

## ESG Series

### The Enhancement of Compliance Management Systems in ESG Practice

In recent years, the government has attached great importance to the compliance management of enterprises. It has issued instructions for enterprises to strengthen their compliance management systems and operate in a legal manner. This is to enhance their competitiveness through compliance with the latest laws and regulations. In April this year, the State-owned Assets Supervision and Administration Commission in the People's Government of Guangdong Province (**Guangdong SASAC**) issued an action plan for provincial enterprises to comply with international standard compliance management system *ISO 37301:2021* (**ISO 37301**) to have all provincial enterprises pass ISO 37301 standard certification, build compliance systems and develop a compliance culture. This program may be subsequently promoted to other provinces. With an increasing emphasis on the development of enterprises (including foreign-invested enterprises) from a regulatory perspective, enterprise compliance management has become a hot issue. Compliance management is also an important part of ESG performance to measure the sustainability of an enterprise's development. This article aims to explore the relationship between compliance management systems, ESG management systems and ISO 37301 standard certification and provide suggestions for enterprises, their investors and managers.

#### I. Compliance management is an essential part of ESG management.

In 2018, the State-owned Assets Supervision and Administration Commission of the State Council (**SASAC**) and other national departments issued the *Guidelines for Centrally Administered Enterprises on Compliance Management (for Trial Implementation)* and *Guidelines for Enterprises on the Compliance Management of Overseas Operations*. In 2021, "compliance" was emphasized in the *Outline of the 14th Five-Year Plan (2021-2025) for National Economic and Social Development and Long-Range Objectives for 2035*. Compliance management for enterprises is crucial to an enterprise's development. Drawing from the standards first introduced by the International Organization for Standardization (ISO), China has launched several universal standards for compliance management systems in fields such as the environment, production safety, anti-bribery, automobiles, communication, and aerospace. However, compliance management requires the attention of enterprises and institutions across all industries. As an important dimension for measuring a company's sustainable development in terms of their ESG performance, enterprise compliance is an integral part of establishing sound ESG management systems. The *Guidelines for Enterprise ESG Disclosure (T/CERDS 2-2022)* was the first domestic standard for

corporate ESG disclosure, and it officially came into force on June 1, 2022 (the **Guidelines**). It points out that corporate governance mechanisms include supervision, compliance management and risk management, which are compatible with corporate compliance management.

## **II. The establishment of compliance management and ESG management systems shall follow scientific risk identification and control procedures**

In general, the corporate governance dimension of ESG requires enterprises to identify and manage their compliance risks, which requires enterprises to identify these risks based on departmental duties, position duties and different types of organizational activities. They should define their compliance risk status according to each compliance risk source and develop lists of compliance risk sources and their compliance risk status. The ISO 37301 standard and other risk management standards and assessment techniques (for example, the *Risk Management Standard (ISO 31000)* and the *Risk Assessment Techniques for Risk Management (IEC 31010)*) can be used as a base for the identification of systematic risks in their ESG management systems. Considering that both compliance management and ESG management requires systematic risk identification and control, a compliance management system should be integrated into the establishment of an ESG management system. The ISO 37301 standard and certain risk management standards and assessment techniques are suitable to be integrated into the establishment of ESG management systems. It should be noted that the ISO 37301 standard is not simply aimed at passing the certification (certification is an endorsement while the results are often empirical) but should be based on a deep understanding of

ESG concepts and practices and compliance factors to shape a better ESG management system, as a well-established ESG management system can effectively prevent and reduce systemic risks.

## **III. Our Suggestions**

For investors and managers of enterprises, we suggest:

1. Scientifically Designed Paths. Employ staff to study the relationship between compliance management and ESG management systems; track compliance and ESG related laws, regulations, rules and international and domestic standards, scientific methodology, materiality issues of compliance management systems and ESG management systems according to their unique characteristics, and allocate resources to undertake compliance management and/or ESG management promotion. And then set a preliminary plan to improve compliance management and/or ESG management systems as a whole or in gradual stages based on the actual situation (for example, deal with individual materiality issues or key areas first).

2. Adopting Standards. When building or upgrading compliance management and ESG management systems, (whether ISO 37301 standard certification has been carried out or not), we may consider using ISO 37301 standard and certain risk management standards and assessment techniques as a methodological basis to build a scientific and comprehensive compliance management system and provide adequate counseling. This will not only improve the scientific nature of the systems, but also avoid re-counseling when considering ISO 37301 standard certification in the future.

3. Two Systems Combined. If an enterprise decides to build or improve its

compliance management system or requires ISO 37301 standard certification counseling, it should take into consideration the requirements of their ESG management system (especially the methodology of identifying materiality issues and stakeholders, the localized supervision requirements corresponding to the identified materiality issues and the mainstream ESG rating requirements), so as to save resources and time if an enterprise needs to build an ESG management system in the future.

Please contact us by email: [ecoenvpro@junhe.com](mailto:ecoenvpro@junhe.com) if you would like to know more about establishing or improving compliance management systems or ESG management systems. We can also assist in ISO 37301 standard certification and ESG management system counseling including drafting or auditing relevant rules and regulations, conducting due diligence and staff training.

**JunHe's EHS and ESG Team:** JunHe, with over 970 professionals, is one of China's largest full-service law firms with a stellar 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 environment, health and safety (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 with different industrial backgrounds depending on the specific needs of the clients, either independently 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) to provide ESG due diligence services in supply chain management and M&A matters and cooperates with enterprises and third-party agencies in drafting ESG reports. Based on our experience in serving clients from different industrial backgrounds, we can provide specialized services for the daily operations of enterprises. This includes specialized ESG-related legal and compliance diagnosis, as well as drafting and reviewing ESG-related terms and clauses in contracts with business partners, construction and enhancement of ESG systems, identification of ESG disclosure requirements, green finance, and ESG training.

