Transparency And Data Protection: Conflicts and Resolutions in International Commercial Arbitration

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Abstract. This paper delves into the intricate relationship between transparency and confidentiality in international commercial arbitration. It elucidates the significance and meaning of these two values in the context of arbitration, highlighting their crucial roles in maintaining fairness, trust, and legitimacy. The paper navigates through the impact of data disclosure on parties' privacy rights and emphasizes the need for a delicate equilibrium between transparency and data protection. Furthermore, it explores various strategies for resolving conflicts between these values, including the establishment of effective information disclosure and informed consent mechanisms, the utilization of anonymization and pseudonymization techniques, the optimization and innovation of arbitration rules and procedures, and the development of applicable data protection guidelines and standards. In conclusion, this paper underscores the pivotal role of confidentiality as the primary value objective in commercial arbitration, while acknowledging the intrinsic value of transparency in ensuring justice. It underscores that both values are interdependent, shaping the framework of the arbitration system, and their harmonious coexistence is vital for the continued relevance of international commercial arbitration in a rapidly changing global landscape.

Keywords: Transparency; data protection; arbitration; conflicts.

1. Introduction

With the ongoing advancement of international commercial arbitration, resolving disputes between parties has become crucial. International commercial arbitration is valued in practice due to its confidentiality and efficiency, rendering it the preferred method for settling commercial disputes among global stakeholders. Its use has greatly facilitated the orderly and efficient settlement of such disputes. However, as the process of international commercial arbitration unfolds, the absence of complete transparency has gradually unveiled certain inherent limitations, ultimately impeding its development. Consequently, this has prompted a critical reassessment of international commercial arbitration by the international community, with a particular emphasis on the imperative need for transparency reform. In our current digital era, the call to address the intricate challenge of harmonizing transparency and data protection has taken center stage, demanding a delicate equilibrium between these two fundamental aspects.

This research aims to delve into the intricate dynamics between transparency and data protection within the realm of international commercial arbitration. It seeks to unravel the complexities surrounding the coexistence of transparency and the safeguarding of personal data, a task that becomes increasingly intricate in today's digital landscape. By dissecting the nuanced interplay between these two essential elements, this study aspires to provide valuable insights into the delicate balance that must be struck to ensure the integrity, fairness, and efficiency of international commercial arbitration proceedings.

The significance of this research cannot be overstated. As international commercial arbitration continues to be the preferred method for dispute resolution in the global business arena, its adaptability and credibility hinge on the effective management of these seemingly conflicting imperatives. To this end, this paper is structured as follows: we will commence by exploring the fundamental concepts of data protection, privacy rights, and transparency in international commercial arbitration. Subsequently, we will delve into the conflicts arising from the juxtaposition of transparency and data protection, exploring their impact and limitations. Finally, we will discuss

strategies and mechanisms for resolving these conflicts, highlighting best practices and potential avenues for reform. Through this comprehensive analysis, we aim to provide a roadmap for achieving a harmonious coexistence between transparency and data protection in international commercial arbitration, ensuring its continued relevance and effectiveness in the digital age.

2. Data Collection and Usage in International Commercial Arbitration

2.1. Data Collection Methods in the Digital Era

The digitalisation of arbitration is a direct outcome of the extensive employment of digital technology. Over the last two decades, with the advancement of internet technology, arbitration has gradually transitioned from reality to virtual space. Consequently, a considerable number of textual materials created by arbitration have been transformed into binary data and transmitted instantaneously through cyberspace. The advancement of arbitration technology depends on the establishment of appropriate technological norms, in addition to the inherent maturity of the technology. Such norms serve as the driving force behind the development and enhancement of arbitration digitalisation in the post-pandemic era. In summary, digitalization has ceased to be an ideal setting for arbitration, but rather has become a reality in the wake of contemporary times, driving the self-refinement of relevant legal systems, such as arbitration. Therefore, in international commercial arbitration, we must exercise extra caution in collecting and utilizing data.

