

ESG 专题系列（七）：解构 ESG 实践之 EHS 合规审核

过去几年间，我们致力于深耕环境、职业健康和安全管理（EHS）合规。客户的诉求慢慢从争议端的环保调查配合，环境污染和安全事故处理，延展到了预防端的日常合规咨询，如建设项目重大变更的认定、危险废物识别及处理、挥发性有机化合物管理、危险化学品管理、新化学物质管理、消防管理、供应链合规管理等。我们越来越意识到，EHS 合规管理，由于存在复合学科属性，在企业合规管理中往往是一个难点，同样，也是环境、社会和公司治理（ESG）管理的难点。

对于我们所服务的生产型、能源类、研发及检测类企业而言，EHS 本身也是 ESG 管理的重大议题，与 ESG 管理在边界上存在实质性交叉。然而，尤其在上述类型的跨国公司中，由于团队可能具有英美法和大陆法不同法律背景、文化背景，法律和工程师不同的知识体系背景，团队成员理解和解决问题的角度往往存在差异，加之不同地区的地方规定和实操可能存在一些差异，就一些问题产生分歧的频率较高，这也决定了 EHS 合规管理必然面临更多多样化的挑战。相应地，在投融资并购和供应链管理中，EHS 合规审核也同样重要。本文旨在从 EHS 合规审核的角度抛砖引玉，希望引起对于 EHS 合规管理或 ESG 话题的更多思考和交流。

4 EHS 合规审核为何重要？

实操中，EHS 合规管理要求法律专业人士具备一定的环境、职业健康和安全管理的技术知识，不仅理解法律的要求，也能够了解一些重大的标准，同时，其要求环境、职业健康和安全管理工程人员具备一定的法律知识。然而，这无论对于法律专业人士，

还是相关工程人员，都不易实现，需要长期的理论和实务积累。我们在过往多次研讨会中，反复强调，企业发生 EHS 合规问题（例如土壤或地下水污染事故），将可能给企业带来民事、行政及刑事法律责任（一些情况下，特定的责任人员也可能被追究法律责任）。同时，企业还可能面临合同违约的风险、信用风险、商业伙伴关系维系等方面的挑战。EHS 合规审核作为一种整体性排查企业 EHS 合规风险的工具，为越来越多的企业作为 ESG 管理提升的手段所采纳。

以投融资并购交易为例，如投前尽职调查未能有效识别标的企业的 EHS 合规问题，投后标的公司将可能承担预期外的纠错成本、行政处罚、ESG 管理提升的成本，而这些可能严重损害交易本身的商业价值，无法达到投资人的投资预期。ESG 时代下，EHS 合规问题也会影响利益相关方要求的满足、产品竞争力及企业形象、经营的可持续性等。EHS 合规审核或 ESG 尽职调查作为一种整体性排查企业 EHS 和 ESG 合规风险的工具，为越来越多的企业作为 ESG 管理提升的手段所采纳。

5 EHS 合规审核有哪些维度？

企业进行 EHS 合规审核时，需要关注三个大的维度，分别是：E（环境 Environment）；H（职业健康 Occupational Health）以及 S（安全 Safety）。在进行具体的 EHS 合规审核时，这三个大的维度下又会有很多细分的模板及维度。下表所列的审核模块供参考，具体需要视企业的行业和业务特征进行定制化调整（在投融资并购和供应链管理中，我们会根据重点风险因素、项目时间节奏等确定选择的审核模块及其深度）

序号	维度	审核模块
1.	环境	审批及许可、环境管理、气体排放、供水管理、废水、废物管理、化学品管理、厂界噪声、消耗臭氧层物质、放射性物质、石棉、土壤和地下水、隐患排查和治理等
2.	职业健康	审批及许可、职业健康管理、职业病危害因素、职业病及职业健康管理、化学品暴露、职业病防护设施、健康监测、卫生档案管理、隐患排查和治理等
3.	安全	审批及许可、安全生产管理、危险品管理、重大危险源管理、受限空间作业安全、用电安全、事故调查、隐患排查和治理等

(注：就以上提及之“管理”的概念，通常会涉及目标与方针、机构、人员、制度和规程文件、财务及配套资源保障、宣传与培训教育、应急预案及演练、档案管理、绩效考核与奖惩、自评与持续改进、信息公开报告等方面的内容。)

