

Author:

[E-mail✉ Akihiro Hironaka](mailto:akihiro@nishimura-asahi.com)[E-mail✉ Yuko Ogawa](mailto:yuko@nishimura-asahi.com)

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1. Introduction

A bill to amend the Code of Civil Procedure (CCP) and the other related codes was submitted to the Japanese Diet on March 8, 2022¹. The main purpose of the bill is to permit further use of electronic communications and other information and communication technology (IT) in resolving disputes in civil litigation, but it also contains important amendments that will have an impact on civil litigation practice in Japan, once the Diet adopts the bill and the law enters into force. This newsletter explains important items in the bill.

2. Utilizing IT in Civil Litigation

(1) Background

The use of IT in civil litigation in Japan is much further behind than in other developed countries. In 2004, a provision was added to the CCP which permitted electronic filing of certain documents with courts (current CCP, art. 132-10), and trial use of an online filing system was implemented at the Sapporo District Court. However, the system was rarely used, and the trial ended in March 2009. Against this background, the Japanese Cabinet determined its “Growth Strategy 2017” in June 2017, and placed the promotion of use of IT in civil litigation among the important topics in Japanese policy², and discussions were held on how to implement this strategy. Consequently, it was determined that utilization of IT in civil litigation would be implemented on a step by step basis. The first step was to implement measures that would not require any amendments to existing laws. Under this initiative, courts started to hold closed hearings remotely via a web meeting system. In February 2022, the courts began use of an electric filing system for court documents, titled “mints,” at some district courts. The next step is to implement measures that require amendments to existing laws. Thus, the Legislative Council of the Ministry of Justice - Section for the Code of Civil Procedure (Utilization of IT), the members of which included judges, practicing lawyers, law scholars, and

¹ <https://www.moj.go.jp/MINJI/minji07_00293.html> (in Japanese)

² “In order to implement a prompt and efficient trial with considering other countries circumstances, from the comprehensive viewpoints including security procedure and security information in the court, and we consider measures to promote IT in procedures for trials with user’s point of view, getting support of related organizations, and will conclude [these efforts] by the end of the current fiscal year.” <https://www.cas.go.jp/jp/seisaku/seicho/pdf/miraitousi2017_inttv_prgm.pdf>

representatives of interested groups, held discussions at 23 separate meetings from June 2020 through January 2022³, after which the bill to amend the CCP and other related codes was submitted to the Diet.

(2) Holding hearings via a web meeting system

As explained above, the promotion of use of IT in civil litigation started separately from the COVID-19 pandemic in 2020. However, the need to decrease physical contact with others became imperative as a result of the pandemic, and courts began frequently holding closed hearings via a web meeting system, even though such system was rarely used pre-pandemic⁴. Some inconveniences have been noted with regard to the use of a web meeting system. For example, the physical attendance of one party is required to hold Preparatory Proceedings and Scheduling Conferences remotely (current CCP, art. 170(3), Rules of Civil Procedure, art. 96(1)). There was no such requirement for Preparatory Proceedings Based on Documents, but the courts cannot formally examine written exhibits in those proceedings.

The bill attempts to resolve these issues, and contains revised provisions governing remote hearings, including Oral Proceedings (Bill, art. 87-2(1)), Preparatory Proceedings (Bill, art. 170(3)), and Preparatory Proceedings Based on Documents (Bill, art. 176(2)). It is epoch-making, in that courts will be able to hold Oral Proceedings remotely under the revised CCP. The drafters believe these proceedings satisfy the Constitutional mandate of holding trials in “open court” by holding remote hearings in an open court, with observers. The drafters have not included a provision for broadcasting court proceedings via the Internet, due to negative opinions about the concept. The bill abolishes the requirement that one party should attend Preparatory Proceedings physically, and it is anticipated that the Supreme Court Rules will do the same for Scheduling Conferences.