2.1.1 Use of electronic documents and electronic evidence

Arbitration, a judicial method grounded in civil society and verified by sovereign legislation, has undergone continuous development in tandem with the progress of the social economy. The late 20th century emergence of the Internet heralded a profound shift in arbitration from traditional offline processes to online modes. This transition prompted the creation of corresponding legal frameworks. For instance, in 1998, the London Court of International Arbitration (LCIA) introduced rules for arbitral communications that included the use of email and other electronic means. To facilitate this process, a dedicated email box was created for parties to use, which subsequently led to the establishment of an electronic filing system. In the same year, the World Intellectual Property Organization (WIPO) created a digital case management system enabling parties to submit documents and pay fees online. Additionally, an arbitration data platform with a relatively independent structure was established to support the tribunal's work. In 2001, the American Arbitration Association (AAA) capitalised on the technological advantages of the United States to create the Electronic Case Management System (ECM), facilitating fully online arbitration proceedings and becoming an industry leader.

The extensive use of digital technology in arbitration has necessitated modifications in arbitration laws and international norms in numerous countries. The International Chamber of Commerce (ICC), being the largest global business entity, has proactively introduced regulations for consumer dispute resolution in e-commerce. These initiatives promote objectivity, prioritize clear and concise language, ensure logical information flow, and adhere to established structures and style guides. Moreover, the ICC has played a pivotal role in the development of online dispute resolution (ODR) mechanisms, offering effective channels for resolving disputes through online arbitration. The adoption of digital technology in arbitration was accelerated by the COVID-19 pandemic, leading to an increasing preference for online arbitration. A 2021 "Arbitration Report" from Queen Mary University of London underscores this trend, highlighting the surge in online arbitration practices. Over 70% of survey participants embraced various digital formats, such as online hearings, electronic services, and document submissions, as these practices enhanced accessibility. The outbreak of the pandemic also catalyzed efforts to bolster arbitration data infrastructure globally, paving the way for system enhancements and improvements, making it a pivotal trend in post-pandemic arbitration development.

The world is experiencing significant progress, transformation and adaptation, in which peace and development prevail as the theme of our epoch. The global governance system and international order

are undergoing accelerating changes, while countries are becoming even more interconnected and interdependent. The international balance of power is becoming more equitable, and the trend towards peaceful development is unstoppable. Currently, a new phase of scientific and technological revolution and industrial transformation continues to develop, leading to significant changes in the international power balance. This has created fresh strategic opportunities for China's development. The rise of social informatization and scientific advancement is largely thanks to the widespread use of digital technology, with the Internet acting as the central driver. Arbitration, as a dispute resolution mechanism integrated into social production and life, is also significantly influenced by this trend of data. This transformation is evident in the altered approaches to data gathering, marked by the adoption of electronic documents, electronic evidence, and the utilization of blockchain technology, all of which are pivotal in modern data collection practices.

2.1.2 Application of blockchain technology in data collection

The rapid development of the digital economy and the accelerated innovation of intelligent and connected information technology have resulted in a significant increase in online disputes and the use of online arbitration to resolve them. The core element of the arbitration system is the evidentiary system. The critical role of electronic evidence in modern commercial arbitration is undeniable. As opposed to traditional arbitration, modern arbitration relies solely on electronic evidence. As a result, electronic documents and evidence are increasingly prevalent.

In international commercial litigation arbitration cases, lawyers send work letters to parties, guiding them in collecting and submitting evidence, which is one of the most crucial methods for evidence collection. This practice is commonly known as "solicitor's correspondence." Solicitor's correspondence should focus on instructing parties or their staff to gather relevant evidence, given the importance of electronic data in commercial litigation and arbitration. This may include email exchanges, WeChat chat logs, and records of short message service communications between the staff handling the case and other parties involved. Solicitor's correspondence is instrumental in ensuring that pertinent electronic evidence is methodically gathered, safeguarding the integrity and completeness of the evidentiary record in arbitration proceedings.

2.2. The Role and Importance of Data in Arbitration

Information is essential in international commercial arbitration. The use of digital technology to automate arbitration processes is a current trend. This decision is based on the need for efficiency improvement, institutional convergence, and enhanced governance capacity. Furthermore, it is also advantageous to countries and arbitration institutions that seek to gain an edge in cross-domain competition. The paradigm of data-driven arbitration necessitates a vigilant approach to data supervision, as it profoundly influences the delineation of boundaries between the public and private sectors, the equilibrium of value orientations, and the adjustment of competition dynamics within arbitration.

