

MULTI-PARTY PROCEEDINGS IN TAIWAN: REPRESENTATIVE AND GROUP ACTIONS

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ABSTRACT

This study introduces the contents, characteristics and fundamental principles of the group litigation system in Taiwan Code of Civil Procedure after its amendment in 2003. The group litigation system in Taiwan is developed according to the practical experiences of Consumer Protection Law and Investor Protection Act before being incorporated into Code of Civil Procedural. The regulating framework primarily includes (1) the representative party system, (2) the joining-into representative party system and quasi-association's suit system, which are based on the assignment of parties and (3) the association's suit for injunction relief system according to the statutory assignment. The leading rule of law for the functioning of these systems is the "rights of procedural option". It allows parties to determine whether the pursuit of a correct judgment or an efficient one is the priority by respecting parties' choice of procedure type in order to take parties' substantive and procedural interests as well as judicial economy into consideration. Nevertheless, the current civil procedural regulations in Taiwan still requires further study in the future such as whether the model suit system and the group compensation litigation system should also be introduced. How the courts exercise and practice these regulations is indeed another question that requires additional discussions.

KEYWORDS: Taiwan Code of Civil Procedure; group litigation; rights of procedure option; representative party; quasi-association's suit; joining-into representative party; association's suit for injunction relief; lump-sum judgment; distribution agreement

I. INTRODUCTION

Modern civil procedural law not only emphasizes the finding of rights by pursuing an objectively correct judicial decision to protect the substantive interests of parties but also stresses the protection of parties' interests under procedural law. To substantiate, in addition to the protection of parties through cautious and correct judgment, the litigation system shall also reach a prompt and efficient decision for parties involved. As an old saying goes, "Justice delayed is justice denied." How the litigation system can function more efficiently has become a focus point in the civil procedural system. When multiple parties are involved in a dispute, taking individual court actions is inefficient for both the parties and the court. Group litigation or representative litigation system is the solution to this problem.

The group litigation system in Taiwan underwent significant changes in 2003. In addition to the traditional representative party system (representative rules)¹, several regulations under certain special laws such as Consumer Protection Law and Securities Investor and Futures Trader Protection Act [hereinafter "Investor Protection Act"] were incorporated into the Code of Civil Procedure and became the general rules. The primary amendments were composed of three systems: allowing charitable associations to take the roles of representative parties under the representative party system², establishing the joining-into representative party system³ and adding association's suit for injunction relief, where the new law authorizes qualified interest groups to request injunction relief against violations of laws.⁴ These regulations, though take references to regulations of Germany (Verbandsklage), Japan (representative party) and United States (class action), preserves a fair amount of local characteristics by taking into consideration the features of Taiwan's judicial system and social development. Since these regulations have not been enforced for five years, only few relevant cases are present. Therefore, the future development of the system still requires further observation.

This study aims at introducing the content and characteristics of Taiwan's group litigation regulations. The following chapters will be divided into five main parts: the first part briefly introduces the evolution of Taiwan's group litigation system (II.); the second part sheds light on the representative action by assignment of party in Taiwan, including the regulations of the Code of Civil Procedure and other special laws (III.). The third part discusses the association's suit for injunction relief in Taiwan, focusing on the new system after the 2003 amendment in particular and explaining its

¹ Article 41 of Taiwan Code of Civil Procedure.

² Article 44-1 of Taiwan Code of Civil Procedure.

³ Article 44-2 of Taiwan Code of Civil Procedure.

⁴ Article 44-3 of Taiwan Code of Civil Procedure.

regulations and its present enforcement (V). The fourth part addresses the aforesaid leading rules of law as well as the features that the Taiwan systems based on, (VI.); and the fifth part illustrates the potential issues and future challenges currently faced by Taiwan's group litigation system (VI.). It is anticipated that through this study, a complete picture of Taiwan's group litigation system can be presented, allowing experience exchanges with other countries for future development.

II. CIVIL LITIGATION SYSTEM IN TAIWAN AND THE EVOLUTION OF TAIWAN'S GROUP LITIGATION

A. Brief Introduction to Taiwan's Civil Litigation System

Taiwan is a civil law system country, which may be observed from the facts that both the Taiwan Code of Civil Procedure and the Civil Code show the influence of German law. Judicial precedents are neither the sources of law in Taiwan, nor binding upon judges in law. The court system in Taiwan is divided into two distinct jurisdictional branches: the "ordinary" courts, which deal with civil criminal matters, and the administrative courts. The ordinary court system is comprised of three levels: the district court, the high court and the Supreme Court. In district court, most cases are heard by a single judge. As to the High Court, cases to be tried are heard before a three-judge panel. However, one of the judges may conduct the preliminary proceedings alone. An appeal may be made to the Supreme Court only on grounds that the lower court's decision violates a law or order. Since the Supreme Court does not decide questions of fact, documentary proceedings are the rule, while oral arguments are the exception. Cases before the Supreme Court are tried by five judges. The jury trial system has not been adopted in Taiwan.

The amendment of Taiwan Code of Civil Procedure in February, 2000 have laid more emphasis on the complementary obligations of the court and parties to prepare in advance so that the preliminary hearings will be fruitful in preparing the case for further oral-argument sessions. The plenary argument and the evidentiary proceedings shall be concentrated, if possible, to a single sessions. That is the so-called "concentration principle". For purposes of oral argument preparation, parties shall submit to the court a pleading which indicates his/her means of attack or defense, as well as his/her responses to the opposing party's statements and means of attack or defense, and send a written copy or photocopy of the aforementioned directly to the opposing party. Where a party, attempting to delay litigation or through gross negligence, presents an attack or defense in a dilatory manner at the possible cost of a timely conclusion of the litigation, the court may deny the means of attack or defense so presented (Article 196 II of Taiwan Code of Civil Procedure). In order to

streamline the proceedings, the court will formulate and simplify the issues. It shall, before taking evidence, clarify to the parties the issues involved in the action and then examine the witnesses and the parties in person in a consecutive manner. The court also may seek settlement at any time irrespective of the phase of the proceeding reached (Article 377 of Taiwan Code of Civil Procedure).

The principle that parties have control over the initiation, termination and scope of a lawsuit is a fundamental guiding principle of Taiwan civil justice. The party also has the responsibility to describe to the court the facts and means of proof in principle. Although the parties govern the course, scope and facts of the proceedings according to the principle of party autonomy, the judge plays an active role in Taiwan litigation. The judge shall exercise care when directing the parties to present appropriate and complete arguments about the facts and the laws regarding the matters involved in the action. He can question the parties or direct them to make factual and legal representations, state evidence, or make other necessary statements and representations; where the presented statements or representations are ambiguous or incomplete, the judge shall direct the presenting party to clarify or supplement (Article 199 of Taiwan Code of Civil Procedure). To give hints and feedback to the parties to avoid any surprising decision and promote the fair and just judgment is in nature the Taiwan judge's obligation. In addition, when the disputes involve more explicit public policies or group interests than others, such as an association's suit for injunction, and the court cannot obtain conviction from the evidence introduced by the parties, the court may take evidence on its own initiative if such is necessary for finding the truth under Article 288 of the Code of Civil Procedure.

The American discovery process is not adopted in Taiwan. But the proceedings for perpetuation of evidence (Article 386 of Taiwan Code of Civil Procedure) and pretrial preparation can be addressed to obtaining the means of proof. In Taiwan, there are five forms of evidence available, i.e. proof by documentary evidence, proof by inspection by the court, proof by witness testimony, proof by expert testimony and proof by party testimony. Where the document identified to be introduced as documentary evidence is in the opposing party's possession, a party shall move the court to order the opposing party to produce such document (Article 342 of Taiwan Code of Civil Procedure). The court orders the opposing party to produce the document by a ruling when the disputed fact is material and that the motion is just. If a party disobeys an order to produce documents without giving a justifiable reason, the court may, in its discretion, take as the truth the opposing party's allegation with regard to such document or the fact to be proved by such document (Article 345 of Taiwan Code of Civil Procedure).

