



## DISCUSSING PERSONAL DATA PROTECTION DURING ARBITRATION PROCEEDINGS AND LESSONS FOR VIETNAM

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### Abstract:

In today's society, where digital technologies have a pervasive influence, data protection has emerged as a paramount concern across various scientific fields. In the realm of legal science, international arbitration, as an alternative dispute resolution mechanism, also faces its own challenges in this regard. This article delves into the issue of personal data, the urgency of data protection in international arbitration, and, through an analysis of typical data protection regulations worldwide, domestic laws on data protection in general and in arbitration proceedings in particular. Based on this analysis, the article proposes recommendations for enhancing data protection in arbitration proceedings, contributing to the improvement of the Draft Commercial Arbitration Law of Vietnam.

**Keywords:** personal data protection, arbitration process, 2010 Law on Commercial Arbitration, and draft law on commercial arbitration

### 1. Introduction

Currently, there are many opinions that identify the concept of personal data with personal information or that personal data is a broader concept than personal information. According to Council of Europe Convention No. 108 of 1981, personal data means *“any information relating to an identified individual or of a personal nature”*. Meanwhile, the Organization for Economic Co-operation and Development defines personal data as: *“any information relating to an identified or identifiable individual”*. According to the European Union's General Data Protection Regulation (GDPR), personal data is understood as: *“all information relating to an identified or identifiable individual, whether directly or indirectly”*, whereby personal data can be related information such as: name, identity card number, data on place of residence, telephone number, or

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any one or more factors related to the physical, psychological, physiological, genetic, economic, cultural or social identity of the individual.

In Vietnam, according to statistics from the Ministry of Public Security, there are currently 69 legal documents related to personal data protection, but there is no consensus on the concept and content of personal data. In Clause 1, Article 2 of Decree No. 13/2023/ND-CP on personal data protection, it is stipulated that: *“Personal data is information in the form of symbols, letters, numbers, images, sounds or similar forms in electronic media that are associated with a particular person or that identify a particular person. Personal data includes basic personal data and sensitive personal data.”*

In conclusion, through studying and researching documents and current legal regulations, it has been shown that personal data and personal information are two terms with many similarities related to privacy but there are still some certain differences. Therefore, it is necessary to have specific regulations to identify personal data to have strict regulations to effectively protect personal data.

## **2. Material and Methods**

This article is based on the synthesis and analysis of personal data protection provisions in arbitration proceedings in the regulations of several countries around the world. From the results of that analysis, the article focuses on comparing and pointing out gaps in Vietnam's legal framework, specifically in the 2010 Law on Commercial Arbitration, and offers recommendations and lessons for Vietnam to imperfect provisions on personal data protection in arbitration proceedings.

## **3. Results and Discussion**

### **3.1 Regulatory practices on personal data protection around the world**

In international law in general and in the field of international arbitration law in particular, there have previously been no clear and specific regulations on personal data protection in arbitration proceedings. Faced with the need to protect the right to privacy in the face of rapid technological development in the digital era, a number of countries and international arbitration centers around the world are making efforts to build legal frameworks related to this issue about the protection of personal data in arbitration proceedings through the internalization of personal data protection regulations and arbitration rules.

#### **3.1.1 Practice regulations on personal data protection of some countries around the world**

According to UNCTAD (United Nations Conference on Trade and Development), data protection and privacy laws have been implemented in 137/194 countries and more than 9% are currently in the drafting process.<sup>[1]</sup> The world's leading technology research

company - Gartner Inc. has predicted that, by the end of 2023, 65% of the world's population will have personal data protected under modern privacy regulations.<sup>[2]</sup>

In Europe, the European Union's General Data Protection Regulation (GDPR) took effect on May 25, 2018, marking an important milestone in the formation of a legal framework for personal data protection. Accordingly, data protection and privacy issues are specifically recognized and are considered the strictest regulations in the world on data protection and privacy. GDPR is considered a standard for personal data protection and is applied by countries around the world in their legal fields that have many similarities with GDPR such as the UK,<sup>[3]</sup> Brazil and Singapore<sup>[4]</sup>.