2.2.1 Recognition and validity of digital evidence

Digital evidence has unique characteristics that can make determining its authenticity and objectivity a point of contention in disputes between parties. These characteristics include its high level of technology, complexity, concealment and vulnerability, which can also pose challenges for judges in reviewing and assessing it. Consequently, there is considerable debate about how digital evidence needs to be recognised and accepted.

Digital evidence can be categorised into two types: "tamper type" and "tamper-proof type" based on its technology. This classification can aid our judgement of the authenticity of electronic evidence. For instance, it is possible to manipulate and edit the contents of an email box's inbox under certain technical circumstances [1]. Conversely, once an electronic signature is formed and included in the signature book, original information can be detected and confirmed as unalterable, thus representing proof against tampering.

Most digital evidence, with the exception of certain instances, must be obtained through third-party platforms. The process of collecting and preserving electronic data by parties through third-party electronic data forensics depository platforms is becoming more commonplace. In practice, the examination and recognition of electronic data should not be rejected or enhanced solely because it is obtained through a third-party platform. Rather, it must stick to the principle of technological impartiality and undergo case-by-case examination, following the thorough evaluation of specific scrutiny criteria. The third-party platform for electronic data forensics offers the parties a novel approach to forensics, utilizing technical means to guarantee the preservence of electronic evidence integrity post-forensics without modification or damage.

From a legal perspective, fixed electronic evidence remains a type of evidence without any special evidentiary value, as it is completed with the assistance of a third-party platform or with the involvement of a third party. Moreover, there is no discrimination against such evidence simply because it is provided by a third party. As such, its acceptance must still be subject to cross-examination, examination, and judgement. It is the duty and responsibility of the third party data platform to provide the court with a clear explanation and evidence of the relevant technology. The highly technical nature of the third-party electronic data platform requires judges to have a comprehensive understanding of the technology in order to make informed judgments regarding the matter at hand.

2.2.2 The impact of data on arbitral awards

In today's business landscape, characterized by widespread use of online communication tools and major platforms, essential business activities such as communication, contract signing, and document exchange predominantly occur in the digital realm. Consequently, the influence of data on the outcomes of arbitration proceedings becomes particularly pronounced.

The collection, accessibility, and utilization of data have direct implications for its admissibility as legal evidence, thereby influencing the outcomes of arbitration decisions. Within the sphere of international commercial arbitration, data plays an influential role in shaping the final arbitral awards. The increasing prevalence of electronic documents and digital evidence underscores the data's impact on the arbitral process. Moreover, as arbitration becomes more reliant on digital technology, data's role in shaping arbitration awards is expected to grow in significance. It not only affects the acceptance of evidence but also shapes the factual findings, legal interpretations, and ultimately, the awards rendered by arbitral tribunals. This intricate interplay between data and arbitral awards makes data management and supervision a critical aspect of modern arbitration practices.

3. Conflicts between Transparency and Data Protection in International Commercial Arbitration

3.1. The Significance and Meaning of Transparency in International Commercial Arbitration

In the international commercial arbitration model, the confidentiality of the arbitration process, which is not open to third parties, involves a certain degree of public interest, such as environmental protection, public health, financial security, etc. The public's right to know and the transparency of the arbitration process are therefore involved. It is therefore about the public's right to know and the transparency of the arbitration process. In particular, stakeholders should have the right to represent the affected public in arbitration proceedings, thereby augmenting the transparency of the arbitration process. This aspect, akin to the participation of amicus curiae in arbitration, seeks to forestall inconsistencies in awards and crises of legitimacy that can surface in investment arbitration.

3.1.1 The role of transparency in ensuring arbitration fairness

At the root of the wave of transparency reforms in international commercial arbitration is the fact that parties submit their disputes to international commercial arbitration institutions by consensus and trust that they will receive a fair award. How to ensure the fairness and justice of arbitral proceedings

and awards is of particular importance. Increased transparency can enhance the predictability of international commercial arbitration, increase the parties' commitment to this method of dispute resolution and further improve public understanding of arbitration. It's essential to recognize that transparency in international commercial arbitration doesn't imply an outright abandonment of confidentiality but instead seeks to strike a balance. Transparency substantially contributes to the equity of arbitration.

