

## Environmental Protection

### Environmental Protection Series (VIII) - The Era of “Big Social Credits” for Corporate Environmental Protection is coming

On March 3, 2020, the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council jointly issued *Guiding Opinions on Establishing the Modern Environmental Governance System*, which set up a goal of establishing and improving a social credit system for environmental governance by 2025. Considering that the establishment of environmental credits is a key aspect to the overall systemization of social credit, in this context, we will briefly introduce the significance of environmental credit evaluation, how to maintain and enhance environmental credits as well as the key compliance precautions from a corporate perspective.

#### I. The significance to corporations of Environmental Credit Evaluations

1. The mechanisms for “Incentives for Trustworthiness and Punishments for Untrustworthiness” regarding Environmental Credits

In 2013, the former Ministry of Environmental Protection (the current Ministry of Ecology and Environment, “MEE”), together with the

National Development and Reform Commission (“NDRC”), the People’s Bank of China and the China Banking Regulatory Commission, jointly released *Measures for the Evaluation of the Environmental Credit of Enterprises (For Trial)* (the “**Evaluation Measures**”), stipulating the preliminary requirements for environmental credit evaluations of corporations with respect to information collection, credit ratings, publicity and the application of the evaluation results. The Evaluation Measures use a centesimal mechanism and classify the results into four different categories, namely, (i) corporations with great trustworthiness in environmental protection, (ii) corporations with good trustworthiness in environmental protection, (iii) corporations that have received warnings with regard to environmental protection, and (iv) corporations with poor trustworthiness in environmental protection (corresponding to green flags, blue flags, yellow flags and red flags, respectively). Corporations with different grades will be subject to a number of specific measures, with incentives for trustworthiness or punishments for untrustworthiness. For instance, trustworthy corporations with good credits may be prioritized by being included on a government

procurement list, and enjoy active credit support as well as preferential insurance rates; by contrast, an untrustworthy corporation may be subject to some restrictions or punishments such as the suspension of various special funds and subsidies, more frequent law enforcement and supervision, and higher insurance rates.

In addition, in 2016, NDRC and several other ministries jointly released the *Memorandum of Cooperation on Implementing Joint Punishment against Untrustworthy Manufacturing and Operative Entities and Their Relevant Personnel in the Area of Environmental Protection*, emphasizing that various joint punitive measures would apply to untrustworthy entities, for example, by forbidding untrustworthy environmental corporations from participating in government procurement activities, restricting untrustworthy corporations in obtaining land supplied by the government, and restricting their issuance of corporate bonds.

## 2. The Legislative Process at both the National and Local Level Is Expediting.

According to some public reports available online, the MEE and other relevant authorities (including the NDRC) are examining and drafting *Regulations on the Administration of the Evaluation of Enterprise Environmental Credits (Draft)*. We understand that authorities at the national level are improving or may further improve laws and regulations as well as regulatory documents relevant to environmental credit evaluation. We cannot rule out the possibility that future legislation may specify and reinforce these requirements, or even change some principles, provided in the Evaluation Measures.

Although in recent years we have not noticed any newly enacted law at the national level, more than 20 provinces have already

published detailed plans on the evaluation of corporate environmental credits so far. It is worth noting that there are some gaps among local plans with respect to the evaluation targets, the scoring system and categories, as well as the incentive and punishment measures. For instance, according to the *Zhejiang Province Administrative Measures for the Evaluation of the Environmental Credit of Corporates (For Trial)* (“**Zhejiang Plan**”), instead of the centesimal mechanism used by the Evaluation Measures, a full score of environmental credits is 1000, which then may be deducted from, taking in to consideration the evaluation results of the corporation’s environmental compliance, environmental management, ecological protection, and social responsibility. The Zhejiang Plan also stipulates various incentives and punitive measures which shall respectively apply to corporations classified in categories from A (Excellent) to E (Bad).

