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Please indicate your profession:

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Do you have practical expertise in cross-border civil or commercial litigation:

- ☒ Yes
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# *Questions*

# *Consultation on the draft text of a possible convention on parallel proceedings and related actions*

**Question 1 on the scope of the Draft Text**

1.1 What are your views on the scope of the Draft Text?

The Draft Text addresses a well-documented structural gap in transnational civil and commercial litigation: the absence of a general multilateral framework governing parallel proceedings outside regional regimes. Its ambition, fundamentally, is both timely and normatively justified. However, because coordination mechanisms such as suspension or dismissal inevitably affect where adjudication can realistically occur, the Draft Text operates in a space that is functionally adjacent to jurisdictional regulation. Greater conceptual clarity is therefore desirable to ensure that the instrument is understood as coordinating concurrent proceedings rather than harmonising domestic jurisdictional bases.In Limbu v Dyson [2024] EWCA Civ 1564, the Court of Appeal treated questions of fora and access to justice as determinative of where claims could realistically be adjudicated, thereby demonstrating how procedural coordination decisions can operate as de facto jurisdictional allocations.

1.2 Does the subject matter scope of the Draft Text cover those matters for which rules on parallel proceedings and related actions would be beneficial?

The focus on civil and commercial matters is appropriate and consistent with the existing HCCH instruments. That said, many of the most acute coordinationis issues arise in complex transnational disputes involving ccollective or mass claims, and supply-chain litigation. While some of these disputes may fall at the margins of the current scope, the Draft Text would benefit from being applied and interpreted in a manner that is resistant to strategic recharacterisation of claims designed to evade coordination obligations.

1.3 What are your views on the subject matter exclusions in particular, and how they would work in practice? For example, what are your views on the formulation of the arbitration exclusion in Article 2(3)?

The exclusion of arbitration is justified in principle in order to preserve the autonomy of the New York Convention regime. In practice, however, the most problematic parallel proceedings often arise not from arbitral proceedings themselves, but from court proceedings that challenge or intersect with arbitration, such as disputes concerning the validity or scope of arbitration agreements, interim measures, or enforcement-related proceedings. Without further clarification, the arbitration exclusion risks either excessive breadth or uncertainty. Greater precision would enhance legal certainty while preserving arbitration autonomy.I n UniCredit Bank GmbH v RusChemAlliance LLC [2024] UKSC 30, the Supreme Court confirmed that national courts may intervene robustly, including by granting anti-suit injunctions, to restrain parallel foreign proceedings brought in breach of arbitration agreements. Such cases illustrate that, in the absence of multilateral coordination rules, courts will continue to rely on unilateral tools

1.4 What are your views on the geographical scope of the Draft Text and how it would work in practice? (See paragraph 16 for further information).

The proposed habitual-residence condition would significantly narrow the practical reach of the Draft Text and risk excluding many disputes where coordination is most needed, particularly those involving multiple defendants or complex corporate structures. A broader trigger based on the existence of proceedings in different Contracting States is preferable,

with habitual residence treated as a relevant connecting factor within the coordination analysis rather than as a jurisdictional gateway..

**Question 2 on definitions**

What are your views on the definitions of parallel proceedings and related actions? In particular, please share your views on how these definitions might operate, and be applied by parties and courts, in practice.

The definition of parallel proceedings based on identity of parties and subject matter is conceptually clear but vulnerable to tactical manipulation. In practice, litigants may add nominal parties or reframe claims to avoid formal identity. A functional interpretation that considers the object and practical effect of proceedings would better serve the Draft Text's objectives. The definition of related actions is more realistic, but its effectiveness will depend on consistent judicial application and sensitivity to the risk of irreconcilable judgments..

**Question 3 on when a court is deemed to be seised**

What are your views on Article 4?

Article 4 is essential to the operation of the Draft Text, but it is considered a potential vector for abuse. Procedural systems differ significantly as to what constitutes the initiation of proceedings, and these differences can be exploited. Seisin should therefore be understood as requiring not only formal initiation but also genuine prosecutorial intent, reflected in timely notification and procedural progress.

**Question 4 on Article 5 obligations**

What are your views on Article 5?

Article 5 provides a coherent operational framework for suspension, dismissal, and resumption of proceedings. Its effectiveness, however, depends on clear evidentiary and temporal standards. Without guidance on what constitutes adequate proof of foreign proceedings or on how to assess whether a judgment is capable of recognition or enforcement, courts may encounter increased litigation. Similarly, resumption criteria should be grounded in objective indicators of delay or procedural dysfunction to avoid open-ended disputes..

**Question 5 on priority jurisdiction / connection**

What are your views on Articles 6 – 8 including how they will work in practice?

The hierarchical structure adopted by Articles 6–8 broadly reflects comparative principles and promotes legal certainty. Priority for immovable property claims and respect for party autonomy are well established. In practice, however, careful interpretation will be required to prevent evasion, particularly where disputes affecting rights in rem are pleaded in contractual or tortious terms, or where jurisdiction agreements are challenged indirectly.

**Question 6 on Article 8(2) jurisdiction / connection requirements**

6.1 What are your views on the 'jurisdiction / connection' list in Article 8(2)?

~~A~~ An exhaustive ~~list based~~ approach is appropriate, provided it is treated as indicative rather than as a rigid threshold. If applied too expansively as a mandatory trigger for suspension or dismissal, the list may increase the number of situations in which multiple courts appear equally qualified, thereby shifting disputes into Article 9 determinations..

