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China

CLASS ACTIONS

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This country-specific Q&A provides an overview of class actions laws and regulations applicable in China.

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CHINA

CLASS ACTIONS



1. Do you have a class action or collective redress mechanism? If so, please describe the mechanism.

In China, the Civil Procedure Law sets out a general legal framework for the collective redress mechanism, which primarily includes two types of litigation: (1) representative action and (2) public interest litigation.

Representative Action

Representative Action, in essence, is similar to a class action, where the representative plaintiff sues on behalf of himself and many other persons who have a claim based on the same or a similar alleged wrong, and whose claims raise the same questions of law or fact. Nevertheless, unlike Western-style class action, representative action in China does not involve a class certification process, and all plaintiffs must register with the court to join the proceeding (except for special representative litigation discussed below). If the plaintiffs are a closed group when a legal proceeding is initiated, such a collective action is known as **representative action with a fixed number of plaintiffs**, where the plaintiffs will coordinate among themselves to elect certain representative plaintiffs. In contrast, when an action is open for other plaintiffs to join after it is filed, such collective action is called a **representative action with an unfixed number of plaintiffs**, where the court engages in the class notification and registration process and may also discuss with the plaintiffs regarding the determination of the representative plaintiffs. These two proceedings are collectively called **ordinary representative action**, which can be applied to almost all types of disputes. The minimum number of plaintiffs required to initiate an ordinary representative action is ten.

While the representative action regime has been in place for a long time since the early 1990s, due to the mandatory opt-in requirement and the lack of clear rules to guide the filing process, this form of litigation was rarely used in practice and thus did not catch much attention until 2019. In 2019, the Securities Law was

amended and introduced a **special representative litigation mechanism** to deter securities violations and protect investors. Under the special representative litigation mechanism, certain investor protection institutions may file an action on behalf of all aggrieved securities investors, who will automatically be treated as plaintiffs so long as they do not opt out of the action. Special representative litigation is considered a significant development, which enables a Western-style class action environment for securities investors.

In the wake of the Securities Law amendment, the Supreme Court issued Opinions on Several Issues regarding Representative Litigation in Securities Disputes (the “**Judicial Opinion on Securities Representative Actions**”) in 2020. This judicial opinion further elaborates on the specific requirements and steps for both ordinary representative action and special representative litigation. Consequently, a number of securities collective actions have been initiated and become recurrent headlines in legal news and business media. Nowadays, securities fraud and/or misrepresentation claims, regardless of through an ordinary or a special representation action, is the most prevalent form of “class action” in China. The judicial practice of securities class action has also provided reference models for courts when handling class action concerning other types of disputes.

Public Interest Litigation

The second type of collective redress mechanism in China is public interest litigation. This proceeding allows certain government agencies (usually the procuratorate department) or certain non-profit organizations, to file lawsuits on behalf of a group of individuals or the public who have suffered losses as a result of illegal activities that harm the public interest, such as environmental pollution, food and drug safety, or product quality, data privacy, wire fraud, protection of women’s rights and minors issues. The government agency or non-profit organization does not need the authorization of the victims to file the lawsuit; their standing in the legal proceeding is granted by law. While public interest litigation is civil litigation in nature, the monetary

damages usually are not distributed directly to the victims but be used to improve social welfare. For instance, in environmental public interest litigation, the compensation will be used for decontamination and prevention of future pollution. Accordingly, public interest litigation is not a class action but addresses the collective harms.

2. Who may bring class action or collective redress proceeding? (e.g. qualified entities, consumers etc)

A minimum number of ten plaintiffs are required to initiate an ordinary representative action. All the names of the ten or more plaintiffs must be provided to the court when the complaint is submitted. After an ordinary representative action is filed, other similarly situated victims who suffered similar harm from the same illegal conduct may join the litigation if they register with the court. There is no other special requirement on the eligibility or qualification of the initiating party so long as the plaintiff has the standing to sue and the minimum number of the plaintiff is reached.

Special representative action, by contrast, is only applicable in securities litigation and must be brought by the investor protection institution prescribed by the Securities Law (currently the China Securities Investor Services Center, an arm of China's main securities regulator), after obtaining more than 50 investors' authorization.

