AMERICANBARASSOCIATION

International Law Section

International Arbitration Committee Newsletter

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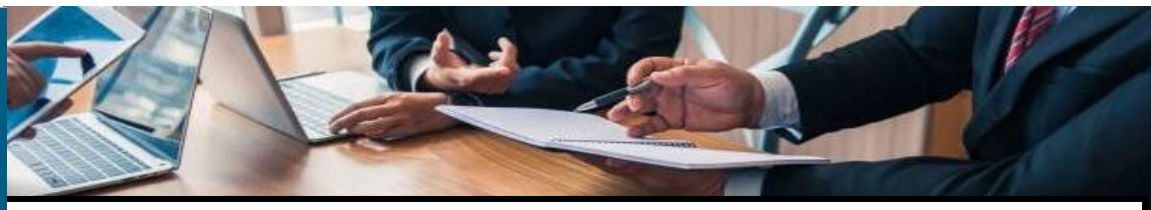

I. UPCOMING EVENTS AND CONFERENCES:

1) Columbia Law School and the Chartered Institute of Arbitrators (CIArb) Present Comprehensive Course on International Arbitration (September 9-12) *New York, New York*

This four-day, in-person course offers a "systematic and comprehensive examination of the law and practice of international arbitration." Attendees will hear lectures from renowned faculty and have the opportunity to engage in interactive activities and simulations.

2) Institute for Transnational Arbitration – ITA-ALARB Americas Workshop (September 12-13) *Buenos Aires, Argentina*

In most Latin American countries, many concessions-related disputes are subject to arbitration – some submitted to domestic arbitrators while others are submitted to international tribunals. The ITA-ALARB Americas Workshop aims to analyze the schemes followed by different Latin American countries and analyze concessions-related disputes under national laws and international law. Sessions include lectures entitled: "The Distinctive Features of Concession Agreements in Latin America" and "Jurisdictional and Procedural Issues in the Arbitration of Infrastructure Concessions."

3) IBA Annual Conference (September 15-20) Mexico City, Mexico

The IBA 2024 Annual Conference offers an unparalleled opportunity for legal professionals to connect to the largest global network of peers and participate in discussions on pressing global issues. The conference features a diverse range of sessions led by experts, including sessions organized by the Arbitration Committee, providing attendees with valuable knowledge and practical skills to enhance their practice. Additionally, Mexico City's rich cultural heritage and vibrant atmosphere make it an ideal backdrop for networking in a dynamic international setting.

4) ICC New York Conference on International Arbitration (September 25-26), *New York, NY*

The 19th edition of the annual ICC New York Conference is a prime opportunity for practicing lawyers, corporate counsel, arbitrators and academics from around the world to learn about the latest developments in the field of international arbitration.

5) Australian Arbitration Week (October 13-18) *Brisbane, Australia*

Registration for the 14th annual Australian Arbitration Week (AAW) is now open.

6) ICC FIDIC Conference on International Construction Contracts and Dispute Resolution (October 17-18), *Seoul, South Korea*

This conference will focus on the latest industry insights, trends, and developments in international construction contracts and dispute resolution.

7) AIEN Dispute Resolution in the International Energy Business (October 14-15), *Houston, Texas*.
In partnership with ICDR this two-day conference will feature panels with top experts in the field, covering key topics in energy disputes, such as boundary, joint ventures, investor-state, alternative energy, and energy infrastructure disputes.

8) ABA Construction Forum Meeting (October 23-25) *Pittsburgh, PA*
Registration for the ABA Construction Forum 2024 Fall Meeting is now open.

9) 2024 ABA ILS Fall Conference (November 13-15), *London, United Kingdom*
The conference will explore the interaction between innovation and tradition in law and the practice of law in the UK and US. Brexit's impact on competition law, corporate transactions and finance, dispute resolution, geopolitics, and IP will be discussed.

10) 2024 Edition of the Cross-Examination Moot (November 16-20), *Paris, France*
The Moot is organizing its fourth edition, the second one entirely in person. This prestigious competition, which has gained notoriety year after year, is open for registration until September 15, 2024. The students will have the chance to display their cross-examination skills. The AAA-ICDR and Chaffetz Lindsay have participated this edition in the preparation of the case study.