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## ESG 专题系列十五：ESG 实践之合规管理体系提升

近年来，中央高度重视企业合规经营，有多次重要指示批示，强调企业合规管理要跟上，企业要遵纪守法搞经营，在合法合规中提高自身竞争能力。广东省国资委于今年四月发布了《省属企业“合规管理强化年”行动方案》，提到“省国资委指导监督省属企业对标国际标准《合规管理体系 要求及使用指南》（ISO 37301: 2021）（下称“ISO 37301 标准”），力争通过三年努力，全部省属企业通过 ISO 37301 贯标认证，推动企业合规管理体系的建设，后续该等方案可能被推广至其他省市”。随着监管层面不断强调企业（包括外商投资企业）高质量发展，企业合规管理成为大家热烈探讨的问题。与此同时，合规管理本身也是衡量企业发展可持续性的 ESG 表现的一个重要维度。因此，本文旨在初步探讨合规管理体系，ESG 管理体系及与 ISO 37301 标准认证之间的关系，并基于此对企业及其投资人、管理者提出初步建议。

### 一、 合规管理体系是 ESG 管理体系的重要组成部分

2018 年，国务院国资委等部委发布了《中央企业合规管理指引（试行）》和《企业境外经营合规管理指引》。2021 年“合规”二字被写入了《中华人民共和国国民经济和社会发展第十四个五年规划和 2035 年远景目标纲要》。企业合规管理对企业发展至关重要。我国借鉴国际标准化组织（ISO）出台的标准，在环境、安全生产、反贿赂等方面，以及汽车、通讯行业、航空航天等领域陆续出台了多部普适性的合规管理体系标准，然而，合规管理体系不只涉及环境、安全生产与反贿赂，且合规管理体系是所有行业的企业及机构均需要关注的。但同时，企业合规作为衡量企业发展可持续性的 ESG 表现的

重要维度之一，是建立良好的 ESG 管理体系不可或缺的重要组成部分。我们注意到 2022 年 6 月 1 日起正式实施的国内首个企业 ESG 披露标准《企业 ESG 披露指南》团体标准（T/CERDS 2-2022）（下称“《指南》”）指出公司治理机制包含合规管理和风险管理、监督管理等多项与企业合规管理相关的议题。

### 二、 合规管理体系和 ESG 管理体系搭建需要遵循科学的风险识别和控制程序

总体上，ESG 的公司治理维度要求企业进行合规风险识别和管理，这就需要企业根据部门职责、岗位职责和不同类型的组织活动，识别合规风险源，并定义每个合规风险源对应的合规风险状态，以制定合规风险源清单和合规风险状态清单。ISO 37301 标准与一些风险管理的标准和评估技术（如《风险管理标准》（ISO 31000）和《风险管理 风险评估技术》（IEC 31010））可作为 ESG 管理体系中系统性风险的识别提供方法论依据。考虑到合规管理体系与 ESG 管理体系都要求对系统性风险进行识别和控制，合规管理体系应被融入 ESG 管理体系搭建中，而 ISO 37301 认证辅导和一些风险管理的标准和评估技术适宜被融入 ESG 管理体系搭建中。需要注意的是：ISO 37301 标准认证辅导并非仅仅以单纯通过认证为目标（认证本身是一种背书，但其结果往往是经验性的），而应建立在对 ESG 理念和实践、大合规因素的深刻理解之上，塑造真正良好的 ESG 管理体系，因为只有真正良好的 ESG 管理体系，才能够有效防范或降低系统性风险。

### 三、 我们的建议

对于企业的投资人及其管理者，我们建议：

1. **科学设计路径：**配备人员研究合规管理及 ESG 管理体系的内涵及其相互关系；跟踪合规和 ESG 相关法律法规、规章、规则及国际、国内标准；并且经现状摸底、基于科学的方法论，基于自身行业、地理特征所识别的合规管理体系和 ESG 管理体系的实质议题，资源配置情况，构建合规管理和/或 ESG 管理提升的目标；并进而设定初步计划和路径，从自身实际情况出发整体或者分阶段逐步、逐项（例如先做个别实质议题或重点领域）予以搭建/完善合规管理和/或 ESG 管理体系，予以落地。

2. **尽量采纳标准：**在构建或提升合规管理体系和 ESG 管理体系时，无论是否进行 ISO 37301 标准的认证，可以考虑用 ISO37301 标准和一些风险管理标准和评估技术作为方法论依据，搭建科学、全面的合规管理体系，进行充分的辅导；一方面提高体系的科学性，另一方面避免未来考虑进行 ISO 37301 冠标认证时，需要重新辅导。

3. **融合两大体系：**如企业决定搭建或完善合规管理体系时或进行 ISO 37301 标准认证辅导时，应将 ESG 管理体系的要求（尤其是识别实质性议题和利益相关方的方法论、识别出的实质议题对应的本地化监管要求、主流 ESG 评级要求）纳入考量，以避免将来企业或机构有需要搭建 ESG 管理体系时，仍需就合规管理的部分进行大量的现状摸底工作和体系辅导，以节约资源和时间。

如您需要了解合规管理体系/ESG 管理体系搭建或战略提升，或者有 ISO37301 标准认证/ESG 管理体系辅导（包括相关规章制度起草或审核），开展尽职调查，培训等需求，欢迎邮件联系我们：  
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**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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