In public interest litigation, the litigating party varies depending on the nature of the dispute and the underlying claims. For instance, an environmental protection organization registered with the Bureau of Civil Affairs may bring an action to challenge pollution and hold the corporation discharging pollutants liable; the China Consumers Association and its local counterparts are entitled to seek compensation from enterprises and individuals that violate consumer rights law so as to protect consumers from fraud, false advertising, and defective or dangerous products. In any event, the procuratorate department always has the standing to initiate a public interest litigation, especially when no action is filed by other social organizations or other government agencies.

3. Which courts deal with class actions or collective redress proceedings?

Generally, the jurisdiction rules that apply to civil legal proceedings apply to representative action. That is to say, the court in the place where the defendant is

domiciled almost always has jurisdiction. Additionally, breach of contract claims can also be heard by courts of the parties' choice or where the main contractual obligation is performed; a tort claim may be filed to a court where the infringement took place. Local courts can hear representative actions; however, if the claims concern overly complicated issues or exceed a significant amount, or as designated by a higher court, the cases have to go to the intermediate people's court or even higher court for the first instance determination.

In cases where a group of plaintiffs has already filed a representative action in a court with jurisdiction, other victims who have not joined that existing proceeding may file a separate lawsuit in the same court or with other courts with jurisdiction. The court where the first action is filed will create a precedent for subsequent proceedings to follow.

Special rules apply to the securities representative action, which must be adjudicated by the intermediate people's court or the special people's court (which has the status of an immediate court), not a lower court. In particular, intermediate courts or special courts located in the place where the issuer's stocks are traded (i.e., the location of the stock exchange) have centralized jurisdiction over the special representative action.

In 2018 and 2021, the National People's Congress Standing Committee authorized the establishment of the Shanghai Financial Court and the Beijing Financial Court, respectively, which are considered to be the special courts to hear the first instances of securities representative actions.

Another exception is designated jurisdiction. Under the Civil Procedure Law, the higher court has the authority to designate a particular court to try a particular under special circumstances. For instance, the first special representative securities action in China against Kangmei Pharmaceutical ("Kangmei") which was listed in Shanghai, was adjudicated by the Guangzhou Intermediate People's Court as designated by the Supreme People Court, though Kangmei was listed in Shanghai and the Shanghai Financial Court has the original jurisdiction over the case.

4. What types of conduct and causes of action can be relied upon as the basis for a class action or collective redress mechanism?

Theoretically, any case that meets the following criteria may be submitted as a representative action: (1) there is a minimum number of ten plaintiffs with selected

representatives; (2) the subject matter of the claims is the same and arise out of the same facts.

In practice, just like in many other countries, the most typical cause of action that may lead to a representative action in China is securities litigation based on securities fraud or misrepresentation, market manipulation, or insider trading. Especially after the issuance of the Judicial Opinion on Securities Representative Actions, the number of representative actions based on the claim of misrepresentation in securities issuance and trading has increased, followed by a number of significantly impactful decisions awarding hundreds or thousands of investors over millions of dollars to cover their losses, including the well-known “Feilo Acoustics Case,” “Wuyang Bond Case,” and “Kangmei Case.”

Because influential securities representative actions always appear in captions in media, it is sometimes wrongly perceived by the general public that class action in China only exists in securities litigation. In fact, other transactions or tortious conducts, though less frequently seen, that involve dealings with a large group of people, may also generate representative legal proceedings. Such areas include disputes arising out of the adhesion contracts between e-commerce platforms and the consumers or retailers, property management agreement disputes between the property owners and the manager; or property purchase agreement disputes between the real estate developers and the buyers.

5. Are there any limitations of types of claims that may be brought on a collective basis?

Representative action is civil litigation in nature and thus is not applicable to administrative, criminal, and state compensation cases.

6. How frequently are class actions brought?

Before the Judicial Opinion on Securities Representative Actions was issued in 2020, there were not many representative actions filed for several reasons: (1) there were no clear and detailed rules guiding the plaintiff regarding how to organize a class if the number of plaintiff members is not fixed; (2) the costs of coordination and organization among the plaintiffs can be high and thus delay the initiation of a lawsuit; and (3) different plaintiff may have different understandings of the cause of action or cannot agree on the litigation strategy. Accordingly, in the past, individual plaintiffs tended to take separate actions instead of a collective

proceeding.