11) New York Arbitration Week (November 18-22), *New York, New York*
New York City, a leading destination for the international arbitration community, will welcome a host of local and global practitioners, in-house counsel, and scholars for the New York Arbitration Week, which is organized by the New York International Arbitration Center (NYIAC) and the New York Branch of the Chartered Institute of Arbitrators (CIArbNY). Registration details are forthcoming.

12) 22nd ICC Miami Conference on International Arbitration (December 1-3), *Miami, Florida*
Registration for the 22nd edition of the ICC Miami Conference on International Arbitration is open! Lawyers, arbitrators, mediators, in-house counsel, and business professionals from all over the globe will have the opportunity to listen to speakers and engage in discussions on the most recent trends and developments in arbitration within the Latin American context.

13) Miami Arbitration Week (December 1-6), Miami, Florida
The city will host several events organized by local firms and institutions such as AAA-ICDR, Ciarb, JAMS, University of Miami or Florida International University. MIAS will host the third annual LATAM Investor-State Arbitration Conference.

II. CONVENTION AND LEGISLATIVE REFORMS

1) Honduras denounces the ICSID Convention (February 24, 2024)
On February 24, 2024, the World Bank announced its receipt of a written notice of denunciation of the ICSID Convention from Honduras. The denunciation will take effect six months after the receipt of the notice, i.e., on August 25, 2024.

2) UNCITRAL Working Group III concludes its work on the draft statute of an Advisory Center (April 8, 2024)
From April 1 to 5, 2024, representatives of more than 70 State delegations and 40 international organizations gathered at the UN Headquarters in New York to complete another set of reforms in investor-State dispute settlement. The Working Group III has now completed its work on a draft statute of an advisory center on international investment dispute resolution, which aims to provide training, support and assistance with regard to international investment dispute resolution and enhance the capacity of States in preventing and handling international investment disputes.

3) Spain denounces the Energy Charter Treaty (May 14, 2024)

On May 14, 2024, Spain announced its denunciation of the Energy Charter Treaty ("ECT") and the Energy Charter Protocol on energy efficiency and related environmental aspects ("Protocol"). The denunciation of both the Treaty and the Protocol will take effect on April 17, 2025.

III. DEVELOPMENTS

1) Leadership transitions in arbitral institutions
Since the beginning of 2024, there have been changes of leadership in several arbitration institutions. On May 20, 2024, the London Court of International Arbitration announced that Jacomijn van Haersolte-van Hof had decided to step down as the Director General, effective 31 December 2024. On May 2, 2024, ICSID announced that Member States of the ICSID had elected Martina Polasek as the new Secretary-General, succeeding Meg Kinnear as of July 1st, 2024. In April 2024, the international division of the Korea Commercial Arbitration Board announced the appointment of Seung Wha Chang as its Chairman, and Steve Kim as its new Secretary General, succeeding Sue Hyun Lim. On March 20, 2024, the Qatar International Centre for Conciliation and Arbitration announced its decision to appoint Ibrahim Mohamed Shahbik as the Secretary-General. On March 18, 2024,

the Arbitration Institute of the Finland Chamber of Commerce appointed Henrik Sajakorpi as its new Secretary General to succeed Sanna Kaistinen. On January 18, 2024, the Hong Kong International Arbitration Centre announced Joanne Lau as its new secretary general, to succeed Mariel Dimsey.

2) IBA committee releases updated conflict guidelines (February 2024)

In February 2024, the International Bar Association ("IBA") published its Guidelines on Conflicts of Interest in International Arbitration, an update of the 2014 version. The new guidelines set out an update of the general standards of independence and disclosure to govern the selection, appointment and continuing role of an arbitrator, aiming at unifying and promoting the widely adopted international approach in assessing conflict of interest in international arbitration.

3) JAMS announces new AI disputes clause and rules (April 15, 2024)

On April 15, 2024, JAMS announced its AI Disputes Clause and Rules to refine and to clarify procedures for cases involving AI systems, which include rules on proper filing, service of the request for arbitration, commencement of the arbitration and service of documents throughout the arbitration.

