

Study on the Special Representative Litigation System of Securities Disputes in China

Chunyu Ren, Haisu Jin, Shijie Wang

Law School of Anhui University of Finance and Economics, Bengbu, 233000, China

Abstract

With the revision of the Securities Law in 2019, the "special representative litigation system" was mentioned for the first time. With the development of The Times, China's securities market has gradually grown into a huge market with a scale of one trillion yuan, and the number of securities disputes is also increasing day by day, and the large number of small and medium-sized investors are the main participants in securities disputes. However, due to its large number of people, the cultural level of the general problems, will lead to the settlement of securities disputes face a series of difficulties. The special representative litigation system can solve this problem well, and this paper will also explore the emerging system, and put forward solutions to the current existing shortcomings.

Keywords

Securities dispute; Special representative litigation; Group litigation; System research.

1. THE CONNOTATION AND LEGISLATIVE EVOLUTION OF THE SPECIAL REPRESENTATIVE LITIGATION SYSTEM FOR SECURITIES DISPUTES IN CHINA

1.1. The connotation of the special representative litigation system for securities disputes in China

1.1.1. The meaning of the special representative litigation system for securities disputes in China

The newly revised "securities law" took effect in March 2020, the paragraph 3 of article 95: "investor protection institutions entrusted by more than 50 investors, can be used as a representative to participate in litigation, and for the holder of the securities registration and settlement institutions in accordance with the provisions of the preceding paragraph to the people's court, but made it clear that investors are not willing to participate in the lawsuit." Its main connotation is that: investor protection institutions can accept more than 50 investors entrusted as representatives to participate in civil securities litigation. The investor protection agency shall be the representative of all the plaintiffs, and shall have the right to attend the hearing on behalf of all the plaintiffs, increase, alter or waive the lawsuit request, settle or reach a mediation agreement with the defendant, bring or apply for the withdrawal of the appeal, and apply for execution, etc.

1.1.2. Functions of the special representative litigation system for securities disputes in China

With the development of the capital market tends to perfect, protecting the legitimate rights and interests of investors has gradually become the primary goal of the Securities Law. In the face of illegal market behavior, investors file lawsuits. Because they do not have professional

litigation knowledge, rights protection takes time and effort, and the success rate is low. Not only can investors' own rights and interests not be guaranteed, but also hit the enthusiasm of market investment, thus affecting the order of the securities market and economic vitality, resulting in a vicious circle. The establishment of the special representative litigation system can lay a solid foundation for effectively protecting the interests of investors. The emergence of the special litigation representative system has increased the door for investors to protect their rights, making it easier for investors to participate in litigation and reducing the cost of rights protection. At the same time, the group litigation section of many people will save judicial costs and improve the efficiency of litigation. With institutions and laws to deter lawbreakers, illegal market activities will be cracked down on, the fairness and efficiency value pursued by investors will be guaranteed, the order of the securities market will be stable, and the economic market will be more active.

2. THE CURRENT STATUS AND DEFECTS OF SPECIAL REPRESENTATIVE LITIGATION OF SECURITIES DISPUTES IN CHINA

2.1. The system status of special representative litigation for securities disputes in China

2.1.1. Clarify the qualification of special representative of investor protection institutions

According to the basic principle of the representative litigation, the representative of the representative litigation must be the party to the dispute. In accordance with Article 54 of the Civil Procedure Law, at the time of the prosecution, all the parties may elect a joint representative, or some of the parties; if the large number of the parties, the representative is uncertain, in the case, the people's court may appoint a representative among the parties. And the special representative litigation system established in Article 95, paragraph 3 of the new Securities Law, in which the "litigation representative" is not the party to the case. The regulation breaks through the traditional litigation system, enabling investor protection institutions to become litigation representatives as public welfare organizations and social organizations, and to participate in litigation for the main purpose of protecting the interests of small and medium-sized investors.

2.1.2. Establish the mode of litigation participation of "implied participation and express withdrawal"

The investor participates in the special representative lawsuit as the plaintiff in the form of "implied participation + express withdrawal". "Implied accession" means that the investor confirmed by the securities registration authority automatically participates in the proceedings and becomes the plaintiff. This rule has strengthened the plaintiff group, overcome the lack of individual litigation force, and the class action action has effectively protected the interests of investors. In the "express exit" rule, the right holder who does not agree to join the special representative lawsuit may submit the exit statement, and may file another lawsuit after the express withdrawal.

2.1.3. Limit the minimum number of initiated and entrusted investors

In the limit of the number of participants in a class action lawsuit, the number of participants generally needs to be 50 to initiate a class action lawsuit. However, in judicial practice, the standard of the number of people required for class action is too high. Therefore, in the design of the class action system, the number of people, only requires more than 3 people to file a class action lawsuit. The establishment of the minimum number of people considers the practical factors, which can not only protect the litigation interests of investors, but also limit the abuse of rights, put an end to the waste of judicial resources, and make the special representative litigation system operate properly.

