

JUNHE SPECIAL REPORT



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ESG Special Topic Series (XII)-Deconstructing ESG Supply Chain Management

Background: In recent years, the Coronavirus (COVID-19) pandemic has brought many new challenges and uncertainties to global supply chains. To deal with such challenges, some companies have increased their number of suppliers, while others have further developed their upstream and downstream capabilities to protect their supply chains. Supply chain management is an important dimension of Environmental, Social and Governance (“ESG”) risk management. This article intends to help companies understand some of the key issues involved in ESG supply chain management. It provides information regarding ESG disclosure standards and some of the legislative trends of ESG supply chain management in various overseas countries.

I. What is ESG Supply Chain Management?

Currently there is no definition of “ESG Supply Chain Management” under the existing laws of the People’s Republic of China (“PRC”). However, certain existing international and domestic standards can help us understand the meaning of ESG supply chain management.

1. Global Level: According to the Consolidated Set of the Global Reporting Initiative Sustainability Reporting Standards (“GRI Standards”), we

understand that a supply chain refers to sequence of activities or parties that provide products or services to an organization. A “product” refers to an article or substance that is offered for sale or is part of a service delivered by an organization; a “service” refers to the action of an organization to meet a demand or need.

2. Domestic Level: China has introduced many laws, regulations and recommended standards regarding supply chains, which define the meaning of “supply chains” or “green supply chains.” These include the *Guiding Opinions of the General Office of the State Council on Actively Promoting Supply Chain Innovation and Application* (the “Guiding Opinion”), and the *Supply Chain Risk Management Guideline* (GB/T 24420—2009), *Supply Chain Management* (GB/T 26337), and *Green Manufacturing—Green Supply Chain Management in Manufacturing Enterprises-Guideline* (GB/T 33635-2017) (the “Green Supply Chain Management Standard in Manufacturing Enterprises”), an enterprise evaluation index system of green supply chain management in the machinery, automobile and electronics industries. According to the Guiding Opinion, a “supply chain” refers to an

organizational form of efficient coordination during the process of a product's design, procurement, production, and sales and service with the goal being quality improvement and efficiency by means of resource integration. The Green Supply Chain Management Standard in Manufacturing Enterprises defines a "green supply chain" as having a goal of environmental protection and resource saving, which exists through the entire process from product design to raw material procurement, production, transportation, storage, sales, usage and disposal and ensures a company's economic activities in harmony with the environment protection goals of the upstream and downstream supply relationship. The definition of a "green supply chain" that empowers the environmental (E) elements is therefore based on the definition of a "supply chain."

Based on the above analysis, the concept of ESG supply chain management could be understood as the entire process and activities of a company's comprehensive planning, organizing, coordinating and controlling, which involves the flow of business, logistics, cash and information with the help of technology, to practice an ESG strategy, in order to unify the economic value, environmental justice and the public welfare of a company.

II. Why is ESG Supply Chain Management important?

1. **Voluntary Standards:** From a global perspective, GRI specifies the disclosure requirements on supply chain management in the GRI Standards, *i.e.*, the status of a company's supply chain (including the type, number, location, currency valuation, major brands,

products and services, labor intensity, of the signing suppliers, any major changes and the impact of such changes, etc.) should be disclosed during the reporting period. The China Enterprise Reform and Development Society released the *Guidelines on Corporate ESG Disclosure*. The guidelines take supply chain management as an independent disclosure index under social indicators and set out the qualitative or quantitative disclosure requirements. Meanwhile, there are other compliance management requirements for suppliers under environmental protection and corporate governance indicators.

2. **Mandatory Standards:** From a global perspective, some countries or economic and political communities like the European Union ("EU"), Germany, the United Kingdom and the United States have released regulations to supervise ESG supply chain management. For instance, in June 2021, the Federal German Parliament passed the *Supply Chain Due Diligence Act*, requiring German companies analyze and report the relevant compliance matters of entities involved in their supply chains (including Chinese suppliers) in connection with environmental protection, human rights and other aspects. This will come into effect on January 1, 2023. On February 23, 2022, the EU Commission released a proposal for the *Directive of the European parliament and of the council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937*. The proposal imposes due diligence obligations in connection with environmental and human rights protection on the following EU and non-EU companies involved in supply chain management: (a) EU companies (i) with

over 500 employees and a net turnover of more than EUR 150 million, or (ii) with over 250 employees and a net turnover of more than EUR 40 million, provided that at least 50% of the turnover is generated in the EU; and (b) non-EU companies (i) with a net turnover of more than EUR 150 million, or (ii) with a net turnover of more than EUR 40 million, provided that all of the turnover is generated in the EU. In addition, the EU Commission published *the Directive 94/62/EC of 20 December 1994 on packaging and packaging waste* and other directives and regulations to set out the specific requirements for supply chain management in connection with packaging.