The primary means of presenting scientific or technical evidence is through court

appointed expert witness. Before appointing an expert witness, the court may accord the parties an opportunity to be heard. If the parties have agreed on the designation of an expert witness, the court shall appoint such expert witness as agreed-upon by the parties, except where the court considers that such expert witness is manifestly inappropriate (Article 326 of Taiwan Code of Civil Procedure). In most cases the expert will file a written report of his investigation. Although the report may be reviewed by the parties and by the court in law, judges in Taiwan tend to rely heavily on court-appointed expert and the expert will not be examined orally at an evidentiary hearing in practice. The costs of court-appointed expert are included in the litigation costs which are ultimately borne by the losing party. The parties may also submit written expert opinions. However, these opinions are treated as part of the respective party's pleadings, not as proof by expert testimony.

The court costs are calculated on the basis of the value in dispute. A detailed regulation is provided in Article 77-13 of the Taiwan Code of Civil Procedure. The court will also charge additional expenses relating to the proceedings, such as the remuneration of witnesses or of court-appointed expert witnesses (Article 77-23 of the Taiwan Code of Civil Procedure). In Taiwan, the losing party shall bear the litigation expenses (Article 78 of the Taiwan Code of Civil Procedure) in principle, but the attorney fees are not included. If a party is only successful in part, the court divides the cost *pro rata*. Nevertheless, in matters of appeal to a court of third instance, an appellant is required to appoint an attorney as his/her advocate (Article 466-1 of the Taiwan Code of Civil Procedure). In this situation, the attorney fees in the court of third instance shall be exceptionally included as parts of the litigation costs and the losing party must bear them (Article 466-3 of the Taiwan Code of Civil Procedure). In addition, for the group litigation there are some special rules (see III. and IV. below).

B. The Evolution of Taiwan's Group Litigation

A highly significant feature possessed by the development of Taiwan's group litigation is the evolving of special rules into general rules. After a period of enforcement, certain regulations of the group litigation system that were initially regulated under Consumer Protection Law and Investor Protection Act are now incorporated into the present Code of Civil Procedure. However, not all special rules were incorporated into the Code of Civil Procedure. Instead, adjustments were made to create a constant revision of Taiwan's group litigation system under the general rules.

The regulations of representative party under Article 41 of the Code of Civil Procedure were the first to be incorporated into the Taiwan civil procedural system in the 1935 amendment on the Code of Civil Procedure, authorizing multiple parties

with common interests (the appointing parties) to appoint one or more persons among themselves (the appointed parties) to sue or be sued on behalf of the appointing parties. However, the appointed parties must be parties with common interests, therefore, charities cannot be appointed (Article 41 of Taiwan Code of Civil Procedure). The final and binding judgment hereby made is binding to the appointing parties pursuant to paragraph 2 of Article 401. This system is adopted from Japan and is similar to UK's representative litigation system.

In 1994, the Consumer Protection Law was enacted in Taiwan to protect consumer's rights. This very law is both substantive and procedural in terms of its regulating structure. Chapter 2 of this law regulates several substantive provisions related to the protection of consumers' interests, which is the special law to the Civil Code, while Chapter 5 regulates the settlement of consumer disputes, with section 2 setting several provisions related to consumer litigation, which is the special law to the Code of Civil Procedure. The provisions implicating the group litigation are mainly: 1.) Damage compensation litigation raised by a consumer protection group: A consumer protection group may bring litigation in its own name when authorized by more than 20 consumers concerning a single incident. However, consumer protection groups shall not claim rewards from consumers for litigation (Article 50 of the Consumer Protection Law). The court fees for the portion of the claim in excess of NT\$600,000 are exempted (Article 52 of the Consumer Protection Law); 2.) Litigation for injunction raised by a consumer protection group: Article 53 incorporates group litigation for injunction and allows a consumer protection group to conduct a suit for injunction against a business operator whose conduct has constituted a material violation of the law. Court fees for this litigation are exempted (Article 53 of the Consumer Protection Law); 3.) notice provided to the public: Article 54 incorporates a system providing public notice, which regulates that when the appointed parties already exist in a consumer dispute, the court may notify the other injured parties through public notice to request their damage in the same litigation process (Article 54 of the Consumer Protection Law). The so-called "consumer protection group" referred to in Article 50 and 53 is required, pursuant to Article 49, to have been established for more than 3 years after its approval, to have obtained upon application a rating of excellence by the Consumer Protection Commission, to maintain a special staff dealing with consumer protection and meeting any of the following requirements: either an association established as juristic person having more than 500 members, or a foundation established as a juristic person having total registered assets of NT\$10 millions or more (Article 49 of the Consumer Protection Law). These regulations have gone beyond the original appointed parties under the Code of Civil Procedure and have lowered the qualification demand of the appointed

parties, i.e. permitting the consumer protection group to be the appointed while adding the association's suit for injunctive relief and the public notice. In addition, to bring the preceding litigation, a consumer protection group shall retain a lawyer to litigate on its behalf. The engaged lawyer may request the reimbursement of any necessary expenses but is not allowed to claim any compensation for such litigation (Article 49(2) of the Consumer Protection Law).

In order to protect the interests of securities investors and futures traders, the Investor Protection Act, which was in enforcement in July, 2002, also established the group litigation system particularly applying to disputes concerning securities investment and futures trading. In accordance with Article 28, the protection institution may, in its own name, bring an action or submit a matter to arbitration with respect to a single securities or futures matter injurious to no less than 20 securities investors or futures traders who have empowered the protection institution to do so (Article 28 of Securities Investor and Futures Trader Protection Act). This provision was again different from the representative party system under the Code of Civil Procedure. It expanded the qualification of the appointed regarding investor protection and yet it was not considered a consumer protection group with litigation right as stated in the Consumer Protection Law. To date, the only protection institution legally established is Securities and Futures Investors Protection Center (SFIPC).⁵ For the furtherance of its operations, the protection institution shall establish a protection fund.⁶ Up until June, 2007, the Center has accepted 43 litigations.⁷ The protection institution is not entitled to seek remuneration for itself (Article 33 of the Securities Investor and Futures Trader Protection Act), but it may be exempted from court costs on that portion of the value of the object of litigation or the

⁵ As designated by the competent authority, the Center is created by Taiwan Stock Exchange Corporation, Taiwan Futures Exchange Corporation, GreTai Securities Market, Taiwan Securities Central Depository Company, Chinese Securities Association, Securities Investment Trust and Consulting Association of the R.O.C., Federation of Futures Industry Associations as well as all securities finance enterprises and other securities- or futures-related organizations or enterprises designated by the competent authority (Article 7 of Securities Investor and Futures Trader Protection Act)

⁶ In addition to assets contributed by Taiwan Stock Exchange Corporation, Taiwan Futures Exchange Corporation, GreTai Securities Market, Taiwan Securities Central Depository Company, Chinese Securities Association, Securities Investment Trust and Consulting Association of the R.O.C., Federation of Futures Industry Associations, all securities finance enterprises and other securities- or futures-related organizations or enterprises as designated by the competent authority, sources of fund assets include the following: 1. Allocation by every securities firm of 0.00000285 (2.85 millionths) of the total volume of consigned securities trades during the previous month, to be made by the 10th of each month. 2. Allocation by every futures commission merchant of NT\$1.88 for each futures consignment contract executed during the previous month, to be made by the 10th of each month. 3. Allocation of 5 percent of the transaction charges received during the previous month by, respectively, the Taiwan Stock Exchange Corporation, the Taiwan Futures Exchange Corporation and the GreTai Securities Market, to be made by the 10th of each month. 4. Interest on and proceeds from utilization of the protection fund. 5. Assets donated by ROC or foreign companies, corporate bodies, groups or individuals (Article 18 of Securities Investor and Futures Trader Protection Act).

⁷ See <http://www.sfipc.org.tw/main.asp> (last visited, July 12, 2007). (in Chinese)

compensation amount sought in excess of NT\$100 million (Article 35 of the Securities Investor and Futures Trader Protection Act).