The bill relaxed the requirements for allowing remote examination of witnesses. A provision to allow examination of witnesses via a TV conference system if certain requirements were met was introduced when the current version of the CCP was enacted in 1996⁵ (current CCP, art. 204). The bill allows remote examination of witnesses when neither party objects; therefore, there is more flexibility for remote examination of witnesses under the amended CCP. The bill also permits remote examination of witnesses outside a courtroom, if the court considers it appropriate, after hearing the opinions of the parties (Bill, art. 185(3)).

The bill permits other proceedings to be conducted remotely also, including settlement discussions (Bill, art. 89(2)) and translation of foreign languages by interpreters (Bill, art. 154(2)).

³ <https://www.moj.go.jp/shingij1/housei02_003005.html> (in Japanese)

⁴ For an explanation of the Japanese court system’s response to the COVID-19 pandemic in 2020, see Akihiro Hironaka, Japan: The Global Impact of the Covid-19 Pandemic on Commercial Dispute Resolution in the First Year, *available at*: <<https://www.ibanet.org/global-impact-covid-19-pandemic-dispute-resolution>>.

⁵ For a comprehensive explanation of the 1996 Japanese CCP in English, see Civil Procedure in Japan (Juris Publishing, 3rd ed., 2018, edited by Yasuhei Taniguchi, et al), to which one of the authors of this newsletter is a contributor.

For an English translation of the current CCP, see:

<<https://www.japaneselawtranslation.go.jp/en/laws/view/2834>>.

For an English translation of the current Rules of Civil Procedure, see:

<<https://www.japaneselawtranslation.go.jp/en/laws/view/3865>>.

(3) Preparation and Management of Electronic Court Records

Currently, all documents prepared by parties and courts, including records of hearings, summonses, and judgments, are prepared and managed in “hard copy” (i.e., “paper”) format. The bill anticipates that, going forward, these court records will be prepared and managed electronically, and adds to, and amends the relevant provisions of, the CCP to accommodate this process.

The bill provides that when attorneys pursue lawsuits on behalf of clients, use of the electronic filing system to file court documents is mandatory (Bill, art. 132-11(1)(i)). Furthermore, it introduces a system for electronic judgments (Bill, art. 252(1)), electronic summonses (Bill, art. 94(1)(i), (2)), and service of process and service by publication of electronic records (Bill, arts. 109, 109-2, 111). Service of process of electronic court records is accomplished by printing out the electronic records (Bill, art. 109), but if a party reports to the court that he/she has accepted electronic service of process, the court can perform service of process via the electronic filing system (Bill, art. 109-2(1)). The court also can accomplish service of electronic court records, via the electronic filing system, to any attorney who is obligated to use it, even if that attorney has not reported to the court that he/she accepts electronic service of process (Bill, art. 109-4(1)).

Currently, a person must visit a courthouse to inspect or request a copy of court records. When the bill passes the Diet and enters into force, parties and interested persons may inspect and download court records using their personal computers outside the courthouse (Bill, art. 91-2(2)). However, after some debate, the drafters of the bill decided not to include a provision to allow a person who does not have any interest in the case to access and inspect court records using a personal computer outside the courthouse.

3. Fast Track Proceedings

The bill includes a series of provisions to provide for fast track proceedings, as a new adjudication process in the era of IT, taking advantage of the opportunity to introduce many provisions regarding the use of IT, although consumer groups opposed their introduction (Bill, art. 381-2(1)). These fast track proceedings cannot be used for litigation related to consumer contracts or for civil disputes arising from individual labor relations. In order to utilize these proceedings, it is necessary for either (i) both parties to make a request, or (ii) one party to make a request and the other party to consent (Bill, art. 281-2(2)). If the court decides to conduct these proceedings, the court must schedule a hearing session within two weeks (Bill, art. 381-3(1)), conclude the proceedings within six months, and render a judgment within one additional month (Bill, art. 381-3(2)); parties will benefit from receiving speedy trials through these new proceedings. Moreover, the losing party cannot appeal the judgment (Bill, art. 381-6), but he/she may file an objection within two weeks after the service of the judgment (Bill, art. 381-7(1)), and if an objection is filed, the proceedings will shift back to normal proceedings (i.e., rather than fast track proceedings) (Bill, art. 381-8(1)).

