

MODEL DATA PROTECTION CLAUSE FOR PROCEDURAL ORDER ONE

DISCLAIMER

This model is intended to provide arbitrators with guidance in the drafting of a data protection clause in Procedural Order One, when the arbitral tribunal considers that the General Data Protection Regulation (“GDPR”) (EU Regulation 2016/679) or other similar data protection laws and regulations apply to the arbitration. It does not constitute an exhaustive, mandatory or otherwise binding document.

For any questions, the arbitrators may contact the case management team in charge of the file.

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1. When personal data is submitted during the arbitration, unless otherwise agreed or ordered in advance, it will be processed based on the legitimate interest of the parties, the arbitrators, and others impacted by the proceeding in ensuring that the arbitration is administered in accordance with the ICC Rules in a fair, impartial, and efficient manner and that the rights of the parties are protected, except where such fundamental rights and interests are overridden by the interests or fundamental rights and freedoms of the data subjects.
2. If sensitive/special category data is submitted during the arbitration, it shall be processed to the extent necessary to establish, exercise, or defend legal claims in the arbitration.
3. Personal data will be transferred outside the European Union (EU) during the arbitration only when there is a lawful basis to do so, which unless otherwise agreed or ordered in advance will be (1) because the EU considers the country of transfer to provide adequate protection; (2) standard contractual clauses have been put in place; or (3) another lawful basis applies, for example, the personal data is necessary to establish, exercise, or defend legal claims in the arbitration. In all cases of personal data transfer outside the EEA in the context of the proceeding, reasonable measures shall be put in place to ensure that the data protection principles established in the relevant data protection law are complied with after transfer.
4. The parties and their legal representatives shall not do anything contrary to the principles set forth in paragraphs 1 through 4, for example seeking consent, without first raising the issue with the tribunal and obtaining directions.
5. The parties and their legal representatives are responsible for:
 - Properly notifying the data subjects whose personal data is submitted during the arbitration by providing privacy statements in accordance with article 13 and/or 14 of GDPR.
 - Ensuring that the processing for the arbitration is compatible with the purpose notified to the data subjects whose personal data is processed during the arbitration.
 - Maintaining adequate records of their data protection compliance efforts.
 - Minimizing the personal data processed during the arbitration.
 - Putting appropriate technical and organisational measures in place to ensure a reasonable level of security appropriate to the arbitration, taking into account the scope and risk of the processing, including the state of the art, the impact on data subjects, the capabilities and regulatory requirements of all those involved in the arbitration, the costs of implementation, and the nature of the information being processed or transferred, including whether it includes personal data or sensitive commercial, proprietary or confidential information.
 - Putting mechanisms in place to comply with their data breach notification obligations.
 - Putting mechanisms in place to comply with the rights of the data subjects whose personal data is submitted during the arbitration.
6. The arbitrators shall retain the personal data for such period as is necessary, depending on applicable laws and professional obligations, for the purposes of the arbitration proceedings and of potential legal proceedings and any related ethical or other obligations applicable to them and thereafter shall safely dispose of it without providing further notice to the parties.
7. If the parties fail to meet their data protection obligations as set forth in this Order, the arbitrators may not be able to comply with their data protection obligations in a reasonable manner, the effects of which may be borne by the party that fails to comply.