4) SVAMC publishes AI guidelines (April 30, 2024)

On April 30, 2024, The Silicon Valley Arbitration and Mediation Center ("SVAMC") published the first edition of the Guidelines on the Use of Artificial Intelligence in International Arbitration. The publication is organized in three chapters - the guidelines that generally apply to all participants; the guidelines that address specific uses of AI by parties and party representatives; and the guidelines addressing particular considerations that may arise when arbitrators use AI.

IV. NOTABLE CASES

1) Angola faces its first ICSID case (March 28, 2024)

On March 28, 2024, a Portuguese investor filed an ICSID claim against Angola in *Ricardo Filomeno Duarte Ventura Leitão Machado v. Republic of Angola*, which is the very first ICSID case against Angola. The proceeding was initiated pursuant to the Angola - Portugal BIT 2008, and involves allegations of an expropriation of investor's electronic and energy investment.

2) Swiss Federal Supreme Court upholds intra-EU jurisdiction in ECT cases (April 3, 2024)

In a decision dated April 3, 2024, the Swiss Federal Supreme Court rendered a ruling in which it disagreed with the position of Court of Justice of the European Union ("CJEU") in *Komstroy*, and confirmed the jurisdiction of a Swiss-seated arbitral tribunal over an intra-EU ECT dispute. The underlying arbitration is *EDF Energies Nouvelles v. Spain*, where the ad hoc arbitral tribunal found in favor of the investor in April 2023. The Swiss Federal Supreme Court provided elaborate analysis of the ECT, and held that CJEU's relevant decisions in this regard are not binding on the Swiss Court.

3) Final ICSID award on *Kaloti Metals & Logistics v. Peru* (May 14, 2024)

On May 14, 2024, an ICSID tribunal rendered its final award in *Kaloti Metals & Logistics v. Peru*, concluding that the claimant's US$ 155 million claim was not a covered investment under the United States-Peru trade promotion agreement. A Floridian company, Kaloti Metals & Logistics, had initiated the ICSID claim against Peru in 2021. The company alleged that Peru's customs authorities confiscated five gold shipments valued US$ 27 million. Initially, Kaloti had sought a US$ 75 million compensation, which was later increased to US$ 122 million, with an additional US$ 33 million as pre-award interests.

4) ICSID claim against Panama (May 16, 2024)

On May 16, 2024, a Canadian mining company, Petaquilla Minerals, filed an ICSID claim against Panama under the Canada-Panama free trade agreement. This claim is thought to be motivated by an alleged expropriation of a gold mining project. Back in 2021, the Canadian company publicly announced that it was preparing a claim against Panama.

5) Concluded arbitration between Spanish gas suppliers (May 16, 2024)

According to the press, an arbitration between Spain's largest natural gas suppliers, Endesa and Naturgy, has ended. The dispute concerned the pricing in a gas supply contract between the companies. The dispute was triggered by Maghreb's shutdown of the gas pipelines in 2022, which was in response to geopolitical conflict between Algeria and Morocco. The arbitral tribunal ruled that Endesa must pay US$ 13.8 million to Naturgy.

6) U.S. Supreme Court solves split - cases sent to arbitration must be stayed (May 16, 2024)

On May 16, 2024, the U.S. Supreme Court held in *Smith v. Spizzirri* that in cases when a district court finds that a lawsuit involves an arbitrable dispute, and a party requests a stay, Section 3 of the Federal Arbitration Act compels federal district courts to stay the case pending arbitration, and the court lacks discretion to dismiss the suit.

V. CASE COMMENTARY

Arbitration and impecuniosity: French Supreme Court rules that impecuniosity is not sufficient to preclude the application of arbitration clauses

By: Stéphane de Navacelle, Juliette Musso & Salomé Garnier

1. Introduction. On 27 September 2023, the French Supreme Court confirmed recent caselaw and ruled that an argument of impecuniosity raised by the claimant is not, in itself, sufficient to preclude the application of an arbitration clause, unless the claimant can demonstrate that a previous attempt to resort to arbitration proceedings was undertaken and failed due to financial constraints.