2.2. Defects of China's special representative litigation system for securities disputes in China

2.2.1. There is a conflict between the relevant provisions of the Securities Law and the representative litigation of the Civil Procedure Law

According to the provisions of the Civil Procedure Law, the effectiveness of the judgment in the uncertain number of representatives is manifested in two aspects: (1) for all the registered right holders have restraint; (2) for the right holders who have not participated in the registration, that is, the court considers the application of the judgment or order made by the court without separate judgment.

As far as the provisions of article 95 of the newly revised Securities Law is concerned, the provisions clearly apply the effect of the judgment to the investors who registered to participate in the lawsuit, but for the investors who did not participate in the registration, does the judgment and ruling have a pre-judgment effect to the investors who did not participate?

2.2.2. System defects of special representative litigation for securities disputes in China

As far as the preconditions are concerned, according to the provisions of Article 119 of the Civil Procedure Law, the general civil dispute court should accept the case. But in the securities group disputes, the Supreme People's Court added an additional regulation, the Supreme People's Court on some issues of securities dispute representative litigation regulation made it clear that the parties when the plaintiff must submit the decision on administrative punishment, criminal judgment, the defendant confessed material, the stock exchange and the State Council approved other national securities trading places give disciplinary action or self-discipline management measures such as preliminary evidence of securities infringement. If the aforementioned preconditions are not met, a civil lawsuit cannot be filed. This precondition makes many small and medium-sized investors hesitate, difficult to enter into the legal proceedings.

Given the original set up a securities dispute litigation front program has a specific historical background and reason, and with the 30 years of financial securities market development, securities infringement relief system research increasingly rich and securities litigation experience accumulation, if also continue to adhere to the securities infringement damages litigation front program, not only against the legal principle, also lack of rationality. Because the existence of this pre-procedure not only violates the legal principle of civil compensation priority, but also leads to the burden of regulating the securities market all on the administrative departments, which leads to the difficult to protect investors' rights and interests in time, the increase of administrative supervision costs and other adverse consequences.

2.2.3. The right relief is difficult to achieve

The reconsideration and appeal right of investors as the plaintiff is difficult to realize. If article 6 of the above Provisions expressly requires the parties to have objections to the scope of the right holder, it may apply for reconsideration to the people's court at the next higher level within 10 days from the date of service of the ruling, and the people's court at the next higher level shall make a reconsideration order within 15 days. The reconsideration conditions stipulated in this item are harsh and exceed the conditions of reconsideration relief in civil litigation.

Article 27 of the Provisions has the following requirements on the right to appeal: if the defendant does not appeal during the appeal period, the judgment of the first instance shall take effect between the plaintiff and the defendant who has not appealed, and the judgment of the second instance is less effective than that of the plaintiff who has not appealed. The investors who did not appeal during the appeal period directly declared the effectiveness of the second trial judgment and ignored the interest appeal of the investors to choose to appeal.

3. IMPROVEMENT OF THE SPECIAL REPRESENTATIVE LITIGATION SYSTEM FOR SECURITIES DISPUTES IN CHINA

3.1. Resolving conflicts in current relevant regulations

Based on the legal principle of representative litigation, it is clear that the prevalidity of the judgment is conducive to the timely and effective settlement of disputes. To solve the current securities dispute representative litigation system in the referee preset effectiveness fuzzy problem, starting from the reality, efficiency, order value requirements, for the same, unified cases of securities dispute litigation representative litigation referee preset effectiveness rules, avoid the problems of the different sentence, timely and contradiction resolve disputes, truly realize v. interest.

3.2. Improvement of the special representative litigation procedure system for securities disputes in China

When improving the representative litigation system of securities disputes, it is suggested to cancel the preparatory procedures established in the Provisions, and to be implemented in judicial practice, in order to better protect the legitimate rights and interests of investors. There are some problems in launching the special representative litigation under the framework of ordinary representative litigation, and initiating the litigation under certain conditions to ensure that the insurance institutions can initiate and directly initiate the litigation in a timely manner.

3.3. Strengthen judicial supervision to ensure the operation of the system

The operation of the legal system cannot be separated from the judicial supervision. The particularity of the special representative litigation system and the conflicts with the relevant regulations of the Civil Procedure Law will, to some extent, lead to the neglect or misuse of the legal system in judicial practice, resulting in the unrealized of legal interests. At the same time, the lack of judicial supervision will make investors lose their enthusiasm, idle in the exercise of rights, interests can not be guaranteed. Therefore, it is necessary to strengthen the judicial supervision, let the special representative litigation system operate efficiently, and maintain the order of the securities market.

4. EPILOGUE

The well-operated capital market cannot be separated from the escort of the legal system. The construction of the special representative litigation system for securities disputes is the progress and development of the law. It effectively solves securities disputes, saves judicial costs, effectively protects the interests of small and medium-sized investors, and adds solid bricks and tiles to the prosperity of the securities market. However, there are always shortcomings in the establishment of the new system: the conflict of legal provisions, the lack of procedure setting, the lack of right relief and so on. Therefore, the legislators should sum up the experience, repair the shortcomings, let the special representative litigation provide a strong institutional guarantee for the capital market, deter illegal acts, protect the interests of investors, and then create a prosperous securities market.

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