

ESG 专题系列十四：ESG 实践：不得不关注的“洗绿”风险！

近日，企业和投资人常常关注的一个问题：抛开上市公司和投资方的要求，总体上，ESG 体系建设遵循的是自愿性标准，那么“投资人的投资体系搭建和践行到什么程度，可以声称自己是具备 ESG 理念和实践的”？这一问题的答案并非“非黑即白”，重点在于：ESG 的声明是否建立在科学的治理体系之上并且具有事实性的佐证资料支撑。如下气候变化相关几个问题的思考，或许可以在一定程度上帮助您探寻这个问题的答案。

一、“洗绿”带来的思考

传统的“洗绿”突出表现为过分夸大企业在环保方面的成绩，刻意隐瞒企业在生态环境方面的劣迹。我们清晰地认识到，在气候变化的问题上，已经不仅仅局限于传统的“洗绿”、“漂绿”所带来的误导性陈述、虚假陈述、违背环保承诺相关的法律风险（美国证券交易委员会公布的与 ESG 相关大量的处罚案例即为例证）；更进一步，国际层面的气候诉讼案件也带给我们深刻的警示：未能吸收《巴黎协定》的精神做出承诺、或者做出抽象的，不明确的承诺，也可能给企业带来现实的法律风险。而事实上，法律风险还仅仅只是 ESG 合规风险这座冰山的一部分，远非全部！

二、值得管理者和投资人审视问题

在气候变化的问题上，企业的管理者和投资人，往往可以审视如下几个问题：

- 1、我们是否评估过气候变化的风险？
- 2、我们依据什么标准评估气候变化的风险？
- 3、我们建立了怎样的气候变化风险管理目标？

4、我们是否围绕该等目标建立了自己的公司政策和披露机制？

5、我们气候变化相关的政策和目标在长期范围内是否具体、明确且具有约束力的，并且与自己的行业特征、地位及影响力相吻合？

6、我们在特定项目中向自己的利益相关方进行信息披露，以及进行 ESG 报告/CSR 报告/年报披露时，是否进行了准确的陈述？

更进一步，如管理或投资的是上市公司，则也可以审视如下几个问题：

1、我们在招股说明书或 ESG 报告/CSR 报告/年报进行信息披露时，是否对投资者进行了全面、充分、准确的陈述？

2、我们向投资者披露的招股说明书或 ESG 报告/CSR 报告/年报中的数据是否经过外部专业鉴定机构的独立验证？

3、我们是否遵守招股说明书或 CSR 报告中的承诺，是否从事有悖于 ESG 和可持续发展理念的业务（包括投融资业务）？

4、我们是否在 ESG 报告/CSR 报告/年报中释放无关紧要的道德信号，如发布某种倡议来彰显企业的低碳意识，而实际这种低碳努力对于降低企业整个碳足迹微不足道？

5、我们制定的气候变化计划与实际举措是否存在严重脱节现象，如发布的碳数据相关事前公告（包括净零排放目标、减碳承诺等）与事后对碳排放进行计量、报告和验证的水平不相称？

三、我们的期待

在中国签署《巴黎协定》以及全球双碳目标的背景之下，在国内监管层面对于国资、上市公司端 ESG 披露要求日益强化、自愿性标准孕育而生的背景之下，ESG 年代已经到来。我们期待：越来越多的企业和投资人关注与践行 ESG，成为或者致力于成为“负责任”的“企业公民”，与越来越多的企业和投资人探讨如何逐步建立符合自身实际情况的 ESG 管理体系/投资体系的搭建，在可持续发展的道路上为越来越多的企业和投资人保驾护航！

如您需要搭建或完善 ESG 投资或管理体系，进行并购或投资中的法律尽职调查和 ESG 尽职调查、交易架构设计、交易文件起草/审阅、ESG 报告或披

露文件，规章制度起草或审核、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 ESG 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 900 人的专业团队。君合是环境、社会和治理（ESG）法律业务领域的先驱之一并且有中国最大的环境法律师团队之一，为客户在 ESG 领域提供法律服务。君合以可持续性为导向，依托不同的法律及合规专业团队（ESG、EHS、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），在并购中提供 ESG 尽职调查服务，配合企业或第三方专业机构（视具体需求）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、ESG 体系搭建和提升等一揽子服务。

朱 核 合伙人 电话：86 21 2208 6340 邮箱地址：zhuh@junhe.com
倪天伶 合伙人 电话：86 21 2208 6346 邮箱地址：nitl@junhe.com
黄芷莲 律 师 电话：86 21 2208 6139 邮箱地址：huangzhl@junhe.com

本文仅为分享信息之目的提供。本文的任何内容均不构成君合律师事务所的任何法律意见或建议。如您想获得更多讯息，敬请关注君合官方网站“www.junhe.com”或君合微信公众号“君合法律评论”/微信号“JUNHE_LegalUpdates”。



JUNHE SPECIAL REPORT



July 26, 2022

ESG Series XIV

ESG Practice: Paying Attention to the Risks of “Greenwashing”

Apart from the requirements for listed companies and investors, the establishment of ESG systems generally follow voluntary standards. To what extent can investors claim that they have established ESG concepts and practices? It is not a black-and-white issue; the key point is whether the ESG statements are based on scientific governance systems and supported by factual data. Taking time to consider the following questions regarding climate change may be helpful.