6 企业/投资人如何进行 EHS 合规审核？

企业 EHS 合规审核需要多部门（如 EHS、基建、采购、法务和财务部门）协作，最重要的是要有精通相关法律及特定行业 EHS 管理实践的内审员（如无内审员的，可聘请 EHS 律师或第三方法律顾问作为外审员）。通常，审核员通过如下步骤完成审核：(1) 识别 EHS 相关风险因素、法律和合规要求（不仅是法律法规，还包括国家、地方和行业标准及重要的规范性文件），基于此编制审核清单，然后通过审阅材料、实地访谈和现场检查，发现 EHS 合规问题；(2) 根据发现的问题起草合规审核报告（包括事实描述、法律风险分析及切实可行的整改建议）；(3) 根据合规审核报告进行管理层汇报并推动整改。

生产型、能源类、研发及检测类企业可考虑定期进行 EHS 或 ESG 内审。并且，考虑到相关法律法规和标准的更新速度较快，无论企业是否有内审员，企业可考虑定期（如 1 年）就自身及关键性供应商的 EHS 或 ESG 合规情况开展一次外审（如有必要，可与 EHS 律师或第三方法律顾问联系协助）。这些努力将有助于帮助企业降低 EHS 或 ESG 合规风险。

相应地，投资人在对生产型、能源类、研发及检测类标的公司进行投融资并购中，除了惯常的法律

尽职调查外，也可以视标的公司情况、项目标的金额等因素与 EHS 律师沟通 EHS 合规审核或 ESG 尽职调查的范围和深度（EHS 合规审核或 ESG 尽职调查本身不是一个全新的话题，其与投资人在投资过程中履行勤勉义务是一致的）。作为传统并购业务的升级服务，我们深耕并开始尝试将并购中的法律尽职调查衍生至定制化的 EHS 合规审核及 ESG 尽职调查，并将 EHS 合规审核及 ESG 尽职调查的发现纳入交易文件层面进行考虑。

我们相信，在 EHS 和 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（无论是基金、投资人，还是企业）保驾护航，驶向成功的彼岸！

关于君合 EHS 及 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、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，单独或与第三方机构合作提供 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、ESG 体系搭建和提升等一揽子服务。

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JUNHE SPECIAL REPORT



March 3, 2022

ESG Special Topic Series (VII): EHS Compliance Audit Deconstructing ESG Practice

Introduction: Over the past few years, JunHe has been actively involved in environment, occupational health and safety (EHS) compliance. Our clients' demands have gradually extended from environmental protection investigations and the handling of environmental pollution and safety disputes, to consultations on daily compliance regarding prevention. This has involved the identification of any major changes in construction projects, the identification and disposal of hazardous wastes, and the management of volatile organic compounds, hazardous chemicals, and new chemicals. It also involves areas such as fire-fighting management and the compliance management of supply chains. EHS compliance management is a particularly difficult issue due to its multi-disciplinary nature.

For the manufacturing, energy, R&D and testing enterprises we serve, EHS itself is a major issue in ESG management, and there are substantial overlaps with ESG management. Due to the different legal and cultural backgrounds in common and civil law teams, as well as the different knowledge systems amongst lawyers and engineers, team members often have a different approach to understanding and solving problems. In addition, there may be some differences in the local regulations and practices in specific areas, resulting in disagreements, which means that EHS compliance management will face unique challenges. Accordingly, an EHS compliance audit is as important in investment and financing M&As, as well as in supply chain management. This article will provide insight from

the perspective of an EHS compliance audit, and we hope to stimulate more thoughts and exchanges on EHS compliance management and other ESG issues.

1 Why is an EHS Compliance Audit Important?

EHS compliance management requires legal professionals to have knowledge of EHS management, not only to understand the legal requirements, but also to be able to understand the major standards. In addition, EHS management engineers are required to have legal knowledge. However, it is not easy for both legal professionals and engineers to have this skill, and it requires theoretical and practical accumulation over time. In previous seminars, we have stressed that EHS compliance issues (such as soil or groundwater pollution accidents) may result in civil, administrative and criminal liabilities for an enterprise (and, in some cases, the person (s) responsible may also be prosecuted). Meanwhile, enterprises may also face challenges in terms of contract breach risks, credit risks and the maintenance of business partnerships. EHS compliance audits, as a tool to comprehensively investigate EHS compliance risks, have been adopted by more and more enterprises to improve ESG management.

Taking investment and financing M&A transactions for example, if pre-investment due diligence fails to effectively identify the target company's EHS compliance issues, the target

company may bear the unexpected corrective costs, the administrative penalties and the ESG management enhancement costs, which may seriously damage the commercial value of the transaction and make it impossible to achieve the investors' expectations. In the ESG era, EHS compliance issues will also affect the satisfaction of stakeholders, product competitiveness and corporate image, as well as business sustainability. EHS compliance audits or ESG due diligence, as tools to comprehensively investigate EHS and ESG compliance, have been adopted by more and more enterprises to improve ESG management.