4. Proceedings to Protect Secrets

The bill introduces new proceedings to keep the domiciles, residences, and names of parties and their legal representative(s) secret from the other parties in the action (Bill, art. 133(1)). A legal system that restricts the inspection and photocopying of confidential parts of court records by third parties already exists, but under the existing system the court must disclose them to the other parties in the case. The new proceedings allow parties to maintain the secrecy of certain information with regard to the other parties also. These were created to protect, for example, victims of domestic violence and sexual assaults who file lawsuits against the perpetrators of these wrongdoings. The bill includes a provision to guarantee and protect the other parties’

rights, if maintaining the secrecy of the relevant information might affect the other parties' right to defend himself/herself in the litigation (Bill, art 133-4(2)).

In addition, the bill improves some aspects of the current system of restrictions on the inspection and photocopying of confidential parts of court records by third parties. For example, a series of new provisions in the bill will deal with abusive intervention by a person with the mere intention of accessing secret information (Bill, art. 92(6)-(8)). Furthermore, the Supreme Court Rules will include a provision that obligates the party seeking restriction of inspection and photocopying of confidential parts of court records by third parties to prepare a version of those documents in which the confidential parts have been redacted.

The bill also provides that settlement terms are exempt from inspection by third parties that do not have an interest in the case (Bill, art. 91(2)). Under the existing system for inspection and photocopying of confidential parts of court records by third parties, questions had arisen as to whether or not the court could maintain the secrecy of settlement terms; this bill has resolved that issue.

5. Other Matters

The bill makes other amendments to the CCP also; due to space considerations, it is impossible to explain all of the amendments here, but it is notable that the period for fixing litigation costs will be limited to ten years, which is a change to the currently open-ended period (Bill, art. 71(2)). In addition, the bill introduces a new provision that obligates a party to explain the reason for any failure to comply with the deadline(s) for submission of preparatory briefs and offers of evidence (Bill, art. 162 (2)).

6. Prospective Impact of the Amendment and Remaining Issues

Once the bill passes the Diet and the amended CCP enters into force, the use of IT in civil litigation will advance rapidly. Practitioners have pointed out that scheduling and attending hearings has already become much easier than in the past, since during the COVID-19 pandemic, the courts have frequently scheduled remote hearings, which saves time formerly spent on transportation to the court. Once the electronic filing of documents is introduced, and Oral Arguments can be held via a web meeting system, it is anticipated that the efficiency and speed of civil litigation in Japan will increase significantly. In addition, judges already have begun to discuss issues in remote, closed hearings using screen sharing; after the bill becomes law, this and other new practices will become more prevalent. Currently, discussions are ongoing as to how proceedings in family courts, proceedings relating to provisional remedies, enforcement proceedings, and bankruptcy proceedings should be implemented.⁶

The utilization of IT should prove useful in cross-border litigation also. For example, if a court can examine a witness located in a foreign country using a web meeting system, that process would be benefit both the court and the parties significantly. However, because court proceedings are an exercise of Japan's sovereign power, practitioners and scholars have divided opinions as to whether or not such proceedings infringe the sovereignty of foreign nations, and thus, whether or not they are permissible. The "Discussion Group on International Service of Process and International Taking of Evidence in Response to Utilization of IT" held discussions in seven separate meetings from July 2020 through February 2021⁷, and issued the "Summary of

⁶ <<https://www.shojihomu.or.jp/kenkyuu/kajijikentetuduki>> (in Japanese)

⁷ <https://www.moj.go.jp/MINJI/minji07_00140.html> (in Japanese)

the Discussion Group on International Service of Process and International Taking of Evidence in Response to Utilization of IT⁸, in which it summarized its discussions on these issues.

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⁸ <<https://www.moj.go.jp/content/001346048.pdf>> (in Japanese)