

## → ESG and Sustainability

Environmental, Social and Governance (“ESG”) considerations are critical elements of sustainable capitalism. We believe that ESG imperatives, when supported by a deep and nuanced understanding of the legal, regulatory and policy landscape, will drive opportunities for continued commercial success. As trusted problem solvers, we help our clients succeed using this new set of standards guiding them on how to best meet and exceed their business objectives while simultaneously advancing environmental sustainability, social responsibility, and rigorous corporate governance.

Sheppard Mullin’s ESG and Sustainability Team takes a holistic approach, bringing together expertise spanning a range of legal disciplines and providing comprehensive advice and representation from across our almost 1000 lawyers. We work across practice groups, geographies, industry teams and client teams. We make sure our clients get the benefit of our market-leading experience and expertise by assembling teams that approach client issues from a broad spectrum of perspectives as one firm.

Our Team recognizes that ESG standards and principles continue to evolve, sometimes quite rapidly, and that businesses must address a complex matrix of potentially applicable standards, and think ahead to prepare for what’s coming in the evolving ESG environment. We monitor trends and developments in government, industry and civil society to lead with a combination of high-level thinking and practical application in the real world. We are active with many leading sustainability organizations and initiatives, which gives us knowledge of and access to best practices and trends involving ESG and Sustainability. We help clients take stock of their ESG performance and provide strategic guidance enabling companies to affirmatively enhance economic performance, and to avoid or manage regulatory scrutiny, potentially expensive and disruptive litigation, and activist shareholder initiatives.

Our ESG and Sustainability-related services cut across substantive legal topics and span the range of our traditional practice groups. Sheppard’s Mullin’s integrated approach incorporates ten areas: (1) Climate Change and Decarbonization; (2) Corporate Governance and Regulatory Risk; (3) Sustainable Business and Projects; (4) Financing of Green Energy and Infrastructure; (5) Project Development; (6) Land Use and Environmental; (7) Clean Technology; (8) ESG Marketing and Consumer Communications; (9) Business and Human Rights; and (10) Equitable and Healthy Workplaces.

### Climate Change and Decarbonization

Climate change and decarbonization will be key issues for companies as they transition to lower carbon energy resources, changing technologies and business practices that can help them meet their energy efficiency goals and, where appropriate, leverage carbon offsets and trading to achieve decarbonization. Companies in all business sectors are addressing their own contributions to climate change, as well as the risks climate change poses to their economic prospects, their competitive posture, and even their viability. With careful consideration, good legal advice, understanding of the commercial realities and technological changes and costs, and an eye on the future, companies can become powerful positive forces on the path to mitigate and adapt to climate change while achieving long-term business success.

## What we do:

- Assist clients with understanding and developing targets for reducing carbon consumption and strategies for achieving those targets, including advising on energy transition strategies.
- Advise clients with respect to the Paris Agreement and other international climate regimes and programs, including both “hard law” and “soft law,” voluntary and mandatory regimes.
- Advise clients on the ever-increasing range of carbon disclosure standards such as those of the Task Force on Climate-related Financial Disclosures (TCFD), federal and state legislation and SEC regulations, and their consequences for the banking community and shareholder interactions.
- Advise clients on GHG regulations and mandatory/voluntary targets, including improving operations and energy efficiency to reduce emissions as well as mitigation technologies and the use of carbon offsets.
- Advise clients with respect to the climate principles of resilience and adaptation (including community-based concerns and environmental justice) to be incorporated into project development and investment/finance decisions.
- Advise clients making investments and managing risks related to energy, clean technology and tradable environmental attributes.
- Advise purchasers and originators of GHG emission credits and negotiate carbon offset offtake agreements.
- Advise clients on strategies for monetizing and securitizing carbon offset assets. Assist with the financing, development and certification of projects delivering nature-based and technology-based solutions to the climate crisis and other carbon offset projects both domestically and internationally, including projects that address agricultural and other land use practices.
- Advise clients with respect to international REDD+ (Reducing Emissions from Deforestation and Forest Degradation) and other AFOLU (Agriculture, Forestry and Other Land Use) projects, including in the voluntary market, in connection with the Green Climate Fund, and Article 6 of the Paris Agreement.
- Advise on the development of joint venture and other investment vehicles to finance renewable and alternative energy projects, including hydrogen production and storage technologies.
- Counsel clients with respect to FERC’s evolving climate policies and their intersection with state and local climate policies and regulatory programs.
- Advocate in administrative rulemaking regarding climate policy and regulation and related litigation.
- Represent clients in, and counsel clients affected by, GHG and climate-related lawsuits involving issues such as environmental impact statements, nuisance/torts, permitting, corporate disclosures, alleged “greenwashing” claims, and emission trading programs and practices.
- Advise clients on ocean decarbonization issues and initiatives.

