



Analysis the Ease of Shareholder Suits Index through Doing Business 2020

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ABSTRACT: This article starts with the Doing Business 2020, focusing on the interest-related indicators of small and medium shareholders, especially the issues related to the litigation facilitation system, and discussing the reasons for China’s low score in this indicator, that is, the qualification threshold for the plaintiff of small and medium shareholders. Too high, and the lack of reporting statistics. After that, through the jurisprudence analysis of the problem, corresponding improvement suggestions are put forward to optimize the business environment for small and medium investors.

KEYWORDS: Business Environment; Evidence Collection; Shareholder Suits

I. INTRODUCTION

On October 24, 2019, the World Bank (hereinafter referred to as the World Bank) reconvened the "Doing Business 2020 (DB2020)", which raised China's business environment ranking by 15 places and ranked 31st among 190 economies in the world. The economies that have been ranked among the top ten for improving the business environment in the world for two years are also in the top 20% for the first time. Among the specific individual evaluation indicators, the indicator of protecting minority investors has inconvenienced significantly. The ranking of this individual item has risen from 64th in 2019 to 28th, and the individual score has also inconvenienced by 10 points, which has a significant impact on the overall ranking. The importance is self-evident. At present, China's economy is in a critical period of transforming its development mode and optimizing the economic structure, and optimizing the business environment is an important point of force. In terms of protecting the interests of small and medium investors, starting with the prominent issues reported by the World Bank, combined with the current legal status of the protection of the rights and interests of small and medium shareholders in China, the protection of the interests of small and medium investors is improved. Next, this article will elaborate on the relevant indicators.

II. INDICATORS FOR PROTECTING MINORITY INVESTORS

The “Protecting Minority Investors” has a total score of 50 points, and China has a total score of 36 points. There are 2 secondary indicators. The first is a conflict of interest indicator, which is used to measure the ability to regulate and control conflicts of interest. This indicator has a full score of 30. China scored 19 points. Another secondary indicator is the shareholder governance scope index, which measures the size of shareholders’ rights in corporate governance. The full score of this indicator is 20 points, while China’s score is 17 points. The following table 1-1 shows the specific indicator status.

Table 1-1. China's score for Protecting Minority Investors

<i>Protection from conflicts of interest</i>			<i>Shareholders rights in corporate governance</i>		
<i>Extent of disclosure index</i>	<i>Extent of director liability index</i>	<i>Ease of shareholder suits index</i>	<i>Extent of shareholder rights index</i>	<i>Extent of ownership and control index</i>	<i>Extent of corporate transparency index</i>
10	4	5	5	6	6



From the point of view of the scoring results, although the Protecting Minority Investors scores relatively high, but the directors' responsibility degree index, shareholder rights index, and the convenience of litigation indicators are less scored. Now this article will further analyze the above indicators, especially for shareholders. Convenience is a single indicator for analysis, so this indicator is selected for analysis. First, the indicator has a low score, which is worthy of in-depth analysis by Chinese legal scholars to promote the improvement of the business environment. The second is the three-level indicator. When it comes to specific investigation issues, China has not scored, which is more worthy of discussion. Based on the above considerations, the author will conduct a specific analysis.

III. REASONS FOR THE LOW SCORE OF THE CONVENIENCE INDEX OF SHAREHOLDER LITIGATION

In the survey of the convenience index of shareholder litigation, according to the research method of the World Bank, based on the case model given in the World Bank questionnaire, under the index of Ease of Shareholder Suits Index, the World Bank mainly put forward 6 scoring questions, with a full score of 10. point. The specific issues are as follows:

- a. Can a shareholder representing 10% of the buyer's share capital check the transaction documents before filing a lawsuit? (0-1 points)
- b. Can the plaintiff obtain any documents from the defendant and witnesses? (0-3 points)
- c. Can the plaintiff request the type of documents from the defendant without knowing the specific documents? (0-1 points)
- d. Can the plaintiff directly question the defendant and witnesses during the trial? (0-2 points)
- e. Is the level of evidence required in civil litigation lower than the level of evidence in criminal cases? (0-1 points)
- f. Can the shareholder plaintiff recover legal expenses from the company? (0-2 points)