In addition, based on the scope of GDPR, it can be seen that arbitration proceedings are also regulated by GDPR. For example, GDPR applies when (i) personal data<sup>[5]</sup> (ii) being processed<sup>[6]</sup> within the jurisdiction of the GDPR, that is: first, in the context of controller establishment activities<sup>[7]</sup> or processing body<sup>[8]</sup> at the European Union<sup>[9]</sup>; or secondly, in connection with the supply of goods or services to persons in the European Union<sup>[10]</sup>. In addition, based on GDPR regulations, personal data in arbitration includes any data that identifies or can identify an individual such as name, home address, and contact information... processed including includes all relevant stakeholder activities such as collection, analysis and storage<sup>[11]</sup>

After leaving the European Union (EU), the UK continues to use GDPR to regulate data protection in the country. However, like a number of other countries in the EU, the UK also promulgates its own domestic laws based on the provisions of the GDPR to harmonize domestic law regulations with general EU regulations even if the country has left the alliance. Specifically, the UK passed a new national Data Protection Act (DPA) effective on May 25, 2018, in which, in addition to legal norms similar to GDPR, the DPA also created a data protection regime specifically for the processing of personal data by law enforcement, where Part 4 of the DPA updates the data protection regime to address national security; Parts 5 and 6 set out the scope of the Information Commissioner's duties and powers, and establish certain criminal offenses relating to the processing of personal data.

Currently, arbitration proceedings in the UK are governed by the Arbitration Act 1996, but the Arbitration Act 1996 does not have any specific provisions on personal data protection in arbitration proceedings. However, to fill this legal gap, GDPR and DPA can also be considered applicable in protecting personal data in arbitration proceedings based on the scope of regulation and some provisions of GDPR and DPA, issue of personal data protection in arbitration proceedings can also be considered and adjusted according to the general provisions on personal data protection.

The law on personal data protection applies throughout the UK, moreover, there is no provision in the GDPR and DPA that this law will not be applied in the field of arbitration. This means that organizations and individuals participating in commercial arbitration shall comply with these regulations when collecting, using and storing the personal data of parties involved in the arbitration, including disputing parties, witnesses and experts. In addition, to ensure confidentiality, during the arbitration proceedings, the

application of the provisions of personal data protection law shall be considered. Thus, non-compliance with personal data protection principles in arbitration proceedings may be governed by the provisions and sanctions referred to in the GDPR and DPA. Parties participating in arbitration must therefore carefully comply with these principles to protect the personal data of the parties involved.

In an effort to strengthen the legal framework on personal data protection, after the adoption of GDPR, several US states proposed to enact their own data protection laws, establishing a similar legal framework. Like GDPR, the California Consumer Privacy Act (CCPA) was passed in June 2018 after the Cambridge Analytica scandal<sup>[13]</sup>, which is expected to become the most comprehensive privacy and data protection law in the United States. Besides, the basic law regulating arbitration in the US is the US Federal Arbitration Act (FAA),<sup>[14]</sup> this act also does not contain provisions addressing the issue of personal data protection in arbitration proceedings. However, in each case, the protection of personal data in arbitration proceedings may be governed by the specific laws of each state and each state depending on the scope and location of the case in this country.

### **3.1.2. Practice regulations on personal data protection during arbitration proceedings of some arbitration centers**

In January 2019, the International Chamber of Commerce (“ICC”) added new rules regarding the protection of personal data.<sup>[15]</sup> The updated ICC Rules highlight “recognition of the importance of effective and meaningful protection of personal data where the [ICC] collects and uses that personal data as a controller data in accordance with data protection regulations, including [GDPR]”.<sup>[16]</sup> Furthermore, these new rules required parties to ensure that they comply with the GDPR and required arbitral tribunals to admonish “party representatives, witnesses, experts and any other individuals appearing before the courts that the GDPR applies to arbitration”.<sup>[17]</sup> This will typically take the form of a data protection protocol created by all participants, including members of the tribunal. The UK is a member of the ICC, so if the ICC supplements regulations on personal data protection in arbitration, commercial arbitrators in the UK during arbitration proceedings are also obliged to comply with the regulations on personal data protection in arbitration.