3.1.2 The need for information disclosure and open hearings

The issue of confidentiality in international commercial arbitration is not certain: Courts, arbitrators and sometimes even parties may seek or require disclosure of documents or information in arbitration for special needs; and once the case is brought to court, the barrier of secrecy is of course breached. As the American scholar Brown put it, "There is a gap between theory and reality in the assertion of arbitral secrecy". On a legal level, the 1995 decision of the High Court of Australia in Essov.Plowman also posed a significant challenge to this principle. In that case, the Court held that there was no implied duty of confidentiality in the arbitration agreement and that, where there was no express duty of confidentiality in the arbitration agreement, the parties were not bound by any implied duty of confidentiality regarding the use of documents and information obtained in the arbitration. Although the English Court, in the subsequent Ali Shipping case, rejected the Australian Court's perspective and reaffirmed the confidentiality principle rooted in the nature of arbitration, the underlying question of when and under what circumstances it may or should be breached remains a focal point of contention.

3.1.3 The influence of transparency on trust in commercial arbitration

Confidentiality is a key principle in domestic arbitration as it stems directly from the institutional nature of arbitration to mediate private disputes between parties. This form of dispute resolution is conditioned upon the exclusion of intervention from the public power of the state. Moreover, there is no obligation to disclose private matters between individuals to the public. According to this principle, only arbitrators, parties, and witnesses may participate in or observe the arbitration hearing, and they are not entitled to obtain any information about the arbitration. Additionally, neither the arbitrator nor the parties may disclose any information about the arbitral proceedings, documents or awards to the outside world, nor may they use such information for purposes other than the arbitration.

Thus, the foundation of arbitration can be attributed to the confidentiality of international commercial arbitration. Consequently, it is essential to acknowledge the indisputable impact of transparency on trust in commercial arbitration. However, it's important to strike a delicate balance, as an excess of transparency may inadvertently render parties hesitant to utilize arbitration as their chosen method for dispute resolution.

3.2. Data Protection Demands in International Commercial Arbitration

In practice, confidentiality transcends the realm of a mere theoretical legal concept, assuming the form of a concrete legal obligation. Numerous significant international commercial arbitration regulations mandate that arbitrators and parties must maintain confidentiality throughout the arbitration proceedings. However, it is worth noting that, with the exception of New Zealand, all countries' arbitration laws lack clear provisions regarding the confidentiality of arbitration. This results in a deficiency of complete institutional norms at the level of enactment law.

3.2.1 Parties' privacy rights and personal data protection

The safeguarding of the right to privacy is crucial for preserving individual freedom, dignity, personal autonomy, and liberation from external control and coercion. Any intrusion into an individual's private sphere poses a severe threat to their wellbeing. Without adequate safeguards, individuals risk losing their right to self-determination, rendering themselves vulnerable to external influence. In the age of big data, protecting personal information is crucial to prevent privacy violations and maintain its boundaries.

The present era of big data has undoubtedly produced various advancements, yet the protection of personal data and privacy has emerged as a mounting apprehension for social progress. The ease of privacy violations has encouraged individuals to fear the breach of privacy, which may undermine their confidence in arbitration and hinder its support. Hence, the call for transparency in international commercial arbitration must be meticulously balanced against the potential risks of privacy breaches.

Therefore, the long-term and sustainable development of international commercial arbitration depends on enhancing personal privacy protection. The imperative to protect privacy and personal data is grounded in facts and is, therefore, a more humane objective than the pursuit of big data. It is crucial to consider the protection of personal privacy and its associated data as a top priority.

3.2.2 Legitimacy of data processing and informed consent

"Consent" stands as the pivotal principle of privacy and a crucial component of the "informed consent" principle. It establishes the primary legal foundation for the lawful processing of personal information, stipulating that consent must follow the condition of "informed". This implies that "consent" is given based on sound knowledge. The first and most crucial stage for ensuring the legality of data processing involves obtaining consent.

From an academic standpoint, it is recognized that obtaining the consent of the information subject is necessary for information processing. Consent can be categorized as either "positive" or "negative." "Positive consent" necessitates obtaining explicit consent from the information subject for data processing, with a lack of consent signifying non-compliance. Conversely, "Negative consent" implies that consent is presumed unless explicitly denied by the subject. Both consent models confer data subjects the right to control their personal information, while enabling data users to utilize personal data rights. Nevertheless, there is a significant disparity in the cost associated with these two consent models. "Active consent" necessitates obtaining express consent from each information subject, requiring every information user to invest time and money in the process. Failure to secure explicit consent would constitute infringement and significantly increase the cost of information processing.