From a domestic perspective, China has released certain laws and regulations involving environment, health and safety (“EHS”) on supply chain management, indicating that the compliance management of suppliers is becoming increasingly important for companies to prevent compliance risk. In some cases, a company that fails to conduct thorough due diligence on its suppliers may face civil liability, administrative penalties or even criminal punishments. Therefore, it is now common for companies to conduct regular EHS compliance and EHS supplier audits.

Disclosure rules for listed companies are emphasizing the increasing importance of ESG disclosure. The *Guidelines for Investment Relationship Management for Listed Companies* became effective on May 15, 2022, and provides that listed companies shall disclose a company’s ESG information during the management of the investment relationship. There are no further details available on how to disclose such

information, but we believe that information related to supply chain management should also fall within the scope of ESG disclosure.

III. How should companies deal with ESG Supply Chain Management?

The ESG supply chain management of an enterprise can only be achieved with the cooperation of multiple departments such as procurement, legal, risk control, public relations and finance. We recommend that enterprises strengthen the management of their supply chains by taking the following measures:

1. Enterprises should establish, improve and operate their own ESG supply chain management systems, and implement systems for the selection, training, assessment, supervision and elimination of suppliers, as well as supplier specific ESG management policies. In particular, the ESG supply chain management systems of export enterprises should be established based on the full identification of the regulations and local practices of the countries and regions where their customers are located. It should be noted that multinational corporations should fully understand and apply their ESG supply chain management systems, to meet the domestic and foreign compliance requirements regarding ESG supply chain management.
2. Enterprises should strive to include ESG related representations and warranties in their supply chain related commercial contracts. They should explicitly require their suppliers to comply with (i) the international standards and domestic regulatory requirements that they commit to and that they expect their

suppliers to comply with, (ii) their policies regarding the ESG management of suppliers, and (iii) appropriate reporting mechanisms when ESG problems arise, to strengthen contractual constraints.

3. Enterprises should regularly organize internal and external auditors to conduct supply chain ESG or EHS compliance reviews, especially for suppliers of critical raw materials. Auditors can help enterprises establish and/or upgrade their ESG supply chain management systems, identify ESG risk points, and urge suppliers to track and solve problems in a timely manner.

The ESG management of supply chains plays a vital role in the ESG risk management of enterprises and affects their sustainable development capacity. Alongside our traditional long-term legal and compliance services, we can perform legal due diligence into customized ESG compliance reviews and incorporate ESG factors and considerations when drafting and reviewing commercial contracts. We are able to assist our valued clients in all areas of ESG compliance.

We can assist you to establish or improve your company's or your supplier's ESG management systems. We can also draft relevant rules and policies, assist with your ESG and EHS due diligence, draft and review supply chain-related commercial contracts, and provide ESG training and other services. Please contact us by email for further information: ecoenvpro@junhe.com

The JunHe EHS and ESG Team: JunHe, with over 970 professionals, is one of China's largest full-service law firms with an international reputation in providing high quality legal services. As one of the pioneers in the practice area of ESG in China and one of the largest teams of environment, health and safety (EHS) lawyers in the country, JunHe provides clients with a full range of EHS and ESG legal services. Our team is sustainability-oriented and provides EHS compliance audit services for enterprises with different industrial backgrounds depending on the specific needs of the clients, either alone or in collaboration with third-party agencies. JunHe relies on different legal and professional compliance teams (including ESG, EHS, antitrust, labor and employment, intellectual property, trade and data, finance and tax, business, criminal compliance and other professional teams related to ESG areas) to provide ESG due diligence services in supply chain management and M&A matters and cooperates with enterprises and third-party agencies to draft ESG reports. Based on our experience in serving clients from different industrial backgrounds, we can provide a package of specialized services for the daily operations of enterprises, including specialized ESG-related legal and compliance diagnosis, as well as drafting and reviewing ESG-related terms and clauses in contracts with business partners, the construction and enhancement of ESG systems, the identification of ESG disclosure requirements, green finance, and ESG training.