Taiwan Code of Civil Procedure was subsequently amended in 2003. After the amendment, the Code of Civil Procedure [hereinafter the New Code] added Article 44-1, 44-2 and 44-3. In addition to transforming the special law provisions into general rules, expanding the representative party system, adding the association's suit for injunctive relief as well as the joining-into representative party system. The lump-sum judgment and distribution agreement was also introduced, that is, all members of the appointing party agree to be granted the full amount of a monetary award by the court as well as how such total sum shall be distributed. Furthermore, if all members of the appointing party have filed a pleading to such effect, the court may award a lump sum of money to all members of the appointing party without specifying the amount that the defendant must pay to each of the appointing parties (Article 44-1(2) of Code of Civil Procedure). In addition, the provision for an incorporated charitable association becoming the appointed party is also different from that of Consumer Protection Law and Investor Protection Act. Therefore, the New Code did not make a word-for-word copy of the regulations under the Consumer Protection Law and Investor Protection Act but made some changes to it. The group litigation system under Taiwan Code of Civil Procedure was finalized after the amendment.

The above shows, other than the traditional representative party system, several important instruments of present Taiwan group litigation system were initially grounded as special law before being transformed and regarded as the general law. Such development helps to facilitate a full picture of Taiwan's group litigation system today. The following chapters further elaborate upon the regulations and the current situations of various group litigation systems.

III. THE REPRESENTATIVE ACTION BY ASSIGNMENT OF PARTY (GEWILLKÜRTE PROZEBSTANDSCHAFT)

Generally speaking, when discussing Taiwan's group litigation system, scholars often distinguish between representative action by assignment of Party (gewillkürte Prozeßstandschaft) and representative action by statutory assignment (gesetzliche Prozeßstandschaft), while making the introduction respectively. The so-called "representative action by assignment of Party" refers to a representative party who obtains his/her right of action through the assignment of the appointing parties, whereas the "representative action by statutory assignment" refers to a representative party who obtains his/her right of action through regulations of law without the assignment of adversely affected people. This study will introduce the representative

action by assignment of Party in Taiwan in this section before moving to the next section — the representative action by statutory assignment.

At present, the representative action by assignment of Party in Taiwan can be divided into two parts: the representative party, that is, a member from the parties with common interests becomes the appointed party, and the quasi-association's suits, whereas the representative party is an incorporated charitable organization. The regulation and characteristics of each system is introduced as follows.

A. The Representative Party

The representative party in Taiwan is regulated under Article 41 of the Code of Civil Procedure, which refers to that multiple parties, who have common interests and may not qualify to be an association or foundation which is not a legal entity but which has rules for its representative or administrator, may appoint one or more persons among themselves to be the plaintiff or the defendant on behalf of the appointing parties and the appointed parties (the representative parties)(Article 41(1) of Code of Civil Procedure). After the appointment has been made in a pending action in accordance with the provision of the preceding paragraph, parties who are not appointed shall withdraw from the proceeding (Article 41(2) of Code of Civil Procedure). The representative parties may conduct all acts of litigation for the appointing parties in principle, provided however that the appointing parties may restrict the representative party's authority to abandon claims, admit claims, voluntarily dismiss the action or settle the case (Article 44 of Code of Civil Procedure). The appointing parties may, in the form of writing, substitute, call off or increase the number of the representative parties (Article 42 of Code of Civil Procedure).

The first characteristic of this system is multiple parties with common interests shall make the "appointment" which allows the representative parties to conduct litigation acts. The fact that the representative parties are authorized by such appointment to conduct the litigation does not prevent the other parties who have common interests but do not participate in the appointment from bringing another lawsuit, nor is the ruling binding to them.⁸ The representative parties have the right to conduct all acts of litigation on behalf of the appointing parties; however, the appointing parties may restrict the authority of the representative parties to abandon or admit claims, voluntarily dismiss the action or settle the case. Such restriction effect coming from one member of the appointing parties is inferior to the authority of the representative parties. It shall be evidenced as prescribed in Article 42 of the Code of

⁸ See Kuan-Ling Shen, *The Redress System of Multiple Parties in Dispute: From the Representative Party to Group Litigation*, in KUAN-LING SHEN, *THE PROTECTION OF LITIGATION RIGHT AND ALTERNATIVE DISPUTE SETTLEMENT* 161, 180-81 (2006) (in Chinese).

Civil Procedure or to be brought to court in the form of writing (Article 44 of the Code of Civil Procedure).

Judgment regarding litigation brought by the representative parties is binding to the appointed parties (Article 401(2) of the Code of Civil Procedure). The judicial practice in Taiwan acknowledges the fact that the representative parties as the plaintiffs may directly plead the defendant to pay a certain amount of compensation to the appointing parties who are not in the litigation, for example, to state in the allegation “the amount payable to A , B and C respectively.”⁹ It is different from the representative litigation system in other countries,¹⁰ which simply state the defendant’s responsibility to compensate before the claimants come up with the actual amount of claim. It is also more consistent with the goal of efficient dispute settlement as well as the concept of judicial economy.

However, regarding the distribution of litigation fees under the representative party system, there are no relevant provisions available in Taiwan and related discussions are also rare. According to the principle of litigation fees distribution in Taiwan, the representative parties shall undertake all litigation fees. If there is no prior agreement between the appointing parties and the representative parties regarding the distribution of litigation fees, it might affect the willingness of the representative parties to sue for the appointing parties or to agree to the joining of other parties with common interests after bringing the lawsuit and thus decreases the utility of the representative party system.¹¹ This study believes that Taiwan may refer to United Kingdom’s precedents and oblige the appointing parties to share the fees under equitable discretion by the court.

B. The Joining-Into Representative Party

Multiple parties are allowed to take the advantage of settling disputes in a single procedure once for all in order to achieve the judicial economy and decrease the litigation.¹² In 2003, the New Code of Civil Procedure took reference to Article 54 of Consumer Protection Law and added the joining-into representative parties system in Article 44-2, which regulated that when multiple parties, whose common interests had arisen from the same public nuisance, traffic accident, product defect, or the same transaction or occurrence of any kind, were allowed to appoint one or more persons among themselves in accordance with the provision of Article 41 to sue for the same category of legal claims. Then, a public notice from the court stated to the effect that other persons with the same common interests were allowed to join the action under

⁹ See The 15th Resolution of the Supreme Court Civil Court in 2001.

¹⁰ Such as United Kingdom, See Kuan-Ling Shen, *supra* note 8, at 181.

¹¹ See Kuan-Ling Shen, *supra* note 8, at 181.

¹² See the legislative reason of Article 44-2 of Code of Civil Procedure.

certain circumstances which were comprised of four situations. First, when the court actively sought the consent of the representative parties;¹³ second, upon the original representative party's petition which the court considered appropriate;¹⁴ third, upon the petition of other parties with common interests which the court considered appropriate (Article 44-2(2) of Code of Civil Procedure); and last but not least, when the representative parties did not agree to such joining-into while the court considered it appropriate (Article 44-2(5) of Code of Civil Procedure).

The strength of Taiwan's joining-into representative party system is that it respects parties' choice, disposition or the decision to participate in a procedure. Besides, it balances the procedural interests of parties and the protection of parties' hearing rights, avoiding the defects in the US opt-out system. Furthermore, the system is not only established for the sake of judicial economy but also meant to facilitate parties to take advantage of a lower litigation fee and the measures in place for attorney appointment. The court may, on motion, appoint an attorney as an advocate for the plaintiff (Article 44-4 of Code of Civil Procedure). When the court or the presiding judge has duly appointed an attorney to act as the special representative or advocate for a party, the compensation to be paid to such appointed attorney shall be determined in the discretion of the court or the presiding judge. (Article 77-25 of Code of Civil Procedure). The compensation shall be included as part of litigation expenses. The representative party who initiated an action in accordance with the provision of Article 44-2 may temporarily be exempted from paying the portion of the court costs in excess of NTD 600,000 if the amount of court costs taxed is more than NTD 600,000 (Article 77-22(1) of Code of Civil Procedure). Whether to make use of the joining-into representative party system is left to the parties' decision as they weigh their substantive as well as procedural interests. The system also respects the parties' concern for their procedural interests by allowing the parties to decline or disagree to being appointed by other parties with common interests. This leading rule of law deserves endorsement.¹⁵

However, prior to the court's publishing of the notice, if other parties with common interests have brought a court action individually which have been pending before courts under different jurisdictions, whether these actions may join into the court that is to publish the notice would be of doubt.¹⁶ The idea of model suit is still relatively uncommon in Taiwan, therefore, this study suggests the model suit be set by

¹³ The front paragraph in Article 44-2(1) of Code of Civil Procedure.

