

Class Action Report of South Korea

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1. What year was the procedure adopted?

The Korean Civil Procedure Code does not provide for a genuine class action procedure that would be available for claims in civil and commercial matters. However, in the absence of such a procedure, Korea has limitedly adopted class action within special field.

Firstly, Korea has limitedly adopted the genuine meaning of class action only in securities related field in 2005 by enacting “Securities Related Class Action Act”. The Act was proclaimed on April 20th, 2004 and entered into enforcement on January 1st, 2005. The Class Action provided by the Act is the similar form of class action as that of U.S.

Second, Korea also has adopted a different style of collective litigation that is known as the “German Verbandsklage.” This type of group litigation was first promulgated by revising “the Korean Consumer Framework Act” on September 27th, 2006 and entered into force on March 28th, 2007. Under the Korean Consumer Framework Act, when an enterpriser or company infringes directly on the rights and interests of consumers relating to their lives, bodies or property in violation of the Act and the infringement continues, the organization which falls under the may file an action for an injunctive relief.

2. Is it authorized by statute, rule or judicial interpretation of an existing statute or rule? (Please include the formal citation and, if available, a link or attachment of an English language version.)

Both of the securities related class action and consumer organization litigation is authorized by existing statutes as below (also attached as word file);

- Genuine meaning of class action : **Securities Related Class Action Act (SRCAA)**

http://elaw.klri.re.kr/kor_service/lawView.do?hseq=28408&lang=ENG¹

¹ See former act of 2007 at http://elaw.klri.re.kr/kor_service/lawView.do?lang=ENG&hseq=17165

- Consumer organization collective litigation: **Consumer Framework Act(CFA), Chapter 8, Article 70 through 76**

http://elaw.klri.re.kr/kor_service/lawView.do?hseq=25571&lang=ENG²

3. What is the scope of the procedure? (Is it trans-substantive or is it limited to specific fields of law (e.g., consumer law, securities, ...?))

As stated under section 1, the genuine meaning of class action in Korea is limited to securities related group actions, and the different form of group litigation is limited to consumer organization actions.

4. Who has standing to initiate the procedure?

- Securities Related Class Action (SRCAA Article 5, 11 and 12)
 - A minimum of 50 shareholders whose aggregate equity in the company is 0.01% or more must agree and join together as plaintiffs on behalf of other shareholders to bring a class-action lawsuit against the company or its insiders.
 - Relevant legal or factual issues must be "common" to all members of the class.
 - The class action lawsuit must be an "adequate and efficient" means of fulfilling the rights of, and protecting the interests of, the class members.
 - A class action must be certified by the court, and both the plaintiff and the defendant must be represented by attorneys.
 - There are also limits on lead plaintiff and plaintiff attorney: A lead plaintiff and the plaintiff attorney must "adequately represent" the members of the class. The lead plaintiff or the plaintiff attorney cannot have served as lead plaintiff or lead counsel if they had previously been lead plaintiff or lead counsel in three or more class actions within the last three years.
- Consumer Organization Litigation(CFA, Article 70, 73, 74)
 - A consumer organization which is registered with the Fair Trade Commission pursuant to Article 29 of the Act and meets all the requirements provided for in the followings are entitled to bring this action against an enterprise:

an organization which mainly aims to promote consumers' right; whose number of regular member is not less than one thousand; and which has been registered more than three years pursuant to Article 29 of the Act;

² See Former act of 2006: http://elaw.klri.re.kr/kor_service/lawView.do?lang=ENG&hseq=3142

- The Korea Chamber of Commerce and Industry under the Chambers of Commerce and Industry Act, the federation of small and medium enterprise cooperatives under the Small and Medium Enterprise Cooperatives Act, and the nationwide economic organization as prescribed by the Presidential Decree may have standing to bring this action
- A non-profit and non-governmental organization under Article 2 of the Assistance for Non-profit, Non-governmental Organizations Act which meets all the requirements below may also have standing:

an organization which is asked to institute a class action by fifty or more consumers who suffered legally or factually identical damages; which has performed actual activities for the latest three years or more according to the purpose to promote consumers' rights and interests; whose number of members is not less than five thousand; and which is registered to the central administrative agency.

- The plaintiff in a class action shall appoint a lawyer as his/her attorney.
- And, a court shall permit a class action, by its ruling, only in cases where there is a public need to protect consumers' rights and interests and to prevent of a damage to them when the goods concerned cause or might cause any danger or injury to consumers' lives, bodies or property;

5. What remedies are allowed? (Injunctive or declaratory relief; monetary compensation; other)

- Securities Related Class Action (SRCAA Article 3): Class actions are only available for damages arising out of certain securities-related transactions as below:
 - Damages arising from false disclosure (in registration statements or prospectuses, annual reports and other periodic reports, or the audit report).
 - Unfair securities practices, including insider trading or market manipulation.
 - Claims against auditors of financial records.
- Consumer Organization Litigation(CFA, Article 70)
 - Only an injunctive order is allowed by the consumer's organization to prohibit and suspend the infringement of consumers' rights and interests

6. Is the procedure opt-in or opt-out?

- Securities Related Class Action (SRCAA, Article 10, 18, 28 and 37)

The class action is filed by one or more class members (representative party), who file for the class after obtaining "permission for a class action" from the court. The court then issues a public notice of the filing of the class action. Any other person wishing to be a "representative party" must submit an application to the court within 30 days from the date of the public notice. Members of the class are automatically bound by the outcome of the suit unless they expressly elect to drop out (opt-out system).

