

## **Jurisdiction and Parallel Procedure in Foreign Court (summary)**

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### 1. Introduction

The topic on amendment of Code of Civil Procedure is now about international jurisdiction. A provision about a parallel proceeding in foreign court might be legislated. It is difficult in theory whether a procedure in foreign jurisdiction has influence to international jurisdiction of Japan. It is also difficult how to deal a procedure in Japan when a parallel procedure was commenced in foreign jurisdiction.

Some take this problem as an effect of foregoing procedure in foreign court or needs for judgment on merit rendered by domestic court. Others insist that this problem should be dealt as a concurrence of jurisdiction.

We may understand the project of amendment as to prescribe a new provision subject to a latter view.

### 2. Requirement to withhold to exercise jurisdiction

A Japanese court may withhold to exercise its jurisdiction on the ground of a parallel procedure in a foreign court, only if the right of the parties to petition for judicial guarantee was satisfied by the foreign procedure. And if the problem of *litis pendens* in a foreign court is handled on the level of jurisdiction, it should be decisive which is the proper forum, Japan or a foreign country. At first we should discuss about the elements to estimate properness.

Those elements might be overlapped with the grounds of jurisdiction. A jurisdiction which has closer connection could be decided as a proper forum. While the grounds of jurisdiction are provided based on the connection with the cases, a country where more grounds are founded should be proper forum.

There must be other elements. A stage of foreign procedure might be one of the elements from the view of balance of parties. The conditions provided as a premise for recognition of a foreign judgment should be considered because those conditions are criteria to estimate justification of foreign procedure. Those conditions should not be ignored. However the burden of court may not be so

emphasized. And the date of filing should not be decisive. The judge must deliberate all kinds of factors found in the concrete case.

### 3. How to withhold to exercise jurisdiction — Effect of parallel proceeding

If the court is prohibited to exercise jurisdiction, at a glance the judge should dismiss a claim of plaintiff without deciding on merits. But in case of parallel proceeding it has to be possible to restart the procedure in Japan or to resort to a court again. Even the foreign court was granted as a proper forum, it is afraid that the foreign court denies its jurisdiction or a judgment rendered by the foreign court is not recognized. In case of the enforcement in Japan is needed, it has to be possible for the creditor to alter its claim in a dequate form.

The effect of withholding to exercise jurisdiction has to be to stay the procedure. The procedure is stayed based on a decision rendered by court. But in urgent case some acts of procedure must be accepted even when the procedure is staying. It is not due that the procedure continues to be stayed for excessive long term. The period of stay should be prescribed. When that period passed, the procedure should be restarted.

### 4. Conclusion

Even if the new provision of jurisdiction in case of parallel proceeding in foreign court is introduced into the Code of Civil Procedure, the problem of needs of plaintiff for judgment on merits or the effect of foregoing procedure in foreign jurisdiction is not resolved yet.

Based on the analysis above, I present an example of draft:

“The court may stay procedure on account of all of facts including burden of parties to sue, the condition of procedure in foreign court and probability to recognize the judgment rendered by the foreign court, when a proceeding in foreign court has a same object of action with in Japanese court.”

Of course it might be more discussed based on concrete draft of the text whether a provision of jurisdiction in case of parallel proceeding in foreign jurisdiction should be provided.