

Comments by Dr. Xu Guojian on the Questions for the Consultation

Question 1 on the scope of the Draft Text

Do you have any views on the scope of the Draft Text?

1.1 Does the subject matter scope of the Draft Text cover those subject matters for which rules on parallel proceedings and related actions would be beneficial? Please give reasons for your answer.

1.2 Do you have any views on any of the subject matter exclusions in particular, and how they would work in practice?

[Dr. XU: Article 2.3 excludes arbitration from the scope of application of the Convention. This exclusion should be reconsidered. Transnational litigation and international arbitration are distinct yet closely related means of resolving international civil and commercial disputes. In practice, situations frequently arise in which, due to the uncertain validity of an arbitration agreement between the parties, arbitral proceedings and court litigation concerning the same dispute proceed in parallel. Moreover, as provided in Rule 28.4 of the SIAC Arbitration Rules—“*The Tribunal may rule on an objection referred to in Rule 28.3 either as a preliminary question or in an Award on the Merits*”—it is possible that, notwithstanding the existence of court proceedings, the arbitral proceedings may continue until an award is rendered. Such jurisdictional conflicts between arbitration and litigation are issues that the future Convention clearly cannot ignore.

The Convention’s treatment of arbitration differs from that of the 2005 Choice of Court Agreements Convention and the 2019 Judgments Convention. This is because the 1958 New York Convention already provides a global regime for the recognition and enforcement of arbitral awards, whereas, at the global level, no international convention exists that conflicts with or comprehensively governs transnational civil and commercial jurisdiction.]

1.3 Do you have any views on the geographical scope of the Draft Text and how it would work in practice?

[Dr. XU: No]

Question 2 on definitions

Do you have any comments on the definitions of parallel proceedings and related actions, in particular how these definitions might operate, and be applied by parties and courts, in practice?

[Dr. XU: The draft Convention defines three concepts used in the Convention text, namely **parallel proceedings**, **related actions**, and **habitual residence**. In the English text, the terms “proceedings” and “actions” are used respectively for *parallel proceedings* and *related actions*. We understand these two terms to have exactly the same meaning, because in the definition of *related actions* the term “proceedings” is in fact used to define “actions”. Therefore, in the Explanatory Report to the future Convention, it would be appropriate to clarify expressly that these two terms are used synonymously.

In light of the scope of application of the Convention discussed above, arbitral proceedings should be included within the notion of *related actions*. An example may illustrate the relationship between arbitral proceedings and related actions.

Company S, incorporated in State C, entered into a loan agreement with Company G, which is also incorporated in State C. The contract contained an arbitration clause providing for arbitration in Hong Kong. The shareholder of Company S was Company A, incorporated in State D. Company A later sold all its shares in Company S to Company B, incorporated in Hong Kong, and the parties concluded a Share Purchase Agreement (SPA). The SPA provided that, prior to completion of the transfer of shares in the target company S, Company A was required to fully repay the principal and interest of the loan owed by Company S to Company G. As Company S failed to repay the debt owed to Company G before completion, Company B withheld a portion of the share purchase price equivalent to the outstanding amount. Consequently, Company A brought an action against Company B before the courts of State C, where Company S is located, seeking payment of the remaining share purchase price together with interest.

Meanwhile, Company G (more precisely, the bankruptcy administrator of Company G), on the basis of the arbitration agreement, commenced arbitration against Company S before the HKIAC, seeking repayment of the debt owed by Company S to Company G. It should be noted that, at the time the arbitration was commenced, Company S had already come under the actual control of Company B, and Company A had transferred all of its shares to Company B.

It is evident that the arbitration between Company G and Company S before the HKIAC and the court proceedings between Company A and Company B before the courts of State C are closely connected and involve intertwined legal interests. This arbitral proceeding clearly falls within the category of “related actions (arbitration)” with which the Convention is concerned. Accordingly, we submit that the definition

of *related actions* should take into account situations involving *related arbitral proceedings*.]

Question 3 on jurisdiction / connection

3.1 *Do you have any views on Articles 4 and 5?*

3.2 *Do you have any views on how each Article 6 – 8 will work in practice?*

[Dr.XU: Regarding Article 4:

Although such situations may not arise frequently in practice, questions may arise as to how to proceed if the parties to parallel proceedings, or the two courts seised, each consider themselves to be the “court seised.” In addition, should issues of time differences between jurisdictions be taken into account?

