



Research on Legal Issues of Green Credit System in China

Cheng Hong

School of Marine Law and Humanities, Dalian Ocean University, Dalian 116086, Liaoning, China.

How to cite this paper: Cheng Hong, (2024) Research on Legal Issues of Green Credit System in China. *Journal of Humanities, Arts and Social Science*, 8(8), 2006-2009.
DOI: 10.26855/jhass.2024.08.034

Received: July 20, 2024
Accepted: August 17, 2024
Published: September 13, 2024

***Corresponding author:** Cheng Hong, School of Marine Law and Humanities, Dalian Ocean University, Dalian 116086, Liaoning, China.

Abstract

Green credit plays a crucial role in achieving green development, promoting environmental protection, and fostering a sustainable economy. The release of the *Opinions on Implementing Environmental Protection Policies and Regulations to Prevent Credit Risks* in 2007 marked the inception of green credit in China. Subsequently, a series of policies were introduced, establishing the foundational framework of China's green credit system, including rules for statistics and monitoring, appraisal and evaluation, and information disclosure. Together, these elements constitute the green credit policy system in China. This paper examines the existing green credit policies in China and identifies several issues within the current system, including the lack of specialized legislation, inadequate legal accountability provisions, an imperfect regulatory framework, and insufficient subsidies and incentives. For each of these challenges, corresponding countermeasures are proposed, with the aim of creating a conducive environment for the development of green credit and promoting sustainable and healthy economic and social development in China.

Keywords

Green credit; green finance; commercial banks; legislation

1. Introduction

As global climate change and environmental issues become increasingly prominent, China attaches great importance to the construction of an ecological civilization and sustainable development. General Secretary Xi emphasized the importance of "Chinese-style modernization" and ecological civilization in his report to the 20th Party Congress and declared at the 2020 United Nations General Assembly that he would strive to reach peak carbon emissions by 2030 and achieve carbon neutrality by 2060. Green finance, as an important means to promote economic transformation to green and low-carbon development, especially green credit, plays a significant role in realizing the goal of carbon neutrality (Teng Faxin, Huang Xuewei, & Peng Yifan, 2023). However, there are many challenges and deficiencies in China's current green credit legal system, with poor policy implementation and lack of self-regulatory constraints in the banking industry, leading to slow promotion of green credit. Therefore, studying the legal issues of green credit will help to understand the current situation and challenges of green financial development in China and provide guidance for promoting the construction of a green financial system and realizing the green transformation of the economy and the goal of carbon neutrality (Gu Haifeng & Zhu Huiping, 2023).

2. Major problems facing China's green credit policy

At present, the main driving force of China's green credit is the administrative guidance documents developed by the executive branch, the order out of a number of parties and decentralized fragmentation has not yet formed a scientific and effective system, there are still many deficiencies and shortcomings (Zeng Yan, 2022).

2.1 Lack of green credit-specific legislation

At present, the development of green finance in China is inextricably linked to the realization of the dual-carbon goal, but there is no specialized legal system for green finance to support and regulate its development. The highest authority of the state has not formulated any green finance law, and the State Council has not issued any corresponding administrative regulations, so the field of green finance mainly relies on policies, habits, and morals for constraints. Although some regions have issued local regulations, their scope of application is limited to the administrative region, and the problems of missing superior laws, low level of effectiveness, and insufficient authority need to be solved. In the field of green credit, the policies are mostly documents issued by the State Council, financial regulators, and relevant ministries and commissions, with a low order of legal effectiveness. In order to be in line with the current requirements for the in-depth promotion of the construction of ecological civilization and ecological environmental protection, green credit should be clearly defined in terms of responsibility, content, and supporting systems through the form of law (Fang Guirong & Song Qunli, 2021).

