

ICCA and IBA join forces on data protection

Jack Ballantyne 12 February 2019



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The International Council for Commercial Arbitration and the International Bar Association have created a joint task force to produce a guide to data protection issues in international arbitration.

In a press release today, ICCA says the practical guide will identify the ways in which data protection may need to be taken into account in the course of an arbitration.

As it is not possible to address all the data protection laws that might apply to an arbitration, the guide will use as an example the EU's General Data Protection Regulation (GDPR), which came into force in May 2018.

ICCA says the coming into force of GDPR has brought "unprecedented attention" to the importance of data protection and the risks of failing to comply. The regulation permits fines of up to €20 million or 4% of annual global turnover of a party in breach.

According to ICCA, acknowledging the range of applicable data protection laws, the guide will not attempt to provide a "universal solution" given the complexity of the arbitral process and the fact that the GDPR's application to an arbitration is "highly fact specific" and may be affected by the national legislation implementing the regulation.

Instead, the guide will offer an overview of the wider "regulatory framework" and explain how data protection obligations may affect parties involved in arbitration and the arbitral process itself. The guide will include annexes containing checklists and sources to be used during arbitrations to address potential data protection issues.

ICCA president **Gabrielle Kaufmann-Kohler** of Lévy Kaufmann-Kohler in Geneva says: “Navigating the obligations imposed by data protection laws is a challenge for all arbitration practitioners”. She adds that the guide will be of “real value to the arbitral community” and is a “welcome opportunity for cooperation with the IBA.”

IBA arbitration committee co-chair **Gaëtan Verhoosel** of Three Crowns in London says that the committee is “delighted to join forces with ICCA” on a project he says will “foster understanding and awareness regarding a subject matter of undeniable import today for all arbitration practitioners”.

The decision to establish the task force on data protection was made in late December and it held its first meeting on 17 January.

The task force will publish a draft guide in March this year for public comment on the ICCA and IBA websites.

A number of institutions have agreed to provide input during the drafting process including the AAA/ICDR, SCC, ICSID, ICC Court of International Arbitration, CPR Institute, HKIAC, LCIA, Permanent Court of Arbitration, Swiss Chambers’ Arbitration Institution, and World Intellectual Property Organization Arbitration and Mediation Centre.

Members of the ICCA-IBA joint task force on data protection in international arbitration proceedings:

- **Kathleen Paisley**, Ambos Law, Brussels (chair on behalf of ICCA)
- **Melanie van Leeuwen**, Derains & Gharavi, Paris (chair on behalf of IBA)
- **Lawrence Akka QC**, 20 Essex Street, London
- **Rosa Barcelo**, Squire Patton Boggs, Brussels
- **Niuscha Bassiri**, Hanotiau & van den Berg, Brussels
- **Lisa Bingham**, ICCA, The Hague
- **Markus Burianski**, White & Case, Frankfurt
- **Hugh Carlson**, Three Crowns, Washington, DC
- **Daniel Cooper**, Covington & Burling, London
- **Javier Fernandez-Samaniego**, Samaniego Law, Madrid
- **Hilary Heilbron QC**, Brick Court Chambers, London
- **Robert Maddox**, Debevoise & Plimpton, London
- **Charlie Morgan**, Herbert Smith Freehills, London
- **Philippe Pinsolle**, Quinn Emanuel Urquhart & Sullivan, Geneva
- **Jacques de Werra**, University of Geneva

Last year, the ICCA and the IBA both produced separate guidance on cybersecurity. ICCA's [protocol on cybersecurity](#) was prepared in cooperation with CPR and the New York City Bar and is currently being finalised after a period of public comment.

GAR’s sister publication covering data protection issues, [Global Data Review](#), launched in 2018.

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