6.2 Based on your experience, do you consider these factors appropriate for parallel proceedings i.e. for obliging courts to suspend or dismiss proceedings if they are not seised on the basis of one of these? Why or why not?

The listed factors are broadly appropriate, but they should be applied with caution. Obligations to suspend or dismiss should arise only where connections are sufficiently strong and widely accepted, and where safeguards against abuse are effective.

6.3 Are there any additional factors that you believe should be included?
Consideration of whether a single forum can realistically resolve the dispute without fragmentation, particularly in multi-defendant cases, would enhance the framework's responsiveness to modern litigation patterns..

Question 7 on the determination of the more appropriate court

7.1 What are your views on the approaches proposed in Article 9 for determining which court should adjudicate the dispute in cases of parallel proceedings which Articles 6 – 8 have not resolved?
The two approaches reflect a genuine policy choice between predictability and flexibility. A system that gives primacy to the first seised court promotes certainty but risks encouraging procedural races, while a more decentralised approach may better respect procedural autonomy but risks coordination failure

7.2 What are your views on how the two approaches may work in practice?
In practice, the effectiveness of either approach will depend on robust seisin rules and safeguards against abuse. Without such safeguards, both approaches risk generating mirror proceedings or tactical behaviour.

7.3 Do you have a preference for either approach? If so, please explain why.
A modified approach that accords primary responsibility to the first seised court, while allowing departure where seisin has been achieved abusively or where effective justice cannot be delivered within a reasonable time, appears most consistent with the Draft Text's objectives

Question 8 on factors to be considered to determine the more appropriate court

8.1 What are your views on the factors listed in Article 10 for determining the more appropriate court in cases of parallel proceedings subject to Article 9 (i.e. that are not resolved by Articles 6 – 8)?
The factors listed in Article 10 are broadly appropriate but require careful application to avoid covert merits assessment. Considerations such as procedural progress and the likelihood of recognition or enforcement are particularly important in transnational litigation.

8.2 Do you have any views on how Article 10 might work in practice?
Without structured guidance, Article 10 may be applied unevenly across jurisdictions. Clear emphasis on effective participation and procedural integrity would promote more consistent outcomes.

8.3 Are there additional considerations that, in your view, should be taken into account?
Explicit attention to procedural abuse, including strategic negative declarations and deliberate duplication of interim measures, would strengthen the framework..

Question 9 on the effectiveness of the framework for parallel proceedings

Do you have an overall view on the effectiveness of the framework developed in the Draft Text for dealing with **parallel proceedings** in an international context? Please explain any advantages and / or disadvantages of the framework, and how you think it will work in practice.

The framework has significant potential to improve legal certainty and reduce inconsistent judgments. Its principal risk lies in the possibility of increased preliminary litigation over seisin and appropriateness. This risk can be mitigated through disciplined drafting and interpretation.

### Question 10 on related actions

Do you have a view on the effectiveness of the framework developed in the Draft Text for dealing with **related actions** in an international context? Please explain any advantages or disadvantages of the framework, and how you think it will work in practice.

The discretionary framework for related actions better reflects litigation reality than rigid lis pendens rules. However, without stronger coordination incentives, related proceedings may continue independently. Greater emphasis on avoiding irreconcilable judgments would enhance effectiveness.

### Question 11 on the communication mechanism

11.1 What are your views on the practical operation (or the effectiveness) of the communication methods set out in Chapter IV of the draft text for use between courts seised, in cases involving parallel proceedings and related actions?

The flexible approach to judicial communication respects institutional diversity. In practice, however, coordination will often depend on party-provided information rather than direct judicial dialogue.

11.2 Are there particular advantages and challenges you foresee in applying these methods?

While communication mechanisms can reduce uncertainty, challenges include confidentiality, translation, and varying judicial cultures. Minimum operational standards would enhance usability.

### Question 12 on safeguards

What are your views on the three safeguards provided in the Draft Text (Articles 19-21), particularly as to how they will operate in practice?

The safeguards in Articles 19–21 are necessary but should remain exceptional. Denial of justice and public policy should be interpreted narrowly, while abuse of process should be defined with sufficient clarity to capture contemporary tactical behaviour.

### Question 13 on the objectives of the Draft Instrument

13.1 Would the rules set out in the Draft Text achieve the objectives of a future instrument?

The objective of a future instrument is to enhance legal certainty, predictability and access to justice by reducing litigation costs, and to mitigate inconsistent judgments in transnational litigation in civil or commercial matters.

The Draft Text is capable of set objectives provided that its coordination mechanisms are applied consistently and resist abuse..

13.2 Do you have any views on whether the proposed rules set out in the Draft Text would improve the status quo?

The Draft Text would improve upon the fragmented status quo by establishing a common minimum discipline for managing concurrency.

13.3 Do you consider there are any risks of tactical or satellite litigation arising from any of the provisions, or the overall approach of the Draft Text? Are these risks greater or fewer than

those that currently exist? Are there any ways that such risks could be addressed in the Draft Text?

Risks potentially remain, particularly around seisin and claim framing. These risks are not greater than those currently existing and can be addressed through clearer standards and safeguards.

**Question 14 - comments**

What other comments, if any, do you have?

A clear relationship clause with other HCCH instruments and regional regimes will be essential. Uniform interpretation should be actively promoted through explanatory materials, especially Explanatory Report. Finally, the Draft Text should be designed to function effectively even in jurisdictions with limited institutional resources..