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Protocol for Online Case Management in International Arbitration

By the Working Group on LegalTech Adoption in International Arbitration

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As the technology used in international arbitration becomes increasingly sophisticated, our clients (as the end users of international arbitration) are seeking ever more efficient and cost effective dispute resolution processes. We are therefore delighted to have been able to contribute to the production of the Protocol, which seeks to deliver a globally consistent approach to the use of online case management platforms in international arbitration. We hope the Protocol will assist all stakeholders across the arbitration community to engage with and consider how best to use online case management software to advance the efficiency and security of their arbitration proceedings.

Projects of this nature demonstrate the international arbitration community's desire to adapt and embrace new practices, and are a forceful means of shaping the future of arbitration. We all hope that the collaboration between our firms in the production of this Protocol, to the benefit of the community as a whole, can be a blueprint for future co-operation in this area. In the meantime, we commend the Protocol to you and hope that it will become a valuable and trusted tool for all arbitral participants.

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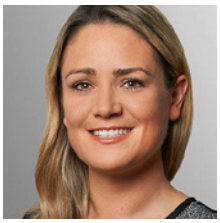
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Please note: The circumstances of any given case will dictate whether adoption of an online case management platform is appropriate. The decision to adopt (or not) such a platform will involve balancing flexibility, functionality, user friendliness, data security and cost, which can be difficult in practice. Such a balancing exercise should be conducted on a case-by-case basis and at each step of implementation. This Protocol should not be read to endorse use of an online case management platform in every arbitration.

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INTRODUCTION

1. Online case management platforms (**Platforms**) drive time and cost efficiencies throughout the arbitral process and help arbitral participants comply with their obligations to securely and effectively manage data relating to the arbitral process.

2. This Protocol will help arbitral participants (parties, lawyers, arbitrators, arbitral institutions or organisations and other arbitral stakeholders) develop efficient, safe and consistent procedures if adopting a shared online case management platform in their arbitration proceedings.

3. This Protocol is also intended to help technology providers better understand the requirements of their users, which is expected to aid the development and enhancement of online case management platforms for use in international arbitration going forward.

4. Part I addresses the “what” and the “why” by:

    - Highlighting the benefits of, and drivers behind, the adoption of online case management platforms in international arbitration;

    - Emphasizing and supporting arbitral institutions’ efforts to integrate online case management into their internal document management systems/ processes and their arbitral rules; and

    - Identifying the spectrum of case management platforms available for use in arbitration.

5. Part II addresses the "How". This Part of the Protocol gives practical guidance to arbitral participants seeking to use an online case management platform in their proceedings and identifies characteristics and functionality that arbitral participants should consider when evaluating a Platform for use in an arbitration.

6. Finally, the Annexes provide:

    - An overview of considerations relevant to Platform adoption in international arbitration (Annex 1);

    - Additional guidance for technology providers, illustrating core processes that platforms may need to address (Annex 2);

    - A checklist for arbitral participants to use when adopting a Platform (Annex 3);

    - A list of data security and privacy questions that arbitral participants may ask Platform providers (Annex 4);

    - Draft wording for a potential procedural order on issues associated with Platform adoption (Annex 5); and

    - A list of the entities and individuals consulted on the draft Protocol during the private consultation period (Annex 6). The Working Group is very grateful for all the valuable input received in the private consultation, and the public consultation, which followed the publication of the draft Protocol on 1 July 2020.

Online case management platforms (**Platforms**) drive time and cost efficiencies throughout the arbitral process and help arbitral participants comply with their obligations to securely and effectively manage data relating to the arbitral process

PURPOSE OF THIS PROTOCOL

7. Dispute resolution processes must evolve to keep pace with regulation, technological progress and the increasing digitisation of information, products and services. Importantly, they must also progress to keep pace with their users, who are increasingly globalised, located in different jurisdictions and reliant upon digital technologies as a means of efficient communication.

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8. Over the last few years, arbitral participants have rightly been giving greater focus to enhanced cybersecurity and data protection measures in the conduct of arbitration. This is reflected in the publication of the ICCA-NYC Bar-CPR Protocol on Cybersecurity in International Arbitration and the IBA Presidential Task Force's Guidelines on Cyber Security, which both highlight the importance of implementing appropriate cybersecurity measures in relation to the resolution of disputes through arbitration. Further, the ICCA-IBA Joint Task Force on Data Protection in International Arbitration Proceedings has issued a Roadmap and Annexes for public consultation, which identify what arbitration practitioners need to bear in mind to ensure compliance with data protection laws throughout an arbitral process.

9. Arbitral institutions have been reviewing and regularly revising their procedural rules to provide for more robust provisions on cybersecurity and data protection, and they are now increasingly considering and implementing online case management tools to improve their data security procedures (see, for example, the ICC's Note on Information Technology in International Arbitration, HKIAC's Administered Arbitration Rules 2018, WIPO's eADR case management platform and the SCC's case management platform — which can be used for ad hoc proceedings too).

10. In parallel, the end users of arbitration (and their counsel) have been looking to drive greater efficiency and cost-effectiveness throughout the arbitral process, including by adopting new technologies, and new ways of approaching established processes.

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11. Against that background, however, the COVID-19 pandemic and the consequent government restrictions imposed around the world have brought into stark focus the need for a more digitalised dispute resolution process and will undoubtedly further accelerate the adoption of new technologies within the context of arbitration.

12. Indeed, in the space of a few weeks, there were dramatic changes to existing dispute resolution processes across many jurisdictions aimed at enabling parties to continue to resolve disputes effectively and efficiently via remote working.

13. In response to the COVID-19 pandemic, almost all arbitral institutions have embraced new technology-enabled processes that allow cases to be filed, parties and tribunals to communicate and, when necessary, hearings to be conducted virtually. In a first, a number of leading institutions (the CPR, CRCICA, DIS, ICC, ICDR/AAA, ICSID, KCAB, LCIA, MCA, HKIAC, SCC, SIAC, VIAC and the International Federation of Commercial Arbitration Institutions) released a joint statement to the market on COVID-19. The statement acknowledges the current challenging times, highlights these institutions' support for parties and arbitral tribunals and encourages arbitral participants to deal with the challenges presented by COVID-19 in a constructive way that *"mitigate[s] the effects of any impediments on the arbitral process to the largest extent possible"*.

14. Of course, many arbitrations already take place without a hearing or on a documents-only basis (as is the case for many *ad hoc* arbitrations under the LMAA rules, for example), and those proceedings have not been as significantly impacted.

15. Helpful guidance for addressing the challenges raised by the pandemic has been developed, including:

    - The Delos checklist on holding arbitration and mediation hearings in times of COVID-19;
    - The ICC Guidance Note on mitigating the impacts of COVID-19;
    - The International Council for Online Dispute Resolution Guidelines for Video Arbitration;
    - The Seoul Protocol on Video Conferencing in International Arbitration;
    - CIArb's Guidance Note on Remote Dispute Resolution Proceedings;
    - CPR's Annotated Model Procedural Order for Remote Video Arbitration Proceedings; and
    - The Africa Arbitration Academy's Protocol on Virtual Hearings in Africa.

16. To date, a consistent approach to the adoption and use of online case management tools in arbitration remains lacking,[1] and a number of the tools that are being adopted internationally sometimes fail to meet the needs of the multiple stakeholders in the arbitral process. Although the immediate aftermath of the COVID-19 pandemic saw a transition to entirely virtual hearings in many cases, hybrid hearing configurations (i.e. a mixture of on-site and remote participation) are likely to become a more common scenario. The development of online platforms should cater to the requirements of such hybrid hearings.

17. This guidance is designed to help address that void.

To date, a consistent approach to the adoption and use of online case management tools in arbitration remains lacking

1 However, it is worth mentioning two new initiatives which seek to collate information about online processes for arbitration and court proceedings respectively. These initiatives are: Virtual Arbitration (https://virtualarbitration.info/) and Remote Courts Worldwide (https://remotecourts.org/).

PART I: THE WHAT AND THE WHY

DRIVERS FOR ONLINE CASE MANAGEMENT IN ARBITRATION

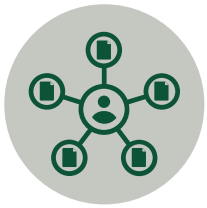
18. A number of parallel factors weigh in favour of arbitral participants adopting adequate online case management tools to handle the processing of data in their arbitration. The relevance and weight to be attributed to each of these factors will depend on the circumstances of the particular case.

Efficiency and effectiveness

19. Platforms facilitate collaboration and the sharing of documents in an efficient and secure way.

20. When used effectively, Platforms enable arbitral participants to access all necessary information through a single, secure and shared portal. This can significantly reduce the number of asynchronous communications (such as email or other data storage facilities) over the course of the proceedings. An online repository of case data can also help arbitral participants manage version control, avoid duplication and maintain a consistent approach to data handling throughout the proceedings. The more sophisticated Platforms enable arbitration stakeholders to perform even more tasks on the platform (beyond upload, download and storage of documents).

21. Indeed, these Platforms, through their in-built functionality or ability to plug into other software tools, can help parties, tribunals and institutions establish efficient workflows, communicate effectively, run analytics over case data, identify and handle particular types of data (e.g. personal data) and manage pleadings, evidence, hearing bundles and awards. In turn, parties may be better able to present their cases, particularly those that involve high volumes of documentary evidence. Having all documents and correspondence stored centrally in a Platform can also make it easier for arbitral institutions to review awards for quality control and correct referencing.



