



Debevoise
& Plimpton

Protocol to Promote Cybersecurity in International Arbitration

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As the prevalence of malicious cyberactors and cyberattacks on high-profile companies and government organizations grows, parties to commercially or politically sensitive international arbitrations increasingly express concerns with respect to cybersecurity. Cybersecurity threats may create significant operational and legal problems that can compromise the arbitral process, including loss or unauthorized disclosure of sensitive data, breaches of attorney-client confidentiality, adverse media coverage and reputational damage, costs associated with breach notification or data recovery, and legal liability. In addition to the threat cyberattacks pose to the parties to an arbitration, failing to address this problem could ultimately lead to a loss of confidence in the arbitral system.

To respond to these concerns, the practitioners at Debevoise & Plimpton LLP have developed this Protocol to Promote Cybersecurity in International Arbitration. This Protocol operates on three principles: (i) Establishing Secure Protocols for the Transfer of Sensitive Information at the Outset of Proceedings, (ii) Limiting Disclosure and Use of Sensitive Information, and (iii) Developing Procedures for Disclosing Cyber Incidents.

The Protocol reflects our continued commitment to counsel clients on the most critical issues in international arbitration. We believe consideration of the procedures reflected in this Protocol will improve the arbitration process while appropriately managing risks. The procedures reflected in this Protocol are meant to be adaptable, so that parties, counsel and arbitral tribunals can use the flexibility inherent in international arbitration to develop procedures relevant and appropriate for each individual arbitration.



1. We will request that the arbitral tribunal establish protocols and procedures for the transfer of sensitive information at the outset of proceedings, usually in the first procedural conference. What constitutes such sensitive information should be defined in light of the particular circumstances of a dispute.
 - a. These protocols and procedures may include: (i) defining categories of sensitive information, updated as necessary through the course of the proceeding; and (ii) agreeing on processes for the secure transfer of such sensitive information between and among the tribunal and the parties.
 - b. This may include barring certain transfer methods (e.g., use of public WiFi to access sensitive information) or adopting certain transfer methods (e.g., use of secure portals instead of email).
2. We will ask the arbitral tribunal and the parties to consider and, if appropriate, agree to specific encryption standards for the transmission of sensitive information.
3. We will propose and encourage arbitral tribunals to disfavor the use of insecure email for the transmission of sensitive information unless additional measures are taken to secure the information. Such additional measures may include applying passwords to documents containing sensitive information that will be transmitted via separate channels (e.g., texting or via a phone call).
4. We will propose that, where possible, email accounts maintained by third party public servers (e.g., Gmail) have additional access protections such as multi-factor authentication (e.g., use of a token or similar mechanism in addition to username and password).
5. If third-party cloud storage is used, we will consider whether the third-party cloud storage incorporates adequate security protocols.
6. We will consider, and ask that the arbitral tribunal and opposing party consider, applicable governmental cross-border restrictions on the transfer of sensitive information and adopt reasonable measures to facilitate compliance with any restrictions.

Limited Disclosure and Use of Sensitive Information

7. Before submitting any sensitive information to the arbitral tribunal or opposing party, we will weigh the sensitivity of that information against the relevance and materiality of that information for that arbitration.
8. We will explore with the arbitral tribunal whether sensitive information may be submitted in a form that is only screen viewable (i.e., not readily downloadable or printable). If sensitive information is permitted to be printed, we will ask the tribunal to establish consistent policies and procedures related to the destruction of printed materials.
9. To the extent practicable, we will limit the persons who have access to sensitive information to those persons having a need-to-know with respect to such information.

10. To the extent practicable, access to sensitive information on computer systems should be restricted to those using a secure log-in ID and password, with a unique log-in ID and password assigned to each individual. We will consider, and ask that the arbitral tribunal and opposing party consider, the use of multi-factor authentication to access accounts or portals used to transmit and receive sensitive information.
11. We will restrict the ability to transfer sensitive information to mobile devices only if they use encryption or other appropriate security protocols.
12. At the client's request, we will establish procedures for returning or destroying sensitive information upon the conclusion of the arbitration.

