Research on Investor Protection Agency Distribute Resolution Mechanism

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Abstract: On March 1, 2020, the newly amended Securities Law created a special chapter on "Investor Protection," which for the first time provides the legal status of "Investor Protection Agency.". Investor Protection Agency actively practices the function of protecting minority investors and improving the quality of governance of listed companies, which has become an essential element in the standardized development of China's securities and capital markets. This paper will analyze the current situation of the Investor Protection Agency dispute resolution mechanism from the perspective of minority investors protection, point out the problems in the recent work of minority investors protection, draw on overseas experience, and propose corresponding system improvement and improvement measures.

1. Importance of Investor Protection Agency Dispute Resolution Mechanism

The Investor Protection Agency, represented by the Investment Service Center, has initially established a new dispute resolution mechanism with the convenient application, simplified procedures, professional authority, and guaranteed effectiveness. The Investment Service Center has cooperated with the Securities Regulatory Bureau, securities and futures industry self-regulatory organizations, or mediation organizations (cooperative units) to establish mediation workstations at the CSI Minority investors Service Center in various jurisdictions, providing investors with working outlets for securities and futures dispute resolution services. Guo Wenying: "do not forget the original intention of investor protection, actively practice the mission of investment and service public welfare", published in “investor”, issue 1, 2020. Article 93 of the Securities Law provides for an early payment system at the institutional level, Article 94 of the Securities Law provides for a securities dispute resolution system. Article 171 of the Securities Law provides for provisions on a settlement system for administrative enforcement by the securities regulatory authorities, including specific measures for suspension of investigation, termination of the investigation, and resumption of investigation. Article 171 of the securities administrative settlement system, the administrative settlement conditions of application of the "groundbreaking" changes. The provision undoubtedly has a great incentive for the responsible subject to take the initiative to fund the early payment of investors. Guo Feng et al: "The Essence of the Securities Law System of the People's Republic of China with Commentary on the Provisions (above)", China Legal Publishing House, 2020 edition, p. 515. Investor Protection Agency mediation service has the advantage of effectively solving the problems of "difficulty in the initiation," "difficulty in completion of mediation," "difficulty in validity," "difficulty in implementation," and guaranteed effectiveness of mediation compared to other rights protection mechanisms.

And more than 80% of the relevant personnel of listed companies are willing to submit their disputes with investors to the mediation of the Investment Service Center and believe that the Investment Service Center can genuinely protect the rights and interests of investors. Besides, most of the relevant personnel of listed companies expressed their willingness to fulfill the mediation agreement actively and cooperate with Investor Protection Agency to carry out early payment under specific conditions, which indicates that the neutral, fair, convenient, and efficient advantages of Investor Protection Agency in handling compensation disputes are recognized by listed companies, and the implementation and promotion of the early payment system are promising.

2. Deficiency of Investor Protection Agency distribute resolution

First, mediation organizations lack "authority" and have not yet developed an efficient and professional mediators' team. Parties often see mediation organizations as informal and, in a sense, "informal" dispute resolution institutions, lacking the aura of "authority" possessed by courts and arbitration institutions. China has not yet formed a team of mediators with appropriate professional knowledge and practice skills. There are significant differences between different mediation organizations in terms of the qualifications for mediators.

Second, unlike court judgments and arbitration awards, the agreement reached through mediation is a civil contract that does not affect enforcement. This makes the parties concerned about choosing mediation. In practice, there are indeed cases where the parties use the name of mediation to delay the process and end up having to litigate or arbitrate.

Third, the current legislation related to people's mediation in China cannot meet the development of mediation needs at this stage. Compared with litigation and arbitration, mediation is an efficient and convenient way to resolve disputes. However, at this stage, mediation practice in China is not perfect in playing to its strengths and does not fully reflect its own professional characteristics. The mediation rules of the mediation centers are relatively simple and lack systematic methodological guidelines for mediators.

