

# Research on Environmental Legal Responsibility of Green Credit

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**Abstract:** *Green credit policy is an important starting point for the development of green finance in China. In order to promote the further development of green credit, it is urgent to clarify the legal responsibilities of commercial banks in the implementation of green credit policy. By combing the legal oversight of commercial banks in the restrictive factors of China's green credit policy, this paper demonstrates the rationality of commercial banks' legal responsibility for green credit, and analyzes the specific ways to undertake legal responsibility. In the design of rules, from the perspective of environmental administrative responsibility and environmental civil responsibility, we should not only avoid the loss of regulatory function caused by excessive tolerance of the law, but also avoid using excellent legal means to bind the bank's credit supply. By assuming legal responsibilities that are appropriate to their scope of duties, commercial banks are urged to actively promote green credit policies.*

**Keywords:** *Commercial banks, Green credit policy, Environmental legal responsibility*

## 1. Introduction

Since the introduction of green credit financial policy in 2007, by June 2020, the balance of green credit in China has exceeded 11 trillion yuan, ranking first in the world. In 2021, the balance of China's green credit financing will remain at the level of 1-1.1 billion, accounting for 90% of the total green financing. It can be seen that in the green financial system, green financial products are still dominated by green credit.

However, the existing green credit policy is mainly based on principle and advocacy, and the provisions on the subject and content of responsibility are not clear. As the main body of implementing green credit, commercial banks are required to bear legal responsibility for the environmental damage of borrowers, that is, the persons who are directly responsible for the ecological environment damage, and so on, which are worthy of in-depth discussion.

## 2. The constraints of commercial banks' green credit

Since China put forward the concept of "green credit" in 2007, various state agencies and local governments have successively issued a series of normative documents to implement the green credit policy, and domestic banks have also issued notices to start implementing the national green credit policy, gradually reducing loans to environmental pollution projects and investing in energy-saving and environmental protection projects.

However, in terms of the total amount and proportion of loan finance, the proportion of domestic commercial banks' loans to environmental protection projects is still low, and a considerable part of their loan stock is still invested in "two high" industries. In addition, because the above norms and regulations are all "soft laws" and lack the responsible subject and responsibility mechanism, the effect of implementing green credit in practice is not ideal, the enthusiasm of the participants in green credit is not strong, and the green credit system is a mere formality. As for the main factors that restrict the current development of green credit, this paper focuses on the lack of legal regulation of commercial banks, which can be mainly attributed to three categories: imperfect existing policies, conflict of interests and lack of punishment and incentive mechanisms.

## **2.1. The existing green credit policy is not perfect**

### **2.1.1. Lack of legal protection of green credit**

At present, the logic of green credit development in China is "industrial policy-oriented"<sup>[1]</sup>. That is, to encourage development and promote development through policies. At present, most normative documents are principle-oriented guidelines, covering a comprehensive content, but they do not give detailed implementation rules and guidelines, and they also lack specific project classification and evaluation methods. It is difficult for commercial banks to formulate relevant management methods or guidelines according to their own loan demand, which greatly reduces the operability of green credit in concrete practice.

At the legal level, the existing laws only mention that enterprises should bear social responsibilities, that commercial banks should safeguard the public interests of the state and society in their credit business, and that commercial banks should follow the guidance of national industrial policies in their loan business, but there are no specific provisions on the specific process and responsibility regulation of green credit implementation. As far as commercial banks are concerned, in view of the fact that the current law does not stipulate the environmental administrative responsibility or environmental civil responsibility of commercial banks, whether or not to implement green credit depends on the consciousness of banks. In addition, there is little post-legislative evaluation in the current laws and regulations, and there is a lack of self-examination and improvement on the social effects, functions and system defects after the implementation of legislation. However, the issuance of green credit has strong timeliness and should be adjusted in time according to the specific problems in implementation.

### **2.1.2. Lack of institutional setup and coordination mechanism.**

In the aspect of institutional setup and internal division of labor in the implementation of green credit policy, most of the legal documents related to green credit policy only briefly mention that the main institutions implementing green credit are banking financial institutions, and rarely provide guidance for the internal institutional setup of commercial banks. Only "Green Credit Guidelines" describe the contents of the organization in detail. However, its coercive power is insufficient, and it lacks follow-up mechanisms such as supervision and improvement effect evaluation.