Given that various regions use different criteria for environmental credit evaluations, we foresee that the central government may soon issue a nationwide unified evaluation method or scheme. Prior to or after the issuance of such a unified evaluation method or scheme, corporations should continue to pay attention to the requirements of the environmental compliance policies and credit scoring management at the local level, particularly for groups and multinational corporations with cross-province production sites.

## 3. Environmental Credit Information is Open for Public Research.

The environmental credit evaluation is important for corporations to consider, due to the incentive and punitive mechanisms discussed above. Meanwhile, environmental credits have a significant (and even sometimes decisive) impact on a customer’s management, since customers or partners of

a corporation can search at any time for a corporation's credits (including environmental credits) and any "untrustworthy" records, through the above-mentioned public channels. The relevant environmental credit research channels include the 'Credit China' website, national and local ecological environment department portal websites, the websites of the National Corporate Credit Information Publicity System, Qichacha, Tianyancha and specific industry association platforms (such as the National Industry Credit Public Service Platform), etc.

## **II. Major Considerations for Corporations under Environmental Credit Evaluation.**

Taking into account the significance of the environmental credit evaluations to corporations, we have summarized the following important considerations. You may consult with or seek help from your environmental lawyer or consultant if necessary.

Firstly, corporations should ensure their environmental compliance, which is the basis for acquiring a positive environmental credit rating.

Secondly, if the government conducts an environmental investigation on a corporation, the corporation should respond as our last article ['Environmental Special Topic Series \(V\)- Strategies of Response to Environmental Administrative Penalties and Hearing'](#) discussed, and consult with an environmental lawyer on whether or not to conduct a defense or hearing.

Thirdly, corporations should pay attention to discover and correct any faulty or out of date untrustworthy information disclosed to the public, as well as rectify in a timely manner a damaged rating to minimize any unnecessary adverse impact.

Fourthly, corporations may be required to disclose large amounts of data for environmental credit evaluations (especially for corporations which would like to achieve a positive credit rating). Before the disclosure of any relevant data, corporations should be aware of the relevant laws and regulations with respect to business secrets, employee privacy and data transmission security, as well as take into account the internal policy requirements of the corporation or group (you may need to consult with a professional lawyer).

Fifthly, corporations should actively and timely follow and pay attention to the national and local legislation and all regulatory documents regarding environmental credit evaluation.

## **III. Conclusion and Suggestions**

Under the background that both the central and local governments are consummating legal and regulatory documents regarding environmental credit evaluation, in order to obtain a positive result under the framework of the environmental 'big social credit', corporations should attach importance to the environmental credit evaluation and take precautions, as well as pay attention to matters which we have discussed in Section two above. If you have any specific questions or need any assistance, you may contact us via email at [ecoenvpro@junhe.com](mailto:ecoenvpro@junhe.com).

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development and incorporation of joint ventures, M&A transactions, daily operation, EHS compliance, government investigations, administrative punishments, reconsiderations and litigations.

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## 环境保护法律热点问题

### 环保专题系列（八）- 企业环境的“大信用”时代已到来

2020年3月3日，中共中央办公厅、国务院办公厅印发了《关于构建现代环境治理体系的指导意见》，提出到2025年建立健全环境治理的信用体系的工作目标。考虑到环保领域信用建设属于我们社会信用体系建设的一个重要领域，本文将从企业的视角，简要介绍目前环境信用评价对企业的重要性、如何去维持和提升环境信用及其合规注意事项。

#### 一、环境信用评价对企业至关重要

##### 1、环境信用的“守信激励和失信惩戒”机制

2013年，原环境保护部会同国家发改委、人民银行、银监会联合颁布《企业环境信用评价办法（试行）》（以下简称“《评价办法》”），初步设定了企业环境信用评价的信息收集、信用等级评定、评价结果公开与应用的要求。《评价办法》采取百分制评分方式，将评价结果分为“环保诚信企业、环保良好企业、环保警示企业和环保不良企业（对应绿、蓝、黄、红牌）”四个等级。不同等级的企业将面对“守信激励、失信惩戒”的若干具体措施。比如，针对信用状况好的企业，可能被优先纳入政府采购名录、享受积极的信贷支持、优惠的保险费率；而失信企业，则可能受暂停各类环保专项资金补助、加大执法监察频次、提高保险费率等约束和惩戒。