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ESG 专题系列（十二）—— 解构 ESG 之供应链管理

导言：近年来，新冠肺炎疫情给全球供应链带来了巨大的挑战和不确定性。为应对新冠肺炎疫情给企业供应链带来的考验，一些企业增加了供应商数量，另一些企业则自行纵向往上、下游发展，增加供应链端的抗风险能力。而企业供应链管理本身是环境、社会及公司治理（简称“ESG”）风险管理的重要维度之一。本文拟结合 ESG 披露标准和一些海外国家 ESG 供应链管理方面的立法动态，帮助企业了解 ESG 供应链管理方面的一些注意事项。

一、何为ESG供应链管理？

尽管我们暂未注意到中国法律法规对“ESG供应链管理”给出定义，但结合一些国际和国内标准有助于理解ESG供应链管理的含义。

1. **国际层面：**根据全球可持续发展标准委员会发布的《GRI可持续发展报告统一标准》（简称“GRI标准”），我们理解供应链系指为组织提供产品或服务或相关方所形成的网链结构。其中产品系指用于销售或作为组织所提供服务的部分的物品或物质；服务系指组织满足需求或需要的行为。

2. **国内层面：**中国出台了不少供应链方面的法律法规和推荐性标准，例如：《国务院办公厅关于积极推进供应链创新与应用的指导意见》（简称“《指导意见》”）、《供应链风险管理指南》（GB/T 24420—2009）、《供应链管理》（GB/T 26337）、《绿色制造-制造企业绿色供应链管理-导则》（GB/T 33635-2017）（简称“**制造企业绿色供应链管理标准**”）、机械/汽车/电子电器行业的绿色供应链管理企业评价指标体系等，对“供应链”或“绿色供应链”作出了定义。根据《指导意见》，供应链系指以客户需求为导向，以提高质量和效率为目标，以整合资源为手段，实现产品设计、采购、生产、销售、服务等全过程高效协同的组织形态。而

“制造企业绿色供应链管理标准”则给出了绿色供应链的定义，即将环境保护和资源节约的理念贯穿于企业从产品设计到原材料采购、生产、运输、储存、销售、使用和报废处理的全过程，使企业的经济活动与环境保护相协调的上下游供应关系，即在前述普通意义上的供应链基础上赋能环境(E)要素。

综上，我们似乎可以将ESG供应链管理理解为：以践行ESG战略为理念，实现经济价值与环境正义和社会公益的统一为目标，利用信息技术在提供产品或服务的全过程中，全面规划该组织形态的商流、物流、资金流及信息流等，并进行计划、组织、协调与控制相关的活动和过程。

二、ESG供应链管理为何重要？

1. **自愿性标准：**从国际层面全球可持续发展标准委员会发布的“GRI标准”对供应链管理提出了披露要求，即披露报告期内企业的供应链情况（包括签约的供应商类型、数量、地理位置、支付货币估值、主要品牌、产品和服务、劳动密集型程度，以及重大变化及其影响等）。此外，2022年4月16日中国企业改革与发展研究会发布的《企业ESG披露指南》将供应链管理作为社会指标项下独立的披露指标，提出了定性或定量的披露要求。同时，在环保和治理指标项下提及了供应商合规管理等要求。

2. **强制性规定/标准：**在国际层面，欧盟、德国、英国、美国等国家或经济政治共同体就ESG供应链管理出台了相应法规进行监管。例如：联邦德国议院于2021年6月通过了《供应链尽职调查法》，要求德国企业就其供应链中相关主体（包括中国供应商）在环保、人权等方面进行分析并报告相关合规情况，该法将于2023年1月1日生效；欧盟委员会于2022年2月23日发布了《企业可持续发展尽职调