In terms of coordination between commercial banks and other institutions. First, the information sharing mechanism among enterprises, environmental protection departments and banks is not smooth. This increases the cost of obtaining environmental information during the credit review of financial institutions and the supervision of environmental protection departments. Second, commercial banks rely too much on environmental protection departments. Commercial banks believe that the "green degree" in green credit work should be defined by the environmental protection department, and even hope that the environmental protection department will directly issue a list of enterprises that restrict loans. However, the environmental situation of enterprises is dynamic, and the list of illegal enterprises only represents the situation at a certain point in time, and enterprises may take different environmental protection measures at different points in time. Therefore, it is impossible to dynamically reflect the changing process with environmental risks according to specific projects only by relying on the list of illegal enterprises for green credit operation.

## **2.2. The lack of punishment and incentive mechanisms**

### **2.2.1. Lack of effective supervision mechanism**

China's existing policy documents have preliminarily stipulated the supervision mechanism of commercial banks' green credit. As for the subject of supervision, Article 22 of the Guiding Opinions on Credit Work for Energy Conservation and Emission Reduction and Article 4 of the Guidelines on Energy Efficiency Credit mention that China Banking and Insurance Regulatory Commission has the duty to inspect and supervise the green credit business of commercial banks, Article 18 of the Guidelines on Green Credit refers to the supervision of lenders, and Article 24 refers to the supervision of the market, stakeholders and independent third parties. As for the content of supervision, the Green Credit Guidelines stipulate to assist in establishing and improving the information sharing mechanism, carry out off-site supervision and on-site inspection, and strengthen self-evaluation guidance. However, all the above policies lack effective judicial and operational provisions to realize them. In addition, public participation is still insufficient, and stakeholders and non-governmental organizations cannot participate in it, which greatly limits the function of social supervision mechanism.

### **2.2.2. Lack of effective incentive mechanism**

The effective implementation of green credit system needs an effective incentive mechanism to match it. China's current green credit policies are mostly restrictive and binding, that is, commercial banks are required to meet or meet some external standards when managing credit trends, and the incentive and subsidy green credit preferential policies are seriously insufficient<sup>[2]</sup>. However, as a social control tool to punish evil and promote good, law's incentive function is as important as punishment function. As for the existing incentive mechanism, the Guiding Opinions on Building a Green Financial System puts forward that "green credit should be brought into the macro-prudential evaluation framework, and the evaluation results of key indicators of green credit implementation and green evaluation results of banks should be taken as important references", but its target is mainly borrowers rather than commercial banks, and the implementation of green credit needs the initiative of commercial banks to give full play to the market role.

To sum up, at present, there is no law to clearly stipulate the responsibility, content and supporting system of green credit in the implementation of green credit in China. For commercial banks that implement the main institutions, they are faced with short-term conflicts of interests, local protectionism and other problems. In addition, under the circumstances that the existing laws lack provisions on the environmental responsibilities of commercial banks and the effective legal supervision and incentive mechanism is not perfect, different banks have different understandings and plans on the importance of environmental responsibilities and the degree of fulfilling environmental responsibilities<sup>[3]</sup>. As a result, the performance of green credit among commercial banks is uneven, and the effect of green credit implementation is not ideal in practice.

## **3. The rationality of taking commercial banks as the main body of responsibility**

Generally speaking, enterprises are the main responsible persons for environmental problems. On the one hand, enterprises make use of environmental resources in their operation and have the obligation to compensate for environmental damage and resource consumption, which is part of corporate social responsibility; On the other hand, for the solution of environmental problems, enterprises can directly improve environmental problems by means of resource acquisition and technological innovation. The green credit undoubtedly allocates this kind of environmental responsibility to banks, requiring banks to assume their environmental responsibilities by regulating the behavior of enterprises, so as to realize the environmental responsibility of enterprises. Then, when achieving the goal of green development, why take the bank as the transmission intermediary, which indirectly affects the behavior of enterprises? The following will demonstrate the rationality of requiring commercial banks to undertake green credit responsibility from two aspects: oughtness and feasibility.

### **3.1. The oughtness of commercial banks undertaking green credit responsibility**

#### **3.1.1. Requirements of social responsibility of commercial banks**

Social responsibility of commercial banks is a concept derived from corporate social responsibility, which means that commercial banks should fully consider the interests of stakeholders such as shareholders, depositors, lenders, etc. while striving for maximum profits in their operations, and at the same time bear corresponding responsibilities for social, political, economic and resource environment. The reason why commercial banks have to bear the above responsibilities is mainly because banks, as enterprise project financing lenders, have the obligation to supervise the use of the funds borrowed by borrowers, ensure that the use of these funds is conducive to the sustainable development of the environment and society, and control the possible environmental and social risks of financing projects<sup>[4]</sup>. As a special public enterprise, the unique role of commercial banks in resource allocation makes them obligated to take on more responsibilities and incorporate the pursuit of economic, social and environmental harmony into their own development goals. Green credit is an important means for commercial banks to undertake environmental responsibilities.

