

Environmental Protection

Environmental Protection Series (XIV) - How will the Environmental Information Disclosure System affect Pre-IPO companies or listed companies

Foreword:

The role of ESG, namely Environmental, Social and Corporate Governance, is to evaluate the sustainability of business operations and its impact on society from the perspective of the environment, society and corporate governance. The China Securities Regulatory Commission (CSRC) has ESG information disclosure requirements for listed companies. With China's "registration-based IPO system" era fast approaching, pre-IPO companies and listed companies need to pay close attention to the changes to the laws and requirements of various stock exchanges in order to ensure ESG compliance (especially environmental compliance) and avoid unforeseen compliance problems which may hinder the listing process or bring about legal risks.

I. An Overview of the Relevant Requirements of Environmental Information Disclosure for Listed Companies in China

According to the current legal framework and the listing and disclosure rules of the Shenzhen Stock

Exchange ("SZSE") and the Shanghai Stock Exchange ("SSE"), listed companies shall disclose information about environmental pollutants, their facilities for pollution prevention, any major violations of law and/or contingency plans for environmental emergencies, and environmental self-monitoring plans in their registration statements, prospectuses, IPO announcements, periodic reports, and interim reports. In addition, a listed company shall disclose any major administrative penalties it has incurred and any serious environmental accidents. It is worth noting that the rules mentioned above have not set out the ESG information disclosure mandatory requirements for all listed companies. Nevertheless, we have noticed that the SZSE released *Guidance on Social Responsibilities of Listed Companies* in 2016, and the SSE issued *Guidance on Environmental Information Disclosure of Listed Companies* and *Guidance on ESG Information Disclosure of Listed Companies* respectively in 2010 and 2018 (both are draft guidelines). These guidelines have more specific ESG information disclosure requirements for listed companies. Some sectors (such as the petrochemical industry) have also introduced ESG evaluation

guidelines.

II. The Importance of Environmental Compliance Review and Information Disclosure Compliance for Pre-IPO Companies

In the IPO process for an enterprise, the stock exchange will review and provide feedback on the application materials, including the enterprise's prospectus and opinion letters presented by intermediaries. The enterprise may be put at risk if it fails to fully and truthfully disclose environmental compliance information. We have noted that environmental protection related problems has caused some companies' applications to be denied. Some of the problems have been that a company has started construction without formal approval, they made an investment without verification, the company did not apply for the required discharge permits or their discharged pollutants limits were exceeded. The comprehensiveness and accuracy of the listing application documents rely on the findings of due diligence to some extent. To better address ESG and Environmental, Health and Safety (EHS) related issues, one needs to take into consideration the laws, local regulations, industry standards, local standards and the conditions and situations of individual companies. Compared with traditional due diligence, these problems are likely to be overlooked or omitted due to the high demand for professional skills and different regional regulatory requirements. Once such problems have occurred, the listing process may be delayed or hindered to various extents.

III. The Importance of Environmental Compliance Review and Information Disclosure Compliance of Listed Companies

Listed companies should also continuously

comply with information disclosure requirements, and their annual, periodic or temporary reports should contain ESG related information. For example, in September 2020, the SZSE revised and issued the *Measures for the Evaluation of Information Disclosure of Listed Companies on the Shenzhen Stock Exchange*, which has clearly tightened its supervision of information disclosure of listed companies on the SZSE. The Measures provides that when determining whether a listed company has fulfilled its social responsibilities, the SZSE will focus on "whether the company has taken the initiative to reveal its ESG related performance, and whether its report is full and complete." In particular, listed companies should pay more attention to their own obligations to disclose information (especially environmental compliance information): whether they have disclosed the required information appropriately, accurately and in a timely manner in accordance with the law and the relevant regulations. If a listed company provides inaccurate or incomplete information, administrative punishments may be imposed, and the company bears the risk of losing its privileges in financial subsidies, bank loans, insurance premium reductions, etc. Also, legal disputes between a company and its investors and partners are more likely to happen. We recommend that listed companies promptly review their own ESG compliance so that they can appropriately and in a timely manner respond to disclosure requirements, and if necessary, contact lawyers practicing in the relevant areas.

IV. How to Respond to the Requirements of the Environmental Information Disclosure System

Based on the discussions above, to assist companies in improving their compliance management, we make the following suggestions:

1. Improve compliance management during daily operations. Companies can work to

improve their systems directly in the areas of the environment, safety, health, corporate governance, and social responsibility, etc. Also, they can improve their environmental compliance and their own compliance management from the perspectives of system security, organizational infrastructure, personnel, funds, resources, facilities, management and training, etc. In these ways, the risks arising from information disclosure could be substantially reduced.

2. Conduct a comprehensive environmental compliance review in a timely manner. In order to establish a compliance system that meets the IPO requirements, in the early stages of pre-listing tutoring or at an earlier time, companies can conduct an ESG and EHS compliance review, assess ESG related IPO compliance risks in advance, receive tutoring directed at those problems identified during the review, and rectify the situation. Similarly, listed companies should also regularly conduct compliance reviews and make rectifications.

3. Ensure the comprehensiveness and accuracy of disclosed information. When a company is preparing their IPO application materials and disclosure statements, and communicating with the CSRC, (and even in upcoming information disclosure processes), it is advisable that they request a third party, such as an EHS lawyer or a professional environment security consulting firm, to make an ESG and EHS compliance review of the to-be-disclosed materials in order to ensure the accuracy and compliance of the materials. In this way, they can avoid receiving unnecessary attention from the CSRC, thereby delaying the

listing process or incurring administrative penalties.

