

Abstract

The so-called "Test action agreement"(Musterprozessvertrag) means a special contract before or during a civil proceeding. Through such consent can a plenty of parties with the same kind of conflict agree that each side would go on the proceeding only by one of them, all the others would not submit any action. They would resolve their disputes based on the verdict of this test action. In this way, a lot of work, cost and time could be saved not only by the court, but also by the parties. Comparing with Germany, so far in Taiwan, their still lacks academic research with regards to "Test action agreement". Therefore, it necessitates one deep and through research. Refer to and compare with the experience of the test action developed in German, Austria and Switzerland, this Article analyses the definition, types, function, nature and effect of test action agreement .

The contents of the test action agreement includes the combination of several agreements: (1) "Agreement of non-commencing civil procedure" (2) "Agreement of claim preclusion" (3) "Acquirement of execution" (4) "The contract of the action of litigation proceedings of test action itself". The essential parts thereof are: "agreement of non-commencing civil procedure" and "agreement of claim preclusion".

In one aspect, the test action agreement possesses the function of alternative dispute resolution. By means of the conclusion of the test action agreement, it has retained the advantages of independent settlement of disputes by litigants themselves and would show respect for litigants' selection regarding the methods of solving the disputes. On the other hand, compared with the settlements of other similar disputes, it can maintain merits of solving disputes based on the judgments rendered by the judicial organization by using judgment of the test action as basis for handling and settling disputes. By way of doing this, the gen-

eral public will be able to anticipate the existence and development of the law, meanwhile, it will assist in defining and stabilizing the order of the law.