## Corporate Governance and Regulatory Risk

Governance in the context of ESG will directly impact how successfully top floor executive offices, executive management, and boards of directors interact with an array of stakeholders, including shareholders, employees, customers, suppliers and the broader public. Does the company give back to the community in which it is located? Do the company’s actions reflect the values of its stakeholders? Does the company prioritize organizational integrity and transparency? Do the company’s statements align with its actions? How does the company robustly address in securities filings its challenges, uncertainties and mitigation actions without

exacerbating exposure?

Corporate governance includes financial and accounting transparency and full and honest financial reporting. Board members acting in a fiduciary capacity must be careful to avoid any conflicts of interest. Many ESG investors also focus on diversity and inclusion on the Board and throughout an enterprise. They may scrutinize executive compensation and involvement, as a measure of real contributions to long-term value, and as compared to rank-and-file pay rates.

Regulatory risk includes financial disclosure requirements, as well as other ESG reporting obligations, and the shifting and overlapping ESG regulatory regimes that govern multi-jurisdictional enterprises. ESG issues in the capital markets can be very broad, touching every company in some manner, and they can also be quite specific, with significant differences depending on the industry, location of operations and other factors. There is no single set of metrics or shared taxonomy that covers all ESG issues for all companies. Moreover, the landscape continues to change, so issues that were only peripheral yesterday may be central today, and uncertain tomorrow.

#### **What we do:**

- Design codes of business conduct that reflect a company's core values and incorporate those values into specific, practical, and auditable standards.
- Counsel clients on responsible reporting to shareholders, other stakeholders, regulators, and the public using clear, robust and consistent messaging, in compliance with applicable regulations, helping clients put their values forward in every aspect of their business.
- Advise on ESG considerations in connection with IPOs, SPACS and other capital markets transactions and ESG-related products, such as green bonds, social bonds and sustainability-linked bonds.
- Advise on mandatory disclosures including compliance with amendments to Regulation S-K regarding human capital disclosures, non-financial reporting directive, gender pay gap reports and the Task Force on Climate-related Financial Disclosures (TCFD).
- Advise on voluntary disclosures and commitments, including in SEC filings, sustainability reports and on websites.
- Draft ESG policies, respond to sustainability questionnaires and scrutinize ESG ratings.
- Advise and represent companies in responding to shareholder activism and ESG proposals.
- Counsel clients on how to navigate inconsistent cross-border legal regimes of multiple jurisdictions and implement best practices in jurisdictions where there are few if any ESG regulations or legal regimes.
- Design, support, and conduct audits of clients' compliance and conduct, and return actionable proposals for responding to potential problems before they become actual problems.
- Advise boards regarding their fiduciary duties concerning ESG issues and best practices, including obligations to stakeholders—both equity holders and creditors, including as to insolvent entities.
- Advise on internal and external investigations, with holistic support for crisis management and engagement with stakeholders and regulators. Help clients avoid potential calamity by designing and leading “pre-mortem” exercises to prepare and test client responses for when a real crisis hits.
- Actively participate in geopolitical policy discussions where the first indicia of global ethical issues are identified and responses drawn up at the international, national, and entity level.

- Counsel on supply chain management and support planning for potential issues on the horizon.
- Counsel clients on the collection, protection and use of sensitive data including cybersecurity counseling, asset inventories, and risk assessments, drafting disclosures on information risks, and incident response plans to assess whether information is properly managed.
- Advise on compliance with California's Unruh Act and other similar laws concerning company websites.
- Implement our Pay Equity Audit tool recognized by the Financial Times' Innovative Lawyer Report for expediting compensation reviews and providing real-time access to data for c-suite and board review.

