



IP ITeasers 037:

The new ICCA-IBA Roadmap to Data Protection in International Arbitration: essential guidance and helpful precedents

Have you ever worried about how GDPR might affect your arbitration? If so, help is at hand for parties, counsel and arbitrators in the form of the newly published ICCA-IBA Roadmap to Data Protection in International Arbitration (available as a free download).

Taking GDPR as its model data protection law (although also referring to other similar data protection regimes), the report provides a clear, user-friendly analysis of key concepts. It goes on to consider the issues which Arbitral Participants (the report's term) should address before, during and after the proceedings. The Annexes contain checklists and precedents for useful documents such as standard data protection directions to be made at the CMC and privacy notices to be posted by Arbitral Participants on their websites.

The jurisdictional scope of EU-style data protection laws is broad and they often apply extra-territorially. The report emphasises that data protection rules apply as a matter of law to the collection, retention, processing and security policies of personal data in arbitration proceedings, and that individuals involved in the proceedings face potential criminal and/or civil liability in the event of a data breach, and are under an obligation to report any breach to the regulator within a very short time frame. Among the practical illustrations provided by the report is the nightmare scenario of an arbitrator using an unencrypted insecure email account and relying on public wifi whose account is then hacked, giving rise to a raft of instantly reportable data breaches.