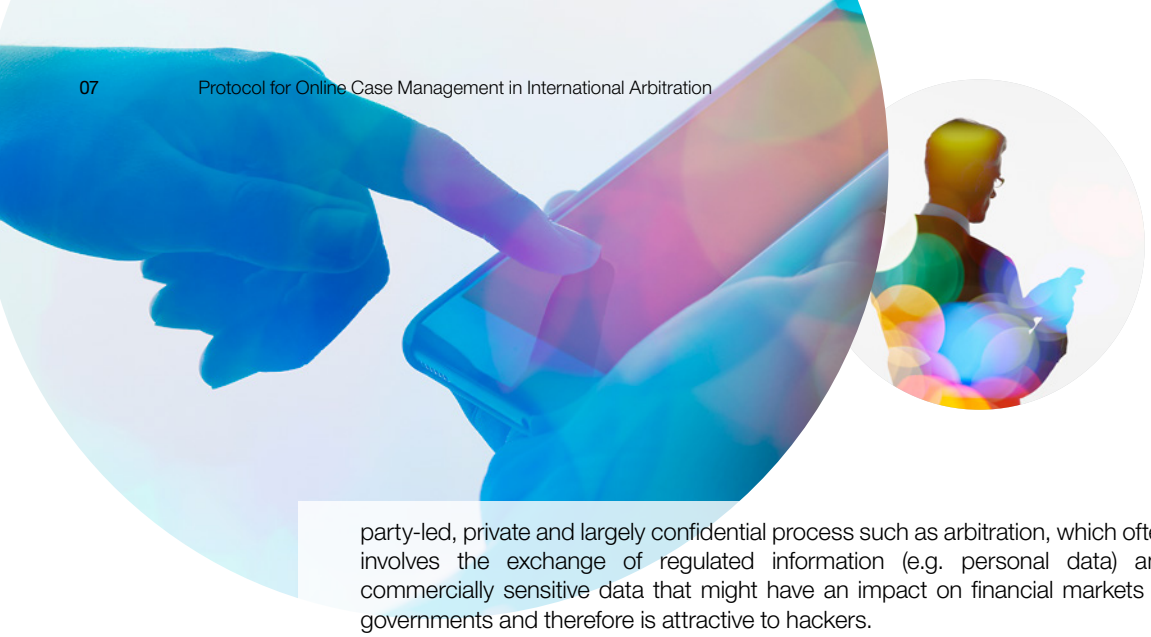
22. It is worth noting that the efficiency and effectiveness of a chosen Platform is also likely to depend on the stage of the arbitration proceedings at which it is adopted. The earlier that arbitral users and tribunals consider the adoption of a Platform in any given case, the more likely they are to reap the rewards it offers, throughout the life of the proceedings.

Accountability/transparency

23. Platforms that manage communications and data exchanges in an arbitration allow the necessary arbitral participants more easily to monitor compliance with the data handling measures agreed by the parties or directed by the arbitral institution or tribunal. Such Platforms enable those arbitral participants to generate an audit trail of communications and data exchanges when necessary. If the need arises, including in relation to a challenge or claim arising out of the proceedings, arbitral participants can draw on that information to respond to any complaints about the arbitral process or the conduct of any participant.

Cybersecurity

24. Data breaches and other cybersecurity threats can lead to regulatory penalties, financial losses and reputational damage. They can also undermine trust in an organisation. The risk of a cyberattack is particularly relevant in the context of a



party-led, private and largely confidential process such as arbitration, which often involves the exchange of regulated information (e.g. personal data) and commercially sensitive data that might have an impact on financial markets or governments and therefore is attractive to hackers.

25. Storing data in a consistently used and secure repository can help minimise cybersecurity risks. However, cybersecurity is only as robust as the weakest link in the chain. A Platform can help "level up" the overall security of the custody chain as long as the relevant functionality is enabled and used. Further, a Platform can reduce security and privacy risks when users transfer data through the Platform rather than by email (notably, the Platform can still generate notifications by email).

26. At the same time, developing and adopting a single Platform across the arbitration community could arguably exacerbate cybersecurity risks. If all data in relation to live arbitration cases administered by one or more institutions were stored on a single server or could be accessed through the same user interface, hackers might find the Platform to be an attractive target (or the relevant servers on which data exchanged via the Platform is stored). Data storage, transmission or processing procedures for the Platforms that are widely used across the community therefore need to comply with the strictest cybersecurity standards (for more, see paragraphs 26-27 below).

Confidentiality

27. Platforms can enable administrators to control access to specific folders/data and generate alerts/audit trails if data is shared with anyone who does not have the necessary access permissions. Platforms can also enable administrators to grant granular access permissions to data so that certain individuals or groups can view particular documents but not edit, send or print them — a functionality that may help ensure arbitral participants' compliance with confidentiality obligations. However, parties (and their counsel) may want to limit the usage that a Platform administrator is able to monitor, an issue that should be considered at the outset of a case. Of course, parties will also want to ensure they do not unwittingly give a counterparty the ability to track activity across the relevant dataset, which would risk revealing a train of inquiry or strategy. Encryption methods can also enhance confidentiality, since they protect against information leakage.

Data protection

28. Arbitral participants need to comply with increasingly strict data protection laws. Compliance issues are further exacerbated when cross-border data flows — a regular feature in international arbitration — are involved. Additionally, the storage of data in a particular geographical location may attract the data protection law applicable there. The consistent use of a Platform in arbitration proceedings can enable personal data exchanged in the proceedings to be:

    - Processed only in those ways that have been agreed by the parties or directed by the tribunal;
    - Processed only for those legitimate purposes for which they were expressly collected (i.e. the proceedings);
    - Shared only with those parties that have a need to process it (if a challenge is raised as to which party received the data, the Platform will help provide the audit trail of the data flow);

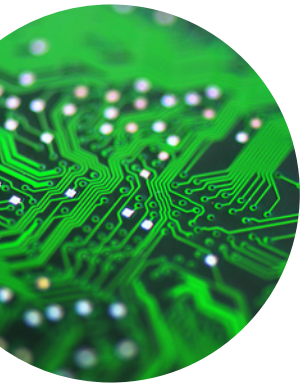
- Minimised (i.e. Artificial Intelligence (AI) tools can suggest and/or automatically effect redactions to personal data or cull data for irrelevance);
- Kept in a form that permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed;
- Processed in a manner that ensures appropriate security considering the risk (see Cybersecurity, above); and
- Effectively destroyed once the proceedings (and the purpose for which the data was collected and exchanged) have ended.

29. Data protection, cybersecurity and Platform considerations are usually best addressed at the same time (usually at the procedural conference or before). Data protection compliance should be documented in a data protection protocol or a procedural order by the tribunal, which as a practical matter may be combined into one document with the Platform and cybersecurity protocol in cases where a Platform is employed. Parties will also need to ensure that the necessary data protection arrangements are entered into with any third-party Platform provider (see Annex 4). If a Platform provider is considered a data processor (as will often be the case), the arbitral participants will need to enter into a data processing agreement with the Platform provider. If the Platform provider is a data controller, depending on the circumstances, the arbitral participants should consider having the Platform agree to either the protocol entered into by the parties and the tribunal or a separate data protection protocol.

Environment and sustainability

30. Environmental concerns are becoming more and more prevalent in the context of arbitration. Arbitral participants are advocating for the increasing use of online services to reduce the need for and cost of printing and travel. For example, in some instances, carbon footprint offsetting in relation to case-related travel is already being treated as a recoverable cost. Several initiatives such as the Green Pledge and the Campaign for Greener Arbitrations are gaining recognition, and environmental considerations in arbitration will increasingly need to be addressed at an early stage of proceedings. Going forward, the arbitration community is likely to make a wholesale move toward paperless, online hearings. Again, this trend will be exacerbated by the recent events surrounding COVID-19 and the resulting global travel restrictions.

31. An effective Platform may help address some of these environmental concerns. With the right functionality, a Platform can accelerate the drive towards paperless hearings (e.g. a Platform may include a seamless plug-in or in-built capability to generate electronic hearing bundles) as well as virtual hearings (e.g. the Platform may include in-built video conferencing software, or the arbitral participants may use alternative software for that purpose).

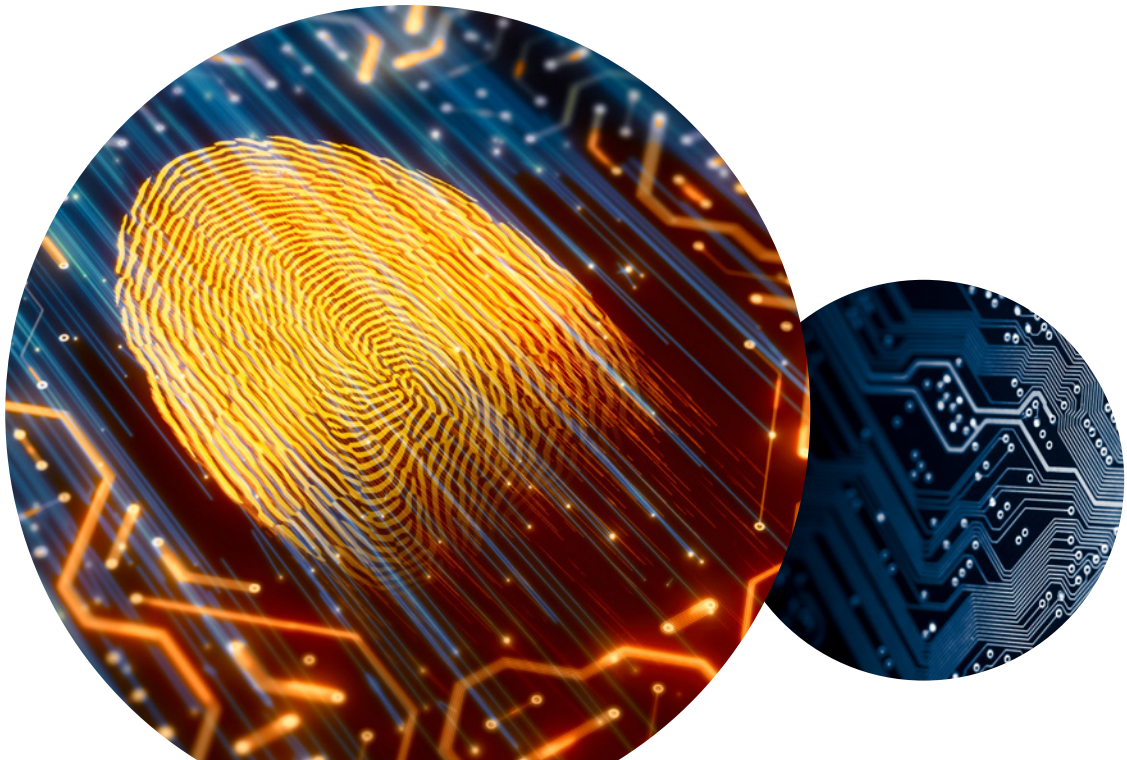


Resilience

32. The COVID-19 pandemic has exposed vulnerabilities inherent in traditional methods of case management, notably when processes rely on a physical presence at a particular location. The adoption of Platforms will help arbitral participants develop resilience to business shocks like the COVID-19 pandemic, notably by enabling more seamless remote interactions. However, parties will need a contingency plan in case of a Platform failure and will need to agree on what support services the Platform will supply to ensure service continuity (and what tolerable limitations there might be in that service, if any).