¹⁴ The middle paragraph in Article 44-2(1) of Code of Civil Procedure.

¹⁵ See Kuan-Ling Shen, *From the New System of "Investor Model Suit" in Germany to Discuss "Joining-into Representative Party" System*, in KUAN-LING SHEN ET AL., *THE CIVIL LAW RESEARCH FOR STEPPING INTO TWENTY-FIRST CENTURY: THE COLLECTION OF THESIS CELEBRATING SEVENTY-YEARS-OLD BIRTHDAY OF PROFESSOR YEONG-JIA LOUCH* 175, 175 (2006) (in Chinese).

¹⁶ See *id.* at 176-77.

the legislature to conduct model suits focusing on one of the common issues of the disputes which have been individually brought to the court by other parties with common interests and which have been pending before courts under different jurisdictions. Then, the various courts are left to examine the individual issues of dispute, which allows each court to proceed and to deal with massive, diffusive disputes both simultaneously and efficiently.

C. Quasi-Association's Suit

The so-called “quasi-association’s suit” (also known as “association suit by assignment of Party”) is different from the representative parties discussed above. It is regulated under Article 44-1 of Taiwan Code of Civil Procedure, which refers to multiple parties with common interests who are members of the same incorporated charitable association may, to the extent permitted by the said association's purpose as prescribed in its bylaws, appoint such association as representative party to sue on their behalf. This provision relaxed the original rule which required the representative party/parties to be a member/members of the parties with common interests. To distinguish from association’s suit, the name “quasi-association’s suit” is thus created for the purpose. The fact that an incorporated charitable association can bring a lawsuit in its own name is not for the interests of the association or public interests but based on the assignment of their injured parties (considered by the substantive law as the claimants). Therefore, it still falls within the representative action by assignment of Party system. Although this provision allows an “association” to bring lawsuit as discussed, it still serves the individual interests of the appointing parties instead of public or the association’s interests. Thus, it is not a typical association’s suit (such as German “Verbandsklage”) but a “quasi-association’s suit” as put in this study.

The quasi-association’s suit in Code of Civil Procedure expands its scope of application by allowing the quasi-association’s suit which was originally found in Consumer Protection Law and Investor Protection Act to be applied to all civil procedures. However, the original provisions in Consumer Protection Law and Investor Protection Act are not deleted and the consumer protection group are still able to initiate a compensation lawsuit based on the assignment of rights of actions by more than 20 injured consumers; investor protection institutions may still initiate a lawsuit based on the empowerment of more than 20 securities investors and futures traders. In comparison, two remarkable points are found in the New Code. The first point is that there is no restriction set to the number of appointing parties under the Code of Civil Procedure, while both Consumer Protection Law and Investor Protection Act require 20 such persons.¹⁷ The second is that the Code of Civil

¹⁷ Article 50 of Consumer Protection Law, Article 28 of Investor Protection Act.

Procedure requires the appointing parties to be the members of an incorporated charitable association, while consumers and investors as protected by Consumer Protection Law or Investor Protection Act are not members of a consumer protection group or investor protection institution.

One thing worth noticing is that, according to Article 44-1(2) of the New Code, the court may, based on the agreement of the entire appointing parties, award a lump-sum to the entire appointing parties. This is evidently different from the traditional representative party (Article 41 of Code of Civil Procedure) which requires the plaintiff to specify the sum paid to each appointing party while the court is also required to specify the amount that the defendant must pay to each of the appointing party. This very paragraph, on the one hand, owns the nature which allows the plaintiff to dispose his/her substantive rights, on the other hand it lessens parties' burden of proof or other relevant procedural burdens by protecting parties' procedural interests and alleviating court's burden. Based on this agreement, when the court is determining the lump-sum of damage, it does not simply calculate the total substantive damage compensation claimed by the individual appointing parties but examines all situations before reaching a decision on the total sum in an equitable manner. The decision might not be in conformity with the objective compensation rights of the appointing parties, however, it is the result obtained by each of the appointing party disposing his/her own substantive rights through the agreement above and therefore it shall not be forbidden.¹⁸ Furthermore, regarding the distribution agreement, the appointing parties may arrange to distribute the sum to the individual appointing party according to a certain proportion and method; or, the appointing parties may agree not to distribute the sum to the individuals but donate it to an incorporated charitable association or authorize the use of the compensation such as establishing a public interest fund. The approach which separates the determination of compensation from its distribution not only is economical for the judgment procedure but also more efficient in the enforcement procedure.¹⁹ However, this lump sum judgment and distribution agreement are only applicable to quasi-association's suit by the present Code of Civil Procedure. As to the representative parties system or other multi-parties litigation, there have been no provisions allowing *mutatis mutandis* application. Whether the judicial practice may apply this system to other situations through the approach of analogy in the future is worth observing.

Since the 2003 amendment which added the quasi-association suit system to the present, there have been comparatively few cases taking advantage of this system in

¹⁸ See Kuan-Ling Shen, *supra* note 8, at 203-04.

¹⁹ See Kuan-Ling Shen, *supra* note 8, at 204.

Taiwan's judicial practice, partly due to the fact that the enforcement period is still too short and parties are still used to bringing lawsuits by means of the representative party system. In the only one case where the court held that the labour union has the right of action, the plaintiff also did not claim for a lump-sum judgment, but pleaded the court to award a monetary judgement, in which separate payments to each appointing party (777 people altogether) are definite and particularized.²⁰ In addition, in the RCA case²¹ which involved environmental liability, Taiwan Taipei District Court decided that "Taoyuan County Original RCA Corporation Employees Caring Association" organized by the victims was not qualified to be the representative party under Article 44-1 of the Taiwan Code of Civil Procedure on the grounds that the association had not been registered as a juridical person, thus was not the qualified incorporated charitable association. In addition, the court also made it clear that although the association met the condition set in Article 40(3) of the Taiwan Code of Civil Procedure as an unincorporated association and thus had capacity to be a party, however, since the victims in that case were the members of the association, not the association itself, the association was neither qualified to suit on its own nor qualified as the representative party under Article 41 of the Taiwan Code of Civil Procedure. This decision reveals the weakness of Taiwan's present quasi-association suit system.

IV. THE ASSOCIATION'S SUIT (VERBANDSKLAGE) FOR INJUNCTION RELIEF

The association's suit for injunction relief is regulated in accordance with Article 53 of Consumer Protection Law; instead, consumer disputes are taken to be included in the civil procedure. Pursuant to Article 44-3 of the New Code of Civil Procedure, an incorporated charitable association or a foundation may, with permission from its competent authority and to the extent permitted by the purposes as prescribed in its bylaws, initiate an action for injunctive relief prohibiting specific acts of a person who has violated the interests of the majority concerned. Regarding this very provision there are four requirements for a group to initiate a lawsuit for injunction. First, the association shall be an incorporated charitable association or a foundation which owns the legal person entity; second, it shall obtain permission from its business competent authority²²; and third, the lawsuit shall be limited to the extent permitted by the

²⁰ Taiwan Taipei District Court 95 Lau-Su No. 206 Decision, see: <http://jirs.judicial.gov.tw/>

²¹ Taiwan Taipei District Court 93 Chong-Su No. 723 Decision.

²² The so-called "business competent authority" here represents the supervisory governmental authority which supervises the activities of that juridical person. Generally speaking, when the establishment of that juridical person is required by law to obtain license from a specific governmental authority, that specific governmental authority is the business competent authority of the juridical person. The business competent authority is permitted to examine the juridical person's financial situation and ascertain whether it has violated the conditions of the license and other legal requirements by Article 32 of the Civil Code.

purposes as prescribed in its bylaws and fourth, a person's specific act has caused an infringement upon the majority's interests. No court cost will be taxed on the association's suit for injunction relief (Article 77-22(2) of Taiwan Code of Civil Procedure).