According to the Doing Business 2020, China has no score on questions b and c, that is, whether it can obtain any documents from the defendant and witnesses and whether the plaintiff can request documents from the defendant without knowing the specific documents. The answer to the question is negative. At this point, we clearly see that the plaintiff in the Chinese shareholder litigation case, that is, the small and medium shareholders in the case, are relatively limited in obtaining materials related to the litigation in the shareholder litigation issue. More, the reason for the above situation needs to be analyzed in conjunction with the status quo of the rule of law in China's shareholder litigation.

IV. LEGAL ANALYSIS OF THE EASE OF SHAREHOLDER SUITS INDEX

Based on the World Bank report, shareholder litigation issues are mainly concentrated in two aspects. One is the eligibility of the plaintiff, and the other is the difficulty of obtaining evidence for small and medium shareholders in the litigation process. On this issue, China's score The situation is worse.

A. *The Qualification Threshold of the Plaintiff for Small and Medium Shareholders Is High*

First, Article 152 of the "Company Law of the People's Republic of China" (hereinafter referred to as the "Company Law") stipulates that if directors and senior managers violate the provisions of laws, administrative regulations or the company's articles of association and harm the interests of shareholders, shareholders may report to the people. The court filed a lawsuit, here is the shareholder's direct right to litigate. However, Article 151 of the "Company Law" stipulates that directors and senior managers who violate laws, administrative regulations, or the company's articles of association when performing their duties in the company and cause losses to the company shall be liable for compensation. The limited liability company Shareholders of a company limited by shares or shareholders who individually or collectively hold more than one percent of the company's shares for more than 180 consecutive days may request the board of supervisors or the supervisor of a limited liability company that does not have a board



of supervisors to bring a lawsuit to the people's court; Anyone who violates laws, administrative regulations, or the company's articles of association while performing the company's duties and causes losses to the company shall be liable for compensation. The aforementioned shareholders may request the board of directors or the executive director of a limited liability company without a board of directors to file a lawsuit in the people's court.

The above-mentioned regulations stipulate that company shareholders can act on their behalf when the company's interests are harmed by major shareholders, management and other personnel, and the company fails to exercise its rights of litigation, and sue a third party in the name of the company that harms the company's interests. It is stipulated here that small and medium shareholders can become the main body of the plaintiff, but the requirements for the eligibility of the small and medium shareholders to become the main body of the plaintiff are relatively high. They must be shareholders who hold more than one percent of the company's shares alone or in total for more than 180 consecutive days. This is relatively unfavorable to a small number of small and medium investors. Of course, for most companies, especially stock limited liability companies and listed companies, due to the large number of small and medium investors and the large number of shareholders, the regulations on shareholding ratio and holding time are also conducive to avoiding many invalidation lawsuits. , To avoid wasting more litigation resources.

In addition to the stricter Chinese regulations regarding the eligibility of the plaintiff, China's shareholder litigation procedures are also stricter than those in foreign countries. With regard to shareholder litigation issues, according to Article 151 of the Company Law, the second In the paragraph, shareholders can directly file a lawsuit in their own name for the benefit of the company unless the company is slack in exercising the right of litigation. This reflects that the company's resources must be exhausted before legal means can be used. After the shareholder litigation goes to court, the entire Litigation procedures are also relatively strict.

