

**Research Assessment Exercise 2020**  
**Impact Case Study**

**University:** **The Chinese University of Hong Kong**

**Unit of Assessment (UoA):** **Law-19**

**Title of case study:** **Better compensation for investors in Mainland China and Hong Kong**

**(1) Summary of the impact** (indicative maximum 100 words)

The research conducted by the Law Faculty has addressed a longstanding problem – how to improve compensation remedies for aggrieved investors in China’s securities markets – which has hindered the effectiveness of the justice process for securities investors. At a time when less than ten percent of aggrieved investors have sought compensation remedies against securities-related financial misconduct, we have formulated practical law reform suggestions which have been adopted by the China Securities Regulatory Commission, by the Shanghai Financial Court and by the HK Securities and Futures Commission. As a result, the regime for securities civil suits has become significantly more effective and investors can now more easily bring security-related civil suits and obtain compensation remedies for the harm caused by securities misconducts, whilst processing by the courts was also facilitated.

**(2) Underpinning research** (indicative maximum 500 words)

*2.1. Research context* / Research undertaken at CUHK by Professor Robin Hui Huang from 2010 to 2019 has allowed for a better understanding of legal enforcement against securities misconduct that affects investors in China’s securities markets. Securities investors are a particular type of investor who invest in tradable financial assets and thus require a framework characterized by high levels of regulatory protection. However, it was reported that in China securities litigation has been brought in less than thirty percent of cases involving securities-related misconduct, whilst compensation remedies have been sought by less than ten percent of all aggrieved investors. In effect, legal grey areas have over the past years negatively affected investor protection by making civil suits related to securities markets overly complex. For instance, questions such as who can sue, who can be sued, how to establish the causal link between securities misconduct and investors’ loss, how to calculate damages, and how to bring legal suits have remained unanswered. In other words, many investors were left without an adequate supporting legal framework and without compensation remedies for the harm they suffered from securities market misconduct. The negative impact of the system in place was therefore twofold: i) the system affected investors financially, and ii) the lack of protection also undermined public confidence in the Chinese securities market and thus hampered the healthy development of the market and of the economy at large.

*2.2. Research collaboration* / In response to this, the Faculty undertook an empirical inquiry to understand the reasons behind the low numbers mentioned previously. Based on theoretical and comparative studies already publicly available, we developed several hypotheses. For instance, we considered whether the pre-suit procedural requirement could unduly restrict the bringing of securities civil litigation. Second, we considered whether the low number of cases brought to court could be caused by a lack of securities lawyers. Third, we considered whether the shortage of cases could be largely attributable to the inhospitable attitude of the courts. We then decided to verify whether these hypotheses could be confirmed through both quantitative and qualitative ways. On the quantitative side, we proceeded with an examination of all the relevant cases handled by the regulators and the courts to determine the temporal and geographical distribution of cases, as well as recovery rates. On the qualitative side, we conducted interviews with academic, governmental and

professional contacts in China, including judges, officials of the China Securities Regulatory Commission, lawyers and investors. This helped to i) provide a multi-faceted perspective on the research issue, to ii) produce major insights, including the real reason for the low numbers being the issue of local judicial protectionism, the need for preserving the pre-suit procedural requirement, the undesirability of transplanting the US-style class action into China, and the suggestion of allowing securities civil suits to be brought in the court of the place where the company is listed, namely Shanghai or Shenzhen, and to iii) foster engagement and increase research relevance. In this regard, research projects were carried with the support of the Investor Service Center of China Securities Regulatory Commission and of the Shanghai Financial Court, which gave us access to internal data sources and helped us maximize the relevance of the research.

*2.3. Main research findings* / The underlying research was conducted from 2006 to present and has culminated in the production of two books and four academic articles, which have been disseminated through conferences, media and policy reports (see **Research References**), and were eventually used by the securities regulatory authority, the courts and the lawyers (see **Corroborating sources**). Of all the research produced, a paper published in 2013 has become a particular reference in the field (**Reference 3.1**). This research has produced impactful insights, in that it has highlighted the existence of a major problem that only a very small portion of aggrieved investors was able to bring civil suits against and get compensation for a very small portion of securities misconduct in China, which has since then been acknowledged by the courts, the securities regulator and practicing lawyers. The research conducted has emphasized the need to find out the reasons behind the problem and based on such examination, put forward proposals for improvement.