The Judicial Yuan and Administrative Yuan have awarded "Regulation of Permission and Supervision of Bringing the Lawsuit for Injunction by Incorporated Charitable Association and Foundation", mandated by Article 44-3(2), to regulate the permission procedure and standard for the competent authority. To bring the association's suits to court as approved by the competent authority, Article 2 under the same regulation points out the following requirements that an incorporated charitable association and foundation shall meet: (1) the incorporated charitable association or foundation must be established over three years; (2) members for the incorporated charitable association are over 500 or the foundation has a total registered assets of over NT\$10,000,000; (3) The association's suits are consistent with the purposes as prescribed in the bylaws and as approved by the board of directors; (4) The action is considered to be an infringement upon the majority's interests by at least 20 persons. In addition, an association's suits shall not be brought to court when the following occurs: (I) the above (2) is not met; (II) the same facts are been filed by an incorporated charitable association or foundation as a association's suit which is still pending; (III) the association's suit is considered groundless and is thus turned down three times by a court; (VI) the association's suit violates Article 6 as stated below; (VII) relevant facts are incorrectly stated to the extent of severe circumstances as determined or violate the law; (VIII) a court decision of rejection based on other relevant facts. To avoid plaintiff's any harmful behaviors to the party/parties, Article 6 under the very same regulation specifies that after an incorporated charitable association or foundation has filed an association's suit, actions such as abandoning claims, voluntarily dismissing the action, settling the case, appealing to a higher court or to a re-hearing are not permitted without approval from the competent authority. Prior to the approval, the competent authority shall allow the injured party/parties the opportunity to speak. In addition, an incorporated charitable association or foundation and their appointed attorney are not permitted to claim remunerations or any fees from the injured party/parties for the association's suits. The association's suits for injunction relief originated from Article 53 of Consumer Protection Law had expanded the scope of application from the original consumer disputes to all civil procedural events.

Regarding the nature of the association's suits, divergent opinions are found in the academic field of Taiwan. Some contends that the reason for an association which is allowed to initiate the suit in its own name is based on its inherent independent right,

therefore, it leads to the conclusion that although one association has already brought the suit for injunction, other associations may still bring another suit without violating Article 253 of Code of Civil Procedure which prohibits reinitiating of an action.²³ However, this study believes that, according to Article 44(3) of Code of Civil Procedure, the nature of an association's suit for injunction relief shall be regarded as the representative action by statutory assignment. On the basis of a reasonable distribution of judicial resources without the defendant's unnecessary re-appearances in court as well as balancing the procedural protection for parties, it shall be recognized that actions initiated by an association are for the collective interests, and these interests not only belong to the specific association but a community which includes all the relevant incorporated charitable associations and foundations as well as the majority of the injured parties. Therefore, if one association has initiated the action towards a specific act and another association also brings the suit at a later time while the former is still pending, the latter will incur the defense of violation of Article 253. If a final and binding judgment has been awarded to the former suit, the latter will incur the defense of *res judicata*, except when the plaintiff fails the former suit and sufficient procedural protection is not provided to the association bringing the latter suit.

Nevertheless, currently the functioning of the association's suits for injunction relief in Taiwan is based on a case-by-case examination approach conducted by the competent authority. If the association has not been permitted by the competent authority at the time it initiates the action, it may be disqualified for being a party. If the association seeks redress following the administrative appellate procedure and administrative litigation procedure, the action may be too late for a critical situation.²⁴ This study suggests that for the purposes of quickly resolving a dispute and protecting the interests of parties at the same time, the court shall be recognized in its powers to decide whether the disapproval or delay of approval from the competent authority is justifiable when examining the plaintiff qualification of an incorporated charitable association or a foundation.

V. THE CHARACTERISTICS OF THE TAIWAN SYSTEM

The development of Taiwan civil procedure system is building on the so-called "protection of procedural interest theory". People's basic rights of litigation are protected by the Constitution; therefore, the state shall provide a comprehensive litigation system to ensure people's litigation rights effectively, seeking not only a

²³ See Shyh-Ming Chiang, *The Transition of Representative Party System: Discussing the Group Litigation Concurrently*, 96 THE TAIWAN LAW REVIEW 8, 25 (2003). (in Chinese)

²⁴ See Kuan-Ling Shen, *supra* note 8, at 192-94.

prudent and just judgment but a prompt and efficient one. When parties litigate, although their substantive rights are to be protected, the resources such as the labor, time and expenses that parties may be required to invest during the litigation process shall also be taken into consideration. Therefore, the litigation system shall take parties' substantive and procedural interests into account as the most effective way to protect their interests. The issue as to how the substantive and procedural interests of parties can be protected shall be left to the parties to decide without sacrificing the public interest. Consequently, when establishing the litigation system, parties' rights of procedure option shall be respected in particular and the procedure shall, in the best way possible, proceed based on the decision of parties.²⁵

Taiwan group litigation system is also designed based on a respect for rights of procedure option. When multiple parties are involved in the same category of suits, commentators often look at it from the perspective of judicial economy and group litigation is expected to reduce court's burden and save judicial resources. However, given that the litigation system shall at the same time protect parties' substantive and procedural interests, when designing the group litigation system, Taiwan Code of Civil Procedure, based on the rights of procedure option theory, respects the choice of parties as much as possible by providing various options for parties to choose what they consider to be the most appropriate dispute resolution to their particular situation. In other words, the procedure is not pre-determined by the legislators, and thus avoiding rigidity which is not to the advantage of parties in a given case.

The rights of procedure option are particularly helpful in the representative action by assignment of Party. It was exactly why the New Code is founded: First, the general rule of quasi-association's suit is created to loosen up the qualification of appointed parties and allow an incorporated charitable association with no common interests to be appointed. Parties may take their self-interests into account by deciding whether to make use of this option as provided. Second, the lump sum judgment and distribution agreement are also created to allow parties, provided that all of them are in agreement, to plead to the court to award a lump sum judgment. Therefore parties may, according to their procedural interests, plead to the court not to specify the compensation respectively and thus saving the resources that otherwise must be devoted by parties. Last but not least, the joining-into representative party system is added. The court provides parties with the information necessary for their dispute resolution with a public notice. With the sufficient information from court, parties may determine whether to resolve the dispute through the representative party or a joinder. All these regulations may appear to be alleviating the court's burden when it

²⁵ See generally Lian-Gong Chiou, *The Legal Rule of The Rights of Procedure Option*, in LIAN-GONG CHIOU, *DISCUSSING THE RIGHTS OF PROCEDURE OPTION* 23 (2001). (in Chinese)

comes to a dispute with multiple parties, but indeed such function is also based on parties' voluntary authorization instead of the coercion of law or the court. It reveals Taiwan's group litigation and its respect for the rights of procedure option as a fundamental.

For the representative action by statutory assignment, the focus becomes quite different. The fact is that disputes today, such as public nuisance, product defect and other incidents which may hurt the interests of the public, are often lasting, obscure and expansive in nature, while the victims often have little knowledge or lack the ability to independently claim their rights to remove the infringement. Therefore, the general rules of association's suit for injunction relief are added to the New Code, as it is no longer limited to consumer disputes. The characteristic of this system is the protection of public interest and collective interest without having multiple parties to each make an individual empowerment. In modern disputes such individual empowerment concerning multiple parties is unlikely, thus although the parties are granted the rights of procedure option, but operational limitation often occurs in the actual situation. Therefore, it is necessary to directly grant a charitable association or foundation the power to implement the suit by law in order to maintain the public interest and collective interest.²⁶ Building on this perspective, it can be said that legislators have noticed the limit of parties' rights of procedure option by designing the system on behalf of the public interest.

To summarize, alleviating the burden of courts and judicial economy is not a main concern to the legislation of Taiwan group litigation system but parties' rights of procedure option which satisfies parties' need to seek accurate and prompt judgments. For this purpose, the regulations in Taiwan group litigation system which often take into account parties' choices have become a significant feature of the system.

VI. THE FUTURE CHALLENGES OF TAIWAN GROUP LITIGATION SYSTEM

After the 2003 amendment, Taiwan group litigation system has moved a huge step forward. However, this study points out several issues that still deserve further attention in the future.

