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Name: Click or tap here to enter text.

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Affiliation:

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Please indicate your profession:

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

- Yes
- No

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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?
Click or tap here to enter 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?
Click or tap here to enter text.
- 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)?
Click or tap here to enter text.
- 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).
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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.

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Question 3 on when a court is deemed to be seised

What are your views on Article 4?

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Question 4 on Article 5 obligations

What are your views on Article 5?

Suggestions:

1.The relation between Article 5 Paragraph 3 and Article 9 Paragraph 5(b) may need to be made more clear since there seems to be some overlaps.

2.There may be a need to consider whether to add a paragraph “A court that suspended its proceedings in accordance with this Chapter shall proceed with the case if the proceedings in the court for the benefit of which proceedings were suspended resulted in a judgment incapable of recognition and, where applicable, of enforcement in that Contracting State. ”

Question 5 on priority jurisdiction / connection

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

Suggestions:

On Article 7 Paragraph 3, it may need consider whether to set a time limit for the defendant expressly consent since in Chinese law there ’ s a time limit that the jurisdiction objection should be brought up during the submission of defense bill.

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

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

Suggestions:

1. On Article 8 paragraph 2 (g) , it may need consider whether to include “intangible property” or not since the definition is still unclear. Besides, “loss of value” seems can be included into “loss” .

2. Considering the purpose of this convention is to prevent parallel proceedings as much as possible, the jurisdiction/connection created by Article 8 paragraph 2 may need to be limited.

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?

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6.3 Are there any additional factors that you believe should be included?

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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?

Suggestion:

1. On Article 9 paragraph 2, considering in Chinese law the “forum non conveniens” rules shall be started on the application by a party, we suggest to delete “pending the determination of the application under paragraph 1” .

2. On Article 9 paragraph 5(b)[option1], it may need to clear the difference between [option1] and Article 19 Avoiding denial of justice.

7.2 What are your views on how the two approaches may work in practice?

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7.3 Do you have a preference for either approach? If so, please explain why.

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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)?

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8.2 Do you have any views on how Article 10 might work in practice?

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8.3 Are there additional considerations that, in your view, should be taken into account?

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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.

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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.

Suggestions:

It may need to clear the following questions:

1. Whether “Article 22 Declarations with respect to specific matters” can be used by contracting states for the whole “Chapter III related actions” to be excluded.
2. If one party apply for consolidations of related actions, is there a proceeding for the other party to object?
3. The “consolidate” means combine two related action cases into one or just try the two cases in the same forum? (if one case is in the first instance and the other is in the second instance, it’s difficult to combine them into one)
4. If one forum consider one of the related actions is beyond the convention’s scope and the other forum consider it’s not beyond, shall they suspend the trial and start the communication mechanism?

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?

Suggestions:

1. We suggest to remain Article 16 paragraph 4 since it provides a standard to encourage communications.
2. On Article 16 paragraph 4, now it use “shall” but in practice, it may be difficult to compel contracting states to communicate since it concerns jurisdictions and many proceedings need to be started on one party’s application.
3. On Article 17, we strongly suggest that to guarantee the flexibility for contracting states on choosing this rule is important, which means it may be better not to compel contracting states to make a declaration on whether to include Article 17 or not.
4. On Article 18, we strongly suggest that “sovereignty” should be remained in this article..

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

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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?

Suggestions:

1. On Article 19, considering “Denial of justice”, which may have a broad scope and ambiguous definition, is unfamiliar to many contracting states and may cause confusion in practice, we suggest that two points need to be made clear: (1) Article 19 doesn’t create a new jurisdiction/connection; (2) “Denial of justice” should not make a substantive examination of the national judicial system of a contracting state.

2. On Article 20, it needs to differentiate the general litigation strategies and abuse of process. The latter one may need to include “intention” as a core element.

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.

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

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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?

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Question 14 - comments

What other comments, if any, do you have?

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