2. Background. On 21 August 2012, OB Lavau, a French company, and its manager, also acting in his own name, entered into licensing agreements with another French entity, Atlas Form, which later became OB Réseaux, for the opening and operation of a fitness center. These contracts contained arbitration clauses referring to the arbitration rules of the International Chamber of Commerce ("ICC"). The company benefiting from these licensing agreements encountered certain financial difficulties, OB Lavau, was put in compulsory liquidation and sued its co-contractor before the Rennes Commercial Court for damages, despite the existence of arbitration clauses. The Rennes Commercial Court declared itself incompetent in a judgment dated 14 September 2021. In its ruling dated 3 May 2022, the Rennes Court of Appeal upheld the lower court's judgment, ruling in particular that the the arbitration clauses were not manifestly null and void due to the claimant's impecuniosity. The latter appealed to the French Supreme Court arguing that the Court of Appeal ruling failed to examine whether their impecuniosity deprived them of access to the courts, in violation of article 6 § 1 of the European Convention on Human Rights. Indeed, the claimant argued before the Supreme Court that the Court of Appeal had to determine whether the probable costs of the arbitral proceedings were not manifestly disproportionate in comparison to the claimant's resources. If that was the case, this would deprive the claimant of an effective access to a judge.

3. The Supreme Court's decision. The Supreme Court dismissed the appeal on the basis of the negative effect of the *competence-competence* principle of Article 1448 of the French Code of Civil Procedure by explaining that, in the present case, the claimant did not prove that an arbitration proceeding had been initiated and had failed because of its financial difficulties. According to the Supreme Court, the Court of Appel did not have to search whether the probable costs of arbitral proceedings were disproportionate to the claimant's resources because the claimant's impecuniosity is not in itself sufficient to preclude the application of the arbitration clause. Therefore, the Court of Appeal rightfully decided that the right of access to court was not violated and that the commercial court was incompetent.

4. Implications for future proceedings. Based on this caselaw which reinforces prior decisions on the matter, the mere existence of financial difficulties of the claimant will not be sufficient to set aside an arbitration agreement if no previous arbitral attempt was pursued by the claimant. Impecunious claimants must effectively demonstrate that arbitral proceedings failed due to their financial circumstances. The decision of the Supreme Court thus encourages future impecunious claimants wishing to litigate before state courts to initially engage in arbitration and witness the proceedings falter due to their financial constraints, and then go to court and argue that the arbitral proceedings could not prosper because of these difficulties which warrant the setting aside of the arbitration agreement. The Supreme Court decision confirms that any discussion regarding impecuniosity of the claimant must first be dealt with by an arbitral tribunal, and only if the arbitration fails can state litigation be pursued.

It must be emphasized that the present case was rendered in the context of a domestic arbitration case. The decision can reasonably be extended to international arbitration.

VI. WORKING GROUP REPORT

UNCITRAL Working Group III 47th session in Vienna in January 2024

By: *Velislava Hristova*

From 22 to 26 January 2024, the United Nations Commission on International Trade Law (UNCITRAL) Working Group III (Working Group) held its forty-seventh session in Vienna, Austria. Throughout the session, the Working Group focused on three main agenda items. These included the establishment of the Advisory Centre on International Investment Dispute Resolution (Advisory Centre), the draft guidelines on dispute prevention and mitigation of international investment disputes and the draft provisions on procedural and cross-cutting issues and annotations. This report will focus on the Advisory Centre.

The Working Group has been discussing the establishment of the Advisory Centre since 2019. At its sessions in October 2023 and January 2024, the Working Group conducted its first and second reading of the draft statute on the establishment of the Advisory Centre, which, at the time of writing, consisted of sixteen articles and five annexes. Although there is still work to be done

to bring the Advisory Centre to life, the key aspects of its operations, as outlined in the latest draft statute, will be addressed below.

Objectives and Principles of Operation of the Advisory Centre

The envisaged Advisory Centre aims to strengthen the capacity of States and regional economic integration organizations (REIOs) in preventing and handling international investment disputes, with a particular focus on least developed countries (LDCs) and developing countries. The Advisory Centre's main objective is to provide technical assistance and capacity building to LDCs, developing countries, and REIOs.