First of all, in addition to the present group litigation system, whether other systems such as model suit may be introduced in the future is not explicitly addressed by the New Code. Multiple parties may be under different jurisdictions. In this case, a joinder is inappropriate and it should be noted by considering whether it is possible to introduce the model suit system for it focusing on the common issues in dispute while leaving the individual ones to the individual courts' examinations. These various

²⁶ See Kuan-Ling Shen, *supra* note 8, at 199-200.

courts may proceed simultaneously and review incidents of massive, expansive nature with efficiency. This is indeed an issue worthy of future research. This approach also involves the binding force of a judgment, litigation fees and other important procedural issues, and thus it must be regulated by law. With no relevant provisions under the present Taiwan Code of Civil Procedure, the implementation of the approach requires more than interpretation. It needs to be legislated in the future.

Regarding the category of group litigation, whether to introduce the association's suit for compensation in addition to the association's suit for injunction relief is another issue worth pondering. In the process of legislation, some members of commission had suggested that charitable association may be allowed to initiate the compensation action directly for the purpose of maintaining the public interest or collective interest and may claim a lump sum of compensation.²⁷ However, this suggestion was never adopted. As a matter of fact, when multiple persons are injured and the injury is of minor degree, the injured may not be aware of the injury. When the injured persons are not members of a specific incorporated charitable association, it is even more difficult to expect victims taking advantage of the representative party to allow the appointment of one or several parties with common interests for initiating an action. However, if the lump sum of multiple parties' damage reaches a certain amount of money, we may still allow a charitable association to initiate the injunction relief and make a claim to the compensation against the defendant when certain conditions are met.

Last but not least, how the new systems as amended in 2003 will function in judicial practice is an issue indeed worthy of attention. Although the New Code has added several new regulations to allow parties the opportunities for choosing the procedure of their interests, the actual number of cases utilizing the new systems and how well the new systems function are questions that still require further observation.

VII. CONCLUSION

After the amendment in 2003, the Taiwan Multi-Party Proceedings (Representative and group actions) become very different. Its leading rule of law is based on the rights of procedure option which respects parties being the subjects of procedure and their rights of procedure option, instead of a mere concern for alleviating the burden of courts. The representative party system, quasi-association's suit system, joining-into representative party system, lump sum judgment, distribution agreement and association's suit for injunction relief system are thus created and accompanied by the regulations under Consumer Protection Law and Investor

²⁷ See the statement of Lian-gong Chiou, in THE COMPILATION OF JUDICIAL YUAN CODE OF CIVIL PROCEDURE RESEARCH AND AMENDMENT STATISTICS (11), 604-05. (in Chinese)

Protection Act, which constitute the present Taiwan group litigation. How this regulation framework will function in the future and whether improvements by legislation are required are issues in the future studies.

Annex: Relevant Statutory and Regulatory Materials

Taiwan Code of Civil Procedure (2003.06.25 Amended)²⁸

- Article 40 Any person who has legal capacity has the capacity to be a party.
A fetus has the capacity to be a party in an action concerning the entitlement of its interests.
An unincorporated association with a representative or an administrator has the capacity to be a party.
A central or local government agency has the capacity to be a party.
- Article 41 Multiple parties, who have common interests and may not qualify to be an unincorporated association provided in the third paragraph of the preceding Article, may appoint one or more persons from themselves to sue or to be sued on behalf of the appointing parties and the appointed parties.
After the appointment has been made in a pending action in accordance with the provision of the preceding paragraph, all parties who are not appointed shall withdraw from the proceeding.
The appointed parties provided in the two preceding paragraphs may be substituted, increased in number, or cancelled. Such substitution, increase in number, or cancellation shall not take effect until after a notice of such action is served upon the opposing party.
- Article 42 The appointment of representative parties, and the substitution, increase in number or cancellation thereof in accordance with the provision of the preceding Article, shall be evidenced in writing.
- Article 43 When any of the parties who have been appointed in accordance with the provision of Article 41 has lost its capacity to sue due to death or for any other reason, the remaining appointed parties may continue to conduct the litigation for the entire body.
- Article 44 The appointed parties may conduct all acts of litigation for the appointing parties, provided however that the appointing parties may restrict the appointed parties authority to abandon claims, admit claims, voluntarily dismiss the action, or settle the case.
The restriction of authority imposed by one of the appointing

²⁸ See <http://jirs.judicial.gov.tw/ENG/> (in English).

parties shall have no effect with regard to the other appointing parties.

Any restrictions provided in the first paragraph shall be evidenced in writing as prescribed in Article 42 or submitted to the court by subsequent pleadings.

Article 44- 1 Multiple parties with common interests who are members of the same incorporated charitable association may, to the extent permitted by said association's purpose as prescribed in its bylaws, appoint such association as an appointed party to sue on behalf of them.

Where an incorporated association initiates an action for monetary damages on behalf of its members in accordance with the provision of the preceding paragraph, if the entire body of the appointing parties agrees to allow the court to grant the full amount of a monetary award to them as a whole body and prescribes how such total award shall be distributed, and furthermore, if the entire body has filed a pleading to such effect, then the court may award a total sum of money to the entire body of the appointing parties without specifying the amount that the defendant must pay to each of the appointing parties respectively. The provisions of Articles 42 and 44 shall apply mutatis mutandis to the circumstance provided in the first paragraph of this article.

Article 44- 2 When multiple parties, whose common interests have arisen from the same public nuisance, traffic accident, product defect, or the same transaction or occurrence of any kind, appoint one or more persons from themselves in accordance with the provision of Article 41 to sue for the same category of legal claims, the court may, with the consent of the appointed party, or upon the original appointed party's motion which the court considers appropriate, publish a notice to the effect that other persons with the same common interests may join the action by filing a pleading within a designated period of time specifying: the transaction or occurrence giving rise to such claim; the evidence; and the demand for judgment for the relief sought. Those persons so joining shall be deemed to have made the same appointment in accordance with the provisions of Article 41.

Other persons with the same common interest may also move the court to publish the notice provided in the preceding paragraph.

A written copy or photocopy of the pleading of joinder shall be served upon all parties to the action.

The publication period of the notice provided for in the first paragraph shall be no less than twenty days. The same notice shall be posted on the court's bulletin board and published in official gazettes, newspapers, or other similar means of communication. The expenses for such publication shall be advanced by the national treasury.

When the appointed party provided in the first paragraph does not agree to such joinder, the court may, on its own initiative, publish a notice to inform other persons with the same common interests to initiate actions and then the court will consolidate the actions.

Article 44-3 An incorporated charitable association or a foundation may initiate, with the permission of its competent governmental business authority and to the extent permitted by the purposes as prescribed in its bylaws, an action for injunctive relief prohibiting specific acts of a person who has violated the interests of the majority concerned.

The Judicial Yuan and the Executive Yuan jointly shall prescribe regulations governing the permission provided in the preceding paragraph as well as appropriate supervision.

Article 44-4 In actions initiated in accordance with the provisions of the three preceding Articles, the court may, on motion, appoint an attorney as an advocate for the plaintiff.

The appointment of an attorney in accordance with the provision of the preceding paragraph shall be made only insofar as necessary for asserting or defending rights.

Article 77-13 In matters arising from proprietary rights, the court cost shall be 1,000 New Taiwan Dollars [NTD] on the first NTD100,000 of the price or claim's value, and an additional amount shall be taxed for each NTD10,000 thereafter in accordance with the following rates: NTD100 on the portion between NTD100,001 and NTD1,000,000 inclusive; NTD90 on the portion between NTD1,000,001 and NTD10,000,000 inclusive; NTD80 on the portion between NTD10,000,001 and NTD100,000,000 inclusive; NTD70 on the portion between NTD100,000,001 and

NTD1,000,000,000 inclusive; and NTD60 on the portion over NTD1,000,000,000. A fraction of NTD10,000 shall be rounded up to NTD10,000 for purposes of taxing court costs.

Article 77-22 The appointed party who initiated an action in accordance with the provision of Article 44-2 may temporarily be exempted from paying the portion of the court costs in excess of NTD 600,000 if the amount of court costs taxed is more than NTD 600,000.

No court cost will be taxed on an action initiated in accordance with the provision of Article 44-3.

The court of first instance shall, after the action is concluded, make a ruling on its own initiative to tax court costs, the payment of which will be temporarily exempted against the party who should bear such cost in accordance with the provision of the first paragraph.

