

Survey response	
Please indicate: [Name:]	Lai Lai- Kuan
Please indicate: [State:]	台灣國際私法學會理事長
Please indicate: [Region:]	
Please indicate: [Affiliation:]	Chairperson of the board of directors of Taiwan Private International Law Association
Please indicate your profession:	Academia
Do you have practical expertise in cross-border civil or commercial litigation:	Yes
1.1 What are your views on the scope of the Draft Text?	
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?	<p>1. 對公約架構之肯定 Commendation of the Convention's Structure • 中文意見： 本草案依序規範專屬管轄（第6條）、協議管轄（第7條）、國際管轄法則（第8條）、先繫屬原則（第9條）及裁量管轄（第10條）。此種兼採並融合各國立法例之架構，實屬可採之立法模式。 • English Comment: The draft sequentially structures the rules on exclusive jurisdiction (Art. 6), party autonomy (Art. 7), jurisdictional bases (Art. 8), the principle of lis pendens (Art. 9), and discretionary jurisdiction (Art. 10). This integrated approach, which incorporates diverse national legislative practices, is a highly commendable model for international legislation.</p> <p>2. 關於「訴前程序」對訴訟繫屬認定之影響 Incorporation of Pre-litigation Procedures in Determining Lis Pendens • 中文意見： 在審議本草案時，應考量各法域中「訴前調解或和解機制」之普及性。建議公約不應僅依據傳統訴訟提起之時間認定「訴訟繫屬」（Lis Pendens），而應重視強制性訴前替代性爭端解決（ADR）程序。此類程序應被視為「法院正式受案」（Seising of the court）過程的一部分，以增進公約與各國程序多樣性間之兼容性。 • English Comment: In deliberating upon this draft, it is essential to account for the prevalence of pre-litigation mediation or conciliation mechanisms across jurisdictions. Rather than relying solely on the chronological filing of a lawsuit, the Convention should give due weight to mandatory pre-trial ADR procedures. 17Such stages should significantly impact the temporal determination of when a</p>

	court is formally seized of a matter, thereby enhancing the Convention's compatibility with procedural diversity.
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)?	
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).	
2. 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.	
3. What are your views on Article 4?	
4. What are your views on Article 5?	
5. What are your views on Articles 6 – 8 including how they will work in practice?	<p>1. 關於第 6 條：專屬 / 優先管轄（不動產） Re: Article 6 – Exclusive / Priority Jurisdiction (Immovable Property) • 中文建議： 現行條文第 5 項規定，其他法院須「依當事人申請」始得停止或駁回其程序。建議於此處增修，授權法院亦得依職權 (ex officio) 停止或駁回相關程序。此舉能確保不動產所在地法院之管轄權不受當事人不作為之影響，並提升程序效率。 • English Proposal: Paragraph 5 of Article 6 currently provides that any other court shall suspend or dismiss proceedings "on application by a party." It is proposed that the provision be amended to authorize the court to also act ex officio in staying or dismissing such proceedings. This would ensure the effectiveness of the exclusive jurisdiction of the situs and enhance overall procedural economy.</p> <p>2. 關於第 7 條：當事人自治（意定管轄） Re: Article 7 – Party Autonomy (Consensual Jurisdiction) • 中文建議： 草案第 3 項規定，若被告於程序中明確同意管轄，則該法院應續行審理。為避免爭議並落實當事人自治原則，建議將被告單方面同意修正為「當事人雙方合意」，以確保管轄權基礎之公平性與穩定性。 • English Proposal: Article 7(3) stipulates that a court shall proceed with adjudication if the</p>

	<p>defendant expressly consents to its jurisdiction during the proceedings. To prevent potential disputes and uphold the principle of party autonomy, it is recommended to revise this requirement from unilateral consent by the defendant to "mutual agreement between the parties," thereby ensuring a more stable and equitable jurisdictional basis.</p> <p>3. 關於第 6 條不動產物權範圍之疑義 Clarification on the Scope of Rights in Rem under Article 6 • 中文意見： 第6條之「不動產物權」範圍是否包含基於土地森林復育計畫取得之特殊排放單位（如 RMU、ERU）或碳排放權，值得釐清。此外，有關配偶於一方死亡後繼續使用房屋之權利，或依台灣民法第 826-1 條經登記之共有建物使用約定，是否屬於本條之不動產物權訴訟，亦建議予以明確化。 • English Comment: Clarification is needed regarding whether "rights in rem in immovable property" under Article 6 include special emission units (e.g., RMUs, ERUs) or carbon credits derived from land/forest restoration projects. 21Furthermore, it should be clarified whether certain rights, such as a surviving spouse's right to occupy the family home or registered co-owner usage agreements (e.g., under Art. 826-1 of the Taiwanese Civil Code), fall within the scope of this Article.</p> <p>4. 關於協議管轄與裁量管轄之交互關係 Relationship between Party Autonomy and Discretionary Jurisdiction • 中文意見： 公約應釐清第7條「排他性管轄協議」與第9條及第10條間之關係。特別是當事人已有管轄協議時，法院是否仍得依據第10條之法則行使裁量權來決定管轄，抑或排他性協議應具有絕對優先性，此點尚待明確。 • English Comment: The relationship between exclusive jurisdiction agreements under Article 7 and the rules in Articles 9 and 10 requires further clarification. Specifically, it remains unclear whether a court may still exercise discretion to determine jurisdiction under Article 10 when a valid jurisdiction agreement exists, or if such agreements should strictly override discretionary rules.</p>
6.1 What are your views on the 'jurisdiction / connection' list in Article 8(2)?	

<p>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?</p>	
<p>6.3 Are there any additional factors that you believe should be included?</p>	
<p>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?</p>	
<p>7.2 What are your views on how the two approaches may work in practice?</p>	
<p>7.3 Do you have a preference for either approach? If so, please explain why.</p>	
<p>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)?</p>	
<p>8.2 Do you have any views on how Article 10 might work in practice?</p>	
<p>8.3 Are there additional considerations that, in your view, should be taken into account?</p>	
<p>9. 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.</p>	
<p>10. 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.</p>	
<p>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?</p>	

<p>11.2 Are there particular advantages and challenges you foresee in applying these methods?</p>	
<p>12. 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?</p>	
<p>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.</p>	
<p>13.2 Do you have any views on whether the proposed rules set out in the Draft Text would improve the status quo?</p>	
<p>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?</p>	
<p>14. What other comments, if any, do you have?</p>	