## Sustainable Business and Projects

From new startups to long-established companies, modern business enterprises are paying more attention to their impact on the environment, as well as the significant business risks they may face because of environmental factors, including climate change and increasing public and government attention to environmental sustainability. Whether for particular projects or overall strategy, companies are hearing from an increasing number of stakeholders concerning their operations and impacts. Companies must maintain positive relationships with the natural environment and the communities with which they interact. Advancing environmental and social values, both outwardly and inwardly, can promote their long-term commercial success.

Sustainable Business and Projects includes finance products that have as an express purpose the achievement of environmental, social and organizational integrity goals on commercially sustainable terms. Achievement of such goals increasingly can be recognized as important for the long-term health and success of businesses—because institutional and individual investors increasingly seek out and demand investments that pursue these goals, and because certain asset classes linked to these goals have generated high returns for investors. Investment based on environmental, social and governance criteria has and continues to proliferate at a rapid pace.

### What we do:

- Formation of private equity and venture capital funds focused on investments addressing environmental, social and governance issues, including investment policies related to ESG investments, ESG impact measurement, and ESG impact investor reporting.
- Advise institutional investors in respect of ESG investments into private equity and venture capital funds, including formulation of investment policy statements to address ESG issues, due diligence of investments in respect of ESG issues, and formulation of impact measurement of ESG goals.
- Acquisitions and sales of Sustainable Businesses.
- Due diligence with respect to acquisitions and investments in sustainable businesses.
- Negotiate representations, warranties and indemnities addressing risks associated with acquisitions and sales of businesses in the context of ESG goals.
- Advise on acquisitions and sales of green technology and assets of debtors in chapter 11 proceedings, including toxic sites for environmental remediation and re-purposing for green usage, and green technology for expanded use to reduce GHG emissions.
- Advise social enterprises regarding business practices and alternative business structures.

- Advise on the structure, negotiation and documentation of agreements relating to ownership of business organizations that develop, own, and operate energy projects, including joint ventures, contribution agreements, shareholder agreements, tandem structures, securities offering documents, and federal and state securities law compliance.
- Structure and conduct due diligence and negotiate project and operating company purchase and sale transactions involving sustainable businesses, including operating company acquisition considerations such as employee, environmental, compliance, insurance and trade secret matters.
- Advise sports teams regarding sustainable business practices and reduction of carbon impact.

## Financing of Green Energy and Infrastructure

As demand for renewable energy grows, we continue to strengthen and expand our leading renewable energy financing practice encompassing a broad range of technologies and types of infrastructure, including utility scale wind and solar generation, distributed generation, fuel cells, biomass, renewable natural gas, green hydrogen, transmission infrastructure, pipelines, carbon capture and sequestration, offshore wind, and electric energy storage projects, including flow and lithium-ion batteries, stand-alone energy storage and energy storage coupled with solar, wind, or gas-fired generation.

### What we do:

- Advise with respect to all legal aspects of the entire life cycle of renewable energy generation, storage, transmission and disposal and related sustainable infrastructure. Learn more about EIPF Team add link to EIPF web page.
- Advise on exit financing for reorganized companies seeking to implement a reorganization plan and environmental business plans and plans that facilitate the development and implementation of green technology.
- Advise clients with respect to compliance published frameworks that are often voluntarily followed by financing providers, such as the UN Guiding Principles on Business and Human Rights, the OECD Guidelines on Due Diligence for Responsible Corporate Lending and Securities Underwriting, the IFC Performance Standards and the Equator Principles.
- Advise on environmental and social finance products including green bonds, green loans, sustainability-linked bonds, sustainability-linked loans, social bonds, social loans and debtor-in-possession financing for chapter 11 debtors and lenders to facilitate environmental business strategies and acquisitions.

## Project Development

By their nature, renewable energy and infrastructure projects raise a host of ESG and Sustainability issues. These issues include the many ways in which they can impact and be impacted by environmental conditions, including climate change, environmental justice considerations, the rights of indigenous communities, working conditions of employees, supply chain integrity and the suitability of projects for ESG-sensitive investors. These challenges impact project development and implementation beyond the traditional focus on financial metrics and regulatory compliance. We help clients plan and implement renewable energy and infrastructure projects with an eye on the impact for all stakeholders from initial R&D to full implementation and distribution. By thinking ahead, we aim to avoid problems down the line—and if problems do arise, we guide clients through dispute resolution proceedings.