Procedure for Disclosing Data Breaches

13. We will take reasonable steps to mitigate any potential breach, including by contracting with third-party vendors as necessary.
14. We will propose and work with the arbitral tribunal to establish policies and procedures related to detecting breaches, determining their scope, and notifying affected parties. Where the existence of the arbitration is itself confidential, we will work with the tribunal to consider means of notifying affected parties that best preserve the confidentiality of the arbitration.
15. We will propose and work with the arbitral tribunal to establish point-persons for each party to the arbitration and the tribunal itself to be responsible for coordinating communications in the event of a data breach or other incident that exposes or affects sensitive information.
16. We will consider whether there are any legal obligations to report the breach to affected parties, regulatory agencies, or other authorities.

Debevoise's Senior International Disputes Team



Catherine Amirfar

Catherine Amirfar is a partner in the International Dispute Resolution Group and Co-Chair of the firm's Public International Law Group. Her practice focuses on international commercial and treaty arbitration, international litigation, and public international law, and she regularly appears in U.S. courts and before international courts and arbitration tribunals. With over fifteen years of experience, Ms. Amirfar is recognized as a top practitioner in international disputes globally. Prior to rejoining Debevoise in 2016, Ms. Amirfar spent two years as the Counselor on International Law to the Legal Adviser at the U.S. Department of State, and received the State Department's Superior Honor Award in recognition of her contributions to the Department. Ms. Amirfar was one of the youngest lawyers ever to argue before the International Court of Justice.

Ms. Amirfar is admitted to practice in New York.



Donald Donovan

Donald Francis Donovan is Co-Chair of Debevoise's International Dispute Resolution Group and its Public International Law Group, and serves as counsel in international disputes before United States and international courts, as well as international arbitration tribunals. He currently serves as President of the International Council for Commercial Arbitration (ICCA), the leading global organization of international arbitrators and arbitration practitioners, and regularly sits as arbitrator in international cases, including under the auspices of ICSID, the ICC, and the ICDR, as president, chair, sole arbitrator, and co-arbitrator.

Mr. Donovan is widely regarded as one of the leading international arbitration practitioners, international lawyers, and international advocates in the world. He is admitted to practice in New York.

Debevoise's Senior International Disputes Team (con't)



Tony Dymond

Tony Dymond is a partner in the International Dispute Resolution Group. His practice focuses on complex, multi-jurisdictional construction and engineering disputes in both litigation and arbitration. He has advised clients in a wide range of jurisdictions, having spent the last 20 years in London, Hong Kong and Seoul. Mr. Dymond has advised on some of the largest and most complex market-shaping disputes in these sectors, and is widely acknowledged as a leading lawyer in energy and infrastructure. He has appeared in arbitrations under the principal arbitration rules and in the English and Hong Kong courts. Mr. Dymond is a regular speaker at construction and arbitration conferences and contributor to construction law journals.

Mr. Dymond is admitted to practice in England & Wales and Hong Kong.



Mark Friedman

Mark W. Friedman is a partner in the International Dispute Resolution Group. His practice concentrates on international arbitration and litigation, and he also has broad experience in civil and criminal matters. Mr. Friedman has represented clients in a wide variety of complex disputes across many industry sectors, including those concerning energy, mining, finance, insurance, construction, shareholder relationships, joint ventures, media, telecommunications, manufacturing, and investments. He has acted as counsel or arbitrator in disputes under the rules of the ICC, LCIA, AAA, ICDR, CPR, UNCITRAL and ICSID. He is a Vice President of the ICC Court of Arbitration and is a former Chair of the International Bar Association Arbitration Committee. Mr. Friedman was named "International Arbitration Attorney of the Year" by *Benchmark Litigation* for both 2016 & 2017.

Mr. Friedman is admitted to practice in New York and Massachusetts.