Accessibility

33. With the right design and implementation, a Platform can promote accessibility of arbitration for existing and new users. Widespread adoption of Platforms in arbitration will increase the appeal of arbitration for certain types of disputes that currently do not get referred to arbitration. A secure Platform made available by arbitral institutions “as a service” may help expand the appeal of arbitration as a dispute resolution mechanism to less habitual users (and counsel) in a way that does not jeopardise the security of data or robustness of the legal process for other users. Availability of a Platform with accessibility options for varying speeds of internet access will also be important for widespread adoption.



DRIVING MUCH-NEEDED ADOPTION WITHIN THE ARBITRATION COMMUNITY

34. Each participant in an arbitration may support the adoption of a Platform in a given case. The decision on the adoption of a Platform is usually left to agreement between the parties. In this regard, parties or counsel may agree to adopt a Platform with specific functionality and security features, and present that agreement to the tribunal. Tribunals can also guide and encourage these discussions, where appropriate (see Annex 5, below). In the absence of agreement, the tribunal may order the adoption of a Platform based on its view of the complexity and security needs of a case, where it is empowered to do so, taking into account the parties' views.

35. As a result of restrictions put in place during the COVID-19 pandemic, a number of hearing centres have adapted and expanded their offerings to include online hearing and other facilities to arbitral participants. As arbitral users become more comfortable with the virtual administration of hearings and other procedural steps, hearing centres may have opportunities to enhance their role, and may consider establishing their own Platforms. However, for the time being at least, administering institutions or associations are perhaps best placed to promote the widespread adoption of Platforms in arbitration due to their permanence, experience, neutrality and ability to set a new "default" position under amended procedural rules. An institution can make a Platform available for the proceedings that it administers in three principal ways:

    (1) **Mandatory**: Adopting at least certain features of the Platform as mandatory for all cases administered by the institution;

    (2) **Opt-out**: Using the Platform is the default option, but parties can opt out. The institution may allow parties to opt out by agreement (as approved by the tribunal). Alternatively, the institution may allow any participant in the process to opt out unilaterally, in which case the Platform is not used by anyone in the arbitration; and

    (3) **Opt-in**: The Platform is made available by the institution but used only if the parties (and the tribunal) expressly agree to do so.

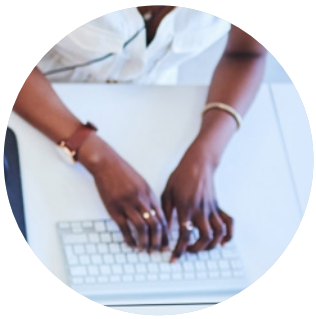
Administering institutions or associations are perhaps best placed to promote the widespread adoption of Platforms in arbitration due to their permanence, experience, neutrality and ability to set a new "default" position under amended procedural rules

36. An opt-out arrangement is likely to be the most effective means to drive adoption within the arbitration community in the long term without compromising on party autonomy.

37. An opt-in approach is likely to delay adoption significantly, as arbitral participants may (on the whole) shy away from adopting a tool with which they are not familiar. This may be less true in the current circumstances arising from COVID-19, but is likely to bear true even in the "new normal" of post-COVID-19 life.

38. While a mandatory approach would ensure adoption and could foster broader change within the arbitration community more quickly (because all stakeholders would be forced to upskill as needed), institutions may feel compelled to uphold party autonomy and not to dissuade any users from selecting their institution to administer their disputes for fear of needing to use a (potentially unsuitable) Platform. Certain outlier cases may justify a different approach to the norm, and an opt-out approach is flexible enough to appropriately account for those.





39. The strategy employed might differ depending on the type of Platform concerned (as below) as well as the stage of proceedings. Firms might already have made a significant investment into the offerings of particular vendors for individual tools such as document repositories, financing tools or review platforms that analyse relevance and privilege. Additionally, firms on the opposite sides of a dispute may not want to use the same vendor for tools offering review and analysis capabilities, to prevent conflicts for example. At the stage of exchanging documents, however, a more collaborative strategy towards the tools used for building bundles, sharing information between parties and submissions/filings can be encouraged.

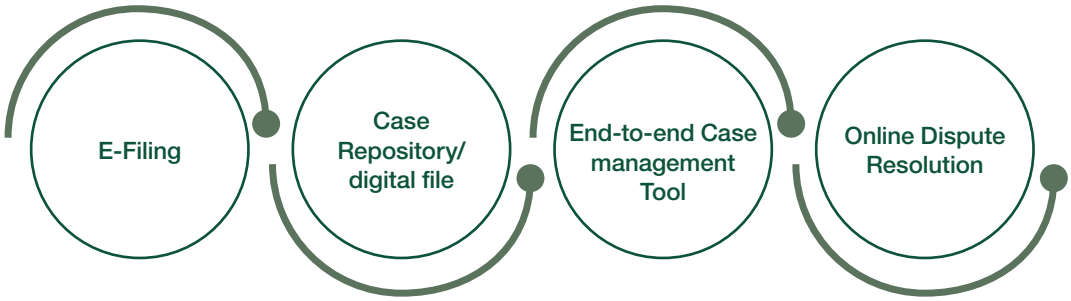
40. When parties choose to resolve their dispute through *ad hoc* arbitration without an administering institution, arbitral institutions can nonetheless play a role as a neutral third party supplying and hosting a Platform. Parties can nominate an arbitral institution in their arbitration agreement, or a default mechanism can be incorporated into the relevant *ad hoc* arbitration rules (similar to the role played by the Permanent Court of Arbitration in the context of tribunal appointments under the UNCITRAL Rules). The SCC recently started to offer the use of its online case management tool for *ad hoc* proceedings free of charge during the COVID-19 pandemic, and associations such as the LMAA and GAFTA have released helpful guidance for parties to *ad hoc* arbitrations on adapting to a more digitalised process.

41. Additional factors to consider are the cost implications of the institution supplying and hosting the Platform as well as how the Platform will be marketed to the parties, lawyers and arbitrators who have already been conducting online arbitrations for many years. Arbitral institutions will also need to ensure they are comfortable with the inherent risks of developing, hosting and maintaining the Platform, as well as being able to offer a certain level of support (including training) to arbitral users. It is likely that detailed discussions will be required between relevant arbitral institutions and technology providers, in order to ensure that such matters are addressed and, to the extent possible, resolved. If it does not prove feasible for institutions to offer Platform services for arbitrations not taking place under their auspices, associations involved in *ad hoc* arbitrations can develop a pan-organisation initiative with technology provider(s) suited for adoption in ad hoc arbitrations.

42. This guidance is intended to be of assistance to any and all arbitration users (including parties, counsel, tribunals and institutions) when considering the use of a Platform, regardless of how a Platform is proposed in a given case.

THE SPECTRUM OF ONLINE CASE MANAGEMENT PLATFORMS

43. A functional understanding of Platforms is necessary to appreciate how Platform services are priced and what services will be required in addition to the service offered by a Platform provider. Absent such an understanding, there can be a mismatch of expectations between providers and users. The broad categories of Platforms for use in arbitration are as follows:



E-filing

44. An e-filing Platform enables parties to submit submissions and evidence to an arbitral institution via an electronic portal. While an e-filing Platform can help streamline physical filing requirements, it may be of limited benefit when filing can be achieved by email. Moreover, an e-filing Platform is of limited benefit for parties (and counsel) because other arbitral participants beyond the administrator do not gain access to the information.

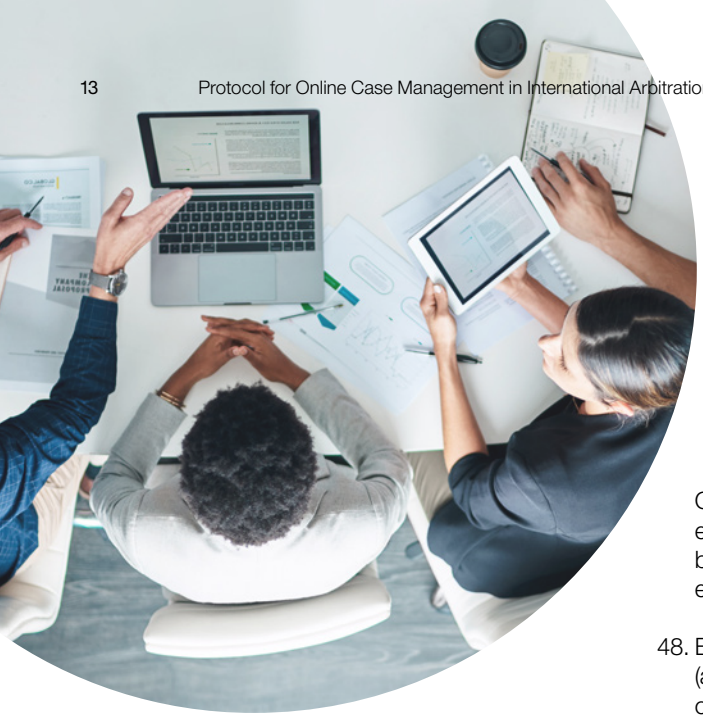
Case repository/digital file

45. A document repository maintained by an administering institution or an agreed third-party provider to store the case file can often improve the security and efficiency of communications and data exchanges in an arbitration. However, this type of Platform generally does not cover the sending and receiving of information between the arbitral participants that are not submissions per se. In addition, due to the limited functionality of a document repository, data shared with the other arbitral participants via a Platform of this type will usually be readily downloadable. Once the data has been downloaded, relevant stakeholder(s) may not be able to monitor its use nor, importantly, ensure its security (nor will the stakeholders be able to run any analytics over that data even in an anonymised way).