Starting around 2018, the courts started to see a spike in securities fraud and misrepresentation claims. Against this backdrop, for the sake of judicial efficiency and to better protect the interest of the investors, the Minutes of the National Court Civil and Commercial Trial Work Meeting issued in November 2019, among other things, specifically encouraged the local courts to try cases of the same subject matter involving numerous plaintiffs (and potentially more to join) in a consolidated proceeding; many of the guidelines therein were later embodied in the Judicial Opinion on Securities Representative Actions published by the Supreme Court in July 2020.

Since then, we have seen an increase in securities representative actions; and a few landmark cases were adjudicated in the year 2021. In September 2021, the Shanghai High People’s Court rendered a judgment against Feilo Acoustics, a listed company that made multiple misrepresentations in the stock market. 315 plaintiffs were awarded a total amount of CNY123 million (USD19 million). The Feilo Acoustics case is the first time the ordinary representative proceeding was applied in securities litigation. In November 2021, the first special representative action decision was released. The Guangzhou Intermediate People’s Court rendered a decision against Kangmei, a pharmaceutical company that made fraudulent statements and omitted material information in its annual reports, ordering Kangmei and its executives to compensate more than 50,000 investors a total loss of CNY 2.459 billion (approx. USD 385 million). So far, the Kangmei case is the only case where the special representative proceeding is applied. Probably due to the influence of Covid-19 or the deterrence effect of these landmark cases, there are not many securities class actions reported in 2022. Nevertheless, with the legal and judicial infrastructure in place, we expect that representative actions will increase in the coming years.

In the field of public interest litigation, the caseload has increased steadily in the past years. According to a press conference of the Supreme People’s Court regarding the environmental public interest litigation in January 2023, the courts have heard over 16,000 environmental public interest cases since 2013. The Supreme People’s Procuratorate also announced that the Procuratorate Department at various levels initiated approximately 13,000 public interest lawsuits in 2022.

7. What are the top three emerging business risks that are the focus of class

action or collective redress litigation?

Liabilities of Independent Directors. In the Kangmei decision, the court ruled that all five independent directors (including 4 university professors) had breached their fiduciary duty for failing to detect fraud and thus should be jointly and severally liable for 5%-10% of the total compensation awarded to investors, equivalent to CNY 123 million to CNY 246 million, hundreds of times their annual salary. After this decision, there was a huge wave of resignations of independent directors from the listed companies for fear that they would be held personally liable for the listed company's wrongdoings despite their limited role in the decision-making process. Consequently, in 2021 and 2022, we saw a surge in the purchase of D&O insurance to cover such potential risks.

Liabilities of Securities Intermediaries

(underwriters, law firms, accounting firms, credit rating agencies, etc.). In September 2021, the Zhejiang High People's Court affirmed the Hangzhou Intermediate People's Court decision, awarding CNY 494 million of combined debt claims to 487 individual bondholders of Wuyang Construction Group, who made false statements during the issuance of the bonds (the **"Wuyang Bond Case"**). The court found that all the intermediaries involved in the issuance of the bonds, including underwriters, law firms, accounting firms, and credit rating agencies were negligent and thus should be jointly and severally liable for the investors' compensation claims (with variations in the percentage of liabilities). After the Wuyan Bond Case, more and more investors start to go after securities intermediaries to recover losses based on the negligence theory, especially when the issuer becomes insolvent.

Securities fraud and misrepresentation: China has been cracking down on securities fraud in recent years, and there have been several high-profile cases involving fraudulent accounting practices, insider trading, and market manipulation in the capital market. More and more retail investors have become aware of the powerful tool of representative actions, and thus securities class actions are on the rise.

8. Is your jurisdiction an "opt in" or "opt out" jurisdiction?

The ordinary representative action is an opt-in system. All the claimants must register with the court as plaintiffs, either when the litigation is brought up or after the court issues a notification to collect the plaintiff's names, to be eligible to participate in an ordinary representative action.

In contrast, special representative litigation has adopted an opt-out model. Investors who do not want to participate in the class action must expressly notify the court within 15 days after the class notification period expires. Failure to notify the court duly would be deemed as consent to join the special representative proceeding.