## What we do:

- Negotiate and document real property acquisitions and dispositions by renewable energy developers, and assist in conducting due diligence investigations required for purchase and sale transactions, including matters relating to title, zoning and other entitlements, water and mineral rights and endangered species.
- Develop and implement strategies for project licensing and permitting, including assisting in preparation of environmental studies, impact reports and data statements, siting, and permitting including air quality, water quality, hazardous substances, land use, compliance and regulatory issues.
- Advise developers, contractors, and financing parties on engineering, procurement and construction (“EPC”) contracts, from the negotiation of such contracts to the enforcement of rights in mediation, arbitration, litigation and related appeals.
- Advise and represent clients regarding tariff-related issues, Department of Energy export and import authorizations, FERC market-based rate authorizations, state regulation (e.g., renewable energy standards and RECs) compliance with energy market rules and regulations, standards of conduct, interconnection issues, rate cases and purchases and sales of jurisdictional energy facilities.
- Negotiate transmission arrangements with unregulated transmission owners developing DC (Direct Current) interties between regions in the U.S.
- Work with Regional Transmission Organizations and their stakeholders on issues related to pricing for renewable assets relative to conventional generation.
- Negotiate power purchase agreements including bulk power sales, busbar sales, physical and financial hedges, “virtual PPAs” and distributed generation power purchase agreements.
- Structure and negotiate debt and equity financings, including limited recourse project financings, operating company working capital, asset-based and acquisition debt facilities, tax equity and equity capitalizations by strategic and financial sponsors.
- Advise on the myriad of tax planning matters related to energy projects including advice on structuring equity investments for the monetization of investment tax credits or production tax credits, special allocations in partnership arrangements, implementing tax-advantaged financing and acquisition techniques, sales tax issues, real estate tax issues, and international tax planning.
- Advise on the structure, negotiation and documentation of agreements relating to ownership of business organizations that develop, own, and operate energy projects, including joint ventures, contribution agreements, shareholder agreements, tandem structures, securities offering documents, and federal and state securities law compliance.
- Structure and conduct due diligence and negotiate project and operating company purchase and sale transactions, including operating company acquisition considerations such as employee, environmental, compliance, insurance and trade secret matters.

## Land Use and Environmental

Environmental regulations have evolved over time from a focus primarily on heavy industry, releases and disposal to the full lifecycle of products, including supply chains, retail and circular economy principles. In addition, the regulations governing land use and natural resources are constantly evolving. We closely monitor these developments at both the micro and macro level, and we counsel clients accordingly.

## What we do:

- Represent clients in litigation and administrative proceedings involving state and federal environmental laws and regulations and claims related to supply chain, climate change, and alleged misrepresentations.
- Advise clients on matters arising under state and federal environmental regimes, including the Clean Water Act, the Clean Air Act, NEPA, the Endangered Species Act, CERCLA, RCRA, TSCA as well as other relevant cross-border regulations and international conventions, both with respect to compliance obligations and strategies.
- Advise clients on managing, addressing and remediating Superfund site exposure at industrial facilities, including pulp and paper mills and chemical facilities.
- Conduct audits to assess environmental risks and formulate and implement strategies for managing those risks.
- Advise clients with respect to the cleanup of historic contamination under CERCLA, similar federal and state statutes and common law, including enforcement proceedings and private actions and initiatives.
- Advise clients regarding land acquisition and the financing and development of various projects, including LEED-certified projects.
- Provide sustainability and environmental risk management counsel with respect to investments in real property, REITs, distressed assets, and real estate portfolios, whether leased or owned.
- Advise clients with respect to environmental risks associated with M&A activities and other corporate transactions, including cross-border transactions.