I. Reflections on “Greenwashing”

Traditional “greenwashing” activities include the over-exaggeration of a company’s achievements in environmental protection and deliberately hiding ecological misdeeds. We realize that greenwashing is not limited to the act of making misleading or false statements or the legal risks related to the violation of environmental commitments. (The large number of ESG-related penalties published by the SEC can provide examples.) Internationally, climate litigation cases provide warnings: failure to absorb the spirit of the Paris Agreement to make commitments, or making abstract or unclear commitments, may entail legal risks to enterprises. However, legal risks are just the tip of the iceberg for ESG compliance.

II. Issues Worth Examining by Managers and Investors

On the issue of climate change, managers and investors may consider the following questions:

1. Have they assessed the risk of climate change?
2. What criteria has been used to assess the risk of climate change?
3. What kind of climate change risk management objectives have been established?
4. Have they established company policies and disclosure mechanisms around these objectives?
5. Are the policies and objectives relating to climate change specific, clear and binding in the long term, and consistent with the industry’s character, status and influence?
6. Are the statements accurate when disclosing information to interested parties in specific projects, and when disclosing information in the ESG, CSR and annual reports?

When it comes to listed companies, the following questions may also arise:

1. Have comprehensive, sufficient and accurate statements been made to investors in the information disclosure in the prospectuses or the ESG, CSR and annual reports?
2. Has the data in the prospectuses disclosed to investors, or the ESG, CSR and annual reports, been independently verified by a professional external appraisal institution?
3. Have the commitments in the prospectus or CSR reports been abided to? Has any business (including investment and financing) that is against ESG and the concept of sustainability been engaged in?
4. Have irrelevant ethical signals been made in ESG, CSR and annual reports, such as highlighting initiatives in carbon awareness, when such efforts have a minimal effect on reducing the overall carbon footprint?
5. Is there a serious gap between climate change plans and action? This could be the gap between the level of ex ante announcements of carbon data (including net zero emissions targets, carbon reduction commitments, etc.) and the level of ex post measurement, reporting and the verification of emissions.

III. Our Expectations

China has signed the Paris Agreement and the ESG era has arrived. This signals increasingly stringent domestic regulations and the emergence of voluntary standards for ESG disclosure requirements for state-owned assets companies and listed companies. We expect that more and more

enterprises and investors will pay attention to ESG and put these principles into practice. Companies will strive to become “responsible corporate citizens,” and explore ways to gradually implement ESG management and investment systems.

JunHe offers various services to establish and/or improve ESG-related investment or management systems, as well as legal and ESG due diligence investigations. We provide assistance in deal structuring, draft and review transaction documents in relation to M&A transactions and investment projects, as well as draft and review ESG reports, disclosure documents, policies and rules. If you require ESG training or any other ESG-related services, please contact us via email: ecoenvpro@junhe.com.

JunHe’s ESG Team: JunHe, with over 900 professionals, is one of China’s largest full-service law firms with an international reputation for providing high quality legal services. JunHe is one of the pioneers in the practice area of environmental, social, and corporate governance (“ESG”) and has one of the largest teams of environmental law lawyers in China, which provides clients with ESG related legal services. With a goal of sustainability, multidisciplinary practice groups (such as ESG, EHS, labor, IP, trade and data, finance and tax, commercial and criminal compliance, and other ESG related areas) and extensive experience in serving clients from different industries, JunHe provides ESG due diligence services in M&A transactions, assists enterprises or third party professional agencies (if requested) in drafting ESG reports and offers full legal services during enterprises’ daily operation, including ESG related legal and compliance analysis and establishment and improvement of ESG system

George Zhu Partner Tel: 86 21 2208 6340 Email: zhuh@junhe.com
Carey Ni Partner Tel: 86 21 2208 6346 Email: nitl@junhe.com
Zhilian Huang Associate Tel: 86 21 2208 6139 Email: Huangzhl@junhe.com

This document is provided for and only for the purposes of information sharing. Nothing contained in this document constitutes any legal advice or opinion of JunHe Law Offices. For more information, please visit our official website at www.junhe.com or our WeChat public account “君合法律评论”/WeChat account “JUNHE Legal Update