**(3) References to the research** (indicative maximum of 6 references)

**3.1** Hui Huang, ‘Private Enforcement of Securities Law in China: A Ten-year Retrospective and Empirical Assessment’ (2013) 61(4) *American Journal of Comparative Law* 757-798;

**3.2** Hui Huang, *Securities and Capital Markets Law in China* (UK, Oxford University Press, 2014);

**3.3** Hui Huang and Nicholas Howson (eds), “Enforcement of Corporate and Securities Law: China and the World” (Cambridge University Press, 2017);

**3.4** Hui Huang, “The Hong Kong Market Misconduct Tribunal and its Inspiration for Mainland China” 2018 (1) *Touzi Zhe* [Investors] 184-202;

**3.5** Hui Huang, “The Prospect and Evolution of the Securities Regulatory Cooperative Regime between Hong Kong and Mainland China under the ‘One Country, Two Systems’ Arrangement” (2017) 5 *Bijiaofa Yanjiu* [Journal of Comparative Law] 12-25;

**3.6** Yu Xiao and Hui Huang, ‘Advance Compensation for Securities Market Misconduct: Jurisprudential Analysis and Legal Construction’ 2019(8) *Fa Xue* [Law Science] 368-380. |

**(4) Details of the impact** (indicative maximum 750 words)

*4.1. Impact timeline* / The research conducted by Professor Huang since 2006 has made a positive contribution to the improvement of compensation remedies for aggrieved investors in the Chinese securities market, because it provided a better framework for the protection of investors in the Chinese and in the Hong Kong securities markets, thus alleviating a problem and impacting investors on a national scale.

*4.2. Impact on Mainland China Regulators, Courts and Lawyers* / First, the insights produced have helped create awareness on the part of the Mainland China regulators and courts, who have adopted some of the suggestions made, thereby improving compensation remedies for aggrieved investors. In October 2018, the Shanghai Financial Court has for instance largely followed the suggestion that the pre-suit procedural prerequisite be simplified (**Sources 5.1**). In January 2019, the Court has also followed our suggestions regarding the adoption of the so-called ‘model suit’ mechanism aimed at

facilitating the hearing of a large number of cases arising from the same instance of securities misconduct (**Sources 5.1**). In March 2019, the Court has recently funded a new CUHK Law research project aimed at understanding how to implement more suggestions produced by our research, such as centralized jurisdiction over securities civil cases (**Sources 5.1**). In August 2019, our paper derived from the research project report was presented at a conference co-organized by the Adjudication Jurisprudence Committee of China Law Society and the High Court of Shanghai Municipality, and was awarded the Second Prize for Best Paper (**Sources 5.8**).

Second, and once again in line with our research suggestions, since July 2016, the Investor Service Centre (ISC) of the China Securities Regulatory Commission (CSRC) has introduced the mechanism of public interest group litigation, also known as securities supporting litigation, which was promoted in our research, and under which the Investor Service Centre can now bring litigation on behalf of private investors (**Sources 5.2**). The ISC has furthermore followed our suggestion on the so-called 'Advance Compensation Mechanism' under which the perpetrator of misrepresentation receives leniency in exchange for making advance compensation to the aggrieved investors (**Sources 5.2**). Professor Huang's policy recommendations on the regulation of securities misconduct such as insider trading and market manipulation have been included in internal reports of the CSRC, and have been considered by the CSRC (**Sources 5.9**). As a result, in July 2019, the CSRC agreed to support our research project on cross-border regulatory cooperation between Mainland China and Hong Kong to enhance investor protection in cross-border securities transactions (**Sources 5.5**).

Further, over the past years, our research findings on information disclosure and enforcement of securities law have also been used by self-regulatory bodies such as the Shenzhen Stock Exchange (**Sources 5.3**). Finally, practicing lawyers have also used the research results to dramatically alter their litigation strategies to increase the chance of obtaining compensation remedies for their investor clients. In the words of one leading lawyer in Shanghai who has helped more than 5000 aggrieved investors to get compensation, my research results on important issues such as litigation forms and causality have 'greatly helped to improve [his] professional work'. (**Sources 5.6**).

*4.3. Impact on the Hong Kong Financial Regulator/* Our research also impacted the Hong Kong financial regulator, and Professor Huang was eventually invited to train the Hong Kong Securities and Futures Commission as part of practical, result-oriented and impact-seeking high-level three-day workshops organized in both 2015 and 2016 (**Sources 5.10**). A total of about 96 staff members of the SFC attended the training programs, and the SFC has sent a letter of appreciation, stating that '[t]he training programs helped our staff better understand the law and practice of the Chinese securities regulation and gave us some insight when considering regulatory cooperation with the relevant regulators and government agencies in the Mainland China.' (**Sources 5.10**). During the training programmes, the SFC staff members raised issues over cross-boundary securities law enforcement between Hong Kong and Mainland China. In recent years, the securities markets in Hong Kong and Mainland China have become increasingly integrated with more listings of Mainland-based companies and the introduction of Stock Connect programs. This, however, has not come without problems as illustrated in a growing incidence of market misconduct such as fraudulent listings and cross-boundary market manipulation and insider trading. Hence, in January 2019, building on our expertise in this area, we made a successful grant application to the Policy Innovation and Co-ordination Office of the Hong Kong SAR Government, winning a Public Policy Research Funding to explore policy solutions to improve the effectiveness of cross-boundary securities law enforcement between Hong Kong and Mainland China.