46. Additionally, individual tools may cater to discrete aspects of the case management process, including financing tools to assign billable expenditure to matters for client invoicing, review platforms to analyse data on a matter for relevance or privilege, e-bundling tools and document presentation tools for hearings.

End-to-end case management tool

47. End-to-end Platforms manage data exchanged between parties, enabling users to check in and check out documents, send documents for approval and receive alerts when a task is assigned or when a document is in need of approval. End-to-end Platform solutions may allow users to assign and prioritise tasks and create custom case checklists, while built-in chatroom, direct-messaging and even video conferencing modules enable further consolidation of communication. End-to-end Platform solutions are intended to be used throughout the life of the arbitral proceedings and by all arbitral participants.



Opportunities for incorporating further procedural elements into an end-to-end Platform (to the extent desirable) abound – for example, Platforms may be able to be used in the process of selecting members of the tribunal, either natively or by integrating specialised external tools in this area.

48. End-to-end Platforms may also offer the ability for arbitral institutions (and/or the users in a specific case) to run analytics over the data stored on the Platform. Indeed, the widespread use of Platforms may help arbitral institutions to better structure, analyse, interrogate their data, and/or to make relevant data accessible to third parties where appropriate.

49. In circumstances where a Platform is appropriate, the case for an end-to-end Platform is strong. The benefits illustrated above can only be fully realised if an end-to-end Platform is adopted. Otherwise, both "on-Platform" and "off-Platform" processes will exist in parallel, which could lead to greater friction arising than is the case with existing processes today. That being said, it is accepted that arbitral participants may decide that certain processes should exist outside the chosen Platform (for example, document review). In these cases, end-to-end Platforms should ideally be able to integrate with external software / systems (for example, document review software, internal document management systems (for institutions), and video conferencing software) so that these systems can work together without conflict.

50. In deciding whether to adopt an end-to-end Platform, arbitral participants need to consider which of the following processes (among others, potentially) they would want to take place on the Platform (and what tools offer that functionality at a cost proportionate to the value and complexity of the arbitration):

Online dispute resolution

51. Online dispute resolution (ODR) started as an alternative dispute resolution mechanism (ADR) and quickly evolved in the 1990s when it was used in the rapidly growing e-commerce space. ODR enabled users to resolve disputes quickly and cost-effectively, using the same technology that enabled the underlying transactions to exist in the first place. Instead of mimicking traditional ADR processes, ODR providers developed new processes that were designed to utilise the technology available at the time.

52. To date, technology adoption within the arbitration context has largely sought to mimic digitally those processes that previously took place in the physical realm. Technological innovations in dispute resolution have generally been limited to supplementing and supporting existing working practices. However, over time, ODR techniques will increasingly become part of the traditional arbitration process as arbitral processes are redesigned more fundamentally to harness the benefits (and requirements) arising from the convergence of emerging technologies.

To date, technology adoption within the arbitration context has largely sought to mimic digitally those processes that previously took place in the physical realm

53. Indeed, ODR techniques are already used around the world for a variety of disputes, from consumer complaints to traffic-penalty grievances. As more people become familiar with remote hearings and online case management, ODR is likely to extend to more areas of dispute resolution.

54. The tools being developed today need to be adaptable to meet future needs or capabilities driven by the adoption of emerging technologies (e.g. AI, quantum, distributed ledger technology and smart legal contracts). It was thought until very recently that some elements of the dispute resolution process, such as hearings, would remain a physical event and could not readily be substituted for online alternatives. As the COVID-19 pandemic has spurred new ways of working and remote hearings become customary at least in the short term, this thinking has been reset.

PART II: THE HOW

DESIRABLE CHARACTERISTICS AND FUNCTIONALITY OF A PLATFORM

55. Part II of this Protocol addresses the "how" of online case management platform adoption by identifying standards against which existing and future case management solutions can be assessed and compared.

56. Part II will help end users of arbitration (acting directly or through their lawyers and, ultimately, subject to a tribunal or institution's directions) streamline the process of identifying and agreeing on a Platform for the online exchange, storage, review and processing of case-related data. This Protocol is also foreseen as a statement of intention about what will be achievable in the future through collaboration between arbitration specialists and technology providers and developers.

57. This Working Group recognises that — in the short term at least — arbitral participants may need to identify software that can be made to fit their most pressing needs. However, in the months and years ahead, technology providers are expected to answer this call to arms and collaboratively drive innovation and enhance product offerings to continue to address the needs of the arbitration community. The emphatic response from technology providers during the private consultation period of this Protocol certainly suggests as much.

58. As noted in Part I above, the benefits of using a Platform are only fully realised when that Platform is end-to-end. The characteristics below are tailored to end-to-end Platforms, but many of them are relevant to Platforms with less sophisticated functionality too. Part II sets out:

    - The baseline capabilities that a Platform is expected to possess by default (referred to below as "must haves", noting that necessary functionality will differ from one case to another); and
    - Certain additional functionality that parties will potentially benefit from, depending on the nature of the dispute and the types of data involved in the arbitration (referred to below as "nice to haves").

59. A caveat needs to be added at this stage — the decision to adopt a Platform will involve balancing flexibility, functionality, user friendliness, data security and cost, which can be difficult in practice. This is particularly the case where some participants may be unable to access a high-speed or secure internet connection, or other technologies that are essential to the functioning of a Platform. In addition, the use of a fully end-to-end Platform may not be appropriate in all cases, particularly smaller cases involving lower value claims and/or less sophisticated arbitral users.

60. Such a balancing exercise should be conducted on a case-by-case basis and at each step of implementation. Some elements of the "must haves" or "nice to haves" may contradict with each other (e.g. security of data vs. user friendliness and ease of access), and all elements may not be met. However, such lists serve as a useful starting point in conducting this balancing exercise. In comparing available Platforms, arbitral participants are likely to be particularly attracted to Platforms that enable them to select (and only pay for) the functionality they require on case-by-case basis.

61. By engaging in that balancing exercise, with which the Annexes to this Protocol should assist, arbitral participants will also identify and be able to allocate responsibility for (and, where relevant, seek insurance against) the risks associated with the hosting and transfer of data in the arbitration proceedings.

62. Further engagement with technology providers and potentially also standards bodies may enable a robust standard to be developed (e.g. a gold, silver and bronze certification depending on the security, privacy and functionality offered by a Platform). Platforms can then be developed and certified for use in arbitrations based on the characteristics of the proceedings, thereby giving end users further clarity and streamlining the adoption process.

Further engagement with technology providers and potentially also standards bodies may enable a robust standard to be developed

Platforms can then be developed and certified for use in arbitration

"MUST HAVES"

63. The following list of properties and functionality is expected to be needed in most arbitrations in order for an end-to-end Platform to streamline processes and enhance data handling materially between the arbitral participants. However, this list is not exhaustive and will need tailoring based on the requirements and characteristics of each specific arbitration. In some arbitrations, many other properties of a Platform might be considered "must haves", while for others it may be more appropriate to adopt a Platform that does not have all of the properties or functions below. For the avoidance of doubt, this list is aspirational and is not intended to suggest that the tools currently available to arbitral participants are equipped to provide all functionality or have all the characteristics listed below.

i. Data Privacy/Security

(1) **Security**: Data uploaded to the Platform must be securely stored. Data should be encrypted in transit and at rest and the institution/Platform provider should have control over the encryption keys. Compliance with enterprise cybersecurity standards should be a given (with ISO27001 being the industry standard and others such as ISO27017 and ISO27018 to be considered, depending on how the data will be stored). If the Platform is maintained and provided "as a service" by an administering institution, the institution needs to operate, manage and control (or procure the operation, management and control of) the operation of the system and ensure that the facilities in which the data is stored meet industry standard certification levels (e.g. the SOC2 framework).

(2) **Storage and integrity**: The ability to choose the region(s) in which the data on the Platform is stored and the type of storage (on premises or in the cloud) will be essential in most arbitrations, so that arbitral participants can meet their regulatory requirements. In many cases, the data is likely to be more secure when it is physically held on third-party servers — which benefit from continuous monitoring and significant investment on security — but under the management and control of specified arbitral participants (e.g. the arbitral institution). The ability to replicate and back up content in more than one region may in some instances be needed. Data integrity must be secured in such a way that information is trusted and cannot be manipulated.

(3) **Identity and access/availability**: The parties whose data is uploaded to the Platform should, subject to any disagreements being determined by the tribunal, retain full control of content and responsibility for configuring access to the Platform services and resources. The parties will generally need the ability to securely manage access, resources and permissions at scale and at a granular level. However, if the Platform is provided "as a service" by an institutional arbitration, the administering institution will need to establish default access rights and data structures, which the parties (subject to the tribunal's directions) can then tailor to their needs. Dual and unified authentication should be considered to prevent situations in which former employees can continue to access information stored on a third-party hosting provider because their access has not been revoked.

(4) **No disclosure or use**: The Platform provider, whether an administering institution, appointing authority or other third party, will need to commit to not accessing, disclosing or using Platform content without the parties' consent, except as legally required. (Government data access requests will need to be considered carefully. If there is a risk of state interference, the parties should discuss their approach to access requests with the Platform provider at the

outset). If AI is used on the Platform, the arbitral participants will need to consider and agree on whether and how learning models will be impacted by the data and activities that take place manually on the Platform.

