

The Sedona Conference Draft International Arbitration Principles



International Arbitration Principles

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International Arbitration Principles

Cooperation and Disclosure

1. The exchange of documents, electronically stored information (“**ESI**”) and other relevant evidence (the “**Documents and Evidence**”) in international commercial arbitration should be undertaken with a view towards the consensual nature of international arbitration and in consideration of the efficiency goal of the process (including cost and time), confidentiality, and the enforceability of the Award.
 - a. The Documents and Evidence processed in international arbitration, including any Protected Data contained therein, should be minimized.
 - b. To the extent consistent with the efficiency goal of the process (including cost and time) and with equal treatment of the parties, the arbitral institution, the arbitral tribunal, the parties, and all those acting on their behalf (the “**Arbitral Participants**”) are encouraged to leverage technology solutions during the conduct of the proceedings, including the disclosure and management of Documents and Evidence.
2. Any agreement between the parties as to the scope of document disclosure should be respected by an arbitral tribunal provided their agreement is consistent with the efficiency goal of the process, the concept of proportionality, and data minimization.
3. Where document disclosure is considered appropriate, and the parties are not able to agree on the scope of the disclosure, document requests should be narrowly tailored to the Documents and Evidence that is relevant, non-duplicative, proportional, and material to the party’s claim or defense or the resolution of the matter.

Information Security

4. Arbitral Participants shall put in place appropriate technical and organisational measures ensuring a reasonable level of security appropriate to the arbitration, taking into account the scope and risk of the processing, the capabilities and regulatory requirements of the Arbitral Participants, the costs of implementation, and the nature of the information being processed or transferred, including whether it includes Protected Data or sensitive commercial, proprietary or confidential information.

Data Protection

5. Arbitral Participants should, whenever possible, apply Data Protection Laws relating to Protected Data in a manner that is consistent with the Applicable Law (including the arbitration agreement) and the rights and freedoms of both the Data Subjects and the parties, including the due process rights of the parties, and the quasi-judicial role international arbitration plays in administering justice.

- a. Arbitration should be considered as a lawful basis for the processing, including where necessary the cross-border transfer, of Protected Data, provided that the Protected Data has been minimized.
 - b. The arbitral tribunal should apply the Data Protection Laws in a reasonable and proportionate manner that balances the rights of the parties in the arbitration and those of the data subjects so as to minimize the impact on the proceedings while at the same time protecting Data Subjects in an appropriate manner.
6. Arbitral Participants shall apply the Data Protection Laws, including the rights granted to Data Subjects, in a good faith manner that minimizes the impact on the efficient conduct of the proceedings and shall not employ them in a manner that disrupts the arbitration.
 - a. The institution and the arbitral tribunal shall have the authority to issue directions binding on the parties intended to minimize the impact of Data Subject Rights on the proceedings, while at the same time respecting those rights through an appropriate mechanism.
7. Courts and Data Protection Authorities should consider international arbitration as a lawful basis to process, including cross-border transfer, Protected Data under applicable Data Protection Laws, provided that the Protected Data has been minimized, and to apply the Data Protection Laws to international arbitration in a manner that respects the essential role it plays in the administration of justice, including that arbitral institutions and arbitral tribunals act in a judicial capacity when administering and deciding arbitration cases.
8. Courts and Data Protection Authorities should respect and give reasonable deference to the decisions of Arbitral Tribunals as to the application of Data Protection Laws to the processing of Protected Data in an international arbitration.

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