

君合专题研究报告



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ESG 专题系列（二十二）：保险机构承保和投资业务中必须关注的 ESG 合规要点

当前可持续发展已成为全球最为热议的话题之一，全球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，全球层面环境、社会与治理(ESG)相关的一些倡议或自愿性标准被逐渐吸纳到监管政策、指引或要求中。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 日发布了《中国银保监会关于印发<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”纳入到对保险机构的业务监管之中，要求保险机构将 ESG 理念融入其承保和投资流程管理和风险管理体系中，确保其业务开展过程中的 ESG 合规，这与我国推动实现碳达峰碳中和及高质量发展的目标是紧密相关的。

一、保险业为什么需要纳入 ESG 因素的考量？

首先，对于保险机构而言，实现其承保及投资业务过程中的 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，保险机构作为重要的金融机构，在承保及投资的过程中，若不考虑拟承保客户或拟投资项目 ESG 方面的问题，未来出现重大的 ESG 事件时，可能导致对客户的资产或项目的不利影响，使得保险机构在负债端或资产端承受巨大损失。

在保险机构运营中，ESG 因素的影响范围广泛，涉及承保业务、保险资金投资等，亟需建立并推动落实良好的评估和管控机制。从资产端来看，保险机构与其他金融机构相类似，需要管理与投资项目价值相关的 ESG 风险，并且要通过加大绿色低碳项

目投资和支持传统高污染高耗能企业转型，促进社会经济的可持续发展。而此外，保险机构的承保端也会受到 ESG 因素的较大影响，例如：气候变化可能导致严重的环境灾害，进而造成财产损失由保险机构进行承担，财产损失索赔概率上升，承保成本增加。

二、保险业具体如何整合 ESG 因素？

根据《通知》的规定，结合保险行业特点，为实现承保和投资管理过程中的 ESG 合规与风险管控，保险机构可考虑先从以下几个方面着手整合 ESG 因素：

- （1）在承保或投资前，保险机构需要根据拟承保客户或拟投资项目的行业、区域特点，对前述拟承保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或拟投资项目特点，制定 ESG 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）在决定承保或投资时，保险机构需要加强 ESG 尽职调查，充分识别 ESG 风险程度，确定合理的承保、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和拟投资项目，应当严格限制承保和投资。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，该项目的承保或投资则需要更高层级人员的审批；将 ESG 相关风险因素纳入产品定价或项目估值考量，以合理的定价和估值管控风险；

- (3) 在签署承保或投资项目的相关协议时，保险机构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 风险的承保客户和投资项目，应当在合同正文或附件中要求其提交 ESG 风险报告，订立客户或接受投资方加强 ESG 风险管理的声明和承诺条款，以及客户或接受投资方在管理 ESG 方面违约时的救济条款；以及
- (4) 在承保或投资后，保险机构需要持续监督客户或项目的 ESG 管理情况：就保险机构内部而言，密切关注内外部环境对客户或项目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，并在资产风险分类等方面及时做出调整；同时，应建立重大 ESG 风险的监控和报告制度，识别到客户或项目存在 ESG 相关风险问题时，提出在风险防控方面的建议，及时督促整改，以期降低 ESG 相关风险事件造成的经济损失。

此外，近年来保险业不断扩展和丰富绿色保险的内涵外延。与此相关，我们注意到 2022 年 11 月，中国银保监会首次对绿色保险进行定义：“绿色保险，是指保险业在环境资源保护与社会治理、绿色产业运行和绿色生活消费等方面提供风险保障和资金支持等经济行为的统称”，并且，要求各保险公司从 2022 年 12 月起，按照产品维度和客户维度相结合的方式，分步骤统计各保险公司绿色保险负债端业务。我们可以预见在绿色保险方面的创新产品将日益增多。保险公司除应注意如上风险控制角度所提及的内容，在险种和保险条款设计时，也应更多考虑市场主体的 ESG 需求并从法律、合规等角度进行风险评估。