Fourth, the investment service center still has not played its proper role in the early compensation system. Although there have been early payment cases in China, the specific system design has not been perfected yet, and the early payment system is still not widely applied. In addition, the early compensation system lacks incentive mechanism, the early compensation subject lacks sufficient motivation, and the issue of its right of recovery has not been implemented after the early compensation.

3. Reference of overseas dispute resolution work

Foreign countries have corresponding legislation for securities dispute resolution. Some countries (regions) have introduced mediation legislation, such as the United States, the United Kingdom, Australia, and Taiwan China, while others have embodied it in relevant financial legislation, such as Germany, which relies mainly on self-regulatory organizations and regulations of banks, securities, and insurance industries.

In terms of the specific system, it is worthwhile to learn from the Financial Ombudsman Service in the United Kingdom and the Corporate Financial Ombudsman System in Australia. The UK Financial Ombudsman Service (FOS) has both mandatory and voluntary jurisdiction over financial institutions. The FOS must have compulsory jurisdiction if the business is a "regulated business" issued by the Treasury. Firms engaged in other businesses may also accept the jurisdiction of the FOS on a voluntary basis, with the aim of dealing with financial disputes promptly, efficiently, and fairly and safeguarding the legitimate rights and interests of financial consumers. The scope of cases under the jurisdiction of the Australian Financial Ombudsman Service is unlike that of the UK, Australia's corporate-type Financial Ombudsman Service is a limited liability company with a permanent decision-making body, the Board of Directors, consisting of nine directors from different financial institutions. which does not provide for mandatory jurisdiction, only voluntary jurisdiction. Although there is no ombudsman system in Germany, it relies on banking supervision and self-regulation to cooperate with the implementation of the mediation system. The ombudsman established by the industry association is formally a private institution but is under the guidance of the administrative supervisory body and has the characteristics of administrative authorization. The administrative grievance redress mechanism of the financial regulator has greater authority and resources, and is empowered to conduct investigations and administrative sanctions, mainly dealing with major, complex, group cases involving violations of law and rules and policies, while ordinary grievance cases are often entrusted to the industry association mechanism.

In addition, the US fair fund system has a substantial reference value for the development of the first compensation work of the Investment Service Center. The investor fair fund system specifies

that when the court orders the perpetrator to return the illegal proceeds or the perpetrator agrees to surrender the unlawful proceeds in administrative and other proceedings initiated by the SEC. The SEC imposes a civil penalty on the perpetrator, the court may, upon the proposal of the SEC or at its discretion, inject part of the outstanding amount into the fair fund established to compensate the injured investors. With the establishment of the Fair Fund system, the SEC has also changed its tendency to be reluctant to pursue extensive damages and settlements from companies accused of violating the law, and the securities administrative settlement system has been further developed. Richard A. Spehr & Michelle J. Annunziata, The Remedies Act Turns Fifteen-What Is Its Relevance Today,1 N.Y.U.J.L.&BUS. AT 587 (2005). The US Fair Fund is funded by two primary sources: the proceeds of violations and civil penalties. In order to operate the fund effectively, the SEC specifically developed the Fair Fund and Spoliation Plan Specifications and Rules of Practice in 2006. In early 2008, the SEC established a new office dedicated to the collection and distribution of the Fair Fund and developed a fund distribution record and tracking system to protect investors from more rapid and efficient compensation. Since then, the Dodd-Frank Act has further expanded the application of the Fair Fund, i.e., the SEC can attribute any penalties for civil fines to the Fair Fund.

4. Suggestions on the improvement of Investor Protection Agency dispute resolution mechanism

First, improve the legal system related to dispute resolution and strengthen the construction of a diversified mechanism for resolving securities disputes. First of all, the investment service center should improve the conflict resolution-related laws and regulations. According to the Securities Law, the Notice on the Pilot Work of the Diversified Dispute Resolution Mechanism for Securities and Futures Disputes in some areas of China jointly issued by the Supreme People's Court and the Securities Regulatory Commission, and with reference to the People's Mediation Law, and taking into account the actual situation, the relevant laws and regulations can be improved and introduced to timely and adequately resolve disputes in the securities market and protect the legitimate rights and interests of investors.

