

International Association of Judges

2nd Study Commission

Civil Law and Procedure

Replies of the Taiwanese Delegation to the Questionnaire for the 2018
meeting (Marrakech - Morocco, 13-18 October, 2018)

STRATEGIES IN EFFECTIVE CASE MANAGEMENT

**1. Can case management be used effectively in civil litigation matters
in your jurisdiction?**

Yes, case management can be used effectively in civil litigation matters in our jurisdiction. Case management is a court reform to resolve the increasingly worsened cases effectively, and to help judges manage their cases; moreover, it can also achieve the goal of the concentrated trial that was the most significant revolution in the amendatory civil procedure form 1999 to 2003.

(1) Resolving the Increasingly Worsened Cases

a. Alternative Dispute Resolution(ADR)

Alternative dispute resolution is generally classified into at least three types: negotiation, mediation, and arbitration. Taiwanese government has taken proactive steps to promote the use of ADR in recent years. For encouraging people to use ADR, Judicial Yuan devoted to set up ADR online system last year. The ADR online system is not only an instruction for people to understand easily but also a query system for people to inquire how to use it specifically.

Some specific disputes from real property, traffic accident or medical treatment, etc. shall be subject to mediation by the court before an action is filed.

b. Pre-trial Proceeding

Taiwan Code of Civil Procedure requires plaintiffs to indicate issues

that they intend to raise and to submit other requirements to the court. If the action is not initiated in accordance with the prescribed formality or lacks other requirements, the court shall dismiss the plaintiff's action by a ruling, but where the defect is rectifiable, the court shall order the plaintiff to rectify within a designated period of time.

To help parties organize their cases, the court may schedule pre-trial proceeding at which parties must confirm their legal claims, discuss the possibility to use ADR out of court, present evidence based on fact, or formulate and agree on simplifying the issues. The court may also require parties to exchange their legal documents before trial.

c. Case diversion

Taiwan civil litigation matters can be classified into three types: ordinary proceeding, summary proceeding and small-claim proceeding. They are distinguished from the value of claims and nature of cases. Summary proceedings and small-claim proceedings are available for cases that require prompt action and generally involve a small number of clear-cut issues. The summary proceeding shall apply to actions with regard to proprietary rights where the price or claim's value of a claim is not more than NT\$ 500,000 (USD 16,700). Moreover, some cases, including actions arising from the fixing of the boundaries or the demarcation of a real property, or actions from employment contract, etc., shall also be applied to summary proceeding irrespective of the price or value of the claim. As for small-claim proceeding, it is used for the claim value not more than NTD 100,000 (USD 3,340).

In summary proceeding, the plaintiff may indicate only the

transactions or occurrences giving rise to the claim, and the court shall, in general, conclude the oral argument within one single session. In small-claim proceeding, the court may even find the facts and enter an equitable decision without taking evidence.

d. Case deadline

Each case has a deadline for handling cases. If the case is delayed, there will be administrative responsibility for the judge. However, if the case is complicated or there are certain reasons, the case deadline can be extended.

(2) Case Managing System

Case managing system is an electronic system to help judges manage the dates of sessions, check the progress of cases, and make judgments. This system also synchronizes the dates of sessions with google calendar automatically, so you can check the dates of sessions on the phone.

(3) Concentrated Trial

For getting rid of the disadvantage of principles of consolidation trial and pleading in free time, we adopt principles of concentrated trial and pleading in the due time, which mean that the court must divide the trial into procedures of issue-joinder and evidence-investigation for systematic trial, and parties must make pleadings in the due time, comply with progress of trial, and fulfill their obligation to assist in a fluent trial.

2. Are there rules or guidelines for the use of case management in civil litigation in your jurisdiction?

Yes, there are some rules for the use of case management.

