

Environmental Protection Series No. 15

Carbon Neutrality: Key compliance issues for enterprises under the new Carbon Emission Rights Trading Regulations.

Preface: On January 5th, 2021, the Ministry of Ecology and Environment (*hereinafter referred to as "MEE"*) promulgated the *Carbon Emissions Rights Trading Regulations (Trial)* (*hereinafter referred to as the "Regulations"*), which came into effect on February 1st, 2021. The Regulations aim to regulate the national Carbon Emission Rights trading activities and marks the official operation of China's Carbon Emission Rights trading system (national carbon emissions trading market). The Regulations form part of China's goal of achieving carbon peak and carbon neutrality. With the establishment and improvement of the national carbon emissions trading market, enterprises in specific industries will be able to participate in national carbon trading. Such enterprises are obliged to meet relevant compliance obligations. In combination with other relevant regulations and policies, this article aims to remind relevant enterprises of certain compliance obligations that deserve attention.

I. Which enterprises are listed as Key Emissions Entities of greenhouse gas under the Regulations

According to the Regulations, enterprises in industries covered by the national carbon emissions trading market and whose annual

greenhouse gas emission reaches 26,000 tons of carbon dioxide shall be included on the List of Key Greenhouse Gas Emissions Entities (*hereinafter referred to as "Key Emission Entities"*). Key Emission Entities may adopt the transfer by transfer, one-way bidding or other methods in accordance with other applicable regulations to trade under the Carbon Emission Quota in the National Carbon Emission Trading System. The trading price shall be determined by the trading parties in terms of the market supply and demand. Until now, MEE has only issued the *2019-2020 National Carbon Emissions Right Trading Quota Setting and Allocation Plan (Power Generation Industry)* and the *List of Enterprises Included in the Administration of National Carbon Emissions Right Trading Quota for 2019-2020* (*such enterprises are hereinafter referred to as "Included Enterprises"*) for the power generation industry. Therefore, the Included Enterprises that can participate in the national carbon emissions trading market are limited to those in the power generation industry. The remaining seven key energy-consuming industries (i.e. petrochemicals, chemicals, building materials, iron and steel, non-ferrous, paper and civil aviation) are expected to be gradually included by the administration of a national carbon emissions right trading quota in

the future.

It is worth noting that some provinces or cities such as Beijing, Shanghai, Shenzhen, Chongqing, Guangzhou, Tianjin, Hubei and Fujian have previously launched relevant pilots. Since the launch of the pilot work, pilot regions have promulgated a series of local regulations on carbon emissions trading, pioneering the establishment of a national legal system for carbon emissions trading. However, there are still differences in the scope of the industries covered by each pilot, and some of the pilot markets have lower emission standards for the included enterprises than those of the national carbon emissions trading market. The Key Emissions Entities included in the national carbon emissions trading market will no longer participate in the local trading pilot markets.

II. What are the key compliance obligations that enterprises identified as Key Emissions Entities need to pay attention to

Enterprises included in the Key Emissions Entities can trade Carbon Emissions Quotas in the Carbon Emissions Rights trading market. Key greenhouse gas emitters should still comply with some compliance obligations, or they may face penalties in the pilot areas in terms of credit management, social notification, financial support and/or project approval in addition to the adverse effect such as fines and Carbon Emission Quota reduction in the Regulations.

1. Key Emissions Entities shall formulate and implement the monitoring plan. Although the Regulations do not cover the obligation of enterprises to monitor carbon emission data, we have noticed that *the Provisional Measures for the Administration of Trading of Carbon Emission Permits (the "Provisional Measures")* and some local pilot regulations request that Key Emissions Entities shall formulate monitoring plans,

file the plans with the relevant authorities of carbon trading, and strictly perform monitoring in accordance with such monitoring plans that have been filed. After the Regulations are promulgated, how Key Emissions Entities perform the monitoring obligations required by the Provisional Measures and some local regulations remains to be further observed in practice. This is expected to be further clarified in the relevant supporting regulations.

