

# JUNHE SPECIAL REPORT



March 13, 2023

## Key ESG Compliance Attentions for Bank Credit and Investment Business

Sustainable development has become a key global concern in recent years and countries are introducing new policies and regulations in response to the call for more sustainable development. At a global level, some initiatives and voluntary standards related to environment, social and governance (ESG) have gradually been 'incorporated into regulatory policies, guidelines and requirements. For example, on June 1, 2022, in order to promote the development of green finance in China, the China Banking and Insurance Regulatory Commission ("CBIRC") issued the Circular on the Guidelines for Green Finance for Banking and Insurance Sectors (the "Circular"). The Circular incorporated the core concepts of sustainable development into regulations for the business of banks and insurance institutions, requiring them to integrate ESG concepts into their credit and investment business process and risk management systems. It ensures ESG compliance for credit and investment businesses, with aims of "carbon peaking and carbon neutrality" alongside high-quality development.

### **1. Why should ESG factors be considered when conducting banking business?**

For banks, achieving ESG compliance in investment and financing is a mandatory requirement set forth in Chapter IV of the Circular. From a systemic risk control perspective, if banks, as major financial institutions, do not take into consideration the ESG concerns of proposed

credit clients or proposed investment projects while in the process of granting credit and making investment, the future occurrence of major ESG events may affect the client's solvency or project development. This may result in the lending funds or investment funds of banks going to waste.

### **2. How should banking businesses integrate ESG factors?**

According to the Circular, to achieve ESG compliance, banks should consider the following :

- (1) Before granting credit to or making investment, banks should conduct ESG due diligence or ESG compliance reviews for the client or project, based on the industrial and regional characteristics. It is therefore necessary to establish an ESG risk assessment mechanism, and it is important to develop a checklist for due diligence in respect to ESG, a checklist for compliance documents and a checklist for compliance risk reviews considering the characteristics of clients in different industries.
- (2) When deciding to grant credit to or make investment in certain projects, banks should strengthen their ESG due diligence, fully identify the ESG risk level, and determine the reasonable credit granting and investment authority as well as the examination and approval processes. Credit granting and investment in clients with serious legal

violations and material risks in ESG should be restricted. Therefore, it is necessary to ensure that the appropriate internal or external personnel conduct due diligence, fully identify the material risks, and set up corresponding approval and reporting systems. Approval by higher level personnel is required for particular credit or investment projects, depending on the ESG risk level.

- (3) When entering into relevant agreements with clients in connection with credit facilities or investments, banks should incorporate ESG compliance requirements into the relevant provisions of the agreement and incorporate ESG into the sections of representations and warranties, conditions precedent, covenants and liability for breach of contract. For credit clients and investments involving material ESG risks, they shall require the client to provide ESG risk reports in the text or annexes of the contract and enter the representation and undertaking provisions regarding strengthening the ESG risk management by the client and the remedies in the event of default by the client in the management of ESG.
- (4) After providing the loans or investment funds, banks shall continuously supervise the ESG management of the investee enterprises or projects. For banks, they shall pay close attention to the impact of the internal and external environment on the client's operating conditions and industry development, strengthen dynamic analysis, conduct scenario analysis and stress testing, and make timely adjustments in terms of asset risk classifications, preparation and other aspects. They shall also establish a reporting system for the occurrence of major ESG risks and link the results of such supervision with the allocation of credit or investment funds. For clients with potentially major environmental, social and governance risks,

targeted improvement management measures shall be formulated and implemented.

### 3. Suggestions

Given that the Circular requires banks to establish and optimize their internal ESG management systems and processes by May 31, 2023, we recommend that relevant institutions take action to establish relevant internal ESG policies and systems as soon as possible. Banks should begin to implement the requirements of the Circular as soon as possible while granting credit and making investments. Banks may also seek assistance from ESG lawyers or consultants to deal with relevant matters. Please contact your ESG attorney to make amendments to the template agreement/commercial agreement of the relevant parts of the transaction documents to complete the integration of ESG elements.

If you have any questions regarding the Circular or need assistance in preparing ESG due diligence checklists, compliance document checklists, compliance risk review checklists, updating transaction documents or agreements, or carrying out ESG due diligence, please contact us at [ecoenvpro@junhe.com](mailto:ecoenvpro@junhe.com).

### JunHe's EHS and ESG Team

JunHe, with over 1,000 professionals, is one of China's largest full-service law firms with a recognized international reputation for providing high quality legal services. As one of the pioneers in the practice area of ESG in China and with one of the largest teams of EHS lawyers in the country, JunHe provides clients with a full range of EHS and ESG legal services. JunHe is sustainability-oriented and provides EHS compliance audit services to enterprises across different industries. 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) to provide ESG due diligence services in supply chain management and M&A matters and assists companies or third-party agencies in drafting ESG reports. Based on our experience in serving clients from different industries, we can provide specialized services for the daily operations of enterprises. These include

specialized ESG-related legal and compliance and, as well as drafting and reviewing ESG-related terms and clauses in contracts with business partners, establishing and improving ESG systems, identifying ESG disclosure requirements, green finance, and ESG training.

