Principles for International Arbitration
(May 2025 Public Comment Version)

The *Principles for International Arbitration* ("*Principles*") suggests a reasonable and proportional approach to the use and protection of data in international arbitration that: (1) respects the data protection and privacy rights of relevant data subjects while at the same time recognizing the due process rights of the arbitral participants, including the right of parties to adduce evidence material to resolution of the matter; and (2) ensures reasonable and good-faith compliance with data protection laws, while at the same time respecting the quasi-judicial role of international arbitration and ensuring that arbitral proceedings are not unduly hindered.

The focus of *Principles* is on the cross-border data transfer aspects of international arbitration. By adopting the suggested approach and striking the appropriate balance, participants in international arbitration can mitigate potential conflicts with privacy laws and regulations in the context of cross-border data transfers during international arbitration proceedings.

Principles starts with a statement of the six principles of international arbitration, followed by an introduction (Section I) and a list of definitions (Section II). Section III provides background on the characteristics of international commercial arbitration. The core of the paper can be found in Section IV, which addresses the six principles of international arbitration and provides commentary for each principle with explanatory guidance. A conclusion follows in Section V.

The six principles outlined in Section IV are as follows:

- **Principle 1:** During the course of an arbitration, Arbitral Participants should adopt a reasonable, cooperative, and proportionate approach to complying with all Data Protection Laws applicable to the proceedings while at the same time respecting the rights of the parties and their interests in the fair and efficient conduct of the proceedings.
- **Principle 2:** The exchange of Documents and Evidence in International Arbitration should be minimized and narrowly tailored to the Documents and Evidence that are relevant to a party's claim or defense, nonduplicative, and material to the resolution of the matter. Disclosure should be undertaken in compliance with the Data Protection Laws as applied in a reasonable and proportionate manner, balancing the rights of the Data Subject and relevant third parties with those of the Arbitral Participants, reflecting the consensual nature of International Arbitration, and in consideration of the efficiency goal of the process (including cost and time), confidentiality, privacy, and enforceability.
- **Principle 3:** An agreement between the parties as to the scope of document disclosure should be respected by an Arbitral Tribunal, provided their agreement is consistent with Principles 1 and 2.
- **Principle 4:** Where document disclosure is considered appropriate, and the parties are not able to agree on the scope of the disclosure, or if the agreement they propose is inconsistent with Principles 1 or 2, the Arbitral Tribunal should apply Principles 1 and 2 in deciding the extent of disclosure to be ordered.

- **Principle 5:** Applying Data Protection Laws to arbitration proceedings may require the Arbitral Tribunal to issue binding Data Protection Directions on the parties applicable to the Data Protection Laws at issue. The Arbitral Tribunal should consider issuing such directions after judging the parties' conduct under a standard of good faith, reasonableness, and proportionality, taking into account the considerations in Principles 1–4. While not binding on them, courts and Data Protection Authorities should respect and give reasonable deference to the decisions of the Arbitral Tribunal[1] as to the application of Data Protection Laws to the Processing of Protected Data in International Arbitrations.
- **Principle 6**: Arbitral Participants should put in place technical and organizational measures appropriate to ensure a reasonable level of information security of the Documents and Evidence, 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, privileged information, or sensitive commercial, proprietary, or confidential information.

The full text of *Principles for International Arbitration*, Public Comment Version, is available free for individual download from The Sedona Conference website at:

https://thesedonaconference.org/publication/International_Arbitration_Principles.

Commented [MP1]: I noticed the landing page link has a different name than the Commentary. I know we've done shorthand in rare instances before, but here, not needed as the Commentary name is pretty short. Probably too late to change now as the link is embedded in the various download posts (unless we can reroute somehow).

[1] Here, Arbitral Tribunal refers to the panel in its decision-making capacity (please see the formal definition of the term "Arbitral Tribunal" in Section II, *infra*). We note, however, that the arbitral institutions may establish rules and controls impacting privacy interests and should be guided by these principles as well.