At the Hong Kong International Arbitration Center - one of the prestigious arbitration centers in the world, from October 24 to 28, 2022, "Hong Kong Arbitration Week 2022" was held to focus on the exchange and discussion on “Implications of the Personal Data Protection Law of the People's Republic of China (PRC) on disclosure and participation of PRC parties in international arbitration”. Although, currently, the International Arbitration Center's Rules of Arbitration Procedures do not have any regulations on personal data protection during arbitration proceedings at a major arbitration center in the world. The world's consideration and discussion of the issue of personal data protection in arbitration proceedings has shown its importance and signs that should not be ignored.

## **3.2 Vietnamese law with regulations on personal data protection in arbitration proceedings**

### **3.2.1 General provisions of Vietnamese law on personal data protection**

In Vietnam, the issue of personal data protection has been recognized as a right since the Democratic Republic of Vietnam was established, this right was recognized in the 1946 Constitution.<sup>[19]</sup> Along with the rapid development of society in general, the right to personal data protection continues to be recognized in the provisions of subsequent Constitutions (1959<sup>[20]</sup>, 1980<sup>[21]</sup>, và 1992<sup>[22]</sup>). Although the wording and content are different in each version, in general, this right is still recognized. The current 2013 Constitution inherits the provisions of previous Constitutions and continues to affirm that *“the right to privacy of individuals is inviolable, and at the same time develops and expands the scope of privacy rights to not only inviolability of body, home, and correspondence, but also includes the right to protect personal secrets, including information about private life, personal secrets, and family secrets.”*<sup>[23]</sup>

In recent years, with the speed of development and application of the Internet in Vietnam, the need for a legal corridor with specific regulations for the protection of personal data has become increasingly important and the level of data usage has become demandingly important. Up to now, according to statistics from the Ministry of Public Security, there are a total of 68 legal documents directly related to personal data protection in Vietnam, including: Constitution; 04 Codes; 39 Laws, 01 Ordinance; 18 Decree; 04 Circulars/Joint Circulars; 01 Decision of the Minister<sup>[24]</sup> and most prominently, Decree 13/2023 of the Government takes effect from July 1, 2023 with specific regulations on personal data and responsibilities of agencies, organizations and individuals in protecting personal data. It can be said that this Decree was issued with the goal of creating a legal corridor that opens the way for the development of future related laws and regulations to protect privacy, including the right to personal data across different sectors.

However, with the profound impact of the current Industrial Revolution 4.0, compared to the provisions of international law and laws in many countries, Vietnamese law in this field still has limitations. <sup>[25]</sup> Specifically, in the regulations on arbitration proceedings in Vietnam, the legal framework on this issue is still limited and has not been completed, creating many gaps in litigation activities.

### **3.2.2 Regulations of Vietnamese law on personal data protection and confidentiality in arbitration proceedings**

As mentioned above, personal data protection in general is recognized in many legal documents in countries around the world. Currently, some countries are making efforts to build a legal framework and specific regulations to ensure personal data protection mechanisms in arbitration proceedings.

In Vietnam, there is currently no specific framework or regulation regarding the protection of personal data recorded in the legal provisions on commercial arbitration and the procedural rules of arbitration centers or organizations. The Law on Commercial

Arbitration and the Procedural Rules of Organizations and Arbitration Centers only contain provisions on security issues during the conduct of non-public arbitration proceedings, but there are no provisions addressing how the personal data of the parties involved in the proceedings will be protected based on what mechanisms or sanctions and regulations for handling violations if any party violates the data protection of the parties and the data collected throughout the dispute resolution process.

The issue of security is mentioned in Article 4 of the Law on Commercial Arbitration 2010, specifically when it comes to the provisions on the Principles of Dispute Resolution by Arbitration. Paragraph 4 states: *“Dispute resolution by arbitration shall be conducted in a non-public manner, unless otherwise agreed by the parties.”* Additionally, Paragraph 5 of Article 21 on the Rights and Obligations of Arbitrators stipulates that arbitrators have the obligation to *“maintain the confidentiality of the dispute they resolve, unless required to provide information to competent state authorities in accordance with the law.”* However, if the regulations only address confidentiality, they are not truly comprehensive, as the protection of personal data is a complex issue that is deeply intertwined with human rights. Moreover, the absence of provisions regarding the protection of personal data during the arbitration process in the 2010 Law on Commercial Arbitration represents a shortcoming in meeting the requirements and standards for protecting personal data during arbitration proceedings. This may create certain challenges and legal loopholes.