## Clean Technology

The use of technological innovation to manage environmental challenges, including climate change—mitigation and adaptation—and energy efficiency, is a core Firm expertise. We represent a variety of companies engaged in Cleantech, Clean Energy and Decarbonization enterprises including providers of residential and commercial solar panels and thin-film products, home batteries, renewable natural gas (RNG), compressed natural gas (CNG), liquefied natural gas (LNG), on-demand distributed electricity and biomass, hydrogen batteries, and blockchain solutions (e.g., for centralized global trading, cloud fax, payment platforms, tokenization for carbon credits and trading floor transactions). We are proud to be a Leadership Supporter of the Green Hydrogen Coalition and leader of its Midstream and Downstream work-groups.

## What we do:

- Advise clients regarding intellectual property licensing, and negotiate and prepare licensing agreements.
- Advise clients regarding technology transfer, development agreements, research agreements, manufacturing agreements and supply agreements, from initial due diligence through negotiation of business terms, as well as the preparation of agreements and enforcement.
- Devise and implement appropriate entity structures for strategic partnerships, joint ventures and spin-offs.
- Facilitate data center projects, including financing, land use, engineering, procurement and construction, and leasing.
- Prepare and prosecute U.S. and foreign patent applications, and counsel on the complete range of issues that can arise in connection with patent matters.

- Advise companies regarding compliance with data protection laws and regulations, including GDPR, California Data Privacy Act and similar provisions.
- Counsel and litigate in licensing disputes and to protect trade secrets, know-how and confidential information.

## ESG Marketing and Consumer Communications

Considerations of environmental sustainability, social justice and corporate integrity, from racial inequality to forced labor, are continuing to become more and more important to consumers, businesses and regulators, and these stakeholders increasingly want their purchasing decisions to align with their values. Sheppard Mullin's ESG and Sustainability Team helps companies understand what marketing and consumer communications practices are permitted (or prohibited) and how companies can demonstrate their commitment to ESG and Sustainability consistent with laws and regulations in the jurisdictions where they operate, and where they market their products and services.

Sheppard Mullin's ESG and Sustainability Team helps companies navigate a rapidly evolving legal landscape and ensure that they protect the integrity of their brand, aligning practices and communications with ESG and Sustainability values. The stakes are high, with consumers and regulators taking an ever-closer look into ESG and sustainability marketing claims, and high-profile examples of brands damaged by allegations of "green washing" and unethical sourcing. Sheppard Mullin's ESG and Sustainability Team can provide real-time advice on ESG marketing that includes product descriptions and label statements, social media, mission statements, product origin and composition, employee programs, and investor and public relations. And we can handle sensitive litigation in ways that go beyond mere technical victories and implement long-term strategies to protect and enhance brand integrity.

### What we do:

- Review, clear and advise on advertising copy and product information relating to "green" claims, ethical sourcing claims and other ESG attributes.
- Defend consumer class action litigation alleging claims for false advertising and unfair competition arising from label statements and marketing claims regarding environmental sustainability and animal treatment, green claims, ethical sourcing and forced labor claims.
- Advice and counsel regarding compliance with environmental marketing guidelines, including FDA Green Guides and state law.
- Defend litigation alleging violation of transparency in supply chain laws.
- Advise clients on the use of recycled and repurposed product components.
- Advise clients on circular economy requirements in multiple jurisdictions.
- Advise clients on managing unexpected and new ESG and sustainability issues as they arise.

## Business and Human Rights

With the United Nations Guiding Principles on Business and Human Rights becoming an increasingly important reference point, companies are focusing on human rights implications of their business practices. Business and human rights intersect throughout the lifecycle of product and service development and creation, from sourcing



raw materials through location of manufacturing facilities, labor and employment conditions, protection of whistleblowers, trade law regulation (including carbon tariffs), distribution of products and services in compliance with human rights sanctions, and the safety of products and services, through disposal and waste management. Our wide-ranging approach to business and human rights helps our clients avoid complicity in human rights transgressions and maintain the integrity of their products and services, as well as their reputations.