Regarding Article 5:

Articles 5(1) and 5(2), which provide for suspension and dismissal, respectively, are relatively workable in practice. By contrast, Article 5(3) lacks practical operability, primarily because the standard of “within a reasonable time” is difficult to determine. This provision should further specify the criteria for determining such a time period, or, alternatively, the Explanatory Report to the Convention should set out clearer guidance on how this standard is to be assessed.

Regarding Article 7:

In international civil and commercial practice, situations in which parties conclude arbitration agreements to resolve their disputes arise far more frequently than situations in which they choose court jurisdiction. Therefore, in order to ensure that the future Convention gains broad acceptance and adoption within the international business community, parallel or related proceedings arising from the parties’ exercise of party autonomy in concluding arbitration agreements should also be taken into consideration.

Regarding Article 8:

With a view to expanding the range of parallel or related proceedings covered by the Convention, we consider it reasonable for Article 8(2) to include, as far as possible, the various jurisdictional connecting factors of courts.]

Question 4 on Article 9

4.1 *Do you have any views on the two approaches in Article 9 and how they may work in practice?*

[Dr. XU: In practice, both alternatives provided in Article 9 adopt the approach of allowing the **court first seised** to determine the direction of parallel proceedings, that is, to decide which court should hear the case. However, the first alternative is more reasonable. Under this approach, the court first seised may, in light of the specific circumstances of the case, determine which court is the more appropriate court. By contrast, the second alternative directly confers priority on the court first seised to hear the parallel proceedings, which is more likely to encourage forum racing by the parties in practice. Accordingly, we are inclined to consider the first alternative to be preferable.]

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

[Dr.XU: see above]

Question 5 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?

[Dr. XU: We consider that the solutions to parallel proceedings set out in the draft Convention are, in general, reasonable and workable. The draft largely takes into account and incorporates the necessary factors for resolving parallel proceedings. The solutions, principles, and factors adopted in China's most recent legislation on parallel proceedings are broadly consistent with those reflected in the draft Convention.

Articles 280 and 281 of the **Civil Procedure Law of the People's Republic of China (Amended)**, which entered into force on 1 September 2024, address parallel proceedings and contain the following main elements:

1. **Definition of parallel proceedings:** Where the same dispute between the same parties is brought by one party before a foreign court and by the other party before a People's Court, or where one party brings the same dispute both before a foreign court and before a People's Court, the situation constitutes parallel proceedings.
2. **Acceptance of jurisdiction:** In cases of parallel proceedings, where the People's Court has jurisdiction under the Civil Procedure Law, it may accept the case.
3. **Priority of exclusive choice-of-court agreements:** Where the parties have concluded an exclusive choice-of-court agreement designating a foreign

court, and such agreement does not violate the provisions of the Law on exclusive jurisdiction and does not involve the sovereignty, security, or public interests of the People's Republic of China, the People's Court may rule not to accept the case; if the case has already been accepted, it shall rule to dismiss the action.

4. **Exclusive jurisdiction of the People's Court:** The People's Court shall exercise exclusive jurisdiction over cases subject to its exclusive jurisdiction, or cases involving the sovereignty, security, or public interests of the People's Republic of China.
5. **Suspension of proceedings:** After the People's Court accepts a case pursuant to the preceding provisions, where a party applies in writing for suspension of the proceedings on the ground that a foreign court has been seised earlier, the People's Court may rule to suspend the proceedings.
6. **Continuation of proceedings before the People's Court:** In cases of parallel proceedings, the People's Court shall continue to hear the case where (a) the parties have agreed to submit to the jurisdiction of the People's Court, or the dispute falls within the exclusive jurisdiction of the People's Court, or (b) it is manifestly more convenient for the case to be heard by the People's Court.
7. **Resumption of proceedings:** Where the foreign court fails to take necessary measures to hear the case, or fails to conclude the case within a reasonable time, the People's Court shall, upon a party's written application, resume the proceedings.
8. **Effect of recognized foreign judgments:** Where a legally effective judgment or ruling rendered by a foreign court has been wholly or partially recognized by a People's Court, and a party brings an action before a People's Court again with respect to the part that has already been recognized, the People's Court shall rule not to accept the case; if the case has already been accepted, it shall rule to dismiss the action.

