiations of a series of iron ore mining concession agreements with BHP Billiton, Severstal, China Union, and Elenilto. Our work also included agricultural negotiations, restructuring of health services, litigation and arbitration support, tax, and natural resource policy. The project aimed to aid the Republic of Liberia in its recovery and development following two brutal civil wars.
- The World Bank and the African Legal Support Facility, in the development of the Africa Mining Legislative Atlas, and a related model mining code, called the "Guiding Template." This project strengthens the Rule of Law by promoting legal and procedural certainty - ensuring that the government receives its fair share of revenues and also that investors receive adequate protection.

"With partners like Hogan Lovells, ISLP helps advance just, accountable, and inclusive development around the world with the vital pro bono legal support of highly sophisticated lawyers. The developing country governments and NGOs that serve as our clients benefit significantly from the advice we jointly provide, as do their citizens and communities."

*Katherine Mulhern, Executive Director, ISLP, 2018*



# #LightsOn

## Hogan Lovells Community Solar Innovation Awards

Hogan Lovells launched a global innovation awards programme to recognise and reward businesses and not-for-profit organisations in developing countries that use solar energy or technologies to benefit lives in poor communities. Our inspiration for establishing these awards was the UN Sustainable Development Goals, calling for collaboration between the private sector and civil society to end extreme poverty, tackle inequality and injustice, and safeguard our planet.

Through the **Hogan Lovells Community Solar Innovation Awards**, and with our partners, Adelphi, SEED, and Barefoot College, we have been able to ensure that the best innovative ideas are given a platform and an opportunity to grow amidst the backdrop of some of the most difficult environments.

In 2017, 287 applications were received from eight countries and, after careful consideration, ten winners were revealed during the 2018 SEED South Africa Symposium in Pretoria. All of our finalists are a real inspiration and a true testament to how innovative solutions can flourish in the most unlikely environments.

The overall winner was Village Energy in Uganda, which designs and installs customised solar installations for businesses, agriculture,

and community institutions that lead to improved livelihoods, job creation, and access to services. The company also has a travelling academy, where it trains rural youth and women as solar technicians.

Village Energy was awarded US\$10,000 to support their expansion. All ten winners will receive a bespoke business support package, including US\$30,000 pro bono legal advice, peer networking, one-on-one mentorship to develop business plans, and support from SEED to replicate their business model in other regions.

For more information, visit [www.hoganlovellssolaraward.com](http://www.hoganlovellssolaraward.com)

“Hogan Lovells has done a fantastic job with the awards.”  
*General Counsel, 3M China*

“Appreciated and enjoyed the participation in the jury process.”  
*Managing Director, BNY Mellon*





## Key contacts

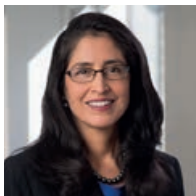
### Sustainable development and social license to operate



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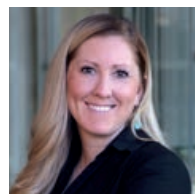
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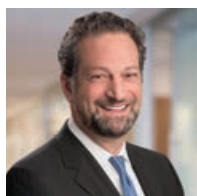
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## Green finance

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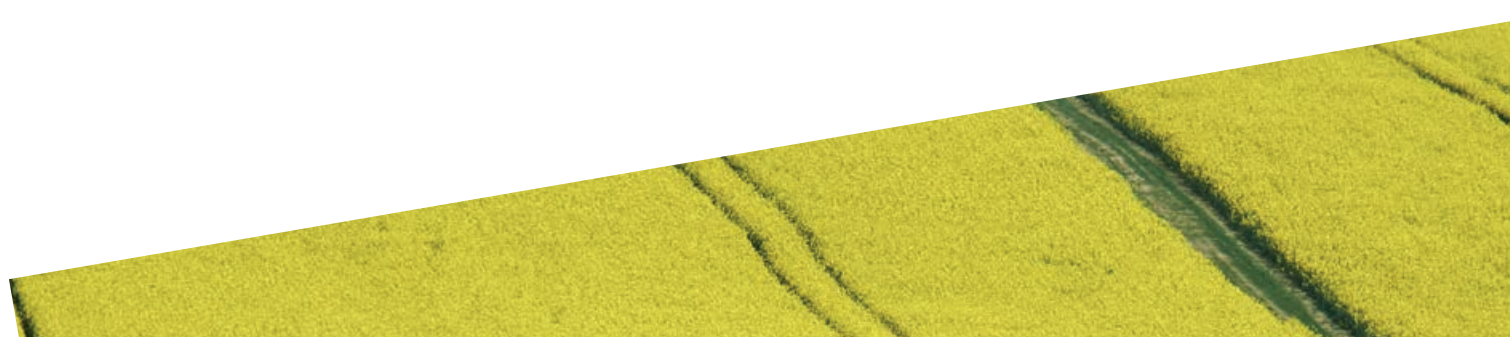
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