2. Key Emissions Entities shall perform their obligation of annual reporting. According to the Regulations, Key Emissions Entities shall prepare their greenhouse gas emission reports for the previous year according to the technical specifications for the accounting and reporting of greenhouse gas emissions formulated by the MEE, indicating the emissions, and report them to the provincial-level ecological and environmental authorities where the production and business premises are located, before March 31 each year. Key Emissions Entities shall ensure the authenticity, completeness and accuracy of their greenhouse gas emission reports. The original records and management accounts of the data involved in the emission reports shall be kept for at least five years. The annual greenhouse gas emission reports prepared by Key Emissions Entities shall be regularly made public and be subject to social supervision, except those involving state secrets and commercial secrets.
3. The restriction on offset against the annual Quota of Key Emissions Entities by Chinese Certified Emission Reduction (CCER). Key Emissions Entities shall settle the Carbon Emissions Quota of the previous year to the provincial-level ecological and environmental authorities that allocate the Quota on time every year. The amount subject to settlement shall be greater than or equal to the actual annual greenhouse gas

emissions of the emitter confirmed by the verification results of the provincial-level ecological and environmental authorities. Key Emissions Entities may offset their Carbon Emissions Quota by CCER every year, but the offset ratio shall not exceed 5% of the Carbon Emissions Quota to be settled. CCER used for offset (i.e., the greenhouse gas emission reductions quantified and certified for the greenhouse gas emission reduction effects of renewable energy, forestry carbon sinks and methane utilization projects in China and registered in the national greenhouse gas voluntary emission reduction transaction registration system) shall not come from emission reduction projects included in the Quota management of the national Carbon Emission Rights trading market.

III. Suggestions for enterprises

1. Enterprises in the power generation industry and the other seven key energy-consuming industries mentioned above, (namely petrochemicals, chemicals, building materials, iron and steel, non-ferrous industry, paper and civil aviation), are to be familiar with the Regulations, pay attention to national legislative developments, follow-up compliance requirements especially in regards to offset requirements when they are subject to the Regulations along with the expansion of Included Enterprises, and evaluate in advance whether it is necessary to purchase additional Quotas and CCERs for the purpose of fulfilling offset obligations and reducing performance costs. Such enterprises shall also actively fulfill the compliance obligations under the Regulations and supporting measures in order to prevent administrative penalties or any adverse impact or loss of advantage on corporate credit management due to violations of the relevant compliance obligations or ESG evaluation. (For your

information, we have noticed that carbon emission is a key evaluation consideration of some mature ESG evaluation systems such as the ESG evaluation system of MSCI; the establishment and implementation of carbon neutral plans by enterprises will also have a positive effect on their ESG evaluations.)

2. The concept of carbon neutrality is now a long-term national policy. Qualified enterprises (especially, manufacturing enterprises with large greenhouse gas emissions) may, on the premise of fully considering PRC laws and regulatory requirements, take the lead in formulating their own comprehensive carbon neutrality plans based on their life cycles (covering the whole process from the purchase of raw materials and energy, transportation, production to product delivery), promote the implementation of such a plan and strengthen the capacity to manage carbon emissions and carbon assets (including the capacity of the supply chain management and the coordination of the upstream and downstream of the supply chain to achieve carbon emission reduction targets). If necessary, enterprises may update relevant production processes, technology and equipment, in order to control greenhouse gas emissions and gradually achieve the goal of carbon neutrality. Enterprises may also further discuss with their environmental lawyers or consultants any specific questions regarding the Carbon Emission Rights trading or their plans or approaches to carbon neutrality.

If you have any specific questions, please contact us via email: ecoenvpro@junhe.com.

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环保法律热点问题

环保专题系列（十五）——碳中和：碳排放权交易规则下企业应关注哪些合规重点

导言：生态环境部于2021年1月5日发布《碳排放权交易管理办法（试行）》（下称“《管理办法》”），于2021年2月1日起正式施行。《管理办法》定位于规范全国碳排放权交易活动的系统性规制，标志着中国碳排放权交易体系（全国碳排放权交易市场）正式投入运行，同时也是对我国实现碳达峰、碳中和目标的响应和落实。伴随全国碳排放权交易市场的建立和完善，特定行业企业将可以参与全国范围内的碳排放权交易，同时也需要履行其作为履约责任方的合规义务。本文将结合相关法律和政策规定，分析作为履约责任方的企业需要注意的重点合规义务。

一、哪些企业在《管理办法》项下被列入温室气体重点排放单位

根据《管理办法》，属于全国碳排放权交易市场覆盖行业且年度温室气体排放量达到2.6万吨二氧化碳当量，应当列入温室气体重点排放单位（下称“重点排放单位”）名录；重点排放单位可采取协议转让、单向竞价或者其他符合规定的方式在全国碳排放权交易系统交易碳排放配额，交易价格由交易参与方根据市场供求关系确定。截至目前，生态环境部仅针对发电行业发布了《2019-2020年全国碳排放权交易配额总量设定与分配方案（发电行业）》和《纳入2019-2020年全国碳排放权交易配额管理的纳入企业名单》（该企业下称“被纳入企