Second, select professional mediators to improve the quality of dispute resolution work. First, the selection criteria and procedures for mediators should be standardized, requiring dispute resolution personnel to have both high moral character and professional knowledge. Second, we should strengthen the training of mediators, enhance their professional ability and their ability to deal with situations, and build a team of authoritative mediation organizations. Third, establish a mechanism for communication and coordination among mediation organizations in various jurisdictions. Regularly exchange mediation experiences and do an excellent job of cross-site and cross-regional dispute resolution.

Third, to promote securities mediation organizations towards unification. The current mediation organizations suffer from a large number and scattered structure, and the scattered resources lead to tremendous waste in practical application. The Securities Industry Association, which has long lacked credibility and independence, and the People's Mediation Organization, which lacks authority and experience, are not able to shoulder the burden of resolving unified disputes in the securities industry today and in the future. Therefore, it is necessary to integrate existing resources and promote the unified management of mediation organizations. Dong Xinyi and Wang Xinzhi, "The Construction of the Safeguard Mechanism of the New <Securities Law> Securities Dispute Resolution-Based on Overseas Experience," in The Banker, No. 2, 2020. Develop unified standards for mediation services, unify the management of full-time mediators around the country, clarify the jurisdiction of cases, and reasonably allocate mediation work. Shen Wei and Shen Pingsheng, "The Improvement of China's Securities Dispute Resolution Mechanism and the Learning of Reasonable Elements of the Financial Ombudsman System," in Southwest Finance, No. 5, 2020.

Fourth, improve the compensation system in advance and give full play to the role of investment and service center. First, the legislative model can choose to rely on comprehensive securities or financial legislation and adhere to a combination of principle and specific provisions. Second, the early payment system needs a stable and continuous source of funds. The experience of the United States can be drawn upon, with the proceeds of violations and civil penalties as essential sources of

funding. Third, in constructing the specific compensation mechanism, the compensation should be paid to all eligible investors. The scope of compensation should deal with the relationship between investor protection and the "risk-bearing" principle. The amount of compensation should be limited and proportional standards. Fourth, establish a systematic and specific incentive mechanism. Consideration can be given to further developing supporting rules under the Administrative Penalties Law framework when it is clear that the rules of mitigating and reducing penalties can be applied when paying compensation first.

Fifth, to establish and improve the docking guarantee mechanism for arbitration to support mediation work. Mediation and arbitration have strong compatibility, and if the same institution manages mediation and arbitration, it can coordinate the public welfare of mediation and the commerciality of arbitration. It is also easy to realize the smooth interface between different dispute resolution methods, so most countries and regions with developed capital markets have set up a third-party professional institution in the financial field that integrates mediation and arbitration. China may consider drawing on the United States' existing experience to have a mediation institution combine the functions of mediation and arbitration. After a party submits a dispute resolution application, it should first enter into the mandatory pre-mediation process. If the mediation fails, it can be transferred to the arbitration process. In order to reflect the tilted protection for investors, whether the award is influential or not is decided by investors. If investors accept the award, then securities companies and other institutions must accept it, and if investors do not accept it, they can seek other remedies.

5. Conclusion

Investor Protection Agency has proved to help promote the improvement of investor protection in China and serve the decisions related to the reform and development of China's capital market. However, the Investor Protection Agency, represented by the Investment Service Center in China, has been established only recently, and there are still many shortcomings in investor dispute resolution work. Therefore, it is necessary to analyze the problem carefully, combine foreign countries' experience, innovate solutions, and strive to build a more perfect dispute adjustment mechanism to put Investor Rights Protection's work in China's capital market into practice.

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