(5) **Threat detection and monitoring**: Sophisticated monitoring of the network activity and account behaviour will be needed to identify and protect against system failures, hacking or other threats.

(6) **Deletion**: Subject to any agreement otherwise or applicable laws or procedural rules, the data uploaded to a Platform will need to be capable of being archived and then deleted permanently. Deletion functionality will also need to extend to permanent (i.e. irreversible) redactions to documents.

(7) **Regulatory obligations and reporting**: Arbitration participants will need to set up the Platform and grant users the necessary permissions (which may include download rights) to ensure compliance with regulatory obligations (e.g. in relation to the preservation of documents/data). Everyone with access to information will be deemed to process it, including transfer for data protection purposes. Therefore, if end-to-end Platforms are employed, it will be important to limit data access to those who need it to avoid unnecessary processing and transfer under the data protection laws. For example, arbitral institutions and arbitrators may not need access to all data exchanged between the parties.

ii. Platform Functionality

(1) **User-friendly interface**: An intuitive and simple user interface (with a tablet or mobile-friendly version) will be vital in ensuring adoption by multiple stakeholder groups within the arbitration community (from the tech savvy to the more hesitant adopters). Folder structures (such as the example provided in Annex 3, row 14 of this Protocol) should be set up as a default for the key steps in the process, though parties with relevant permissions should be able to edit such folder structures. Ultimately, the interface should be a fully configurable workspace that the parties — and importantly, the arbitrators — can dictate the design and structure of for the particular case. Different interfaces for higher and lower internet access speeds will be desirable.

(2) **Upload/download at scale and on a document/folder basis**: Users should have the ability to upload large volumes of data to the Platform at one time (and bulk download, when appropriate). Original folder structures should be retained in that process (so that the folder structure in the Platform reflects the original folders that were downloaded/uploaded). Users should also be able to upload or download documents in their native form (e.g. spreadsheets, PowerPoint presentations) and at a more granular level (e.g. a single document, such as a submission). However, it is important to keep in mind that downloading raises security and potentially data protection risks and concerns, and minimises the value of the Platform in this respect.

(3) **All uploaded data becomes text searchable**: Any documents or files (including images) should go through optical character recognition (OCR) or another text extraction process by default upon upload so that they become text searchable. An in-built search function should have the ability to search the text within documents, rather than just file names. This should be complemented with a translation functionality for languages relevant to the dispute, when possible.

(4) **Granular permissions and access controls**: Permission setting at a user, role, group, case, folder and document level should be enabled, while bearing in mind the risk of human error. Communications should be capable of being switched on/off for groups and individual users.

(5) **Communication tools**: In itself, the upload, storage and access to documents by all arbitral participants via the Platform should obviate the risk of highly sensitive documents/information being sent to unsecure email addresses/servers or servers that do not meet privacy standards. Email notifications can be set up upon the upload of new data or upon amendment of an existing dataset. Additionally, in-built communication tools within the Platform can substitute for email communication to further reduce the exchange of sensitive information via email.

However, these tools need to be sufficiently customisable so that they can be tailored to the requirements of different users (e.g. functionalities for one-to-one and one-to-many communication, real-time conversation threads of chats, sharing tags and comments on documents with all or specific members of a team). In-built or plug-in video and audio software may also help the Platform become a one-stop shop for all communications between arbitral participants for any given arbitration (including in relation to virtual hearings).

(6) **Separate team workspaces**: Each party (together with their representatives), the arbitral institution (if any) and each member of the tribunal will need to be able to tag, organise, annotate and otherwise interact with data on the Platform in a manner that is not visible to the other users of the Platform. Depending on the Platform functionality, data may need to be accessed by each of the different participant groups through distinct siloes or workspaces. Multiple datasets would generally increase storage costs, however, and could potentially create issues of version control. An alternative and more effective means to create private workspaces without multiplying datasets would be through sophisticated user-based permissions. However, human error is always possible, and parties should consider managing against the risk of human error in implementing the Platform, including identifying measures to reduce the risk of inadvertent data sharing, and discuss in advance the consequences of potential errors.

(7) **Download/printing restrictions, watermarking, security controls**: Arbitral participants' ability to download or print documents from the Platform, including in bulk, should be enabled with on/off permission settings for individual users, groups, folders and granular documents. Arbitral participants may also wish to make printing subject to a watermark. Such restrictions may also encourage the move towards paperless hearings, and a decrease in hard copy bundles.

(8) **Equality of arms**: In order to promote the use of Platforms in arbitration, any costs passed on by the service provider or administrating institution to the parties (e.g. for data storage) should be structured in a way that avoids the use of the Platform causing unjustified imbalances between parties.

(9) **Email and in-Platform notifications of new uploads or amendments**: To ensure that events on the Platform are not missed, users should be able to select what email notifications they require of Platform activity. The functionality of the Platform should also make clear when/if amendments are made by a party to documents "on the record" by means of version tracking and alerts.

(10) **Offline functionality**: Users of the Platform should be able to view selected documents/ data in an offline mode. Ideally, this will be an offline review area within the Platform, rather than requiring users to download Platform data.

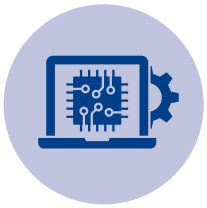
(11) **Language**: Arbitral participants will need to carefully consider whether the Platform functionality is able to operate effectively in the working language of the administering institution, as well as the relevant languages of the arbitration.

"NICE TO HAVES"

64. Parties may also benefit if the Platform has the following additional functionality, depending on the needs of the particular arbitration and its participants:

(1) **Single log-in for every user**: Every user should have a single log-in, which gives them access to all relevant proceedings on which they are working and in which a given Platform has been employed.

(2) **Multi-factor authentication**: An option for multi-factor authentication is especially important for cloud-based Platforms. For cases of a particularly sensitive nature, or where users may need remote access to a Platform from an unknown device or IP address, this functionality is likely to be a "must have".



(3) **Hyperlinking within the dataset**: Parties should be able to include hyperlinks in documents that cross-refer from one document to another. For larger and more complex cases, this functionality is likely to be a "must have".

(4) **Ability for the Platform to integrate with other software**: Subject to the right security checks taking place before any plug-in occurs, the Platform may need to connect directly (e.g. through APIs) into other software tools used by arbitral participants (e.g. e-discovery software, exhibit managers, analytics tools, etc). Failure to provide the ability to link into leading tools with which many arbitral participants are already familiar could limit uptake of Platforms and make them inconvenient to use, causing delay and increased cost. Additionally, Platforms should be compatible with remote hearings functionalities (e.g. recording, transcripts of the hearings, etc.).

(5) **AI functionality**: Document review functionality may be needed to enable arbitral participants to undertake a document review process "on Platform". In-built automation functionality to flag duplicates (and near-duplicates), or to cluster documents by themes, custodians, domain names may also be required within private workspaces for some arbitrations where plug-ins are not available and downloads are undesirable.

(6) **Audit records**: The Platform may be able to assist version control within approved groups by tracking amendments to draft documents and generating versions of a document. Amendments made by users within a given user group would need not to be visible to another group, unless expressly requested. Where documents are filed, which amend previous documents on the record, those changes will be visible to all, and the versions of the documents should be linked (e.g. by virtue of the document number).

(7) **Document management**: Functions such as advanced searching, document comparison, in-browser editing and annotation, and multiple version management (e.g. for translations of documents) may be needed if download rights must be restricted. Again, this need might be met through the ability of the Platform to plug-in to a different piece of software.

(8) **E-bundling**: The ability to create, within the Platform or by means of a plug-in with a separate e-bundling tool, electronic hearing bundles that are hyperlinked to documents on the Platform (and capable of offline review) will help streamline processes and reduce costs in the run-up to and at a hearing. The bundle will need to be accessible to all parties (for the purposes of preparing and agreeing a hearing bundle), then made live to the tribunal once agreed. The Platform may also, in this instance, benefit from a feature by which the electronic bundle is capable of being "presented" during the hearing or, alternatively, the ability to integrate with a hearing presentation platform (see above) , or video conferencing software such as Zoom or Microsoft Teams. As with other data on the Platform, the hearing bundle will need to be capable of editing, tagging and commenting by each user in a way that cannot be accessed by others.