Firstly, the lack of specific provisions on the protection of personal data in the 2010 Law on Commercial Arbitration leads to a deficiency in the ability to protect privacy rights. The absence of specific regulations on the protection of personal data can result in a shortcoming in safeguarding the privacy and self-determination rights of the parties involved in arbitration proceedings.

Secondly, there is a risk of storage and disclosure of personal information. The lack of legal provisions on the storage and disclosure of personal information during arbitration proceedings can create risks of unintended disclosure of personal information or violation of the privacy rights of the relevant parties.

Thirdly, it indirectly imposes limitations on Vietnam's international integration process. The absence of provisions on the protection of personal data during arbitration proceedings can render the process inadequate in meeting international standards and requirements for the protection of personal data, such as the General Data Protection Regulation (GDPR) of the European Union.

Fourthly, it poses difficulties in determining the rights and responsibilities of the parties involved. The absence of provisions on the protection of personal data in the Law on Commercial Arbitration 2010 results in a lack of clarity and consistency. The lack of specific provisions on the protection of personal data can create ambiguity and inconsistency in determining the rights and responsibilities of the parties involved in protecting personal data during the arbitration process.

To address these limitations in arbitration proceedings, it is necessary to consider adjusting or supplementing the Law on Commercial Arbitration or applying provisions on the protection of personal data through clauses and conditions in the arbitration agreement or arbitration rules. This may require the participation of relevant parties and support from other legal regulations, such as future Personal Data Protection Laws or international arbitration rules.

#### **4. Recommendations to perfect the 2010 Law on Commercial Arbitration relating to the issue of personal data protection during arbitration proceedings**

At present, the Law on Commercial Arbitration of Vietnam (issued under Decree No. 63/2010/ND-CP dated June 8, 2010) does not have specific provisions on the protection of personal data in the arbitration process. The Law on Commercial Arbitration currently focuses on regulating the resolution of commercial disputes through arbitration. However, since the effective enforcement of Government Decree No. 13/2023/ND-CP dated April 17, 2023, on the protection of personal data from July 1, 2023, there have been initial applications of provisions on the protection of personal data in the arbitration process due to the specific regulations on the collection, processing, storage, disclosure, and use of personal data. However, to improve and supplement the process of protecting personal data in the arbitration process, we believe that it is necessary to supplement provisions on the obligation to protect data and ensure security for parties involved in arbitration. Specifically:

Firstly, there is a need to supplement the obligation to protect personal data in arbitration proceedings for arbitrators and all parties involved in dispute resolution, including claimants, respondents, lawyers, experts, etc.

Secondly, there should be mechanisms to ensure the protection of personal data throughout the entire arbitration process, such as securing the information provided by disputing parties, securing information during hearings, and securing the arbitration panel's decisions. In cases where personal data is involved in the arbitration process, participants in arbitration proceedings must comply with the regulations on the protection of personal data, including the collection, use, and protection of personal data of the parties involved. This can be achieved by obtaining the consent of the relevant parties before collecting and using their personal information, as well as ensuring the safety and security of personal information during the arbitration process.

Thirdly, it is necessary to improve the provisions on the protection of personal data in the arbitration process of the Law on Commercial Arbitration of 2010 to align with the regulations of Government Decree No. 13/2023 on the protection of personal data, and particularly, reference should be made to the security provisions in the arbitration process of international arbitration centers and organizations worldwide.

Fourthly, specific sanctions should be established to address violations related to the protection of personal data by disputing parties who engage in wrongful acts.

## 5. Conclusion

Currently, the Law on Commercial Arbitration of 2010 has revealed limitations and shortcomings in the process of litigation regarding the protection of personal data. On the other hand, the legal framework for the protection of personal data in the Vietnamese legal system is still relatively modest, and we are gradually improving it based on the initial regulations recorded in legal documents such as the Constitution and existing laws.

To fulfill the country's goals in the international integration process, it is necessary to promptly supplement specific provisions regarding the obligations of the participating parties and relevant entities regarding the protection of personal data in the arbitration process. This includes expanding the scope of the application of security regulations and aligning them with the provisions of Government Decree No. 13/2023 on the protection of personal data.

### Conflict of Interest Statement

The authors have no conflicts of interest to declare. All co-authors have seen and agree with the contents of the manuscript and there is no financial interest to report. We certify that the submission is original work and is not under review at any other publication.

