

Information Page

Name: Michael P Clancy OBE,WS,FRSE

State: United Kingdom

Region: Scotland

Affiliation: The Law Society of Scotland

E-mail:

Please indicate your profession:

- Practitioner
- Judge
- Company/business lawyer
- Government official
- Legal professional in international organisation
- Academia

X Others, please specify: The Law Society of Scotland is the regulatory and representative body for Scottish solicitors. I am the Director of Law Reform at the Society.

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

- Yes
- X No

The HCCH will publish your response to this public consultation (both in its original form and in a compiled document, together with other responses) to its Members on the Secure Portal of the HCCH. The Secure Portal is accessible by HCCH Members only. You can choose whether you would prefer to have your personal information (name and affiliation) published or to remain anonymous when your response is published. For transparency, the State, region, and the type of respondent (e.g. “profession”, “area of practice”) will be published. Your contact details will not be published.

Please indicate whether your personal information can be published on the HCCH Secure Portal webpage (accessible by HCCH Members only) and in HCCH’s relevant documents. Please tick one box:

- X Yes, I consent to the publication of my name and affiliation

Yes, I consent to the publication of my affiliation only

No, I do not provide consent to the publication of my name and affiliation

Please indicate where you have acquired information about this consultation (for HCCH's internal use):

X HCCH website

HCCH social media

News from blogs

News from associations or organisations

Others

The comments of the **Private International Law Reference Group of the Law Society of Scotland** on the HCCH consultation on Draft text convention on parallel proceedings and related actions

BUSINESS

Introduction

The Law Society of Scotland is the professional body for over 13,500 Scottish solicitors. We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful, and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society. Our Private International Law Reference Group welcomes the opportunity to consider and respond to the [HCCH | Public consultation on the Draft Text](#) to address parallel proceedings and related actions taking place in multiple States. The Reference Group has the following comments to make.

General comments

We commend the initiative of the HCCH to open this global public consultation. It is pivotal that private international law instruments are adopted having regard to the views of stakeholders who are to benefit from such adoption. Hence, the importance of opportunities such as this one to gather their views. We hope that the HCCH will publish an analysis of the consultation exercise in due course.

Parallel proceedings are undesirable in international litigation. They bring uncertainty, increase costs and cause delay in the resolution of disputes by courts. Furthermore, they waste resources and involve the risk of inconsistent judgments resulting from separate proceedings and give rise to potential enforcement issues. Common law and civil law jurisdictions apply different tools and approaches to deal with parallel proceedings. It should be noted that rules for parallel proceedings and related actions

are the exception globally-only existing within the EU, where they are integrated to an overarching system of jurisdiction inclusive of direct rules of jurisdiction.

There are a variety of views about this convention but on balance we take the view that an HCCH convention to coordinate parallel proceedings (and related actions) globally could address some of the challenges in international litigation particularly if the convention is adopted widely. This draft HCCH convention complements other HCCH conventions concerning international jurisdiction and recognition and enforcement of foreign judgments. So, this might be also an incentive for states like the UK, which have already adopted those conventions, to adopt this convention too. We acknowledge that substantial further discussion and work will be required on certain provisions and parts of the text. Subject to resolution of the textual issues, this potential HCCH convention could be valuable for litigants and their advisers.

Specific comments

The scope of the draft text overall seems reasonable. However, the number of exclusions proposed would limit the application and impact of the convention. This is not unusual in international conventions and sometimes assists in the adoption of conventions by more states.

In terms of the arbitration exclusion ('arbitration and related proceedings') in Article 2(3), with which we agree (given the 1958 New York Convention), we questioned the relationship between Articles 2(2) and 2(3). We also questioned how this exclusion interfaces with arbitration related interim measures issued by courts, such as anti-suit injunctions.

In terms of the geographical scope, it would be helpful to know the rationale of the proposed potential additional requirement based on the defendant's habitual residence. Is this being proposed to discourage forum shopping?

We also make the point that non-exclusive jurisdiction agreements that have derogating effects (e.g. asymmetric choice of court agreements) are given priority over other grounds of jurisdiction (apart from exclusive jurisdiction for rights in rem in immovable property and submission) and purely prorogatory non-exclusive choice of court

agreements are treated at the same level as the habitual residence of the defender and the other indirect grounds of jurisdiction modelled on Article 7(1) of the HCCH Judgments Convention 2019.

The overarching principles proposed in the text appear reasonable, but some of the criteria or tests proposed might not be always straightforward to determine or apply (e.g. in Article 5(3) or Article 10).

In our view, there might be a risk of different interpretations among contracting states (despite Article 23 on uniform interpretation). Including a formal body to give authoritative interpretation on the provisions of the convention would manage this risk. Furthermore, the proposed communication mechanism in Article 16 could possibly offer some help with potential interpretation of issues and difficulties.

Nonetheless, we encourage the HCCH to continue with the mandate to work on jurisdiction rules - as provided in paragraph 12 of the Decisions of CGAP 2025:[1828feba-831f-4f6f-a95e-6286e0495057.pdf](https://www.hcch.net/documents/2025/1828feba-831f-4f6f-a95e-6286e0495057.pdf) regardless of the position adopted in relation to this text on parallel proceedings.