*4.4. Informing and influencing the debate on financial regulation in China /* Finally, our research has informed and influenced the debate on financial regulation in China. Following subsequent discussions with the ISC of the CSRC, we published a policy report entitled 'The Relationship of Civil Compensation, Administrative Fine and Criminal Fine in China's Capital Markets' (August 2018)

which led us to speak at the inaugural conference on investor protection organized by CSRC in September 2018 in Beijing. The policy report was disseminated and well-regarded at this conference which was attended by relevant stakeholders, including many regulators, high-level executives of securities firms and institutional investors. The policy report was overall rated as ‘Excellent’ by the Investor Service Centre, which is worth noting since less than a third of all policy reports sponsored by it are rated ‘Excellent’ and lead to a RMB50,000 award (**Sources 5.2**).

One of the books published as a result of the research has also been used by various regulators. The Shanghai Financial Court used it to improve the efficacy of securities civil litigation, with the effect of making it easier for aggrieved investors to bring and obtain compensation remedies (**Sources 5.1**). In addition, publication of the book has led Professor Huang to deliver the previously mentioned three-day training programs to the Hong Kong Securities and Futures Commission in 2015 and 2016. Beyond regulators, the book’s ability to shape and influence the public debate has also been sanctioned publicly by opinion leaders such as Anthony Neoh, formerly the Chief advisor to the China Securities Regulatory Commission and the Chairman of the Hong Kong Securities and Futures Commission, who has said the underpinning research provided ‘the perfect prism’ through which one may view the detailed workings of the regulation of the securities markets in China (**Sources 3.2**).

The media-kits produced to disseminate the insights of the research have furthermore attracted the attention of the *Securities Times*, which is a state media designated by the CSRC as one of the three official media for disseminating securities news (**Sources 5.7**). The outlet did not only communicate on the research, but it also praised its innovative approach and results. To this extent, Professor Huang has been invited to contribute to further conferences which have significantly contributed to shaping a complex and until then largely uninformed public debate (**Sources 5.4**). He has been invited to give talks to the Standing Committee of the National People’s Congress, People’s Bank of China, the CSRC as well as industry associations.

Last but not least, the research is likely to further impact society in the forthcoming years because it has helped the Faculty to secure funding from public sources and major partnerships have been signed to further develop the research. This includes a research grant awarded by the ISC of the CSRC in 2017, a research grant by Shanghai Financial Court in March 2019 and another research grant by the Shanghai Stock Exchange (**Sources 5.1, 5.2**). |

**(5) Sources to corroborate the impact** (indicative maximum of 10 references)

- 5.1 Letter from The Honorable Dr Lin Xiaonie, Vice-president, Shanghai Financial Court;
- 5.2 Letter from Mr Li Guojun, Head of Research Department, Investor Services Centre, China Securities Regulatory Commission;
- 5.3 Letter from Ms Fu Yan, Head of Legal Department, Shenzhen Stock Exchange;
- 5.4 Letter from Professor Guo Feng, Chairman of China Securities Law Society;
- 5.5 Letter from Mr Ruiming Guo, Deputy Head of the Inspection Bureau, China Securities Regulatory Commission;
- 5.6 Letter from Mr Song Yixin, Managing Partner of Hanlian Law Firm, Shanghai;
- 5.7 Low Litigation Rate vs High Recovery Rate: Ten-Year Journey of China’s Regime for Securities Misstatement Civil Compensation Litigation 证券时报[Securities Times] 13 December 2014;
- 5.8 Certificate of Best Paper Prize, the Adjudication Jurisprudence Committee of China Law Society and the High Court of Shanghai Municipality, 20 August 2019;
- 5.9 China Institute of Financial and Capital Markets (a policy research institute under the direct administration of the China Securities Regulatory Commission <http://www.cifcm.cn/>), Internal Report ‘The Regulation of Securities Market Manipulation: Legal Problems and Suggestions’ (05/2018);
- 5.10 Letter from Hong Kong Securities and Futures Commission. |