## What we do:

- Create enforceable and auditable policies for multinational enterprises to comply with sanctions targeting human rights violators.
- Draft Codes of Conduct and Business Ethics for publicly traded companies.
- Advise clients regarding ethical immigration and international mobility practices.
- Advise renewable energy companies on compliance with U.S. regulations targeting alleged forced labor in the solar equipment industry.
- Coordinate renewable energy industry commitment to eliminating forced labor from supply chains, including negotiation of supply contracts that address ethical supply chain management.
- Advise multinational banks on continuing business in countries engaged in thwarting duly constituted governments/juntas/military coups without providing aid to human rights violators.
- Collaborate with boards and management teams to anticipate human rights sanctions issues and conduct business planning to avoid potential issues before they arise.
- Advise companies regarding compliance with international human rights standards, including the UN Guiding Principles on Business and Human Rights, and the OECD Guidelines on Due Diligence for Responsible Corporate Lending and Securities Underwriting.
- Advise companies regarding potential liability for human rights violations, including violations by others in the supply chain.
- Advise boards and their committees on developing commercially-robust, legally valid practices in relation to employee and community engagement, whistleblowing, inclusion and diversity, pro bono, labor organizing, health and safety and working conditions.
- Advise companies regarding the application of international human rights law in domestic court litigation.
- Investigate allegations of human rights violations connected to corporate conduct.
- Advise on the Equator Principles for private sector financial institutions.
- Advise companies regarding compliance with human rights standards of international financial institutions, including the IFC/MIGA Performance Standards, and the European Bank for Reconstruction and Development Environmental and Social Policy.
- Advise clients regarding collaboration with and support for civil society human rights organizations and governments, including litigation in the Supreme Court of the United States, other U.S. courts and international human rights forums.
- Advise clients on ethics, anti-corruption and human rights issues in connection with corporate transactions, proactive and emerging risk initiatives, compliance programs and related cross-border investigations, litigation and administrative proceedings.

## Equitable and Healthy Workplaces

In addition to a company's relationship with external stakeholders, one of the key relationships for a company is the relationship with its own employees. Workplace policies regarding diversity, equity, inclusion and prevention of sexual harassment, as well as pro bono and community service, demand attention. Maintaining a safe and healthy work environment includes ensuring the physical safety of employees, but it does not stop there. In addition, employee training and education programs with opportunities for advancement are important, as are employee engagement with management and whistleblower protection. Compliance with applicable labor and employment laws is a "must," and a healthy and equitable workplace in a world infused with the values of ESG and sustainability will provide even more protection for employers and better workplace morale.

### What we do:

- Advise boards and management on diversity, equity and inclusion, mandatory and voluntary diversity and compensation reporting (including gender and ethnicity pay gap reporting, CEO pay) and pay equity issues.
- Advise boards and management in relation to whistleblower complaints of discrimination, bullying and harassment, and conduct related investigations.
- Advise boards and management on the drafting and implementation of executive compensation strategies and policies.
- Advise boards and their committees on developing best practices in relation to employee and community engagement, whistleblower response, diversity, equity and inclusion, pro bono, health and safety and working conditions.
- Conduct effective and respectful workplace training, including training against harassment, discrimination and bullying, and diversity and inclusion training, including implicit bias and conscious inclusion training.
- Draft Codes of Conduct and Business Ethics for publicly traded companies.
- Advise on implementation of voluntary affirmative action programs and federal contractor compliance with OFCCP (Office of Federal Contract Compliance Programs) requirements.
- Advise regarding development of and compliance with ERISA/ERISA plan investment ESG screens.
- Advise Human Resources and Employee Relations teams on internal communications and initiatives regarding company ESG positions.
- Advise on employee mobility issues, including immigration and non-immigrant worker counseling.

## Our Commitment

Sheppard Mullin understands ESG and Sustainability not just because we provide ESG-related legal services to our clients, but also because we deal with the very same issues as a full service Global 100 law firm with offices throughout North America, Europe and Asia. We understand the challenges and the importance of making ESG and Sustainability part of a thriving business. Sheppard Mullin treats ESG and Sustainability not as mere slogans or marketing tools, but as integral components of delivering high-quality services and problem-solving to our clients and acting as a positive force in the communities in which we and our clients work and live, and throughout our respective value chains.

As a member of the Law Firm Sustainability Network, Sheppard Mullin participates in the development and sharing of innovative measures to manage our carbon footprint, incorporating environmental considerations into the choices we make (e.g., the configuration of our physical office space). Many of our Team members serve as advisors and Board members for ESG and Sustainability-focused organizations at the forefront of ESG and Sustainability.