9. What is required (i.e. procedural formalities) in order to start a class action or collective redress claim?

Submission of Complaint. To start an ordinary representative action, the following procedural formalities must be satisfied: (1) there is a group of at least ten plaintiffs; (2) the complaint must name two to five plaintiffs as the representatives of the plaintiff group; and (3) the plaintiff group must submit prima facie evidence of unlawful conduct.

Plaintiff Notification and Registration. In an ordinary representative action with an unfixed number of plaintiffs, after the complaint is submitted, the court will publish a notice describing the cause of action, the scope of claimants who are eligible to participate in the current proceeding, information about the defendant(s), the period for opt-in registration, and other relevant information. The claimants can register with the court within a 30-day notice period or afterward before the first hearing of the case.

Special Representative Litigation. A mandate by at least 50 securities investors must be secured before investor-protection institutions may bring special representative litigation.

10. What remedies are available to claimants in class action or collective redress proceedings?

Representative actions are civil litigation in nature; accordingly, any remedies available to civil cases (either contractual or tort) are generally available in Representative remedies, mainly including compensation of damages, declaratory judgment, specific performance, permanent injunctions, etc.

11. Are punitive or exemplary damages available for class actions or collective redress proceedings?

Generally, damages in civil actions are compensatory under Chinese law. For instance, in securities class action, the investors will only be compensated for their

investment losses and costs associated with the legal actions to recover losses. However, punitive damages can be awarded under some particular types of causes of action, for instance, consumer litigation where businesses commit fraud in providing goods or services to consumers, IP infringement cases where there are intentional infringement and serious circumstances, personal injury litigation against food or drug manufacturer for violating safety standards; and certain product liabilities cases.

12. Are class actions or collective redress proceedings subject to juries? If so, what is the role of juries?

In China, there is no jury trial, and all cases are determined by the judges. Judges are the adjudicators of both factual and legal issues.

13. What is the measure of damages for class actions or collective redress proceedings?

As a general rule, plaintiffs' actual losses are the primary form of damages that are awarded.

In a typical securities representative action, the courts will assess the investors' actual losses in two steps: (1) the calculation of the differences in the stock purchase price and the price on the day when the stock was sold or the "benchmark day" as determined by the court; (2) deduction of the systemic risks that contributed to the decline in the stock price from the damages. Because the assessment of damages in securities representative actions is highly technical, the court usually seeks an independent third party's opinion to help its determination.

14. Are there any jurisdictional obstacles to class actions or collective redress proceedings?

The existence of an arbitration agreement between the claimant and the defendant will preclude the claimant from filing a lawsuit in court, which would render class action impossible.

15. Are there any limits on the nationality or domicile of claimants in class actions or collective redress proceedings?

There is no limit on the nationality or domicile of

plaintiffs in representative actions.

16. Do any international laws (e.g. EU Representative Actions Directive) impact the conduct of class actions or collective redress proceedings? If so, how?

The Chinese collective redress proceedings are governed by PRC laws and rules; international laws do not apply in this area.

17. Is there any mechanism for the collective settlement of class actions or collective redress proceedings?

Settlement is allowed in representative actions; however, initiating a settlement talk between the litigants could be challenging. The Civil Procedure Law requires that all the claimants must give unanimous consent to their representative to start a settlement discussion with the defendant, which is not always easy to obtain, especially in cases where there are numerous plaintiffs. The dissenting plaintiffs may elect to withdraw from the current proceeding and file a separate lawsuit. In cases where the dissenting plaintiff(s) decide to stay in the proceeding, the case cannot be resolved through settlement.

18. Is there any judicial oversight for settlements of class actions or collective redress mechanisms?

Yes. If the representative plaintiff(s) (with the mandate from all the plaintiffs to engage in a settlement negotiation) and the defendant reach a draft mediation agreement, they shall submit an application to the court together with the draft agreement for the court's review and approval. The court's oversight for settlements of representative actions generally takes three steps.

The court will first conduct a preliminary review of the draft agreement to make sure that the terms are not in violation of any law or regulation, public order, and good morals, or harm any third parties' rights and interests.