Even within the European Union, where human rights have always been highly valued and the "positive consent" model has been predominant, some scholars question its viability, particularly due to its potential costliness and adverse consequences, advocating its use only under exceptional and genuinely necessary circumstances [2]. Therefore, it is widely agreed that the "negative consent" model should be adopted by all countries for non-public institutions when using personal data.

However, this approach has its disadvantages. Although the awareness of citizens' rights is increasing in current Chinese society, it has yet to reach a significant level. Therefore, when implementing the "negative consent" model, it is imperative to guarantee explicit opt-out opportunities for data subjects. Some data processing entities impose stringent restrictions on data subjects attempting to opt out, effectively depriving them of their remaining data value. This practice is widespread in the "negative consent" model [3].

3.2.3 The impact and limitations of privacy protection on arbitral proceedings

Overzealous privacy protection can impede arbitration proceedings. The principle of arbitration confidentiality primarily concerns the case's merits, rather than the award's opinion. The parties involved are safeguarded, rather than the arbitration committee. The publication of the award's opinion ensures impartial oversight and provides guidance on whether the claims of arbitration parties can be further substantiated. If the entire process of international commercial arbitration remains shrouded in secrecy, the zealous protection of privacy may ultimately jeopardize the long-term advancement of arbitration as a whole.

A system that ensures complete privacy, without avenues for oversight, may inadvertently give rise to critical errors. Oversight can be obtained by understanding the arbitration perspectives and case information. While maintaining confidentiality is imperative, it's equally crucial not to stifle the dissemination of erroneous awards or insights into arbitration, as such transparency can subject decisions to public scrutiny. It's vital to recognize that the objective of arbitration confidentiality isn't

to obscure the principles of fairness and justice. Instead, it should be viewed as a means of upholding these fundamental tenets while simultaneously acknowledging the significance of supervision and impartiality. Consequently, international commercial arbitration should not operate devoid of regulation.

4. Strategies for Resolving Conflicts between Transparency and Data Protection

The tension between transparency and privacy has always been present and is particularly relevant in global commercial arbitration. It is essential to review the relationship between disclosing information, privacy, and public rights to create a fairer, more balanced and transparent commercial arbitration system. To ensure the protection of the legal rights and interests of all parties involved and promote the comprehensive development of arbitration, it is crucial to maintain a balance between transparency and privacy. Achieving equilibrium within an arbitration system where confidentiality is advantageous poses a significant challenge.

4.1. Ensuring Transparency through Process Disclosure

When aiming for transparency through arbitration process disclosure, a thoughtful approach is paramount. Factors such as the extent and scope of case information disclosure and its potential impact on the privacy rights of involved parties must be meticulously considered.

4.1.1 Publicizing and disclosing case information

The disclosure of case information can be made public without compromising the privacy of arbitration. Initially, it is essential to reveal basic information about the dispute, particularly if it pertains to a significant case. The public holds the right to be informed that such a dispute exists. Furthermore, the exposition and enforcement of the judgment and arbitration clause need to be disclosed. The details can be anonymised and shared publicly after a considerable period, though not permanently. The focus of arbitration confidentiality is on the factual elements of the case, rather than the decision made by the arbitrator, and its primary aim is to safeguard the interests of the parties involved, rather than the arbitration committee.

The disclosure of the arbitration award serves to uphold the impartiality of the decision and guide future decisions regarding the claims of the disputing parties. If the entire procedure of global commercial arbitration is obscured, safeguarding privacy may jeopardise the lasting progress of arbitration.

4.1.2 The impact of data disclosure on parties' privacy rights

In international commercial arbitration, the impact of data disclosure on parties' privacy rights is a multifaceted challenge. It involves a complex interplay between the imperative for transparency and the preservation of privacy rights. Parties engaged in arbitration often express valid concerns about competitive risks associated with data disclosure. Certain types of information, such as trade secrets or proprietary data, can inadvertently offer advantages to competitors when exposed. Moreover, parties rely on arbitration's confidentiality to safeguard their reputations and maintain the privacy of sensitive information. Breaches of confidentiality can have dire consequences, potentially damaging reputations and violating the fundamental right to privacy. Additionally, arbitration cases that involve individuals, such as employees or consumers, raise unique privacy concerns. Disclosing personal or sensitive data without proper consent can lead to legal and ethical dilemmas. Hence, international commercial arbitration is mandated to determine the appropriate level of disclosure needed.