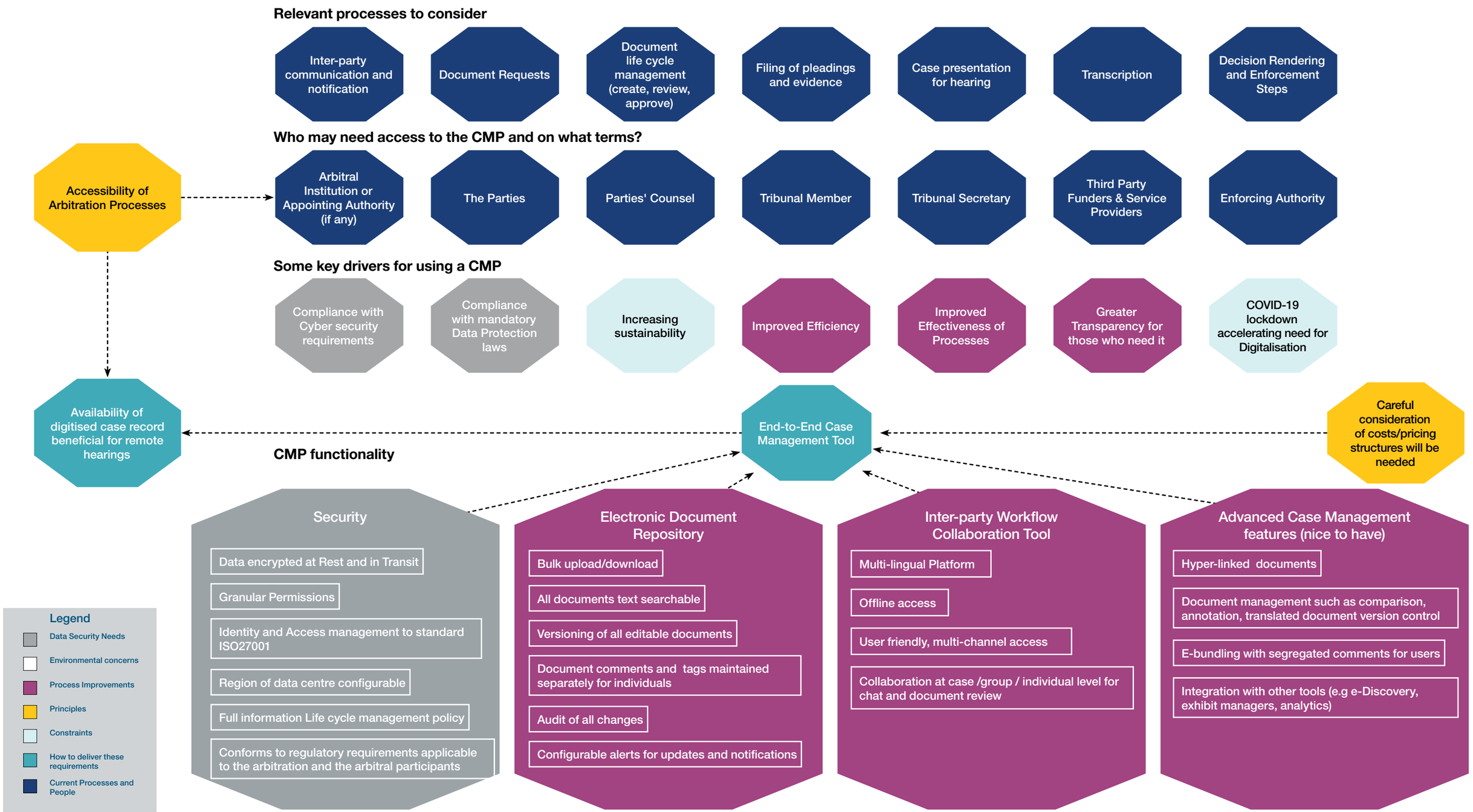
CONCLUSION

This Protocol is intended to catalyse further discussion on this topic, with a goal of achieving broad consensus on the need for the use of Platforms in arbitration. With the benefit of input from arbitral participants, it is hoped that this Protocol will support more informed, streamlined and effective decision-making regarding the development of more sophisticated Platform options as well as the adoption and use of Platforms in international arbitration

65. Over the last few years, there has been a strong trend towards increased digitalisation in arbitration. The COVID-19 pandemic has accelerated the pace of change, and a number of new digital tools have become the norm overnight. The introduction of new technologies creates new opportunities for arbitral participants, and the arbitration community has released a lot of helpful guidance, especially in the areas of data protection and cybersecurity (and more recently in the context of virtual hearings). However, this Working Group has noticed an absence of shared understanding and knowledge regarding the availability and use of online case management platforms.

66. This Protocol is intended to catalyse further discussion on this topic, with a goal of achieving broad consensus on the need for the use of Platforms in arbitration. With the benefit of input from arbitral participants, it is hoped that this Protocol will support more informed, streamlined and effective decision-making regarding the development of more sophisticated Platform options as well as the adoption and use of Platforms in international arbitration.

ANNEX 1: SUMMARY OF REQUIREMENTS FOR PLATFORM FUNCTIONALITY



ANNEX 2: PROCESS IMPROVEMENTS WITH PLATFORM ADOPTION

1. Starting a claim

«Pre-condition»
{AML and conflict checks could be improved and made more transparent}

Request document

Engagement on procedure with counterparty, arbitral institution or appointing authority

«Process»
{An established CMP process available to all (eg. through an institution or appointing authority) may be of great benefit in maintaining robust data handling processes in emergency applications}

«Process»
{sensitive data exchange and communications can take place within a secure portal that all arbitral participants have access

2. Response

Response document

3. Procedural Conference

PO1

TOR

«Process»
{If a CMP is not provided 'as a service', the parties and tribunal will likely need to decide on what IT measures should be taken by no later than first procedural hearing (ideally from outset of case). They should consider entering into a CMP protocol.}

CMP Protocol

«Process»
{CMP may help to streamline other applicable steps, such as jurisdictional or arbitrator challenges, interim applications, procedural applications}

4. Pleadings

Statement of Claim

Statement of Defence

Statement of Reply

Rejoinder

«Process»
{All documents could be stored in a file system accessible by all parties with appropriate levels of security and access controls to ensure that users can only view documents that they should be able to see. Sensitive documents not exchanged via email or USB.}

5. Evidence Gathering

Evidence - Documentary

Document

Objections

Responses to objections

Evidence - Witness

Witness Statements

Replies

Evidence - Expert

Experts reports + supporting evidence

Replies on expert reports

«Process»
{Access for experts, factual witnesses and other stakeholders}

«Process»
{CMP may help to facilitate sharing of information at, for example, joint expert meetings or for witness proofing sessions}

6. Hearing

«Process»
{Hearing bundle automatically produced within the CMP or through plug-in with hyperlinked access to the file system, if needed.}

Pre-hearing Submissions

Comments from deliberations and scrutiny, if any

Post-hearing Submissions and Costs

transcripts of hearing

«Process»
{With relevant offline functionality, a CMP can avoid arbitral participants travelling to hearings with large locally stored (and sometimes unsecured) data (e.g. a hearing bundle).}

«Process»
{Documents can be referred to digitally via the portal during the hearing (with hyperlinking functionality). Avoids the need for expensive printing and courier costs.
With private workspaces and permissions setting, arbitral participants can annotate documents electronically via the CMP}

«Process»
{Streamline and ensure the} security and privacy of communications during tribunal deliberations}

7. Award

Draft award

Comments from deliberations and scrutiny, if any.

Final award

«Process»
{Streamline and ensure the security and privacy of communications during tribunal deliberations}

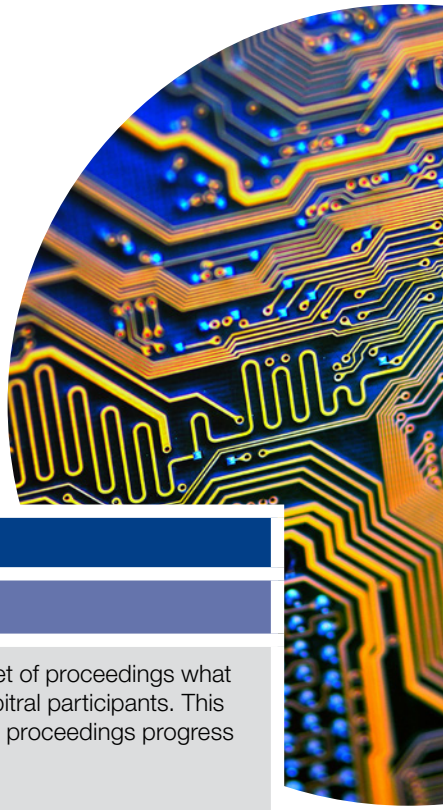
«Process»
{Facilitates processes of scrutiny, if any, corrections or modifications}

«Process»
{In time, processes may be established to enable the sharing and immediate authentication of an award from an arbitral participant from the CMP to an enforcing court}

Legend

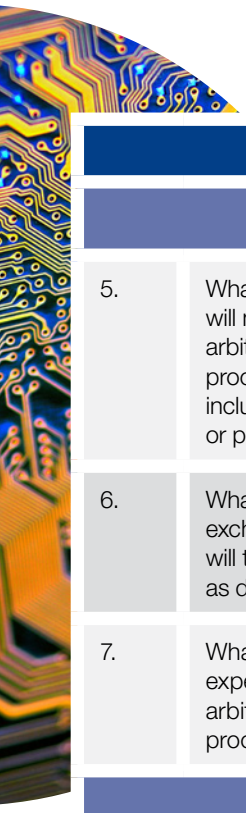
- Process Improvements through CMP
- Potential improvements with CMP as a service
- Claimant documents
- Respondent documents
- Both claimant and respondent documents
- Tribunal documents
- Stage of Arbitration
- This phase could be a Video Conference
- Witness Evidence
- Other Relevant Processes

ANNEX 3: CHECKLIST OF CONSIDERATIONS FOR PLATFORM ADOPTION



This checklist is intended to serve as a basis for discussion between arbitral participants as soon as possible following the commencement of proceedings, or between counsel in preparation for the first procedural hearing, on the question of whether or not to use a Platform for the sharing of data during the course of the arbitral proceedings and, if so, what type of software tool should be adopted.

	QUESTION	COMMENTS
	APPLICABLE LAWS AND PROCEDURAL RULES	
1.	What do the laws applicable to the arbitration (and the individual arbitral participants) require in relation to the management of arbitration data during the proceedings and after their conclusion?	Arbitral participants should consider at the outset of proceedings what laws will apply to them and each of the other arbitral participants. This assessment should be regularly reviewed as the proceedings progress and new arbitral participants become involved. Refer to the ICCA-NYC Bar-CPR Cybersecurity Protocol for questions to consider in the context of cybersecurity Refer to the ICCA-IBA Roadmap to Data Protection in International Arbitration for questions to consider in the context of data protection These questions will impact where the servers of a Platform would need to be located and what agreements would need to be entered into between the arbitral participants (e.g. Standard Contractual Clauses under the GDPR).
2.	What do the relevant arbitration rules require in relation to the management of arbitration data during the proceedings and after their conclusion?	Does the relevant institution have a preferred Platform provider? Many arbitration rules now include language on data handling, cybersecurity and data protection.
3.	Which confidentiality regime, if any, applies to the arbitration?	Does confidentiality apply to the arbitration? If so, does it cover the existence of proceedings, submissions, evidence, procedural orders and/or awards? This may impact upon the permissions granted to users of a Platform and potential confidentiality agreements needed from a Platform provider.
4.	Which professional conduct rules apply to the arbitral participants that could impact upon the setup of a Platform or the need to hold records “off platform”?	Arbitral participants will want to ensure that they are able to comply with regulatory obligations, including in relation to the preservation of data during and after the completion of the matter.