When conducting an EHS compliance audit, enterprises need to pay attention to three areas, namely, E (Environment), H (Occupational Health) and S (Safety). When conducting specific EHS Compliance Audits, there will be many subdivided templates and areas under these three main areas. The audit modules listed in the following table are for reference only, and can be customized according to the industry and business characteristics of the enterprise (in investment and financing M&As and supply chain management, we will determine the specific audit modules and their reach according to the key risk factors, the project timeline, etc.):

2 What are the different areas in an EHS Compliance Audit?

No.	Dimension	Audit Module
1.	Environment	Approval and Permit, Environmental Management, Gas Emission, Water Supply Management, Wastewater, Waste Management, Chemicals Management, Noise at Boundary, Ozone-Depleting Substances, Radioactive Substances, Asbestos, Soil and Groundwater, Hazard Identification and Governance, etc.
2.	Occupational Health	Approval and Permit, Occupational Health Management, Occupational Hazard Factors, Occupational Disease and Occupational Health Management, Chemical Exposure, Occupational Disease Protective Facilities, Health Monitoring, Health Record Management, Hazard Identification and Governance, etc.
3.	Safety	Approval and Permit, Production Safety Management, Hazardous Materials Management, Major Hazard Sources Management, Confined Space Operation Safety, Electricity Safety, Accident Investigation, Hazard Identification and Governance, etc.

(Note: The above mentioned "Management" usually refers to targets and policies, organizations, personnel, systems and procedure documents, finance and supporting resource

guarantees, publicity, training and education, emergency plans and drills, records management, performance assessments, rewards and punishments, self-evaluation and continuous

improvement, information disclosure and reporting, etc.).

3 How does an Enterprise/Investor conduct an EHS Compliance Audit?

An enterprise's EHS compliance audit requires the coordination of multiple departments such as EHS, infrastructure, procurement, legal and finance. It is critical to have an internal auditor who is knowledgeable in the applicable laws and EHS management practices of the specific industries, and if this is not available, EHS attorneys or third-party legal advisors can be engaged as external auditors. Typically, an auditor completes the audit by: (1) identifying the EHS - related risk factors, the legal and compliance requirements (not only the laws and regulations, but also the national, local and industrial standards and the key regulatory documents) and compiles an audit checklist based thereon; then they identify EHS compliance issues by reviewing materials, conducting interviews and conducting on- site inspections; (2) drafting a compliance audit report based on the identified issues (including factual descriptions, legal risk analysis and practical corrective recommendations); (3) reporting to the management and recommending corrective actions based on the compliance audit report. Enterprises engaged in production, energy, R&D and testing may consider conducting EHS or ESG internal audits on a regular basis. In addition, given that the relevant laws, regulations and standards are frequently updated, regardless of whether an enterprise has an internal auditor, enterprises may consider conducting a periodical (e.g., one year) external audit of the enterprise and its key suppliers' EHS or ESG compliance (please contact EHS attorneys or third-party legal advisors for assistance if necessary). Such efforts will help enterprises to lower their EHS and/or ESG compliance risk.

Accordingly, in M&A transactions involving

target production, energy, R&D and testing companies, in addition to the conduction of customary legal due diligence, an investor may also communicate with an EHS attorney about the scope and range of an EHS compliance audit or an ESG due diligence depending on the target company, the amount of the subject matter and any other factors (an EHS compliance audit or an ESG due diligence is not a new topic in itself, and it is consistent with the duty of due diligence performed by the investor in the investment process). As an incremental service to our traditional M&A business, we have extended legal due diligence in M&A transactions to bespoke EHS compliance audits and ESG due diligence and incorporate the findings of these into the transactional documents.

We believe that continuous efforts in the areas of EHS and ESG compliance will enable us to assist our valued clients (whether funds, investors or enterprises) to success.

About JunHe's ESG Team: JunHe is one of the largest full-service law firms in the PRC, employing a team of nearly 900 professionals to provide high quality legal services to clients. JunHe is one of the pioneers in the field of ESG legal services in China and has one of the largest teams of EHS lawyers to provide clients with legal services in these areas. JunHe provides EHS compliance audits to companies in different industries, sometimes in cooperation with third-party agencies, based on the needs of our clients. In addition, JunHe provides services which include ESG, EHS, labor and personnel, intellectual property, trade and data, finance and taxation, and commercial and criminal compliance, in supply chain management and M&As. JunHe also provides ESG due diligence services either alone or in cooperation with third-party agencies. In addition, JunHe assists companies and/or third-party agencies in drafting ESG reports. Based on our experience serving clients in different industries, JunHe can provide services including specific legal and compliance

diagnostics relating to ESG in the daily operations of companies, the drafting and reviewing of ESG

clauses in contracts with business partners and the construction and improvement of ESG systems.

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