Under most national laws and institutional rules the deliberations of the arbitral tribunal aretreated as confidential [4]. The same obligations of confidentiality are imposed by ethical andprofessional guidelines for international arbitrators. The confidentiality of the arbitrators’deliberations extends to draft awards, internal communications regarding disposition of a caseor comments on draft awards,

and the content of oral deliberations [5]. Thus, it is obvious that Parties' Privacy Rights are in great importance in practice. If leaving the path to reach transparency, to some degree one day,the hazardous impact would not be so far.

4.2. Addressing the Protection Demands of Personal Privacy Rights

International arbitration is substantially more private, and often more confidential, than national court proceedings. Arbitral hearings are virtually always closed to the press and public, and in practice the parties'submissions and tribunals'awards often remain confidential. In some (but by no means all) jurisdictions, confidentiality obligations are implied in international arbitration agreements as a matter of law, while some arbitration agreements or institutional arbitration rules impose such duties expressly [6]. In general, most international businesses prefer, and actively seek, the privacy and confidentiality that thearbitral process offers [7].

Ensuring personal privacy protection is an essential factor in selecting commercial arbitration. Consequently, considering the growing trend toward transparency in international commercial arbitration, it is crucial to address the challenge of safeguarding data protection laws and privacy while finding a reasonable balance between privacy and data disclosure.

4.2.1 Data protection laws and safeguards for privacy rights

Confidentiality is a crucial aspect of international commercial arbitration, as it embodies the institutional value of arbitration and encourages parties to choose arbitration over litigation. It is not only a principle but also a system that specifies the subject of confidentiality obligations, the scope of confidentiality subjects, the legal consequences of breaching obligations, and relief measures. This ought to receive greater protection in global business arbitration. Data security must be encompassed within this framework particularly during the era of big data, utilising more advanced and stringent technology.

4.2.2 Balancing privacy rights and data disclosure

More importantly, as public interest and other relevant factors often come into play, secrecy cannot be absolute. Therefore, reasonable regulations of transparency must be introduced to achieve a balance between competing interests. The emergence of disputes is a comprehensible occurrence. On one hand, parties desire to safeguard their business interests by keeping the arbitral process confidential. On the other hand, it is necessary to meet the public's need for procedural transparency because the outcome or existence of an arbitration may impact individuals beyond the participants. For instance, in a dispute between a consumer and a corporation regarding contract terms, a significant number of consumers might have the same contractual terms, and how the arbitration process interprets and enforces these terms has a direct impact on their interests. In different cases, where the ruling will greatly affect the interests of stakeholders and clients, the findings and justifications should be subject to public inspection. Second, during the course of their contractual obligations, one party may need to reveal arbitration information to a third party. Additionally, arbitration information related to criminal proceedings must be disclosed in the public interest.

Therefore, complete and absolute confidentiality is unjustifiable and requires some degree of limitation so as to allow for the disclosure of arbitral information in certain exceptional circumstances. The crux of the matter is to identify which exemptions ought to be applied to the assertion of arbitration confidentiality to attain an equilibrium amidst the numerous opposing concerns.

4.3. Resolving Conflicts between Transparency and Data Protection

With certain optimisation mechanisms, it is possible to achieve a certain degree of balance between the interests of the parties and those of the public with regard to the conflict between transparency and the right to privacy, but it should be noted that this balance is not what we call complete balance. A multifaceted strategy that combines effective information disclosure mechanisms, anonymization and pseudonymization techniques, procedural optimization, and specialized data protection

guidelines can pave the way for a more equitable resolution to the perennial conflict between transparency and data protection in international commercial arbitration.