Article 3 of the draft statute outlines the key principles that would govern the operation of the Advisory Centre, including effectiveness, affordability, financial sustainability, independence, and cooperation.

The Advisory Centre aims to establish a sustainable financial structure. However, the financial aspect seems to be one of the major obstacles to the project's successful launch, especially since it is intended to benefit LDCs and developing countries by providing affordable services. Financial stability is essential because the Advisory Centre is expected to operate independently and free from external influence, including from its donors. The financial obligations of the Advisory Centre's members are yet to be elaborated, but it is considered crucial that its financial structure is transparent and avoids any potential conflict of interest.

Further, the Advisory Centre is expected to provide additional value to the already existing services instead of duplicating them. This means that it should collaborate and coordinate with other international organizations working in the field of investment law, such as UNCTAD, ICSID, and OECD. This would enable the Advisory Centre to optimize its services by focusing on the areas that its members cannot access at reasonable rates from other sources.

Membership and Structure

In the current draft statute for the Advisory Centre, the membership criteria are outlined in draft Article 4. The Advisory Centre would be open to both States and REIOs. While it would primarily operate for its members, draft Article 6(3) of the statute allows non-members to access the Advisory Centre's services. However, such participation would be limited to the exchange of information and the sharing of best practices for higher participation fees. This excludes the possibility of receiving tailored advice. In summary, non-members can access the Advisory Centre's services only with the approval of the Executive Director, and their objectives should align with the Centre's objectives.

During its forty-seventh session, the Working Group decided to establish a three-tier structure for the Advisory Centre. The structure will comprise a Governing Committee, an Executive Committee, and a Secretariat headed by an Executive Director. The functions assigned to each body have already been determined.

The Governing Committee has various responsibilities, which include appointing members of the Executive Committee while taking into account geographical diversity and gender balance. The Executive Committee is made up of six members, including the Executive Director ex officio, and these six members are nominated by the members of the Advisory Centre based on their professional qualifications in international investment dispute resolution. The Executive Committee is responsible for advising the Executive Director, supervising the administration of the Secretariat and performing other functions assigned by the Governing Committee.

Additionally, the Governing Committee evaluates and monitors the performance of the Centre, approves the annual report (which is prepared by the Executive Director), adopts the rules of procedure, adopts the regulations on the operation of the Centre, and, most importantly, appoints the Executive Director.

The Executive Director would lead the Secretariat of the Advisory Centre. The Secretariat will be responsible for managing the daily operations of the Advisory Centre, representing it, recruiting and managing the Secretariat staff, preparing the annual budget, which will be reviewed by the Executive Committee, and preparing the annual report for the Governing Committee's approval.

Lastly, the Executive Director is expected to perform his or her duties independently. The Executive Director should not hold any other employment or engage in any other occupation without the approval of the Executive Committee.

Functions and Services Offered by the Advisory Centre

The Advisory Centre has been projected to offer two types of services. Firstly, it would provide technical assistance and capacity-building services. Secondly, it would offer legal advice and support related to international investment dispute proceedings.

Technical Assistance and Capacity-Building

Paragraph 1 of Draft Article 6 provides a detailed list of services that the Advisory Centre would offer, including advising on issues related to dispute prevention, training on possible means of preventing and resolving disputes, holding seminars and conferences, functioning as a forum for the exchange of information and sharing of best practices, functioning as a repository for information and related sources, and performing any other functions assigned to it by the Governing Committee.

The Advisory Centre is expected to collaborate with other individuals or entities to provide the above-mentioned services, as the draft statute clarifies the cooperative nature it is meant to cultivate.

Legal Advice and Support with Regard to International Investment Dispute Proceedings

Draft Article 7 outlines the Advisory Centre's role in providing legal support and advice for any international investment dispute proceedings that may be brought or are expected to be initiated. The services that the Advisory Centre will provide include:

- conducting a preliminary assessment of the potential case and recommending appropriate means to resolve the dispute;
- assisting in the selection of mediators, arbitrators, or other types of adjudicators, as well as experts, taking into account geographical diversity and gender balance while making such selections;
- supporting the preparation of statements, pleadings, and evidence, as well as other aspects of the proceedings;
- representing the member in the proceedings, including in a hearing, possibly in conjunction with a team of the member;
- facilitating the appointment of external legal counsel to provide the above-mentioned services;
- undertaking any other duties assigned to it by the Governing Committee.