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### References

- [1] UNCTAD official website. <https://unctad.org/page/data-protection-and-privacy-legislation-worldwide>; "Data Protection and Privacy Legislation Worldwide." <https://rb.gy/hs93q>.
- [2] Data Migration International, The Ramp-up in Data Privacy Regulations in North America
- [3] The United Kingdom retained the GDPR after Brexit, in the form of the UK GDPR, which applies alongside an amended version of the Data Protection Act 2018.
- [4] Annex 9 of the Draft ICCA-IBA Roadmap to Data Protection in International Arbitration (Draft Roadmap) sets out a helpful non-exhaustive list of national and regional data protection laws in important arbitration jurisdictions.
- [5] Article 4(1) of the GDPR defines 'personal data' as "*any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or*



*more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person”.*

- [6] Article 4(2) of the GDPR defines ‘processing’ as *“any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction”.*
- [7] Article 4(7) of the GDPR defines ‘controller’ as *“the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data”.*
- [8] Article 4(8) of the GDPR defines ‘processor’ as *“a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller”.*
- [9] GDPR, Article 3(1).
- [10] GDPR, Article 3(2)(a).
- [11] [Data Protection Obligations in International Arbitration | Insights | Greenberg Traurig LLP](#)
- [12] The National Archives, “Arbitration Act 1996”. <https://www.legislation.gov.uk/ukpga/1996/23>. Accessed 26 January 2024.
- [13] HG.org, *Data Protection Law*, <https://www.hg.org/data-protection.html>. Accessed 25 January 2024.
- [14] Legal Information Institute, Cornell Law School, “U.S. Code: Title 9 – ARBITRATION”. <https://www.law.cornell.edu/uscode/text/9>. Accessed 25 January 2024.
- [15] International Chamber of Commerce, ‘ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration’, para. 80–91. <https://iccwbo.org/content/uploads/sites/3/2017/03/icc-note-to-parties-and-arbitral-tribunals-on-the-conduct-of-arbitration.pdf>. Accessed 27 January 2024.
- [16] International Chamber of Commerce, ‘ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration’, para. 80. <https://iccwbo.org/content/uploads/sites/3/2017/03/icc-note-to-parties-and-arbitral-tribunals-on-the-conduct-of-arbitration.pdf>. Accessed 12 March 2024.
- [17] International Chamber of Commerce, ‘ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration’, para. 83–84. <https://iccwbo.org/content/uploads/sites/3/2017/03/icc-note-to-parties-and-arbitral-tribunals-on-the-conduct-of-arbitration.pdf>. Accessed 26 January 2024.
- [18] London Center of International Arbitration (“LCIA”), Season's Greetings from the LCIA. <https://www.lcia.org/seasons-greetings-from-the-lcia.aspx>. Accessed 26 January 2024.
- [19] 1946 Constitution, Article 11, *“The homes and correspondence of Vietnamese citizens shall not be illegally violated.”*

- [20] 1959 Constitution, Article 28, *“The law ensures that the homes of citizens of the Democratic Republic of Vietnam are not violated and that correspondence is kept secret.”*
- [21] 1980 Constitution, Article 71, *“Confidentiality of correspondence, telephone calls, and telegrams is guaranteed.”*
- [22] 1992 Constitution, Article 73, *“Citizens’ correspondence, telephone calls, and telegrams are guaranteed to be safe and confidential.”*
- [23] 2013 Constitution, Article 21.
- [24] Government electronic information portal, Decree No. 13/2023/ND-CP: Protection of personal data rights; prevent personal data breaches. <https://xaydungchinh sach.chinhphu.vn/nghi-dinh-so-13-2023-nd-cp-bao-ve-quyen-du-lieu-ca-nhan-ngan-chan-cac-hanh-vi-xam-pham-du-lieu-ca-nhan-119230513100359528.htm>. Accessed 28 January 2024.
- [25] Government Cipher Committee, Some issues of building and perfecting the legal system on personal data protection in the current situation. <https://antoanthongtin.vn/chinh-sach---chien-luoc/mot-so-van-de-xay-dung-va-hoan-thien-he-thong-phap-luat-ve-bao-ve-du-lieu-ca-nhan-trong-tinh-hinh-hien-nay-107759>. Accessed 29 January 2024.

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