	QUESTION	COMMENTS
	NATURE OF THE DATA TO BE EXCHANGED	
5.	What is the likely content of data that will need to be exchanged between arbitral participants in the proceedings? Is the data likely to include sensitive or confidential data or personal data?	Refer to the ICCA-NYC Bar-CPR Cybersecurity Protocol for questions to consider in the context of cybersecurity. Refer to the ICCA-IBA Roadmap to Data Protection in International Arbitration for questions to consider in the context of data protection.
6.	What types of data will likely be exchanged in the proceedings (e.g. will these include complex data such as databases, non-standard files)?	This question will feed into the choice of Platform, as arbitral participants will need to ensure that the chosen Platform includes the functionality to host and enable arbitral participants to review these data types.
7.	What is the likely size of the data expected to be exchanged between arbitral participants in the proceedings?	This will likely impact upon the costs of a chosen Platform or upon the licencing structure that the arbitral participants may wish to implement for using the Platform in the proceedings.
	PROCEDURAL CONSIDERATIONS	
8.	How and when will documents exchanged electronically become part of the arbitration record?	This should be established and set out in a procedural order at the earliest opportunity, insofar as the point is not expressly covered in applicable procedural rules or under applicable mandatory laws. The submission of documents to the record might be achieved upon the latest of: (i) upload to the Platform; or (ii) granting of the necessary permissions for the relevant arbitral participants to access the relevant data on the Platform. Consider also how version control will be ensured, for example by virtue of linking on the Platform all the different iterations of a particular document.
9.	How should documents uploaded to the Platform be referenced in the parties' submissions or the tribunal's orders?	This should be established and set out in a procedural order or a separate protocol at the earliest opportunity. Using particular nomenclature for cross-referencing at an early stage in the proceedings will help to enable automated hyperlinking of documents on the Platform and may significantly streamline the process of creating electronic bundles, if necessary. Parties are advised to liaise with the potential Platform provider(s) in order to ensure that the referencing convention proposed matches their requirements for the creation of hyperlinks, etc.
10.	How will matters pertaining to evidence be determined?	Will the tribunal be relying on the IBA Rules on the Taking of Evidence in International Arbitration? If so, consider how these rules may need to be supplemented to account for use of the Platform.

ANNEX 3: CHECKLIST FOR CONSIDERATIONS FOR PLATFORM ADOPTION

	QUESTION	COMMENTS
	PLATFORM FUNCTIONALITY AND SETUP	
11.	Does the Platform offer template cases?	The possibility of creating templated cases/options may reduce the administration and set-up time for a new case on the platform. If templates are available, these should be treated as a starting point only, and should be fully adaptable to suit each particular case.
12.	In what format will documents be uploaded to the Platform?	Submissions, witness statements, expert reports, procedural orders and other like documents would usually be uploaded in PDF when possible and made text searchable on the Platform by virtue of OCR. Is it intended that disclosure/document production take place via the Platform? If so, then wherever possible, evidentiary documents should be disclosed/produced in their original native format (if relevant, this is the format in which all associated metadata and original document structure and, where relevant, attachments and header information is preserved within the electronic file). The format of redacted documents will need to be considered. Consider how parent/child documents will be linked on the Platform. Consider whether any data types are not capable of being supported/reviewed on the Platform and, if so, how that data will be treated. Consider how hard copies will be treated and whether they will be scanned and uploaded to the Platform. Will objective coding be available?
13.	Which fields will be visible to arbitral participants in relation to each document?	This should be established and set out in a procedural order or a separate protocol, agreed, when possible, between the parties. As a default, documents should be uploaded to the Platform with the following fields: • Document Number (or disclosure number) • Document Name • Primary Date • Unified Type • File Type • Redacted (Yes/No) When document production is to take place via the Platform, additional default fields may include: • Email From • Email To (including Cc and Bcc) • File name/Email Subject • Sort Date • Author/Custodian All dates should be in an agreed format and times should be standardised to UTC (unless otherwise agreed).

	QUESTION	COMMENTS
14.	What should be the folder structure for the documents “on the record”?	This should be established and set out in a procedural order or separate protocol at the earliest opportunity. The ultimate structure will most likely differ from case to case, but a default folder structure might look something like this: (A) Submissions, with a sub-folder for each submission (B) Witness Statements, with sub-folders for Claimants’ and Respondents’ witnesses (C) Expert Reports, with sub-folders for Claimants’ and Respondents’ witnesses (D) Fact Exhibits, with sub-folders for Claimants’ and Respondents’ fact exhibits and further sub-folders for each of the submissions to which the exhibits were appended as well as a miscellaneous sub-folder (E) Legal Exhibits, with sub-folders for Claimants’ and Respondents’ legal exhibits, with each to contain sub-folders for (i) cases; (ii) Acts/ Regulations/Rules; (iii) Guidelines; and (iv) Books/Commentaries (F) Correspondence with the Tribunal, to contain a chronological run of all tribunal correspondence (G) Tribunal Orders, to contain a chronological run of all Tribunal Orders Arbitral participants should also consider and agree who has permission to create new folders or edit folder names. Automatic folder indexing is an option for certain Platforms. Consider whether the Platform offers a "template" folder structure which can be selected and adapted to suit a particular case.
15.	What permissions will be associated with each of those folders?	The parties, their counsel, the tribunal members and the administering institution are all likely to need permission to access all of the folders of documents “on the record”. Other arbitral participants may need access only to particular folders or specific documents. Admin or role-based, upload, download and editing permissions on those folders will need to be carefully considered. In general, each party should be responsible for uploading and organising folders containing its own submissions and documents. The permission settings may obviate the need for “private workspaces”, which would likely duplicate data storage costs. The associated functionality will also impact upon whether it is expected that arbitral participants will be required to download the documents on the Platform in order to annotate them privately. Consider also whether any downloaded documents will be watermarked (e.g. with the name of the user who downloaded them). Parties should also consider the consequences of human errors in permission setting (by administering institutions, parties, or their counsel).

ANNEX 3: CHECKLIST FOR CONSIDERATIONS FOR PLATFORM ADOPTION

	QUESTION	COMMENTS
16.	What in-built notifications will be triggered by the Platform and to whom will they be sent in the event documents are uploaded to particular folders or edited?	Do arbitral participants want to be notified through an automatic email notification to their chosen email address and/or an in-platform notification of upload/edit of any document "on the record"? It should be possible for the participants to configure whether and to whom notifications should be sent in case of downloads and edits. Arbitral participants would normally be reluctant to allow such notifications to extend to download/commenting or other actions which might reveal to other arbitral participants a potential train of thought or line of enquiry. However, this may differ from one case to the next, depending on the sensitivity of information involved and will therefore need to be considered and agreed.
17.	What user groups and group permissions will be needed?	Individuals accessing the Platform should require a unique user account. For security reasons, accounts should not be shared. Permission settings for users on a group basis will enable additional functionality to be deployed within a group of users but will prevent users from a different group from gaining access to information that is not intended to be shared.
18.	Will workflow allocation tools be needed on the Platform to allocate tasks within particular user groups?	Such functionality may be available on some Platforms, and it may assist in streamlining intra-group communications.
19.	Are languages other than the agreed language(s) of the arbitration likely to be of relevance to the data exchanged? If so, is the necessary functionality of the Platform adapted to those languages (including OCR capability)?	Arbitral participants may need to agree whether documents relied upon in a language other than the language(s) of the arbitration shall be submitted in the original language together with a translation into the language(s) of the arbitration.
20.	How should electronic communications between arbitral participants in relation to the proceedings be managed, and can they be effectively streamlined?	This should be established and set out in a procedural order at the earliest opportunity, insofar as the point is not expressly covered in applicable procedural rules or under applicable mandatory laws.
21.	Is an electronic exchange of data required beyond email?	Parties may wish to consider agreeing to an e-disclosure / document production and exchange protocol in relation to e-disclosure / document production exercises. This is a protocol that parties will follow in order to standardise the electronic exchange of disclosed data. Consider whether e-disclosure / document production will take place via the Platform or whether the Platform will be used only for documents "on the record".

	QUESTION	COMMENTS
22.	What login security will be required for each user and how will forgotten passwords be reset?	Consider two-factor authentication, which is a must-have for cloud-based Platforms. Consider whether users are required individually to sign a confidentiality agreement, obtain security clearance or click through terms and conditions before access is granted. Arbitral participants will also need to consider the applicable process for recovering or resetting a forgotten password. Some Platforms enable passwords to be reset automatically via the webpage, which is recommended. However, others require a manual reset by the Platform provider (which can take time).
23.	What rights, if any, does the Platform provider have to access the data stored on the platform, e.g. to assist with support queries?	Remote assistance from a third party may be more efficient in resolving issues when they arise, but this may not be appropriate for every arbitration (e.g. where data uploaded to the Platform is very sensitive and arbitral participants prefer to limit access to that data to a minimum). There should be an approval process for allowing third-party access, and the application of privileged access management.
	PRACTICAL CONSIDERATIONS	
24.	Do any arbitral participants have internet connectivity issues?	Consider getting each arbitral participant to carry out internet speed checks, in order to consider the need to have different Platform user interfaces for higher and lower internet access speeds. Consider whether the Platform functionality is available equally on different operating systems (Mac, Android, PC, etc). Consider whether the Platform offers an intuitive and simple user interface, with a tablet or mobile-friendly version, to increase accessibility.
25.	Do any arbitral participants face any issue using the web browsers or sites needed for an optimal user experience of particular Platforms?	Although modern Platforms should allow access from any browser supported on a Mac or Windows operating system, and be accessible from any mobile device, for certain Platforms, particular web browsers or older versions of a web browser may not support certain functionalities. In certain jurisdictions, arbitral participants might be subject to access restrictions..
26.	What training and on-going support (including technical assistance) would be needed for each user in relation to the functionality of the Platform?	Consider whether a dedicated case / project manager would be required and how / by whom that would be funded.
27.	Which software tools will each of the arbitral participants be using for their own data review (off-platform), if any, or would participants prefer to undertake all review on the Platform?	This will be an important question when assessing the practicalities and security associated with data transfers from one dataset (hosted by a particular arbitral participant) to the Platform. If document review is to take place on the Platform, this is likely to have an impact on the costs associated with the amount of hosted data. Parties should discuss with the proposed Platform provider how to ensure that hosting a large document production pool on the same Platform does not slow the entire database.