Article 77-23 The Judicial Yuan shall prescribe the items and rates of taxable fees for photocopies, video recording, transcripts, translation, daily fees, travel expenses of witnesses and expert witnesses, and other fees and disbursements necessary for the proceeding items.

Fees for transportation, publication in official gazettes, newspapers and compensation of expert witness as assessed by the court, shall be calculated according to the actual cost.

Advance payments received from the parties of the fees and disbursements referred to in the two preceding paragraphs shall be applied exclusively to the case for the items of designated fees. Fees for service effected by mail or telecommunication, and fees for meals, accommodation and transportation as incurred by the judge, court clerk, executive officer, and interpreter for conducting acts of litigation outside the courtroom shall not be taxed additionally.

Article 77-25 When the court or the presiding judge has duly appointed an attorney to act as the special representative or advocate for a party, the compensation to be paid to such appointed attorney shall be determined in the discretion of the court or the presiding judge.

Both the compensation provided in the preceding paragraph and the compensation provided in the first paragraph of Article 466-3 shall be included as part of litigation expenses. The Judicial Yuan

shall prescribe the payment rates of such compensation taking into consideration the opinions of the Ministry of Justice and the Taiwan Bar Association.

- Article 78 The losing party shall bear the litigation expenses.
- Article 196 Except as otherwise provided, the means of attack or defense shall be presented in due course according to the phase of litigation before the conclusion of the oral-argument sessions.
Where a party, attempting to delay litigation or through gross negligence, presents an attack or defense in a dilatory manner at the possible cost of a timely conclusion of the litigation, the court may deny the means of attack or defense so presented. The same rule shall apply when the purpose of the means of attack or defense presented is unclear and the presenting party fails to provide a necessary explanation after being ordered to do so.
- Article 199 The presiding judge shall exercise care when directing the parties to present appropriate and complete arguments about the facts and the laws regarding the matters involved in the action.
The presiding judge shall question the parties or direct them to make factual and legal representations, state evidence, or make other necessary statements and representations; where the presented statements or representations are ambiguous or incomplete, the presiding judge shall direct the presenting party to clarify or supplement.
The associate judges may, after informing the presiding judge, question or direct the parties.
- Article 253 A party may not reinitiate an action which has been initiated during its pendency.
- Article 288 When the court cannot obtain conviction from the evidence introduced by the parties, the court may take evidence on its own initiative if such is necessary for finding the truth.
In taking evidence in accordance with the provision of the preceding paragraph, the parties shall be accorded an opportunity to be heard.
- Article 326 An expert witness shall be appointed by the court in which the action is pending and the number of expert witnesses shall also be determined by the court.
Before appointing an expert witness, the court may accord the

parties an opportunity to be heard; where the parties have agreed on the designation of an expert witness, the court shall appoint such expert witness as agreed-upon by the parties, except where the court considers that such expert witness is manifestly inappropriate.

The court may replace an appointed expert witness.

Article 342 Where the document identified to be introduced as documentary evidence is in the opposing party's possession, a party shall move the court to order the opposing party to produce such document. The motion provided in the preceding paragraph shall specify the following matters:

1. The identification of document requested to be produced;
2. The disputed fact to be proved by such document;
3. The content of such document;
4. The fact that such document is in the opposing party's possession; and
5. The reason why the opposing party has a duty to produce such document.

Where there exists manifest difficulty in specifying the matters provided in the first and the third subparagraphs of the preceding paragraph, the court may order the opposing party to provide necessary assistance.

Article 345 Where a party disobeys an order to produce documents without giving a justifiable reason, the court may, in its discretion, take as the truth the opposing party's allegation with regard to such document or the fact to be proved by such document.

In the case provided in the preceding paragraph, the parties shall be accorded an opportunity to present their arguments.

Article 377 The court may seek settlement at any time irrespective of the phase of the proceeding reached. A commissioned judge or an assigned judge is also authorized to do so.

A third person may, with the court's permission, participate in a settlement. Where the court considers it necessary, the court may also instruct a third person to participate in the settlement.

Article 386 In case of any of the following, the court shall deny the motion provided in the preceding article by a ruling and postpone the oral-argument session:

1. Where the party who fails to appear has not been legally summoned within a reasonable period of time;
2. Where there is reason to believe that the failure of a party to appear is due to force majeure or other justifiable reasons;
3. Where the appearing party cannot provide necessary proof for the matters which the court shall investigate on its own initiative;
4. Where the statements, facts or evidence presented by the appearing party have not been notified to the opposing party within a reasonable period of time.

Article 401 In addition to all parties, a final and binding judgment is binding on a person who becomes a party's successor after the initiation of the action and on a person who possesses the claimed object for the parties or their successors.

A final and binding judgment to which a party has acted as the plaintiff or the defendant for another person is also binding on such other person.

The provisions of the two preceding paragraphs shall apply *mutatis mutandis* to the declaration of provisional execution.

Article 466-1 Unless the appellant or his/her statutory agent himself/herself is qualified to act as an attorney, an appellant shall appoint an attorney as his/her advocate in the appeal from the judgment of a court of second instance. .

In cases where the spouse, or a relative by blood within the third degree or a relative by marriage within the second degree to the appellant is qualified to act as an attorney, and in cases where the appellant is a juridical person or a central or local government agency and has a full-time personnel who is qualified to act as an attorney, such persons may act as the advocate for the appellant in the third instance if the court considers it appropriate to permit such appointment.

In the situation provided in the provisions of the first paragraph and the second paragraph, the appellant shall make a preliminary showing either upon appeal or upon appointing the advocate.

Where the appellant fails to appoint his/her advocate in accordance with the provisions of the first and the second paragraphs, or he/she has appointed an advocate in accordance with the provision of the second paragraph but the court denies the appointment by reason of such appointment being

inappropriate, the court of second instance shall order the appellant to rectify such defect within the period it designates. If the appellant fails to rectify the defect within the designated period and further fails to make the motion provided in Article 466-2, the court of second instance shall dismiss the appeal by a ruling on the ground that it was not filed in conformity with the law.

Article 466-3 Compensation paid to the attorney in the court of third instance shall be included as a part of the litigation expenses and the maximum amount thereof shall be prescribed.

The Judicial Yuan shall prescribe rules governing the appointment of an attorney to act as the advocate provided in Article 466-1.

The rules provided in the preceding paragraph shall be prescribed by reference to the opinions of the Ministry of Justice and the Taiwan Bar Association.

Consumer Protection Law (2003.01.22 Amended)

Article 47 Consumer litigation may be subject to the jurisdiction of the court of the place where the consumer relationship arises.

Article 48 The high courts, their lower courts and branches thereof may establish a consumer affairs tribunal or designate a magistrate dedicated to the hearing of consumer litigations.

If a court renders a judgment unfavorable to business operators, the court may at its own discretion ,ex officio ,declare provisional execution of the judgment without security or with reduced security.

Article 49 A consumers protection group, which has been established for more than 3 years after its approval, has obtained upon application a rating of excellence by the Consumer Protection Commission, maintains a special staff dealing with consumer protection, and meeting any of the following requirements, may, with the approval of the consumer ombudsman , bring in its own name an action for damages to consumers in accordance with Article 50 or an action for omission in accordance with Article 53:

1. An association established as juristic person having more than 500 members, or
2. A foundation established as a juristic person having total registered assets of NT\$10 millions or more.

If a consumer protection group brings litigation in accordance with the preceding paragraph, it shall retain a lawyer to litigate on its behalf. The engaged lawyer may request the reimbursement of any necessary expenses but not claim any compensation for such litigation.

If a consumer protection group has committed any unlawful conduct in connection with the litigation brought by it in accordance with the 1st paragraph one, the competent authorities of having chartered its establishment shall revoke its approval.

Regulation governing the rating of consumer protection groups shall be separately provided for by the Consumer Protection Commission.

Article 50 Where a mass of consumers are injured as the result of the same incident, a consumer protection group may take assignment of the rights of claims from 20 or more consumers and bring litigation in its own name. Consumers may revoke such assignment of the rights of claims before the close of oral arguments, in which case they shall notify the court.

