



SUSTAINABLE FINANCE FOR THE OIL & GAS INDUSTRY

15 September 2021

INTRODUCTION



- There are tremendous opportunities for the O&G sector to attract sustainable finance.
- The sustainable finance market is booming and the development of new and innovative products has made it more accessible to O&G issuers.
- However, it is crucial for O&G issuers to understand the various risks inherent in sustainable finance transactions.
- There is a clear trend towards increased scrutiny of ESG and ESG-related disclosure and securities offerings:
 - > Regulators are increasingly focused on misleading disclosure (or ‘greenwashing’).
 - > ESG-related securities litigation is increasing as ESG becomes more central to investment decisions.

LEGAL RISKS AND LIABILITY



- Sources of potential liability from sustainable finance transactions are varied, but primarily consist of:
 - > *Contractual liability*:
 - Breaches of ESG-related contractual obligations and other binding commitments.
 - Consequences of binding commercial terms.
 - > *Misrepresentation / mis-selling*:
 - May result from inaccurate, insufficient and/or misleading ESG-related statements in transaction materials and announcements.
 - Particularly relevant to targets, projections and aspirational statements.
- As ESG becomes more important, investors are more likely to assert they have suffered losses, and such losses are likely to be larger.
- The risks for oil & gas issuers may be more acute.

MITIGATING MEASURES



- O&G issuers should focus on the following risk mitigation measures:
 - > *Thorough diligence and disclosure:*
 - Diligence / verify all relevant data; avoid too much disclosure (or too little); prepared fulsome risk disclosure.
 - > *Clear and precise drafting:*
 - Exclude contractual liability (as far as possible); provide for sufficient contractual flexibility where appropriate.
 - > *Optimise transaction structure:*
 - Ensure the relevant green transaction is structured in accordance with the best practice
- This is an exciting time for O&G issuers seeking to raise sustainable finance, but care should be taken to navigate the associated risks.