ANNEX 3: CHECKLIST FOR CONSIDERATIONS FOR PLATFORM ADOPTION

	QUESTION	COMMENTS
28.	How will the costs of a Platform be allocated between the parties?	In general, the costs of maintaining the "on the record" shared documents will usually be shared equally between the parties. However, costs can often be charged on a volume basis for a “data hosted” solution or on a user-subscription licensing model. Consider how those costs will be allocated if there is a discrepancy in the volume of data held (and shared) by each party.
29.	Which of the interactions between arbitral participants during the course of the arbitration are expected to take place remotely and in-person?	This question may impact upon whether in-built video conferencing software would be a beneficial feature for a Platform in the particular case.
30.	Do sanctions impact the Platform?	In the same way that parties should run AML and sanctions checks with respect to arbitrators, parties should also ensure that any CMP provider is AML compliant and not subject to any applicable sanctions. Parties should look not just to CMP provider itself but also check that any support service, such as document storage facility, also passes these checks. This is, as always, an ongoing obligation as sanctions are subject to frequent change. If a party to the arbitration or a CMP provider becomes subject to sanctions during an arbitration, all parties to the arbitration will have to consider a contingency plan with respect to any service provided by the CMP provider in the same way they would with any other third party provider, including the arbitrator, to ensure continuity of those services.
31.	How will responsibility for the risks associated with the hosting and transfer of data be allocated?	Arbitral participants should work with their chosen technology provider to ensure that such allocation is clear. One key consideration will be whether (and if so, how) appropriate insurance might assist.
	CONCLUSION OF THE ARBITRATION	
32.	What access to the Platform will arbitral participants require, if any, following conclusion of the arbitration?	This should be established and set out in a procedural order or a separate protocol, insofar as the point is not expressly covered in applicable procedural rules or under applicable mandatory laws. Arbitral participants should consider: (i) for how long they will continue to have access to the Platform; (ii) when the Platform workspace for the particular arbitration will be archived; (iii) the basis upon which the data will be archived; (iv) whether or not an offline export of the data is required for any arbitral participant; and (v) when the workspace and/or data will be permanently deleted.

ANNEX 4: PLATFORM PROVIDER DATA SECURITY AND PRIVACY QUESTIONS

This short questionnaire may assist arbitral participants to discuss with a Platform provider the relevant data flows and data security arrangements in place for a particular Platform. These questions will also help arbitral participants to ensure and document compliance with relevant cybersecurity and data protection requirements applicable to their particular arbitration. This questionnaire is intended as a starting point for those discussions only, and is not intended to be exhaustive of the data security and privacy questions that should be asked of a Platform provider in the context of any given arbitration.

	QUESTION	ANSWER	SCORE
	DATA SECURITY		
1.	Are you certified to any information security or quality standards in relation to the services to be provided (e.g. ISO 27001, ISO 27017, ISO 27018)? If so, please identify and state the scope of those standards.		
2.	Please share a copy of your information security policy and confirm who within your organisation has responsibility for this policy and when this was last updated. How is compliance monitored?		
3.	Which information security legislation and regulatory policies have been considered in the design and operation of the Platform?		
4.	Who manages and controls the operation of the Platform and the physical security of the facilities in which the data is stored?		
5.	Is data on the Platform encrypted, both in transit and at rest? Please give details of the encryption methods for both states.		
6.	Who is responsible for managing system encryption? Do arbitral participants have the option to manage their own encryption keys?		
7.	Please provide a high level overview of your service architecture, which shows the infrastructure and data flows in operation, and if applicable, any APIs.		

ANNEX 4: PLATFORM PROVIDER DATA SECURITY AND PRIVACY QUESTIONS

	QUESTION	ANSWER	SCORE
8.	Does the operation of the Platform rely on any external information systems or providers? If so, please provide an inventory and describe the services they provide, highlighting if they will be in possession or given access to data.		
9.	Please describe how your staff are vetted, trained and monitored to ensure compliance with non-disclosure or confidentiality requirements in connection with the data on the Platform.		
10.	Does your organisation have a fully executed Non-Disclosure Agreement for this engagement?		
11.	Please describe the physical security controls protecting the location where Platform data would be stored (e.g. physical entry arrangements - locked server cages, guarded access, video monitoring, visitor access controls, etc.) and state any applicable certifications, eg, SSAE 16, SOC 2, SOC 3.		
12.	Please describe your business continuity plan and the results of your last business continuity test.		
13.	Please describe how you protect against data-leakage to ensure the continuous protection of data.		
14.	Please describe how you ensure the integrity of data?		
15.	Has your organisation appointed a Data Protection Officer with the tasks foreseen in GDPR and other relevant data protection laws?		
16.	Describe your organisation's risk tolerance in the areas of threat and vulnerability remediation. What types of threats would you consider acceptable and what time frames do you target for remediation of those that are not acceptable?		
17.	If your organisation develops any aspect of the Platform, please describe the System Development Lifecycle in place to support this process.		
18.	If your organisation develops any mobile elements for the Platform, describe how you ensure this technology is appropriately secured.		

	QUESTION	ANSWER	SCORE
	DATA PRIVACY AND STORAGE		
19.	What is/are the jurisdiction(s) in which data on the Platform can be stored?		
20.	Does your organisation have the ability to replicate and back up content in more than one jurisdiction, if needed?		
21.	Are there any bases on which you would seek to: (a) move or replicate data outside of the chosen region(s) without express consent from all relevant arbitral participants? (b) access, disclose or use Platform data for any purpose beyond the services commissioned of you for this arbitration?		
22.	Do parties have the ability to delete permanently all or part of the information uploaded to the Platform, including the ability to make permanent (ie, irreversible) redactions to documents?		
23.	Which employees or contractors in your company would be able to access Platform data and what is the approval process for granting access? What is the level of security applicable to remote access?		
24.	Please describe how data on the Platform which contains personal data will be handled by you. Please provide a copy of your privacy policy.		
25.	Please describe how you would respond to data subject access requests under applicable data protection laws?		
26.	If located within the United Kingdom, provide your ICO data protection registration number and details.		
27.	What is your proposed retention period for Platform data?		
28.	Describe how data is destroyed when necessary?		
29.	Describe how the Platform and data is backed up, including frequency and the technologies in use. Includes details how these backups are tested for recovery.		

	QUESTION	ANSWER	SCORE
	IDENTITY AND ACCESS		
30.	What capabilities do you have to securely manage identities, resources and permissions at scale and at a granular level?		
31.	Describe how you have architected the Platform to ensure the segmentation of data from other customers and from your internal business systems.		
32.	What type of authentication is required to access servers and network devices, both from on-site and remote access?		
33.	For your organisation, do you assign permissions to the infrastructure and Platform using the principle of least privilege? Please describe how this has been implemented to ensure the protection of data.		
34.	Do first-time users have to agree any project specific terms and conditions to login? If yes, what are the terms and conditions?		
35.	Can restrictions on printing, saving and downloading documents at a granular level be created?		
36.	Do you review who has access to information? If so, please describe the process and frequency of review.		
37.	Does your organisation have facilities for comprehensive user audits and detailed audit reporting, if required?		
38.	Does your organisation have a documented insider trading policy that details an individual's responsibility resulting from both direct and indirect access to confidential information? If so, please provide copies.		
39.	Does your organisation allow the use of removable media? How do you monitor or control their use?		

ANNEX 5: DRAFT PROCEDURAL ORDER

By [ ] days from the date of this order, the parties will confer about the conduct of the proceedings, discussing inter alia:

(1) The adoption of an online case management platform, taking into consideration, as appropriate, the Protocol for Online Case Management in International Arbitration published by the Working Group on LegalTech Adoption in International Arbitration in [June 2020] (the "Platform Protocol");

(2) *[Address cybersecurity and data protection considerations, on which c.f. ICCA-NYC Bar-CPR Protocol on Cybersecurity in International Arbitration and the IBA Presidential Task Force's Guidelines on Cyber Security (together the "Cybersecurity Guidance"), and the ICCA-IBA Joint Task Force Roadmap and on Data Protection in International Arbitration Proceedings (the "Data Protection Roadmap")]*

By [ ] days from the date of this order, the parties will write to the Tribunal informing it of the discussions set out in paragraph [ ] above and of the outcome of those discussions clearly identifying areas of agreement and disagreement.

By [ ] days from the date of this order, the parties and the Tribunal will address the areas of disagreement at a procedural hearing. The Tribunal may give further directions as it considers appropriate as regards the conduct of proceedings and in doing so may have regard to and/or adopt the provisions of the Platform Protocol, the Data Protection Roadmap and the Cybersecurity Guidance.

ANNEX 6: CONSULTEES

The Working Group held a private consultation during which it sent the draft Protocol to and sought input from the individuals and organisations below. It should be noted, however, that not all private consultees were able to respond to the consultation and that the content of the Protocol should not be read to represent the views of any one or more of those consulted. The Working Group also held a public consultation following the publication of the draft Protocol on 1 July 2020, in which feedback was provided from a wide range of arbitrators, counsel, arbitral institutions, technology providers and others. The Working Group is grateful for the very valuable comments received in both the private and public consultation phases.

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