4.3.1 Establishing effective information disclosure and informed consent mechanisms

It is elementary that "arbitration" is a consensual process that requires the agreement of theparties. Article II of the New York Convention applies only to an "agreement ... under which the parties undertake to submit to arbitration,"[8] while Article 8 of the UNCITRAL Model Law applies only where there is "an agreement by the parties to submit to arbitration all or certain disputes."[9] Similarly, national courts uniformly hold that "arbitration is a creature that owes its existence to the will of the parties alone," [10] and that "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit."[11]

To navigate the labyrinth of privacy and transparency, creating well-structured mechanism for disclosing information and obtaining informed consentis paramount. Arbitration proceedings should ensure that all involved parties, including arbitrators, legal counsel, and disputants, are not only aware of but actively participate in defining the parameters of data disclosure. This necessitates clear communication regarding the types of data to be shared, the purposes for which it will be used, and the potential implications. Moreover, it calls for robust frameworks that secure consent in a manner that is informed, unequivocal, and legally valid. Such mechanisms empower parties to make deliberate choices about the extent to which their information is disclosed, thereby fostering a sense of control and trust within the arbitration process.

4.3.2 Utilizing anonymization and pseudonymization techniques

In some (but by no means all) jurisdictions, confidentiality obligations are implied in international arbitration agreements as a matter of law, while some arbitration agreements or institutional arbitration rules impose such duties expressly. In general, most international businesses prefer, and actively seek, the privacy and confidentiality that the arbitral process offers [12]. In this situation, even Utilizing Anonymization and Pseudonymization Techniques are much more expensive, it would be far much acceptable.

The application of disguised and anonymised data technologies assists in upholding a balance between privacy and transparency. The elucidation and execution of the award and arbitration clause should be available for public scrutiny. These constituents are identifiable with the case's anonymity and may be published after a substantive period has lapsed, but they cannot remain confidential permanently. Confidentiality concerning arbitration pertains to the case's essential components and not the award's opinion, and the scope of security is the parties, not the arbitration committee. The transparency of the arbitral award is crucial in assessing its impartiality and ascertaining the viability of the parties' claims in future proceedings. Failure to disclose the entire process of international commercial arbitration would compromise privacy rights, undermine the integrity of the award, and diminish its authoritative standing. However, it must be executed meticulously, striking a careful balance between data protection and the effective administration of justice.

4.3.3 Optimizing and innovating arbitration rules and procedures

It is crucial to enhance and modernise arbitration rules and procedures. Optimizing these frameworks involves incorporating flexibility and scalability, allowing arbitrators and parties to tailor processes to specific cases. Additionally, embracing innovative technologies, such as secure data storage and encrypted communication channels, can bolster privacy protection. Moreover, procedural innovations should be undertaken to address novel challenges posed by data privacy, particularly in cross-border disputes where varying regulations intersect. By doing so, international commercial arbitration can navigate the complexities of modern data protection while upholding its core principles.

4.3.4 Developing applicable data protection guidelines and standards for arbitration

To establish a coherent approach to data protection, the development of specialized guidelines and standards for arbitration is essential. These regulations should be meticulously crafted to align with

the unique dynamics of arbitration processes while harmonizing with broader data protection laws and principles.

They should delineate the responsibilities of all stakeholders, set clear boundaries for data usage, and outline mechanisms for dispute resolution in cases of privacy breaches. Crafting such guidelines would not only bolster data protection within arbitration but also foster a sense of confidence among parties that their rights are safeguarded.

5. Conclusion

In the intricate realm of international commercial arbitration, the dynamic interplay between transparency and confidentiality stands as a cornerstone. This paper has traversed the landscape of these two pivotal values, unearthing their profound significance in fostering fairness, trust, and legitimacy within the arbitration process.

Confidentiality serves as the primary value objective of commercial arbitration, reflecting the value orientation of international commercial arbitration, while transparency is indicative of the value orientation of pursuing justice in international commercial arbitration. Hence, to strike a balance between these two, secrecy takes precedence. However, this does not imply the abandonment of the pursuit of transparency. Transparency constitutes the essential intrinsic value of arbitration, serving as the foundation that justifies its existence as a dispute resolution mechanism. Whenever these objectives conflict, the priority is accorded to confidentiality.

As we conclude, it is imperative to underscore that the paramount objective of commercial arbitration is confidentiality, with transparency serving as its foundational bedrock. These values together form the essence of the arbitration system, ensuring its continued relevance in an ever-evolving global context. Finding equilibrium between these values remains an ongoing endeavor—one that is vital for the continued success and effectiveness of international commercial arbitration in the 21st century. Balancing these values is not a mere theoretical exercise but a practical necessity to meet the challenges of our increasingly interconnected and data-driven world.

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