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# 君合专题研究报告



2023年3月13日

## ESG 专题系列（二十一）：银行授信及对外投资业务中不得不关注的 ESG 合规要点

近年来，可持续发展已成为全球最为热议的话题之一，世界各国都在积极出台相关政策法规，响应可持续发展的号召；与之相关，全球层面 ESG（即环境、社会、治理）相关的一些倡议或自愿性标准被逐渐吸纳到监管政策/指引/要求中。例如，为了促进我国绿色金融的发展，中国银保监会于 2022 年 6 月 1 日出台了《银行业保险业绿色金融指引的通知》（“《通知》”），将可持续发展的核心理念“ESG”纳入到对银行及保险机构的业务监管之中，要求银行及保险机构将 ESG 理念融入其授信和投资流程管理和风险管理体系中，确保其授信和投资业务开展过程中的 ESG 合规，这与我国实现双碳目标和高质量发展的目标是相关的。

### 一、银行业务为什么需要纳入 ESG 因素的考量？

首先，对于银行而言，实现投融资过程中的 ESG 合规系《通知》第四章的硬性要求；其次，从系统性风险控制角度，银行作为主要的金融机构，在对外授信及投资的过程中，若不考虑拟授信客户或拟投资项目 ESG 方面的问题，未来出现重大的 ESG 事件时，可能影响客户的偿债能力或项目的发展，使得银行的放贷资金或投资款付诸流水。

### 二、银行业务具体如何整合 ESG 因素？

根据《通知》的规定，为实现银行授信和投资管理过程中的 ESG 合规，银行可考虑先从以下几个方面着手整合 ESG 因素：

- （1）在对外授信或投资前，银行需要根据拟授信客户或拟投资项目的行业、区域特点，对前述拟授信客户或拟投资项目进行 ESG 尽职调查及 ESG 合规审查。这就需要建立 ESG 风险评估机制，其中很重要的一点是要针对不同行业的客户特点，制定环境、社会和治理方面的尽职调查清单、合规文件清单和合规风险审查清单；
- （2）在决定对外授信或投资时，银行需要加强 ESG 尽职调查，充分识别 ESG 风险程度，确定合理的授信、投资权限和审批流程；对于 ESG 方面存在严重违法违规和重大风险的客户，应当严格限制对其授信和投资。为此，需要确保合适的内部或外部人员开展尽职调查，充分地识别重大的风险点，并设定与之相匹配的审批报告制度，例如 ESG 风险级别越高，该项目的授信或投资则需要更高层级人员的审批；
- （3）在与客户签署与授信或投资项目的相关协议时，银行需要在相关的协议条款中引入

ESG 合规要求，视情况在陈述与保证、先决条件、承诺和违约责任等章节相应纳入 ESG 因素，对涉及重大 ESG 风险的信贷客户和投资项目，应当在合同正文或附件中要求客户提交 ESG 风险报告，订立客户加强 ESG 风险管理的声明和承诺条款，以及客户在管理 ESG 方面违约时的救济条款；以及

- (4) 在提供贷款或投资资金后，银行需要持续监督被投企业或项目的 ESG 管理情况：就银行内部而言，密切关注内外部环境对客户经营状况和行业发展的影响，加强动态分析，开展情景分析和压力测试，并在资产风险分类、准备计提等方面及时做出调整；同时，应建立出现重大 ESG 风险时的报告制度，并将该项监督的成果与授信或投资资金的拨付挂钩，对有潜在重大环境、社会和治理风险的客户，应对其制定并实行有针对性的管理措施。

### 三、我们的建议

考虑到《通知》要求银行在 2023 年 5 月 31 日之前建立及完善 ESG 相关内部管理制度及流程，出于时间的紧迫性，我们建议相关机构尽快按照《通知》的要求采取相关行动，以建立相关的内部 ESG 政策及制度，并在授信和投资的过程中尽快开始实际践行《通知》项下的要求。如果需要，银行也可以寻求 ESG 律师或顾问的协助处理相关事宜；就交易文本相关的部分，请与您的 ESG 律师联系对模板

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协议/商业协议等进行修订，以便完成 ESG 元素的整合。

如您对《通知》有任何疑问或需要我们协助准备 ESG 尽职调查清单、合规文件清单和合规风险审查清单、更新交易文本或协议或开展 ESG 尽职调查的，欢迎邮件联系我们：[ecoenvpro@junhe.com](mailto: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，拥有逾千人的专业团队。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。