三、我们的建议

考虑到《通知》要求银行及保险机构在 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，我们建议有关保险机构尽快按照《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，并在承保管理和投资决策的过程中尽快开始实际践行《通知》项下的要求。如需，保险机构也可以寻求 ESG 律师或顾问的协助处理相关事宜；就承保或投资协议文本相关的部分，请与您的 ESG 律师联系对其进行修订，以便完成 ESG 因素的整合。

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、更新有关协议或条款或开展 ESG 尽职调查的，欢迎邮件联系我们：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。

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JUNHE SPECIAL REPORT



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Key ESG Compliance Focuses for Underwriting and Investment Business of Insurance Agencies

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 relating to environment, social and governance (ESG) have been gradually incorporated into regulatory policies, guidelines and requirements. For example, on June 1, 2022, 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 (Circular). This Circular incorporated core concepts of sustainable development into regulations for the business of insurance agencies, requiring them to integrate ESG concepts into their credit and investment business processes and risk management systems. The Circular ensures ESG compliance for underwriting and investment businesses, with the aims of carbon peaking and carbon neutrality alongside high-quality development.

1. Why should insurance agencies consider ESG factors?

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

underwritten clients or proposed investment projects while in the process of underwriting and making investments, the future occurrence of major ESG events may affect the client's solvency or project development. This may result in exposing insurance agencies to significant losses.

ESG factors may have a wide impact on insurance agencies and involve their underwriting business, the investment of insurance funds, etc. There is an urgent need to establish and promote the implementation of good assessment and control mechanisms. From an asset perspective, insurance agencies, like other financial institutions, need to manage ESG risks related to the value of their investment projects and to promote sustainable socio-economic development by increasing investment in green and low-carbon projects and supporting the transformation of traditionally high polluting and high energy-consuming enterprises. The underwriting side of an insurance agency can be significantly affected by ESG factors, for example, climate change may lead to severe environmental disasters, which in turn may result in property damage being borne by the insurance agency, increasing the probability of property damage claims and increasing the cost of underwriting.

2. How should insurance businesses integrate ESG factors?

According to the Circular, to achieve ESG compliance and risk management in underwriting

and investment management processes, insurance agencies should consider the following :

- (1) Before underwriting or making an investment, insurance agencies should conduct ESG due diligence or ESG compliance reviews for the client or project, based on its distinct 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 the clients in different industries or proposed investment projects.
- (2) When deciding to underwrite or invest in certain projects, insurance agencies should strengthen their ESG due diligence, fully identify the ESG risk level, and determine the reasonable underwriting and investment authority as well as the examination and approval processes. Underwriting or investing in clients or projects with previous serious legal violations and material risks in ESG should be restricted. Therefore, it is necessary to ensure that the appropriate 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 underwriting or investment projects, depending on the ESG risk level and it is recommended to incorporate ESG-related risk factors into product pricing or project valuation considerations, and manage risk with reasonable pricing and valuation.
- (3) When entering agreements in connection with underwriting or investments, insurance agencies should incorporate ESG compliance requirements into the relevant provisions of the agreement and incorporate ESG into the sections for representations and

warranties, conditions precedent, covenants and liability for breach of contract. For underwritten clients and investments involving material ESG risks, they should require the client or the investee 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 or the investee and the remedies in the event of default by the client or the investee in the management of ESG.

- (4) After underwriting or providing investment funds, insurance agencies should continuously supervise the ESG management of the investee enterprises or projects. For insurance agencies, they should pay close attention to the impact of the internal and external environment on the client's or the investee'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 should also establish a reporting system for the occurrence of major ESG risks and link the results of such supervision with the allocation of underwriting or investment funds. For clients with potentially major environmental, social and governance risks, targeted improvement management measures should be formulated and implemented to reduce the economic loss caused by ESG-related risk events.

3. Suggestions

Given that the Circular requires insurance agencies to establish and optimize their internal ESG management systems and processes by May 31, 2023, we recommend that insurance agencies take action to establish internal ESG policies and systems as soon as possible.

Insurance agencies should begin to implement the requirements of the Circular as soon as possible while granting credit and making investments. Insurance agencies 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.

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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