2.2 Inadequate legal liability provisions for green credit

There are many deficiencies in China's green credit legal responsibility provisions. Relevant provisions are scattered in some normative documents, such as "on the implementation of environmental protection policies and regulations to prevent credit risk opinions", these documents have a certain degree of flexibility, and specialization, but are independent of the "Legislative Law of the People's Republic of China", the effectiveness of its normative documents, the scope of application, etc., lack of the "Legislative Law" of the effective regulation. In the legal norms of China's hard law, there are no direct specialized provisions on the legal responsibility of green credit, and one can only find the basis in the relevant laws and apply them through logical reasoning and so on. According to China's relevant legal provisions, commercial banks and other financial institutions in the credit link failed to comply with the requirements of relevant administrative regulations and should bear the corresponding environmental administrative legal responsibility. However, the law does not clearly stipulate whether commercial banks need to bear civil legal liability. Article 5 of the Company Law stipulates that companies have the obligation to assume social responsibility in their business activities, but the content of this provision is too abstract and lacks specific operability. Similarly, Article 8 of the Commercial Banks Law stipulates that commercial banks shall comply with laws and regulations and shall not jeopardize the interests of the state and society, but the provision also lacks practical operability. Therefore, the implementation of the green credit system in China is not obvious. In addition, the relevant hard law provisions on environmental legal liability for green credit are mostly principle-based and not targeted, lacking specialized legislation and systematic chapters. Existing legal provisions refer to the social responsibility of lenders, but lack clear specific obligations and yardsticks for environmental protection. The introduction of the Civil Code has not solved this problem, as the environmental infringement provisions therein do not specify the subject of responsibility and lack practical applicability. In judicial practice, financial institutions that violate laws and regulations to grant credit, or provide loans, are most likely to bear administrative responsibility. Lenders bear civil liability and criminal liability in judicial cases is not common, a lack of clear legal responsibility for lenders. To summarize, China's green credit legal liability provisions are insufficient, resulting in weak supervision and weak accountability, limiting the effectiveness of the green credit system, and there is an urgent need to improve and strengthen the relevant legal system (Huang Tao, 2021; Mo Qingtao, 2020).

2.3 Inadequate regulatory regime for green credit

At present, China lacks a complete legal framework for green credit supervision. Although there are some relevant guiding documents or policy documents, some of the provisions of the policy are not easy to implement in the implementation process compared with laws and regulations, so the supervision work lacks standardization and operability. It is difficult for the supervision departments to perform their duties in accordance with the law, and it is difficult to guarantee the effectiveness of supervision. According to Article 5 of the Green Credit Guidelines, "The China Banking Regulatory Commission (CBRC) is responsible for the supervision and management of the green credit business of banking financial institutions and their environmental and social risk management in accordance with the law." As the implementation of green credit inevitably involves environmental evaluation and environmental regulatory issues, environmental protection departments inevitably have to join in the supervision of green credit, although these departments jointly undertake the regulatory functions, each has a different focus, the corresponding approval standards, evaluation standards are also different, which can easily lead to the complexity of the regulatory

work, affecting the efficiency of the supervision, however, the existing policy does not have the right of supervision and management between the financial and environmental protection departments, which is difficult to guarantee the effectiveness of supervision. However, the existing policy does not clarify the powers and responsibilities between the financial regulators and environmental protection departments, which may lead to the existence of intersections and gaps in the division of labor in the process of real regulatory work, affecting the efficient conduct of the corresponding green credit business (Wang Bo & Yue Sijia, 2020; Han Song, 2018).

3 Countermeasures for the development of a green credit system in China

3.1 Promoting green credit-specific legislative activities

Currently, there is a problem of lack of legislation in the field of green credit in China, which is mainly manifested in the lack of a specialized legal system to support and regulate its development. Most of the existing legal provisions are initiatives, and principles, and lack of specific implementation details, resulting in greater difficulty in implementation, and the provisions are often difficult to be effectively implemented after the introduction of the provisions. This situation makes the development of green credit restricted and unable to effectively respond to the new needs of the current development of green finance. To address this problem, the legal system of green credit can be improved through the form of legislation, which can be based on the integration of existing laws and policies, drawing on the experience of building legal systems in the field of environmental protection, and formulating specialized green credit laws by sorting out and integrating existing laws to provide a clear legal basis and support for its development. For example, at the national level, the Measures for the Administration of Green Credit can be issued in the form of administrative regulations through the State Council, so as to clarify the legal basis and norms of green credit, and to enhance the effectiveness of its legislation and implementation. This will help to unify standards, promote the development of green credit nationwide and solve problems such as the weak effectiveness of local regulations and the lack of uniformity in certification standards (Cui Tao & Guo Zhaowei, 2017; Wang Hao, 2017).