Debevoise's Senior International Disputes Team (con't)



Lord Peter Goldsmith QC, PC

Lord Peter Goldsmith QC, PC is London Co-Managing Partner, Chair of European and Asian Litigation, and Co-Chair of Debevoise's Caribbean Practice. He regularly appears in European and international courts and tribunals, acting for a variety of clients in both arbitration and litigation. He conducts arbitrations under all the major institutions, including LCIA, ICC and SIAC, and in ad hoc arbitrations. Significant work includes partnership disputes, joint ventures, oil and gas disputes, investment treaties, auditors' liability, insurance and takeover law, banking law, company law, insolvency litigation, public law and public international law, including judicial review and human rights law. He served as the UK's Attorney General from 2001-2007, prior to which he was in private practice as one of the leading barristers in London. He has judicial experience as a Crown Court recorder and Deputy High Court Judge.

Lord Goldsmith is fluent in French. He became Queen's Counsel in 1987. He is admitted to practice in England & Wales, Paris, New South Wales, Northern Ireland, Belize and British Virgin Islands, and he regularly appears for clients in other Commonwealth courts.



Antoine Kirry

Antoine F. Kirry is a partner in the International Dispute Resolution Group. Mr. Kirry has substantial litigation and arbitration experience, with particular emphasis on M&A-related disputes. He has represented defendants in some of the most publicized insider trading cases brought before the French financial market regulator and the French criminal courts, and has also handled arbitrations under the auspices of the ICC Court of Arbitration, the Arbitration Institute of the Stockholm Chamber of Commerce and the Arbitration Court of the Russian Federation Chamber of Commerce and Industry, as well as ad hoc arbitrations in various European countries. For over nine years, Mr. Kirry was a member of the board of directors of Association Droit et Procédure, one of the oldest and most respected associations of litigation practitioners in France.

Mr. Kirry is fluent in English as well as his native French. He is admitted to practice in Paris and New York.

Debevoise's Senior International Disputes Team (con't)



Wendy J. Miles, QC

Wendy J. Miles QC is a partner in the International Dispute Resolution Group. Her practice focuses on international arbitration and public international law, and she is recognized as one of the foremost practitioners in those fields. With over twenty years of experience, Ms. Miles has conducted arbitrations under all the major institutions, as well as undertaking significant public international law cases. She has advised a wide range of multi-nationals, sovereign states and state entities, and represents clients across numerous sectors, including energy, natural resources, gaming, manufacturing, financial services, pharmaceutical, licensing, telecommunications, insurance and construction. Ms. Miles is a Vice President of the ICC Court of Arbitration and former Vice Chair of the International Bar Association Arbitration Committee.

Ms. Miles became Queen's Counsel in 2015. She is admitted to practice in England & Wales and New Zealand.



Ina C. Popova

Ina C. Popova is a partner in the International Dispute Resolution Group who focuses on international arbitration and litigation and public international law, with particular expertise in matters in the mining, energy and media sectors. She represents individuals, corporations and States and has broad experience under the rules of the major arbitral institutions and several regional institutions. She also advises parties in international litigations involving proceedings in foreign and domestic courts, and has represented parties before the federal and state courts in the United States, including the United States Supreme Court. She has assumed leadership positions in various international arbitration organizations. Ms. Popova leads matters throughout the world, including in particular disputes arising out of Africa and Latin America.

Ms. Popova is fluent in French, Spanish, Italian and Bulgarian, and is proficient in Portuguese. She is admitted to practice in New York and Paris.

Debevoise's Senior International Disputes Team (con't)



Dietmar W. Prager

Dietmar W. Prager is a partner in the International Dispute Resolution Group who focuses his practice on international arbitration and litigation, with a particular emphasis on Latin America. He is Co-Chair of the firm's Latin America Practice Group, and has represented parties in numerous arbitrations throughout the world under the auspices of the ICC, ICSID, LCIA, AAA, ICDR and the PCA as well as in ad hoc arbitration proceedings. Dr. Prager's recent representations include disputes involving complex construction projects, investment treaties, energy and mining projects, oil & gas projects, the retail sector, the finance sector, sovereign debt, and distribution agreements. Dr. Prager also regularly sits as arbitrator and was one of the youngest lawyers ever to argue before the International Court of Justice.