But, a person who files a lawsuit as an individual with respect to the same rights as those designated as the objects of the securities-related class action before the expiration of the period for opt-out notice decided by the court shall be deemed to have given an opt-out notice unless the lawsuit is not withdrawn within the period for opt-out notice.

- Consumer Organization Litigation(CFA, Article 74, 75, Enforcement Regulation of Consumer Class Action, Article 13, 15)

A consumer organization which is qualified to bring the consumer class action or consumer organization litigation under the Act, Article 70 may intervene in the lawsuit as a co-litigant (opt-in). And the court shall order a combination of the pleadings when the litigations are generated from the same factual causes and are against the same defendant unless the combination is not appropriate.

By Contrary, when a judgment to reject a request made by a plaintiff became final and conclusive, any such other organization as referred to in Article 70 may not a class action with regard to the same matter: Provided that this shall not apply to a case falling under: 1. when a new research result or evidence is found by an institution, which is established by the State or a local government, with respect to the rejected case after the judgment became final and conclusive; and 2. when the judgment of rejection is found to have been caused by any intentional act of the plaintiff.

7. What are the applicable rules on funding and financing? (How is the lawyer for the class paid, and by whom? Who is responsible for adverse costs? Is third-party litigation financing allowed?)

- Both of the class actions under the Securities Related Class Action (SRCAA) and the Consumer Organization Litigation(CFA)

How and by whom are the lawyer fee and other cost paid? - There are no special rules regarding fees and costs in securities-related class actions, and each party is responsible for its own legal costs, as is generally the case in South Korea. For class action claimants, court-ordered costs including costs for experts, public notices, and sending notifications, must also be paid in advance, in addition to the stamp taxes generally payable in civil litigation. Also, as there are no special rules or restrictions on costs or contingency fees. Therefore, as in general civil actions, contingency fee arrangements are permitted.

- Who is responsible for the adverse cost? - When the court gives its decision on a lawsuit, it decides which party bears the costs. The court usually orders the losing party to bear the costs, but this is subject to the statutory scale set by the court (which can be a fraction of actual attorneys' fees). Where the outcome is divided, the court apportions the costs between the parties.
- Is third party funding allowed? - There are no special rules or restrictions regarding third party funding. However, since transfers of claims to a third party for the purpose of entrusting lawsuits are prohibited in general civil actions, third party funding requires an arrangement that does not violate such restrictions. And, individuals who meet certain economic criteria can apply for government legal aid as in other civil actions. However, since class-members do not need to proactively opt-in, unless an individual wishes to initiate the lawsuit as a party representative, class members would not separately incur legal fees (although their pro rata share would still be reduced by the legal fees incurred by the class).

8. Please tell us about whether and how the procedure has been used? (About how many cases have been brought to date? How many cases annually? What types of cases? Who brought the cases? What have been the outcomes of the cases?)

- Securities Related Class Action (SRCAA) – total 7 cases

	Filed date	Plaintiff/Defendant/Fact	Outcome
1	04/13/09	2 Stockholder's asking compensation for a fraudulent accounting against Jin-Sung TEC (.KIKO related)	The court of first instance approved class action, ended through mediation
2	01/07/10	2 stockholders's lawsuit against Hanhwa Securities co and Royal Bank Canada for manipulating ending price of ELS stock	The district court and the court of appeal disapproved class action, but Supreme Court approved it and returned the case

			to appeal court on April, 2015.
3	10/13/11	186 stockholders of Dongbu securities co brought a lawsuit for Dongbu's false statement and investigation on securities report of C-Motech	The first instance court and the appeal court approved class action and ongoing case is at the Supreme Court
4	03/02/12	6 investors' lawsuit against Korea Securities co and Deuch Bank AG for manipulating ending price of ELS stock.	The court of appeal disapproved class action, but Supreme Court approved it and returned the case to appeal court on April, 2015.
5	10/08/13	15 stockholders brought a lawsuit against GS E&C for fraudulent accounting	The court of first instance approved class action on Feb, 2015 and the case is ongoing at appeal court.
6	12/01/13	Against Genematrix's manipulation of market prices	The first instance court approved class action and the case is still ongoing at the court.
7	06/10/14	Dongyang Group's false statement on securities report of CP	The first instance court approved class action and the case is still ongoing at the court.

- Consumer Organization Litigation(CFA) – only one case

- 4 consumer organizations asked an injunctive order against Hanaro Telecom for misusing customer's personal information. FTC(Fair Trade Commission ordered a corrective order to Hanaro and the lawsuit was withdrew by plaintiffs) Later, some plaintiffs were compensated by bringing civil tort claims.
- The reason why not many cases were brought for consumer class action was because most of the violations are detected by or reported to FTC, and FTC usually orders correction before the lawsuits. Also, many of the cases are settled at the Consumer Dispute Settlement Commission.