3.2 Clarifying legal responsibilities for green credit

In order to promote the fulfilment of environmental protection responsibilities by financial institutions and enterprises, it is necessary to clarify the legal responsibilities of the green credit system. First, special provisions should be set up to define the responsibilities of financial institutions and enterprises in environmental protection, drawing on the Tort Liability Section of the Civil Code to clarify civil liabilities in the area of green credit, including environmental clean-up costs and compensation for ecological damage. Secondly, the “potentially liable person” system of the United States should be introduced to clarify the possible liability of financial institutions under specific circumstances. For example, under the Superfund Law, a commercial bank may be considered as a potentially liable person when a borrower defaults on a loan and causes the bank to exercise its mortgage rights. A bank may also be considered a potentially liable person if it acquires other rights related to the mortgage interest before enforcing the mortgage. Such a system can enhance the sense of responsibility of financial institutions in the process of green credit, prompting them to choose loan recipients more carefully and avoid environmental risks. In addition, the principles of strict liability and unlimited joint and several liability should be adhered to. Regardless of whether the financial institutions are at fault or not, once it is determined that they are the relevant subject of environmental infringement, they should bear the corresponding legal responsibility. This strict liability system can effectively restrain financial institutions and enterprises from paying more attention to environmental protection in the process of green credit and reduce environmental risks (Zhou Jiepu, 2017).

3.3 Establishing an effective regulatory system for green credit

In order to solve the problem of unclear powers and responsibilities in the supervision of green credit in China, the responsibilities of all relevant regulatory departments should be clarified to realize effective supervision and synergistic cooperation. Financial regulators should supervise the green credit business of commercial banks, and environmental protection departments should formulate environmental rules and standards for green credit and cooperate with financial regulators. Establish a coordinating regulatory body for green credit to regularly exchange and discuss regulatory issues and promote the improvement of the regulatory system. Strengthening green credit regulation should clarify standards, and penalties, and standardize evaluation, review, and approval processes to avoid regulatory confusion. Clearly define the penalties for non-compliance, such as fines, accountability, and suspension of

qualifications, etc., to enhance the cost of non-compliance, strengthen the binding force on banks and enterprises, and promote the healthy development of green credit. Improving the information disclosure system is the key to green credit regulation. Implement mandatory environmental information disclosure obligations for enterprises with large environmental impacts, and financial institutions should also disclose the environmental impacts of their investment and financing activities. Establish an environmental information disclosure platform to realize information sharing and timely exchange and enhance regulatory efficiency. Introducing social forces for supervision is an important supplement to green credit supervision. Playing the role of public supervision, the Measures for Public Participation in Environmental Protection will be used to support citizens, legal persons, and other organizations in supervising public affairs relating to environmental protection and to promote the development of green credit.

4. Conclusion

With the slogan “green mountains are golden mountains”, green is more and more important in the process of national development, and green credit is one of the important measures to realize the green development of the economy. The development of green credit is a systematic project, which must be based on the overall situation, long-term planning, and the establishment of a perfect green credit system. The corresponding practice of many countries has confirmed that green credit plays an important role in promoting the green transformation of economic development, although China has encountered many difficulties in the implementation of the corresponding policies, but the development of green credit as the representative of green finance is still an optimal solution, the most urgent task is to strengthen the top-level design, promote the green credit specialized legislative activities, clarify the legal responsibilities of all parties concerned, and establish a more comprehensive and unified green credit It is imperative to strengthen the top-level design, promote the legislation of green credit, clarify the legal responsibilities of all parties concerned, and establish a more perfect and unified green credit regulatory system as well as financial and tax support and subsidy system, so as to escort the rapid development of China's green credit, help achieve the goals of “carbon peak” and “carbon neutrality”, and realize the sustainable and healthy economic and social development of China.

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