Dr. Prager is fluent in German, English, Spanish, and French, and is proficient in Portuguese. He is admitted to practice in New York.



Natalie Reid

Natalie L. Reid is a partner in the International Dispute Resolution Group and Co-Chair of Debevoise's Caribbean Practice. Ms. Reid focuses on international arbitration, public international law, and complex commercial litigation matters. A Jamaican national, she regularly advises and represents states, multinational corporations, international organizations, and non-governmental organizations in proceedings in U.S. courts and international fora. Ms. Reid acts as counsel in commercial and treaty arbitrations conducted under the rules of the major arbitral institutions, where her recent representations include disputes arising under bilateral investment treaties in South Asia and East Asia. She currently serves on the Board of Editors of the American Journal of International Law, and multiple committees of the American Society of International Law (ASIL).

Ms. Reid is proficient in French and Spanish. She is admitted to practice in New York.

Debevoise's Senior International Disputes Team (con't)



David W. Rivkin

David W. Rivkin is Co-Chair of Debevoise & Plimpton's International Dispute Resolution Group and Immediate Past President of the International Bar Association.

Mr. Rivkin is consistently ranked as one of the world's top international dispute resolution practitioners and international lawyers. He has acted as counsel and as arbitrator in international arbitrations throughout the world and in U.S. courts. He has won some of the largest investment treaty and commercial arbitration awards. Subjects of these arbitrations have included long-term energy concessions, investment treaties, public international law, joint venture agreements, financial issues, insurance coverage, construction contracts, distribution agreements and intellectual property, among others, and they have involved common law, civil law and Islamic law systems. Mr. Rivkin has served in leadership positions in arbitration institutions on five continents and has frequently worked to update their rules. In 2012, the *American Lawyer's Am Law Litigation Daily* named Mr. Rivkin one of two "Global Lawyers of the Year," and in 2011, the *National Law Journal* named him one of the country's "Most Influential Attorneys." He sits on many arbitration panels.

Mr. Rivkin is admitted to practice in New York.



William H. Taft V

William H. Taft V is a partner in the Litigation Department. His practice focuses on commercial and corporate governance litigation and international

arbitration. Mr. Taft regularly acts for clients in U.S. litigation involving foreign parties and issues such as jurisdiction, forum non conveniens and foreign discovery. He also frequently advises clients in disputes arising from joint venture and partnership agreements, including matters involving commercial real estate and infrastructure development project companies, and has experience handling a broad range of contract disputes. He is a member of the American Society of International Law, the New York City Bar Association and has served on the International Disputes Committee of the New York City Bar Association.

Mr. Taft is admitted to practice in New York.

Debevoise's Senior International Disputes Team (con't)



Christopher Tahbaz

Christopher K. Tahbaz is a partner in the International Dispute Resolution Group and currently serves as Debevoise's Co-Chair of Asian Litigation. He is a litigator and arbitrator with a broad range of U.S. and international experience. Mr. Tahbaz regularly represents U.S. and Asia-based multinational corporations in commercial arbitration before the ICC, the LCIA and other arbitral institutions; he also regularly represents clients in investment treaty arbitrations. In recent years, Mr. Tahbaz has represented clients in post-M&A disputes, and in commercial and investment treaty disputes arising out of the financial, pharmaceutical, solar energy and gaming sectors, among others. Mr. Tahbaz also regularly serves as arbitrator in arbitrations conducted under the HKIAC, UNCITRAL, ICDR/AAA and ICC rules. He recently concluded a term as Co-Chair of the International Bar Association Litigation Committee.

Mr. Tahbaz is admitted to practice in New York.