The Advisory Centre is expected to offer its services throughout the entire proceedings' lifecycle. To prioritize assistance, it has categorized countries under Annex I or Annex II of the Protocol as LDCs or developing countries. Members from the same group will receive priority based on the order of their assistance requests.

If a non-member requests assistance, the Governing Committee will decide on a case-by-case basis whether the service would benefit the non-member and to what extent. Higher fees would apply to non-members.

The Working Group will continue deliberating on the draft statute of the Advisory Centre, the updated text of the draft guidelines on dispute prevention and mitigation, as well as the standing mechanism and the appellate mechanism during the forty-eight session scheduled for 1-5 April 2024 in New York.

VII. FEATURED ARTICLE:

THE NEW DATA PRIVACY FRAMEWORK: PRIVACY SHIELD'S REPLACEMENT

By Luis M. Martinez

(Reprinted from Corporate Disputes magazine)

The European Union (EU)-US Data Privacy Framework (EU-US DPF), the UK Extension to the EU-US Data Privacy Framework (UK Extension to the EU-US DPF) and the Swiss-US Data Privacy Framework (Swiss-US DPF) were developed to facilitate transatlantic commerce by providing US organisations with reliable mechanisms for personal data transfers to the US from the EU and European Economic Area, the UK (and Gibraltar) and Switzerland consistent with EU, UK and Swiss data protection laws.

The DPF programme was developed in response to the invalidation of the Privacy Shield Framework by the Court of Justice of the European Union (CJEU) in 2020. The CJEU found that the Privacy Shield did not adequately protect EU citizens' personal data from access by US intelligence services.

Why is this important?

US organisations need the DPF programme to comply with EU, UK and Swiss data protection laws, such as the EU General Data Protection Regulation (GDPR), one of the strictest data protection laws in the world. It requires businesses that process the personal data of EU citizens to comply with certain requirements, such as obtaining consent for data processing and providing individuals with access to their data, deleting data when it is no longer necessary, implementing appropriate technical and organisational measures to protect personal data, and transferring personal data only to countries outside the EU that have adequate safeguards in place.

Fines for violating the GDPR can be significant —up to E20m or 4 percent of the organisation's global annual revenue from the preceding financial year, whichever is greater. Understanding the options to avoid running afoul of these data protection laws is essential. The DPF provides US organisations with a mechanism to demonstrate compliance with the GDPR and other data protection laws.

The DPF programme provides important benefits to US-based organisations as well as to their partners in Europe. The EU-US DPF, the UK Extension to the EU-US DPF

and the Swiss-US DPF will be recognised by the European Commission (EC), the UK government and the Swiss Federal Administration as compliant with relevant EU, UK and Swiss data protection requirements applicable to transfers of personal data to the US in support of transatlantic commerce. Once such formal recognition enters into force, participating organisations will be deemed as providing adequate privacy protection, a requirement for the transfer of personal data outside of the EU under the GDPR, outside of the UK under the UK Data Protection Act 2018 and UK General Data Protection Regulation (UK GDPR), and outside of Switzerland under the Swiss Federal Act on Data Protection (FADP). Compliance requirements are clearly laid out and can be implemented by small and medium-sized enterprises.

How do US organisations participate in the DPF?

The DPF programme, administered by the International Trade Administration (ITA) within the US Department of Commerce, enables eligible US-based organisations to self-certify their compliance pursuant to the various DPF programmes. To participate in the DPF programme, a US-based organisation is required to self-certify to the ITA via the Department's DPF programme website and publicly commit to comply with DPF principles. While the decision by an eligible US-based organisation to self-certify its compliance pursuant to and participate in the relevant parts of the DPF programme is voluntary, effective compliance upon self-certification is compulsory. Once such an organisation self-certifies to the ITA and publicly declares its commitment to adhere to DPF principles, that commitment is enforceable under US law.