After the preliminary review, the court will issue a notice to all the plaintiffs, informing the plaintiffs of the draft mediation agreement and their rights to accept or oppose the draft mediation agreement. A hearing will be conducted if any plaintiffs raise any objections to the draft agreement.

The court will then conduct a substantive review of the

terms of the agreement, taking all the opposition and supporting opinions, the factual and legal issues, and the legality, appropriateness, and feasibility of the settlement into consideration.

If the court decides to approve the mediation agreement, it will notify the dissenting plaintiffs, who will be given ten days to withdraw from the settlement scheme. Failure to withdraw from the settlement scheme will be deemed as an acceptance of the settlement. Withdrawal from the settlement scheme does not mean the plaintiffs voluntarily dismiss the case; the court will continue to hear the claims of the plaintiffs who do not accept the settlement. The settlement agreement after the court's approval then becomes a binding enforceable legal instrument.

19. How do class actions or collective redress proceedings typically interact with regulatory enforcement findings? e.g. competition or financial regulators?

Administrative punishment by regulatory authorities used to be a condition precedent for the court to accept a securities fraud or misrepresentation case. In December 2021, Several Provisions of the Supreme People's Court on the Trial of Civil Compensation Cases Involving Infringement with False Statements in the Securities Market (the **"2021 Judicial Interpretation on Securities Misrepresentation Dispute"**) were promulgated and removed this requirement. Accordingly, the 2021 Judicial Interpretation on Securities Misrepresentation Dispute lowers the bar for investors to seek legal remedies for harms caused by violations of securities laws and regulations, making it easier to initiate representative actions too.

Despite the cancellation of the pre-procedural requirement, the findings of the regulatory enforcement action are important in the sense that they can serve as compelling evidence to prove the wrongdoing of the defendant. When trying securities fraud or misrepresentation cases, the court may also interact with the China Securities Regulatory Commission (CSRC), the regulatory authority overseeing all the players in the capital market to collect evidence.

20. Are class actions or collective redress proceedings being brought for 'ESG' matters? If so, how are those claims being framed?

The most typical class action is securities representative actions, which are primarily related to corporate

governance issues. The Wuyang Bond case, Kangmei case, and Feilo Acoustics case mentioned above have all been recognized as landmark cases warning the listed companies that the failure of corporate governance would lead to hefty fines and serious consequences.

Environmental litigation has been at the center of public interest litigation in recent years. According to data released by the Supreme People's Procuratorate, between July 2017 and June 2021, 71.9% of the public interest lawsuit filed by the procuratorate department arise out of environmental protection and natural resources preservation.

21. Is litigation funding for class actions or collective redress proceedings permitted?

There is currently no specific statute or regulation on third-party litigation funding in China; however, because the contingency fee arrangement is not permitted in group litigation cases, it is a corollary conclusion that litigation funding practice is prohibited for class actions.

22. Are contingency fee arrangements permissible for the funding of class actions or collective redress proceedings?

Contingency fee arrangements are not permitted to fund representative actions in China.

23. Can a court make an 'adverse costs' order against the unsuccessful party in class actions or collective redress proceedings?

Yes. As a general rule, litigation costs (such as court fees, appraisal fees, and costs for legal insurance) shall be borne by the losing party, and each party bears its own attorney's fees with a few exceptions under special circumstances prescribed by law. In the securities representative action, the Judicial Opinion on Securities Representative Actions expressly provides that reasonable attorney's fees are recoverable from the defendant.

24. Are there any proposals for the reform of class actions or collective redress proceedings? If so, what are those proposals?

Given that the Civil Procedure Law and Securities Law were amended recently in 2021 and 2019, respectively

and the Judicial Opinion on Securities Representative Actions was also relatively new, the practice of representative actions is still developing, and how the civil procedure rules and securities representation actions play out in the real world is yet to unfold with more judicial practices. Accordingly, nationwide reforms of the current class action regime are not expected to

happen in the short term. Nevertheless, local courts still have remained active and issued local rules from time to time to streamline the litigation process or clarify certain issues when necessary. For instance, in March 2020, the Shanghai Financial Court issued its own interim rules on securities representative litigation, which provide more detailed guidelines at the operational level and afforded the investor plaintiff with clearer guidance.

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