查指令草案》，要求对(a) (i) 员工500人以上且净营业额1.5亿欧元以上，或(ii) 员工250人以上、净营业额4千万欧元以上，且至少50%的净营业额来自于特定行业的两类欧盟企业，和(b) 与之相对应的来源于欧盟的净营业额(i) 1.5亿欧元以上或(ii) 4千万欧元以上的两类非欧盟企业施加其在供应链管理中环境和人权等方面的尽职调查义务；欧盟委员会还出台了《包装和包装废物94/62指令》等针对包装的供应链管理提出具体要求。

在国内层面，我国在环境、健康和安全（简称“EHS”）领域的一些法律法规对供应链管理有要求，企业对供应商的合规管理对于企业合规风险防范的重要性日益凸显。一些情况项下企业未尽到供应商的审慎审查，可能承担民事责任、行政处罚（甚至刑事责任）等。因此，企业定期进行EHS合规审核和EHS供应商审核的实践比较普遍。

针对上市公司的披露规则越来越强调ESG披露的重要性。刚于2022年5月15日施行的《上市公司投资者关系管理工作指引》明确上市公司应在投资者关系管理中披露公司ESG信息。尽管该指引尚未出台细则规定，但我们认为从ESG的范畴出发也应当包含供应链管理方面的披露。

三、企业如何进行ESG供应链管理？

企业ESG供应链管理需要多部门（如采购、法务、风控、公关和财务等）协作方能实现。我们建议企业可从以下几个方面出发，加强供应链管理：

1. 企业应建立、完善并运行自己的ESG供应链管理体系，其中尤其应包括建立供应链管理制度，如供应商的遴选、培训、考核、督察及淘汰制度，以及针对供应商ESG管理的政策。提请出口企业注意，ESG供应链管理体系应建立在对客户所在国/区域的法规和本地化习惯充分识别的基础之上。提请跨国公司注意，适当了解和应用ESG供应链管理体系以符合境内外对于ESG供应链管理的合规要求。

2. 企业应在供应链相关商业合同中争取纳入ESG相关的陈述与保证，明确要求供应商遵守：

(i) 企业所承诺且希望供应商遵守的国际标准、国

内监管要求；(ii) 企业针对供应商ESG管理的政策；以及(iii) 出现ESG问题时相应的汇报机制，加强合同层面的约束。

3. 企业应在首次合作前及合作后定期组织内部和外部审人员进行供应链ESG或EHS合规审核（尤其是关键性原料供应商），帮助企业搭建和/或提升ESG供应链管理体系，发现ESG风险点，督促供应商及时跟踪和解决问题，以提高供应链ESG治理的能力及水平。

企业供应链ESG管理在企业ESG风险管理中起着至关重要的作用，影响企业的可持续发展能力。作为传统常年法律和合规服务业务的升级服务，君合团队深耕并将法律尽职调查衍生至定制化的ESG合规审核，并在商业合同起草和审阅中纳入更多的ESG因素与考量。我们相信，在ESG合规领域的持续积累和努力，将使我们能够为我们的客户保驾护航，驶向成功的彼岸！

如您需要搭建或完善企业或供应商ESG管理体系或起草相关制度/政策，进行企业或供应商ESG或EHS尽职调查、供应链相关商业合同起草/审阅方面的协助，ESG培训等服务，欢迎邮件联系我们：ecoenvpro@junhe.com。

关于君合EHS及ESG法律团队：君合是国际公认的、提供优质法律服务的中国大型综合律师事务所之一，拥有逾970人的专业团队。君合是开拓中国ESG法律业务领域的先驱之一并且有中国最大的EHS律师团队之一，为客户在EHS和ESG领域提供法律服务。君合以可持续性为导向，视客户需求，单独或与第三方机构合作，为不同行业的企业提供EHS合规审核，并且依托不同的法律及合规专业团队（ESG、EHS、反垄断、劳动人事、知识产权、贸易与数据、财税、商业和刑事合规等所有与ESG领域相关的专业团队），在供应链管理和并购事宜中，提供ESG尽职调查服务，配合企业或第三方机构起草ESG报告并结合我们服务不同行业客户的经验在企业日常运营中提供ESG相关的专项法律及合规诊断、与商业合作伙伴合同中的ESG条款起草及审阅、投资人和企业的ESG体系搭建和提升，ESG披露要求的识别，绿色金融，ESG培训等一揽子服务。

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