业”）。因此目前能够参与全国碳市场的被纳入企业仅限于发电行业企业，剩余七大重点能耗行业（即石化、化工、建材、钢铁、有色、造纸和民航）有望将来被逐步纳入。

需要注意的是，此前一些省/市（即北京、上海、深圳、重庆、广州、天津、湖北、福建）就已经开展相关试点。自试点工作启动以来，试点地区就碳排放权交易颁布了一系列地方规定，为建立全国性的碳排放权交易法律制度开创了先例，但各试点的覆盖行业范围存在差异，部分试点市场对于纳入企业排放量标准的规定低于全国碳排放权交易市场的标准。纳入全国碳排放权交易市场的重点排放单位，不再参与地方碳排放权交易试点市场。

二、被纳入重点排放单位的企业应注意哪些重点合规义务

尽管被纳入重点排放单位的企业可在碳排放权交易市场交易碳排放配额，但与此同时，重点排放单位仍应遵守一些合规义务，否则除了可能面临《管理办法》项下罚款和碳排放配额核减等不利影响，还可能面临试点地区在信用管理、社会通报、财政资金资助和/或项目审批方面的惩戒。

- 1、重点排放单位应制定监测计划并落实监测计划。虽然《管理办法》并未涉及企业对碳排放数据的监测义务，但我们注意到《碳排放权交

易管理暂行办法》（下称“《暂行办法》”）以及部分试点地方的规定均要求重点排放单位制定排放监测计划并报相应的碳交易主管部门备案，并且严格按照经备案的监测计划实施监测活动。《管理办法》出台后，重点排放单位如何落实《暂行办法》和部分地方规定要求的监测义务，有待于在实践中进一步观察以及相关配套法规的进一步澄清。

- 2、重点排放单位应履行年度报告义务。根据《管理办法》，重点排放单位应当根据生态环境部制定的温室气体排放核算与报告技术规范，编制该单位上一年度的温室气体排放报告，载明排放量，并于每年3月31日前报生产经营场所所在地的省级生态环境主管部门。重点排放单位应确保温室气体排放报告的真实性、完整性、准确性。排放报告所涉数据的原始记录和管理台账应当至少保存五年。重点排放单位编制的年度温室气体排放报告应当定期公开，接受社会监督（涉及国家秘密和商业秘密的除外）。
- 3、重点排放单位的年度配额清缴义务及国家核证自愿减排量（CCER）抵销限制。重点排放单位应每年按时向分配配额的省级生态环境主管部门清缴上年度碳排放配额。清缴量应当大于等于省级生态环境主管部门核查结果确认的该单位上年度温室气体实际排放量。重点排放单位每年可使用国家核证自愿减排量（即对我国境内可再生能源、林业碳汇、甲烷利用等项目的温室气体减排效果进行量化核证并在国家温室气体自愿减排交易注册登记系统中登记的温室气体减排量）抵销碳排放配额的清缴，但抵销比例不得超过应清缴碳排放配额的5%。用于抵销的国家核证自愿减排量不得来自纳入全国碳排放权交易市场配额管理的减排项目。

三、对企业的建议

- 1、发电行业企业及上述提及之七大重点能耗行

业一石化、化工、建材、钢铁、有色、造纸和民航行业企业应学习《管理办法》，关注全国和地方后续配套规则，伴随被纳入企业的扩大，在适用《管理办法》的情况下注意合规要求（尤其是清缴要求），提前评估为履行清缴义务及降低履约成本之目的是否需要购买额外的配额和CCER；积极履行《管理办法》及配套法规项下的合规义务，防止因违规行为遭受行政处罚，在企业信用管理或ESG评价等方面上遭受不利影响或丧失优势。（供参考：我们注意到碳排放也是部分成熟ESG评价体系如MSCI的ESG评价体系等的关键指标，企业制定和落实碳中和方案，也将对其ESG评价产生积极影响。）

- 2、在碳中和明确成为中国长期国家战略的背景之下，有条件的企业（特别是温室气体排放较多的制造型企业）可以在充分考虑中国法律和监管要求的前提下率先制定基于企业全生命周期管理的综合性碳中和方案（覆盖从原料与能源获取，运输、产品生产直至产品出厂这一完整流程），推动方案落实并加强碳排放和碳资产管理的能力建设（包括供应链管理并协同供应链上下游落实碳减排的能力）；在必要的情况下进行生产工艺、技术和设备升级以控制温室气体排放，推动绿色低碳技术创新；逐步实现碳中和目标。如需，企业也可以与其环境律师或环境顾问进一步探讨碳排放权交易，碳中和方案或路径相关问题。

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