(1) Alternative Dispute Resolution(ADR)

Article 403 of Taiwan code of Civil Procedure provides that the following matters shall be subject to mediation by the court before an action is initiated: a. Disputes arising from a relationship of adjacency between real property owners or superficiaries, or other persons using the real property; b. Disputes arising from the determination of boundaries or demarcation of real property; c. Disputes among co-owners of real property arising from the management, disposition, or partition of a real property held in undivided condition; d. Disputes arising from the management of a building or of a common part thereof among the owners of the dividedly-shared title or persons using the building; e. Disputes arising from an increment or reduction/exemption of the rental of real property; f. Disputes arising from the determination of the term, scope and rental of a superficies; g. Disputes arising from a traffic accident or medical treatment; h. Disputes arising from an employment contract between an employer and an employee; i. Disputes arising from a partnership between the partners, or between the undisclosed partners and the nominal business operator; j. Disputes arising from proprietary rights among spouses, lineal relatives by blood, collateral relatives by blood within the fourth degree of relationship,

collateral relatives by marriage within the third degree of relationship, or head of the house or members of the house; k. Other disputes arising from proprietary rights where the price or value of the object in dispute is less than NT\$ 500,000(USD 16,700).

Article 404 of Taiwan code of Civil Procedure provides that the mediation shall be initiated on a party's application.

Article 404 of Taiwan code of Civil Procedure provides that the court may seek settlement at any time irrespective of the phase of the proceeding reached.

(2) Pre-trial Proceeding

For purposes of oral argument preparation, article 265 of Taiwan code of Civil Procedure provides that parties shall submit to the court a pleading which indicates his/her means of attack or defense, and his/her responses to the opposing party's statements and means of attack or defense, and send a written copy or photocopy of the same directly to the opposing party. Article 267 also provides that the defendant shall, if he/she considers it necessary to do so, submit his/her answer to the court, with a written copy or photocopy thereof sent directly to the plaintiff within ten days after receiving the complaint, and no later than five days prior to the oral-argument session if one has been designated. Article 268-1 provides that the court shall require the parties to formulate and agree on simplifying the issues. The presiding judge may, if necessary, order the parties to submit a pleading summarizing the result of the formulation of the issues within the period of time to be designated by the judge.

(3) Case diversion

Article 427 of Taiwan code of Civil Procedure provides that

summary proceeding shall apply to actions with regard to proprietary rights where the price or claim's value of claim is not more than NT\$ 500,000.

A summary proceeding shall apply to the following actions irrespective of the price or value of the claim: Actions arising from disputes over a fixed-term lease of a building or other object of work, or from a fixed-term lender-borrower relationship, etc. The parties may agree to apply a summary proceeding and such agreement must be evidenced in writing.

Article 427 of Taiwan code of Civil Procedure provides that where the action is for the payment of money, other replaceable objects or securities and the price or claim value is not more than NTD 100,000, then the provisions of this Chapter on Small-Claim Proceedings shall apply.

(4) Concentrated Trial

Article 196 of Taiwan code of Civil Procedure provides that 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.

(5) Case deadline

The implementation of the court deadlines at all levels provides the deadline of each case and the extension of deadlines.

3. What are the advantages or disadvantages of the use of case management in your jurisdiction?

There are many advantages of the use of case management. ADR provides early settlement of cases out of court. Furthermore, a successful mediation and final settlement in litigations have the same effect as a final judgment with binding effect. It's effective to solve disputes between parties.

Pre-trial proceeding is used to help parties organize their cases, and seek the possibilities for using ADR out of court. It's also necessary to use pre-trial proceeding to achieve the goal of the concentrated trial.

Summary and small-claim proceedings are the best for the parties to solve their easy or clear cases promptly.

Case managing system is good for judges to manage and arrange their cases easily.

4. Who incurs the costs of the use of case management in your jurisdiction?

Apart from filing fee, there is no need for the parties to incur the costs of the use of case management. To encourage the parties to solve their disputes out of court, when a settlement or mediation in litigation is reached, the parties may, within three months after the settlement date, move for the return of two-thirds of the court costs paid for the current court action.

5. Can the use of case management in your jurisdiction be improved?

The using rate of ADR is still not as high as expected. To encourage the parties to use ADR out of court, our government should make an effort to propagate the advantages of ADR. Moreover, two ways may be taken into consideration that one is to increase the return of the court costs when a settlement or mediation in litigation is reached, not just return two-thirds of the court costs; the other is to increase the court costs when the parties choose to take actions.

There are many advantages of the use of pre-trial proceeding as said above. So the pre-trial proceeding should be mandatory under ordinary proceeding. However, now the pre-trial proceeding is not mandatory in our civil litigation. To adopt pre-trial proceeding or not, it depends on the judges.

Each case has a deadline for handling cases. To avoid delaying litigation, judges must strictly abide by the deadline.