此外，国家发改委联合多个部委于2016年发布的《关于对环境保护领域失信生产经营单位及其有关人员开展联合惩戒的合作备忘录》，强调对失信主体可采取多样化的联合惩戒措施，比如禁止环境

失信企业参与政府采购活动、限制取得政府供应土地、限制发行企业债券及公司债券等。

##### 2、国家和地方正加快立法进程

根据网上的一些公开报告，生态环境部已会同国家发改委等相关部门，开展研究起草《企业环境信用评价管理条例（草案）》，我们理解，国家层面正在或将进一步完善环境信用评价相关的立法和规范性文件，不排除未来的立法细化和加强《评价办法》项下的要求，甚至改变的《评价办法》设定的一些原则的可能性。

尽管最近几年我们注意到尚未有国家层面新的立法出台，但截至目前，全国已有二十几个省份印发了具体的企业环境信用评价方案。值得关注的是，各地方案在参评企业范围、打分制、等级分类、激励或惩戒措施上，都各有千秋。以浙江省生态环境厅于2020年1月20日发布的《浙江省企业环境信用评价管理办法（试行）》（以下简称“《浙江方案》”）为例，区别于《评价办法》采取的百分制，《浙江方案》从环境守法、环境管理、生态保护和社会责任四个模块，以1000分为总分，采用扣分制计算企业的环境信用分值。同时分了A（优秀）至E（差）五个等级，分别实施不同的奖罚措施。

考虑到上述各地环境信用评价体系存在标准不一的情况，我们可以预见，国家层面可能出台国家统一的评价办法或方案，而在此之前或之后，企业仍应特别留意关注各地环保合规政策和信用评

分管理的要求，尤其是在不同省份都有生产布局的集团和跨国企业。

### 3、环境信用信息可为公众公开获得

上文所讨论的激励和惩戒机制决定了环境信用评价对企业的重要性，而与此相关，由于客户或者合作方随时可通过上述公开渠道查询企业信用（包含环境信用）和“失信”动态，环境信用对企业客户管理方面的影响很大（有时甚至是决定性的）。与环境信用相关的查询渠道包括“信用中国”网站、国家和地方生态环境部门门户网站、国家企业信用信息公示系统、企查查、天眼查、特定的行业协会平台（如全国行业信用公共服务平台）等。

## 二、企业在环境信用评级下的重点注意事项

考虑到环境信用评价对企业的重要性，我们将其他在环境信用评级下的重点注意事项归纳如下。如有需要，可向您的环境律师或顾问咨询或寻求帮助。

第一，企业应确保环境合规，这是能够取得好的环境信用评级的一个基础。

第二，企业在面对政府环境调查时，应当妥善应对（具体可参见我们的推文[环保专题系列（五）--环境行政处罚的应对与听证策略](#)），与环境律师探讨是否进行申辩或听证。

第三，企业在面临失信公示时应注意发现和及

时纠正错误或者滞后的失信公示信息，及时修复受损评级，尽可能减小不必要的负面影响。

第四，企业在环境信用评价中，可能将被要求披露大量数据（尤其是针对需要申请较高信用等级企业），披露数据前，企业需了解商业秘密和员工隐私、数据传输安全方面的法律法规并兼顾企业/集团内的政策要求（如需，可咨询专业律师）。

第五，及时跟踪和关注国家和地方关于环境信用评价相关的立法和规范性文件。

## 三、结语与建议

在国家和地方推动环境信用评价相关的立法和规范性文件的背景下，为更好地在环境“大信用”中占主动地位，企业应重视环境信用评价，同时应未雨绸缪，注意我们在上文第二点讨论的注意事项。如您有任何具体的问题或需任何协助的，欢迎邮件联系我们：[ecoenvpro@junhe.com](mailto:ecoenvpro@junhe.com)。

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