



SPECIAL TOPIC

A Primer on Korea's New Securities Class-Action Suit Law

The following is a primer on the securities class-action suit law (SCASL) that took effect January 1, 2005. The new law is primarily intended to strengthen minority shareholder rights and further improve corporate transparency by allowing shareholders to seek monetary compensation for losses that result from certain corporate wrongdoings related to insider abuses and disclosures.

(1) When did the SCASL take effect?

The SCASL took effect on January 1, 2005. For publicly traded companies whose total asset as of December 31, 2004, is less than KRW2 trillion, the new law will take effect on January 1, 2007, except for illegal use of insider information and market manipulation, which are already in effect.

(2) Which companies are covered under the SCASL?

KSE- and KOSDAQ-listed companies with assets of KRW2 trillion or more as of December 31, 2004, are covered under the SCASL. On January 1, 2007, the KRW2 trillion threshold is to be removed and all KSE- and KOSDAQ-listed companies are to be covered under the SCASL and become subject to class action suits from their shareholders.

A recent survey conducted by the FSS of companies publicly traded in the KSE and KOSDAQ showed that, as of the end of September 2004, there were a total of 82 companies with assets of KRW2 trillion or more. Of the 82 companies, 78 were trading in the KSE and 4 in the KOSDAQ. A total of 24 were financial services companies and 58 non-financial services companies. December was the closing month of the accounting period for 68 of the 82 companies. The average asset size for the 82 companies was KRW12.5 trillion, and foreign investors held about 33.3% of the total equity of these companies.



(3) What are the causes for which a securities class action can be initiated against a company?

A securities class action may be brought against a company listed and traded in the KSE or KOSDAQ for illegal acts connected with securities¹ issued by the company as follows:

- False statement (including omission of material information) in the company's prospectus or registration statement filings,²
- False statement (including omission of material information) in the company's quarterly, semiannual or annual reports;³
- Illegal use of inside information & market manipulation⁴, and
- Negligent outside audit.⁵

(4) Who may initiate a securities class-action suit?

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. A class action must be certified by the court, and both the plaintiff and the defendant must be represented by attorneys.

As a way to discourage frivolous class-action suits, any person who has represented the shareholders either as the lead plaintiff⁶ (or a representative party) or as a plaintiff attorney in three or more class-action suits during the preceding three-year period is in principle to be barred from participating in a class-action suit unless the court determines otherwise.

¹ i.e., securities enumerated in Paragraph 1 of Article 2 of the Securities and Exchange Act; include both debt and equity securities;

² As provided for under Article 14 of the Securities and Exchange Act;

³ As provided for under Article 14 and Paragraph 5 of Article 186 of the Securities and Exchange Act; Note that disclosures made under the prompt disclosure rule as well as disclosures concerning the acquisition of treasury stocks and merger activities are excluded from the SCASL.

⁴ As provided for under Paragraph 3 or 5 of Article 188 of the Securities and Exchange Act;

⁵ As provided for under Article 197 of the Securities and Exchange Act;

⁶ The lead plaintiff representing the shareholders must be approved by the court.



(5) Is court certification necessary for a class action to go forward?

A class action brought against a company under the SCASL must be certified by the court. In determining the merits of a class action, the court may question both the plaintiffs and the defendants and compel the FSC/FSS and others to provide the relevant documents and other evidence for the purpose of discovery. Acts such as terminating the class action, relinquishing a right granted under the SCASL or coming to an agreement to settle the class action without a court approval are not recognized and thus invalid.

The SCASL also provides for a prompt public notice of the class action as soon as it is filed to the court to the KSE and the KOSDAQ, which must then release the public notice of the class action to the general public.

(6) Are the shareholders who did not participate in the class action eligible to receive any benefit resulting from the class action against the company?

Shareholders who did not directly participate in the class-action lawsuit are eligible to receive any benefit that may result from it if they are not excluded by the court from the class action and their transactions are appropriately covered by it.

(7) Is an appeal available to the plaintiff shareholders if the court rules against the class-action suit?

A court decision denying a securities class-action lawsuit from proceeding to a trial can be appealed.