In addition, in connection with the rules on parallel proceedings, Article 282 of the **Civil Procedure Law of the People's Republic of China (Amended)** contains a specific provision on **forum non conveniens**. Where a People's Court has accepted a foreign-related civil case and the defendant raises an objection to jurisdiction, and all of the following conditions are met, the People's Court may rule to dismiss the action and inform the plaintiff to bring the action before a more appropriate foreign court:

1. The basic facts of the dispute did not occur within the territory of the People's Republic of China, and it is manifestly inconvenient for the People's Court to hear the case and for the parties to participate in the proceedings;
2. There is no agreement between the parties choosing the jurisdiction of the People's Court;
3. The case does not fall within the exclusive jurisdiction of the People's Court;

4. The case does not involve the sovereignty, security, or public interests of the People's Republic of China; and
5. It is more convenient for the foreign court to hear the case.

After a ruling dismissing the action is made, if the foreign court refuses to exercise jurisdiction over the dispute, or fails to take necessary measures to hear the case, or fails to conclude the case within a reasonable time, and a party subsequently brings the action again before a People's Court, the People's Court shall accept the case.]

Question 6 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?

[Dr. XU: Under Chinese law, there is no concept or regime governing **related actions**. At present, we are therefore unable to assess the merits or shortcomings of the regulatory framework set out in the draft Convention for resolving issues arising from related actions.]

Question 7 on the communication mechanism

Do you have a view on the practical operation (or the effectiveness) of the communication methods between courts seised, in dealing with parallel proceedings and related actions? Please comment on the advantages and disadvantages of these methods, and where necessary and relevant, how the methods or rules can be improved.

[Dr. XU: The draft Convention currently provides that courts seised of parallel proceedings or related actions may communicate with each other either directly or indirectly. Contracting States may choose one of these modes of communication upon acceding to the Convention; where no choice is made, it is to be understood that the courts of that State permit only indirect communication. The adoption of such a flexible approach to inter-court communication in the draft Convention is reasonable and workable.]

Question 8 on safeguards

8.1 Do you have any views on any of the three safeguards provided in the Draft Text, particularly as to how they will operate in practice?

[Dr. XU: Articles 19, 20, and 21 of the draft Convention provide for three safeguards, namely **avoiding denial of justice, prevention of abuse of process, and public policy**. We have no difficulty with the inclusion of public policy as a safeguard. However, given that *avoiding denial of justice* and *prevention of abuse of process* are highly technical concepts, we are concerned that, in practice, such provisions may instead be misused, thereby undermining the effective application of the Convention. If such safeguards are to be included, the threshold for their application should be raised and their scope of use should be strictly limited.]

8.2 Do you have any views on how tactical use of the Draft Text could be prevented?

[Dr. XU: In transnational litigation practice, the tactical use of the Convention by lawyers is common and unavoidable, and there is no need to address or regulate such conduct in the Convention.]

Question 9 on the objectives of the Draft Instrument

9.1 Do you have any views on whether the rules set out in the Draft Text would 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 the risks and [unnecessary] costs associated with multiplicity of proceedings [by creating concrete rules for domestic courts], and to [prevent] [[reduce] [mitigate] the risk of] inconsistent judgments in transnational civil or commercial litigation.*

[Dr. XU: We consider that the provisions of the draft Convention are, in general, capable of achieving the objectives of the Convention.]

9.2 Do you have any views on whether the proposed international instrument would improve the status quo in circumstances where these matters are regulated by national law only?

[Dr. XU: We believe that rules on jurisdiction in cases of parallel proceedings need to be unified at the international level. In our view, the provisions of the current

draft Convention represent an improvement over resolving conflicts of jurisdiction in parallel proceedings solely through domestic legislation.]

Question 10 - additional comments

10.1 What other comments, if any, do you have?

10.2 Optional questions: the PB would find it helpful to receive

- any data or other evidence as to the incidence of parallel proceedings and related actions in your jurisdiction or in your experience;*
- any data/evidence that you might have or be aware of as to parallel proceedings and related actions that would fall within the scope of the Draft Text.*

(Compiled by Dr. Xu Guojian from 31 December 2025 to 4 January 2026.)