In the forgoing litigation, if some customers terminate their assignment of the rights of claims and thus the said litigation result in less than 20 consumers the function of consumer protection group standing will not be affected.

The assignment of the rights of claims referred to in the 1st paragraph shall include non-pecuniary damages set forth in Articles 194 and 195, paragraph 1, of the civil code.

The period of statute of limitations for consumers to seek damages referred to in the preceding paragraph shall be separately determined for each consumer who has made such assignment.

After taking an assignment of the rights of claims set forth in the 3rd paragraph, the consumer protection group shall deliver the balance of compensation received as a result of the litigation by deducting necessary expenses for the litigation, and lawyer fees set forth in 2nd paragraph of the preceding Article , to consumers

who have made such assignment of rights.

Consumer protection groups shall not claim rewards from consumers for litigation referred to in the 1st paragraph .

Article 51 In a litigation brought in accordance with this law, the inquired consumer may claim for punitive damages up to 3 times the amount of actual damages as a result of injuries caused by the willful act of misconduct of business operators; however, if such injuries are caused by negligence, a punitive damage up to one time the amount of the actual damages may be claimed.

Article 52 If a consumer protection group brings a litigation in accordance with Article 50 in its own name, the court fees for the portion of the claim exceeding NT\$600,000 shall be waived.

Article 53 Consumer ombudsmen or consumer protection groups may petition to the court for an injunction to discontinue or prohibit a business operator's conduct which has constituted a material violation of the provisions of this law relating to consumer protection.

Court fees for a litigation referred to in the preceding paragraph shall be exempted.

Article 54 If a mass of parties injured out of the same consumer relationship select one or more persons to bring an action for damages in accordance with Article 41 of the Code of Civil Procedures, the court may announce by public notice after obtaining the consent of the chosen representative(s), whereby other injured parties may within a certain period of time set forth in writing the facts, evidences and declarations of claims resulting from the injury and request for damages in the same litigation proceeding . Persons making such claims shall be deemed to have made the election in accordance with Article 41 of the Code of Civil Procedures.

Copies of the papers concerning the joinder of parties and claims shall be prepared in copies and be sent to both the plaintiffs and the defendants.

The time period referred to in the 1st paragraph 1 shall be not less than 10 days. The public notice shall be attached to the bulletin board of the courthouse and shall be published in newspapers with expenses to be paid for by the National Treasury.

Article 55 Articles 48 and 49 of the Code of Civil Procedures shall apply, mutatis mutandis, to litigations referred to in the preceding article.

Securities Investor and Futures Trader Protection Act (2002.07.17 Announced)

Article 7 The competent authority shall designate the following securities and futures market organizations to establish a protection institution:

1. Taiwan Stock Exchange Corporation
2. Taiwan Futures Exchange Corporation
3. GreTai Securities Market
4. Taiwan Securities Central Depository Company
5. Chinese Securities Association
6. Securities Investment Trust and Consulting Association of the R.O.C.
7. Federation of Futures Industry Associations
8. All securities finance enterprises
9. Other securities- or futures-related organizations or enterprises as designated by the competent authority.

The securities- and futures-related organizations referred to in the preceding paragraph shall contribute a certain amount of assets, with the amount contributed to be determined through coordination by the competent authority.

Article 18 For the furtherance of its operations, the protection institution shall establish a protection fund. In addition to assets contributed in accordance with Article 7, paragraph 2, sources of fund assets shall include the following:

1. Allocation by every securities firm of 0.00000285 (2.85 millionths) of the total volume of consigned securities trades during the previous month, to be made by the 10th of each month.
2. Allocation by every futures commission merchant of NT\$1.88 for each futures consignment contract executed during the previous month, to be made by the 10th of each month.
3. Allocation of 5 percent of the transaction charges received during the previous month by, respectively, the Taiwan Stock Exchange Corporation, the Taiwan Futures Exchange Corporation and the GreTai Securities Market, to be made by the 10th of each

month.

4. Interest on and proceeds from utilization of the protection fund.

5. Assets donated by ROC or foreign companies, corporate bodies, groups or individuals.

The amounts or allocation ratios under subparagraphs 1 to 3 of the preceding paragraph may be adjusted by the competent authority in view of market conditions or the financial status or the effectiveness of risk management at any individual securities firm or futures commission merchant, provided that any increase shall be limited to no more than 50 percent.

When the protection fund's net value exceeds NT\$5 billion, the competent authority may order a temporary suspension of allocations from a securities firm or a futures commission merchant pursuant to paragraph 1, subparagraphs 1 and 2, when the given securities firm or futures commission merchant has allocated funds for a period in excess of ten years.

When the protection fund is insufficient for the purposes given in Article 20, paragraph 1, the protection institution may borrow funds from financial institutions, subject to approval by the competent authority.

Given failure to pay the amounts to be allocated in accordance with paragraph 1, subparagraphs 1 to 3, the protection institution may report to the competent authority and request that it order payment within a specified period; given continued failure to pay at the conclusion of the specified period, the competent authority may duly seek compulsory enforcement under the law.

Article 28 For protection of the public interest and within the scope defined in its articles of incorporation, the protection institution may bring an action or submit a matter to arbitration in its own name with respect to a single securities or futures matter injurious to a majority of securities investors or futures traders, after having been so empowered by not less than 20 securities investors or futures traders. The securities investors or futures traders may withdraw the empowerment prior to conclusion of oral arguments or examination of witnesses and shall provide notice to the court or arbitration tribunal.

In the event that the protection institution has brought an action or submitted a matter to arbitration in accordance with the previous

paragraph, and other securities investors or futures traders suffering damages due to the same securities or futures matter empower it to bring action or submit a matter to arbitration, it may expand the claims asserted for judgment or arbitration prior to conclusion of oral proceedings or examination of witnesses in the court of first instance.

The empowerment to bring action or submit a matter to arbitration referred to in the preceding two paragraphs shall be granted through a written instrument.

Article 4 of the Arbitration Act shall not apply when a protection institution brings an action or expands the claims asserted for judgment pursuant to paragraphs 1 and 2.

Article 29 In the event that securities investors or futures traders withdraw the empowerment to bring an action or to submit matters to arbitration pursuant to Article 28, that portion of the action or arbitration proceedings shall be interrupted, and the securities investors or futures traders shall declare their intention of resuming the proceedings in the action or arbitration. The court or arbitration tribunal may also order, ex officio, the securities investors or futures traders to resume the proceedings.

When the protection institution has brought an action or submitted a matter to arbitration in accordance with Article 28, paragraph 1 and a portion of the securities investors or futures traders withdraw their empowerment for the same, so that the securities investors or futures traders remaining number fewer than 20, the protection institution may nevertheless continue proceedings with regard to remaining portions of the action or mediation.

Article 30 Extinctive prescription for individual securities investors or futures traders' rights of claim for damages under Article 28, paragraphs 1 and 2 shall be calculated separately.

Article 31 The protection institution shall have the power to perform all procedural acts in relation to an action or an arbitration it is empowered to initiate by securities investors or futures traders, provided that those securities investors or futures traders may restrict its power to make waivers, accept liability, withdraw, or enter into a settlement.

The effect of a restriction set by one member of the group of

securities investors or futures traders shall not extend to other securities investors or futures traders.

Any restriction as referred to in paragraph 1 shall be set out in the written instrument referred to in Article 28, paragraph 3, or in a memorandum submitted to the court or the arbitration tribunal.

Article 33 The protection institution shall disburse compensation it receives in an action or arbitration to the securities investors or futures traders who empowered it to initiate the action or arbitration after deducting the expenses required in either of those procedures. The protection institution is not entitled to seek remuneration for itself.

Article 35 In the event the protection institution institutes an action or an appeal pursuant to Article 28, it shall be exempted from court costs on that portion of the value of the object of litigation or the compensation amount sought in excess of NT\$100 million. In the event an opposing party institutes an appeal and receives a final and unappealable judgment in its favor, its advance payment of court costs shall be returned after deduction of the other fees for which it is responsible, and the protection institution shall be exempt from costs recovery with regard to the court costs on the portion in excess of NT\$100 million of the object of litigation or compensation amount sought.