V. Conclusion and Suggestions

With the gradual establishment and improvement of the ESG system, China's environmental information disclosure system develop. As the registration-based IPO system advances, in order to go public successfully and avoid compliance risks, pre-IPO companies (or companies that aim to go public in the future) and listed companies need to pay close attention to any changes to the laws and requirements of various stock exchanges. Companies should carry out ESG and EHS compliance reviews in a timely manner, improve compliance management and ensure the comprehensiveness and accuracy of any information to be disclosed during and after the listing application process. If you have any further questions or need us to assist in training, ESG or EHS compliance reviews, ESG related IPO documents or statement reviews, and evaluations of the relevant regulations, please feel free to contact us at ecoenvpro@junhe.com.

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环境保护法律热点问题

环保专题系列（十四）——环境信息披露制度如何影响拟上市或上市公司

导言：ESG，即环境（Environmental）、社会（Social）、公司治理（Corporate Governance），是从环境、社会和公司治理角度，评估企业经营的可持续性和对社会的影响。针对上市企业，证监会有关ESG信息披露的要求。随着我国“注册制”时代的来临，拟上市企业及已上市企业均需要特别关注这方面的立法变化和证券交易所的要求，以确保ESG合规（尤其是环境合规），避免突发的合规问题阻碍上市进程或引发法律风险。

一、中国上市公司环境信息披露的相关要求概述

目前法律框架、深圳证券交易所（以下简称“深交所”）和上海证券交易所（以下简称“上交所”）上市或披露规则下，上市公司应当在招股说明书、募集说明书、上市公告书、定期报告和临时报告等文件中披露环境污染物、防止污染设施、重大违法行为和/或突发环境事件应急预案、环境自行监测方案等信息。并且，上市公司受到重大行政处罚或发生重大环境事故的，有信息披露的义务。值得注意的是，上述规定未对上市公司统一提出ESG信息披露强制性要求，但我们注意到，深交所于2006年发布《上市公司社会责任指引》，上交所分别于2010年和2018年发布的《上市公司环境信息披露指南》和《上市公司环境、社会和公司治理信息披露指引》（均为征求意见稿），对上市公司披露环境、社会、公司治理信息方面提出了更具体的要求。个别行业

（如石油化工）也出台了ESG评价指南。

二、拟上市公司环境合规审查和信息披露合规的重要性

在企业上市过程中，证券交易所将对公司的招股说明书、各中介机构的意见书等申请材料进行审核并提出意见。企业未充分披露环境合规信息或披露不准确的可能面临潜在风险。我们注意到实践中有企业上市因环保问题被否，如：未批先建、未验先投、未办理排污许可、污染物排放超标等。上市申报文件的全面性和准确性一定程度上依赖审慎性尽职调查的发现。ESG和环境、健康和安（以下简称“EHS”）相关问题，需要结合法律、地方性规定、行业标准和地方性标准等与企业实际情况方能全面判定，相对于传统的尽职调查，由于专业性、地域性监管要求不同等特点，容易被忽视或遗漏。一旦出现问题，可能不同程度拖延或阻碍上市进程。

三、已上市企业环境合规审查和信息披露合规的重要性

已上市企业也应当遵守持续的信息披露义务，并通过年度、定期或临时报告等形式对ESG信息予以披露。例如，2020年9月，深交所修订并发布了《深圳证券交易所上市公司信息披露工作考核办法》，明确加强对深交所上市公司的信息披露监管。

其中规定对上市公司履行社会责任的披露情况考核中，将重点关注“是否主动披露环境、社会责任和公司治理(ESG)履行情况，报告内容是否充实、完整”。上市公司更应当注重其自身的信息披露义务(尤其是环境合规信息)是否根据法律和相关规定准确、及时得到妥当披露，一旦披露不实或者遗漏，上市公司可能面临行政处罚，在财政补贴、银行贷款获取、保费优惠等方面面临不利，同时也会增大与投资者、合作伙伴之间发生法律争议的可能性。建议上市公司及时核查自身ESG合规情况，以便及时、准确应对信息披露要求，如有需要，可以与相关专业律师联系。

四、如何应对环境信息披露制度的要求？

基于上述讨论，我们建议企业可以考虑从以下几个角度加强合规管理：

1、日常经营中加强合规管理。企业可以从加强对环境、安全、健康、公司治理社会责任等方面的制度保障、组织架构、人员、资金、物资、设施、管理和培训等多个维度出发加强环境合规管理和自身合规建设，从本质上降低信息披露相关的风险。

2、及时开展全面的环境合规审核。企业可以在上市辅导初期或更早进行专门的ESG和EHS合规审核，提前评估ESG方面的上市合规风险，针对审核中发现问题进行专项辅导和整改，确保企业建立符合上市要求的合规体系。同样地，上市公司也应当定期进行合规审核、整改和回顾。

3、确保披露信息的全面性和准确性。企业在制作上市申报材料 and 披露文件、与证监会沟通、以

及未来的信息披露过程中，建议引入第三方审查(比如EHS律师或者专业的环境安全咨询公司)，对拟进行披露的材料进行ESG和EHS合规审查，以确保所披露信息的准确性和合规性，避免在此项目上引起证监会的额外关注或拖延上市进程、引发行政处罚风险。

五、结语与建议

我国环境信息披露制度将伴随ESG制度的逐步建立和完善趋于加强。随着注册制的进一步推进，拟上市企业或未来以上市为目标的企业以及上市公司需要特别关注这方面的立法变化和证券交易所的要求，及时开展全面的ESG和EHS审核，加强合规管理，并且确保未来在上市申报过程中以及上市后的信息披露的信息全面性和准确性，避免耽误或阻碍上市进程和合规风险。如您有任何具体的问题或需要我们协助进行ESG或EHS合规审核，ESG方面上市相关文件或披露文件，相关规章制度审核，培训，欢迎邮件联系我们：ecoenvpro@junhe.com。

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