

PARALLEL PROCEEDINGS AND INTERNATIONAL COMMERCIAL ARBITRATION: THE INTERNATIONAL LAW ASSOCIATION'S RECOMMENDATIONS FOR ARBITRATORS

*Winnie (Jo-Mei) Ma**

ABSTRACT

In 2006 the International Law Association adopted various recommendations to facilitate consistency in the arbitrators' approach to parallel proceedings. The ILA confirms the possibility of parallel judicial and arbitral proceedings notwithstanding the persistent debate on whether the arbitral tribunals or the state courts should have priority in determining arbitral jurisdiction. By widening the definition of parallel proceedings to include related proceedings involving substantially the same parties and issues, the ILA provides different recommendations for different types of parallel proceedings. These recommendations advise arbitrators to consider the interests of arbitral efficiency and the possibility of annulment when deciding whether to exercise or decline their jurisdiction.

*Through a critical analysis of the ILA recommendations, this paper explores the debate surrounding the parallelism between arbitration and litigation, the adaptability of the principles governing parallel litigation to arbitration (specifically *lis pendens* and *forum non conveniens*), as well as the controversy of whether the principles governing parallel proceedings should pertain to*

* Assistant Professor, Bond University Faculty of Law. I would like to thank Matthew Cantatore for assisting me in the research of this paper. I am also grateful to Emeritus Professor Mary Hiscock for her comments on a draft of this paper. The author can be reached at wma@bond.edu.au.

public policy. It concludes that the ILA recommendations appropriately balance the interests of avoiding parallel proceedings with the arbitrators' duties to exercise their jurisdiction and render enforceable awards. Nevertheless, it is hoped that the ILA (and the arbitration community) will further explore the solutions for parallel proceedings other than staying arbitration, as well as the interaction between parallel proceedings, anti-suit injunctions, res judicata and public policy.

KEYWORDS: *parallel proceedings, lis pendens, lispendens, forum non conveniens, res judicata, public policy, anti-suit injunction, principle of competence-competence, international commercial arbitration*