Patrick Taylor

Patrick Taylor is a partner in the International Dispute Resolution Group who focuses on commercial and investment treaty arbitration, with particular experience in the upstream oil & gas, energy and telecommunications sectors, and tax-related disputes. Mr. Taylor's practice and experience is geared towards advising clients in the most high-stakes, complex and valuable disputes. He has developed particular expertise advising on investment protection and investment dispute settlements in high-risk jurisdictions, the enforcement of fiscal and legislative stabilisation clauses, production sharing and shareholder/joint venture disputes and complex damages analysis. Mr. Taylor has advised and represented clients in disputes throughout the world, most frequently in Africa, Eastern Europe, Russia and the CIS, and, increasingly, in Latin America. He has acted in arbitrations under the rules of ICSID, the LCIA, the ICC, UNCITRAL, the Stockholm Chamber of Commerce, the Nigerian Arbitration and Conciliation Act and the Milan Chamber of Arbitration.

Mr. Taylor is fluent in French and is proficient in Spanish. He is admitted to practice in England & Wales and Ireland, and is qualified as a solicitor-advocate (High Rights Civil).

Debevoise's Senior International Disputes Team (con't)



Frederick T. Davis

Frederick T. Davis is of counsel to the firm and a member of the International Dispute Resolution Group. His practice focuses on criminal, regulatory and civil litigation, and investigations involving U.S. and French laws. Mr. Davis is an experienced trial lawyer who has represented clients in high profile matters in both French and English language tribunals. He has represented major U.S., French and multinational companies in both domestic and international criminal investigations. He has also appeared as legal counsel in international arbitrations administered by the ICC, AAA and other institutions, and has served as an arbitrator in ICC arbitrations. The French government has named him a “Chevalier” of the National Order of Merit of France.

Mr. Davis is a former U.S. federal prosecutor. He is admitted to practice in New York and Paris.



Aimee-Jane Lee

Aimee-Jane Lee is an international counsel in the firm's International Dispute Resolution Group, whose practice focuses on international commercial arbitration and litigation, and public international law. Ms. Lee has advised private clients and states across multiple jurisdictions (notably in Asia, Africa and Eastern Europe) and a number of industries, including mining, construction, hospitality, advertising and, especially, energy. She also advises on the international protection of investments (notably under bilateral investment treaties, the Energy Charter Treaty and investor-state contracts) and represents clients in associated disputes.

In addition to her legal experience, Ms. Lee has passed Levels 1, 2 and 3 of the Chartered Financial Analyst (CFA) exams. She is therefore particularly proficient in assisting clients with quantum-related aspects of their dispute and liaising with quantum experts. Ms. Lee is admitted to practice in England & Wales.

Debevoise's Senior International Disputes Team (con't)**Carl Micarelli**

Carl Micarelli is a counsel in the International Dispute Resolution Group. His practice has included international and domestic commercial arbitration, international investment arbitration, economic sanctions compliance advice, litigation aspects of insurance regulation, class action defense and general commercial litigation. Mr. Micarelli regularly advises clients in connection with sanctions regulations administered by the Office of Foreign Assets Control (OFAC) in the U.S. Department of the Treasury. This work has included ongoing compliance advice, investigations of potentially noncompliant transactions, licensing matters and litigation. He also has significant experience with litigation regarding the enforceability of arbitration agreements and arbitral awards, and has assisted a number of life insurance companies on regulatory matters.

Mr. Micarelli is admitted to practice in New York.

**Samantha J. Rowe**

Samantha J. Rowe is an international counsel in the International Dispute Resolution Group whose practice focuses on international arbitration and public international law. Ms. Rowe has represented private clients and States across multiple jurisdictions (most notably, Latin America, Asia, the Middle East and Eastern Europe) in arbitrations governed by various substantive laws and conducted under the rules of the ICC, LCIA, ICSID, UNCITRAL and SIAC. She has experience across a broad range of industries and sectors, including energy, mining, construction, financial services and pharmaceuticals. She advises clients on a broad range of international law issues, including the international protection of investments, and represents her clients in associated disputes.

Ms. Rowe is fluent in French and Spanish, and proficient in Portuguese. She is admitted to practice in England & Wales and New York.