To rely on the EU-US DPF and, as applicable, the UK extension to the EU-US DPF or the Swiss-US DPF, an organisation must self-certify its adherence to DPF principles to the ITA and be placed and remain on the Data Privacy Framework List. The ITA will update this list based on annual recertification submissions made by participating organisations and removing organisations when they voluntarily withdraw, fail to complete the annual recertification in accordance with the ITA's procedures or are found to persistently fail to comply. The ITA will also maintain and make available to the public an authoritative record of US organisations that have been removed from the Data Privacy Framework List and identify the reason each organisation was removed. The aforementioned authoritative list and record will remain available to the public on the US Department of Commerce's DPF programme website.

What are the key steps to joining?

Confirm your organisation's eligibility to participate in the DPF programme. Only US legal entities subject to the jurisdiction of the Federal Trade Commission (FTC) or the US Department of Transportation (DOT) are currently eligible to participate in the DPF programme. In order to be transferred in reliance on parts of the DPF programme, personal data must be processed in connection with an activity that is subject to the jurisdiction of at least one appropriate statutory body listed in the DPF principles.

Make specific reference in the privacy policy to your organisation's compliance with the DPF principles. Organisations must develop a DPF-compliant privacy policy before submitting their initial self-certification to the ITA and ensure it conforms to DPF principles. Among other things, the privacy policy should reflect organisations' information-handling practices and the choices it offers individuals with respect to the use and disclosure of their personal information. It is important to write a policy that is clear, concise and easy to understand.

Additional steps. Organisations need to identify their independent recourse mechanisms (IRMs), outlined below. The full list of steps to join the programme can be found on the DPF programme website.

What are the rights of nationals from participating countries pursuant to the DPF?

A participating organisation must provide, among other requirements: (i) information on the types of personal data collected; (ii) information on the purposes of collection and use; (iii) information on the type or identity of third parties to which personal data is disclosed; (iv) choices for limiting use and disclosure of personal data; (v) access to personal data; (vi) notification of the organisation's liability if it transfers personal data; (vii) notification of the requirement to disclose personal data in response to lawful requests by public authorities; (viii) reasonable and appropriate security for personal data; (ix) a response to your complaint within 45 days; (x) cost-free independent dispute resolution to address data protection concerns; and (xi) the ability to invoke binding arbitration to address any complaint that the organisation has violated its obligations under the DPF principles and that has not been resolved by other means.

ICDR role

The ICDR, the international division of the American Arbitration Association, plays a critical role in the DPF.

The ICDR is available as an independent recourse mechanism for the DPF programme. The DPF requires participating organisations to provide — at no cost to the individual — an IRM to investigate and expeditiously resolve each individual's complaints and disputes. The IRM is a free and confidential service that provides EU, Swiss and UK individuals with a way to resolve disputes with US organisations regarding the handling of their

personal data. To meet this requirement, an organisation may choose an ADR provider, such as the ICDR, to resolve its disputes.

The ICDR was selected by the US Department of Commerce to administer arbitrations pursuant to and to manage the arbitral fund identified in annex I of the DPF principles. In annex I of the EU-US DPF principles, the US Department of Commerce committed to facilitating the establishment of a fund into which participating organisations will be required to pay contributions to cover the arbitral cost, including arbitrator fees up to maximum amounts, in consultation with the EC. The purpose of the fund is solely to provide participating organisations with a consolidated mechanism to fund the annex I arbitrations.

The ICDR is the exclusive administrator for the EU-US DPF annex I binding arbitration programme. The ICDR provides dispute resolution services around the world and incorporates best international arbitration practices designed to deliver fair, efficient and economic proceedings. In cooperation with the US Department of Commerce and the EC, the ICDR has developed arbitration rules for EU-US DPF annex I arbitrations. These rules incorporate the required terms contained within the EU-US DPF principles and annex I of the DPF principles. This final and binding arbitration mechanism is in place to resolve any residual claims not resolved by the US organisation or through the IRM procedure, as well as any claim provided to the US Department of Commerce through the claimant's data protection authority and not resolved through best efforts within 90 days.

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