B. The Advantages of the Evidence Collection System Have Not Been Reflected

Although the threshold for acceptance is high, with the continuous development of the market economy, China has gradually established a relatively complete set of procedures to regulate the protection of small and medium investors in shareholder litigation. For example, in the collection of evidence, the "Civil Litigation Article 64 of the Law stipulates that the parties have the responsibility to provide evidence for their claims. If the parties and their agents ad litem are unable to collect evidence on their own due to objective reasons, or evidence that the people's court deems necessary for the trial of the case, the people's court shall investigate and collect it. Article 17 of the "Several Provisions of the Supreme People's Court on Evidence in Civil Litigation" stipulates that if one of the following conditions is met, the parties and their litigation representatives may apply to the people's court for investigation and collection of evidence: (1) The evidence applied for investigation and collection belongs to relevant state departments Archival materials that must be preserved and retrieved by the people's courts according to their powers; (2) Materials involving state secrets, commercial secrets, and personal privacy; (3) Other materials that the parties and their litigation agents cannot collect on their own due to objective reasons. In addition, Article 112 of the "Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China" also stipulates that if the documentary evidence is under the control of the other party, the party who bears the burden of proof can apply to the people's court in writing before the expiration of the time limit for proof. Order the other party to submit. If the application is justified, the people's court shall order the opposing party to submit it. In view of the above, in accordance with the law, the parties to the litigation do not have the right to obtain evidence related to the case on their own, and the court decides whether to approve such evidence collection application. Specifically, the court can decide on its own to require any party in the litigation to provide specific evidence, but it may not necessarily satisfy the party's application.

Article 33 of the "Company Law" stipulates that shareholders have the right to consult and copy the company's articles of association, meeting minutes of the shareholders meeting, resolutions of the board of directors, resolutions of the board of supervisors, and



financial accounting reports. Shareholders can request to consult the company's accounting books. If a shareholder requests to consult the company's accounting books, he shall submit a written request to the company to explain the purpose. If the company has reasonable grounds to believe that the shareholder's access to the accounting books has an improper purpose and may harm the company's legitimate interests, it may refuse to provide access, and shall reply to the shareholders in writing and explain the reasons within 15 days from the date of the shareholder's written request. If the company refuses to provide inspection, shareholders may request the people's court to request the company to provide inspection. Article 97 stipulates that shareholders have the right to consult the company's articles of association, the register of shareholders, the stubs of corporate bonds, the minutes of the shareholders meeting, the resolutions of the board of directors, the resolutions of the board of supervisors, and the financial and accounting reports, and to put forward suggestions or inquiries about the company's operations.

These regulations have reduced the difficulty for small and medium shareholders to provide evidence for litigation due to objective reasons, and provided protection for small and medium shareholders to obtain evidence in shareholder litigation. Therefore, China has no score on this issue, which is somewhat inconsistent with the facts.

V. IMPROVEMENT SUGGESTIONS

A. *Balance the subject qualifications of small and medium shareholders*

In the improvement of the rule of law in the future, it is necessary to think about achieving a better balance between preventing invalid litigation and lowering the eligibility standard of the plaintiff, giving small and medium investors more litigation sovereignty. Appeals, it is also easier to seek legal channels to protect their own interests.

B. *Actively implement relevant systems and other protective measures*

In addition to the above measures, this article suggests that the advantages of our country's evidence collection system can be actively explained in future World Bank reports, so that it can be fully reflected in the business environment report. In addition, the Ease of Shareholder Suits Index is more of a measure of the convenience of relief when the interests of small and medium investors are harmed. Relief is an important means of safeguarding rights after infringements occur. Litigation and justice are the last line of defense for social justice. However, to create a good business environment and protect small and medium investors, in addition to the need to improve the infringement remedy system to protect the interests of small and medium investors, it is more important to support and protect small and medium investors in the process of investing and starting a business. For the interests of investors, prevent and resolve the investment risks of small and medium investors.

VI. CONCLUSIONS

Creating a good business environment requires the efforts of the market, the government and the society. Since the reform and opening up, in the general environment of China's market economy, the overall quality of China's business environment has been continuously improved. This is beyond doubt, but it must be admitted that there are still many deficiencies and needs to be improved in development. The place. The World Bank's business report reflects to a certain extent the deficiencies in the development of China's business environment and points out the direction of optimization. The issue of the facilitation system for small and medium shareholders' litigation that this article focuses on is one of them.

Of course, the report also has shortcomings. For example, the survey methods used for individual indicators and the survey area have certain limitations, and the real improvement of the business environment should not be limited by the relevant reports. What we have to do is to start from the report, carefully analyze the problems reflected in the report, implement the problems in the actual development of China, combine the actual situation of China's economic development, work hard to solve the existing problems,



and then build a good structure. Business environment.

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