#### **3.1.2. Requirements of commercial banks as environmental communities**

From the perspective of environmental community, it demonstrates the due responsibility of commercial banks from the perspective of the integrity of environmental interests. Environment belongs to public goods that provide positive effects, and publicity is a secondary attribute of commercial banks. It is the realization of its publicity that it puts in credit resources according to the national industrial policy or economic policy. From the perspective of the integrity of environmental interests, commercial

banks are in the environmental community, so it is their due responsibility to practice green credit. Supporting green, low-carbon and environmental protection industries, realizing "green allocation" of funds and strictly controlling the credit "gate" of "two highs and one surplus" are also solving the problem of economic "externalities"<sup>[5]</sup>. In addition, some scholars believe that the community of human destiny theory can be used as a new theoretical basis for green credit in the world under the background of sustainable development. Today, when the world is cool and hot, the economic crisis in one country often casts a shadow over the global economic development, and the negative impact of environmental and ecological problems is difficult to strictly control within a country or a specific region. In such a community of destiny, every subject has the obligation to bear the responsibilities within their respective capabilities. Commercial banks have a position advantage in credit rationing and are duty-bound to promote the green credit system.

### ***3.2. The feasibility of commercial banks to bear the responsibility of green credit***

#### ***3.2.1. The convenience of commercial banks' own functions***

The basic function of commercial banks is the credit intermediary function, and providing financing for environmental protection is the embodiment of its credit intermediary function. Based on the function of credit intermediary, the environmental protection-oriented function of banking business has emerged. Its business-oriented function is an important strengthening mechanism for environmental protection. For example, commercial banks give loans to environmentally friendly and resource-saving enterprises, but not to high-consumption and high-pollution enterprises; Give loan support to a specific borrower's energy-saving renovation project, but its high-energy consumption project can't get a loan. By emphasizing the environmental performance of enterprises in credit management, commercial banks can effectively influence the environmental awareness of enterprises and encourage their environmental behavior.

#### ***3.2.2. Administrative power boost***

Commercial banks are the main executors of national macro-control policies, especially for state-owned commercial banks, which play a leading role in the implementation of macro-control policies. In the development of China's green credit policy, the promotion mechanism of administrative power undoubtedly occupies an absolutely dominant position. From the trend, with the construction of green financial system becoming China's national strategy, the political incentives for commercial banks to promote green credit business will be strengthened.

To sum up, commercial banks play the dual roles of participants and managers in social development. First, commercial banks are special public enterprises, which should bear social responsibilities, incorporate environmental and economic responsibilities into their development goals, and undertake the obligations they should shoulder as an environmental community while pursuing their own interests. Second, credit funds play a vital role in the development of enterprises. Commercial banks can guide the business activities of enterprises through the green preference of corporate environmental behavior in credit audit, thus affecting the investment direction of the market and realizing the national macro-control policies. Under the current goal of "double carbon" in China, it has become a trend that the subject of environmental legal responsibility is expanding continuously. The pivotal position of commercial banks in the economic system means that they need to bear the responsibility of ecological environmental protection.

## **4. Conclusion**

Commercial banks are a key link in the implementation of green credit policy. As a special public enterprise, they not only have the function of credit intermediary, but also have the business-oriented function, and are also the main body of national macro-control policies. In the process of system operation, on the one hand, commercial banks have to face short-term interest conflicts and local protectionism, on the other hand, they lack rules and guidelines for implementing green credit, and the legal boundaries of behavior are lacking. In this regard, we should clarify the environmental administrative responsibility and environmental civil responsibility of commercial banks in the green credit policy in time, force commercial banks to consciously perform their due diligence obligations on corporate environmental behavior before lending, strengthen environmental social responsibility, and urge commercial banks to actively implement green credit.

## References

- [1] Qin Fangju. (2020). *Legal Approach to Green Credit of Commercial Banks in China*. *Nanjing Social Sciences* (05), 82-88.
- [2] Yang Feng & Qin Liang. (2019). *Construction of China's green credit responsibility implementation model*. *Series of Political Science and Law* (06), 48-60.
- [3] Zhou Jiepu. (2017). *On the improvement of China's green credit legal system*. *Oriental Law* (02), 72-80.
- [4] Yang Luzhao & Jiang Yuan. (2009). *On the construction of China's green credit legal system*. *Journal of Jiangxi University of Finance and Economics* (04), 112-116.
- [5] Liang Zhou & Chen Xiaofang. (2017). *Present situation and suggestions of developing green credit in China's commercial banks*. *Southwest Finance* (08), 9-16.