CCTL Cross-Border Legal Issues Dialogue Seminar Series – 'Parallel Proceedings between International Commercial Litigation and Arbitration' by Dr. Guangjian Tu (Recording Released)

Parallel proceedings in international commercial litigation between the courts of different countries have long been discussed and explored, for which the Brussels I Regulation in the EU provides a good model for solution although it is still a problem at the global level and an obstacle for the Hague Jurisdiction Project.

However, it seems that so far no enough attention has been paid to the problem of parallel proceedings between international commercial litigation and arbitration. Theoretically, parties' consent to arbitration will exclude the jurisdiction of states' courts by virtue of the rules set out in Article 2 of the New York Convention altogether. But the Convention fails to successfully eradicate parallel proceedings between arbitral tribunals and state courts, owing to its inherent defects. When a conflict arises between international commercial arbitration and litigation proceedings, a rational balance must be struck between the judiciary and the arbitral tribunal with a reasonable division of competence between the two bodies. Different from parallel proceedings between two courts of different countries where usually both have jurisdiction and the question is only who should decide first, the jurisdiction of a national court and that of an arbitral tribunal excludes each other; similar to them, the problems with the former will also happen to the latter. Shall one always give "priority" to the arbitral tribunal to decide i.e. the issue of validity of the arbitration agreement for the purpose of respecting the doctrine of competence/competence? Can a simple lis pendens rule like that under the Brussels I Regulation work i.e. a national court or arbitral tribunal whoever is seized earlier shall decide when the issue of the validity of

arbitration agreement is raised as a preliminary question in the national court? This presentation will try to explore an ideal model for the solution to this problem.

The recording can be found here.