



## ICC Institute Advanced Level Training Programme Production of Documents

9 June 2022 | São Paulo, Brazil | English

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09.00 - 09.30 *Welcome coffee*

09.30 - 09.45 **Welcoming address and introduction**

09.45 - 10.00 **Thinking strategically about the document production process**

This introductory session will address the procedural and strategic choices that should set the approach to document production in international arbitration. Participants will learn how to identify documents that are relevant and material to the case and will discuss issues of document collection and preservation strategies both from a theoretical and a practical standpoint.

10.00 – 10.45 **Case scenarios on ‘Thinking strategically about the document production process’**

10.45 - 11.00 **Pro-active approaches to addressing data protection during the document production process**

Data protection rules often apply to the processing of personal data during the arbitration process. Where data protection laws are likely to apply, best practice is usually to raise these issues proactively and upfront, which may limit the impact of data protection compliance on the arbitration process and the production of documents. This session will train participants to spot data protection issues early on and present potential ways to limit the impact of data protection compliance, including “data minimization”.

11.00 - 11.15 *Coffee break*

11.15 - 11.30 **Party-promulgated document requests (part 1) – how to draft effective requests**

In international arbitration each party is responsible for submitting the documentary evidence on which it intends to rely to support its case and there is no automatic right to the production of documentary evidence in the possession or control of the opposing party. This session will explore the limits of document production in international arbitration and provide practical insights on how to frame an effective request resulting in an expeditious and cost effective document production procedure.

11.30 - 12.15 **Case scenarios on ‘Party-promulgated document requests (part 1) – how to draft effective requests’**

12.15 - 12.30 **Party-promulgated document requests (part 2) – how to draft effective objections**

Upon receipt of a document production request the requested party has to react. What are the contours of the grounds for refusing to produce documents? How can a party best respond to a broad and indiscriminate document request? How can parties make available information necessary and material to a dispute but maintain confidentiality and competitive secrets? During this session participants will discuss the strategic issues and steps that should be considered when responding to a request for production.

12.30 - 13.15 **Case scenarios on ‘Party-promulgated document requests (part 2) – how to draft effective objections’**

13.15 - 14.45 *Lunch*

14.45 - 15.15 **Electronic documents – unique challenges and opportunities**

A lot has been said regarding the consequences of the increasing use of electronic documents, communications and electronically stored information on the document production process but the international arbitration community is still far from reaching a consensus on these issues. This session will address the recent trends and possible developments on how electronic evidence should be treated in international arbitration.

15.15 - 15.30 **Protecting legal privileges and commercial confidences**

Issues of privilege and commercial confidences often arise in international arbitration. The disparity of regimes, however, often makes the outcome uncertain both for counsel and parties and raises challenging issues such as: how to identify and withhold privileged material in practice, how to resist claims of privileges and how to protect commercial confidences, also considering the discretion of the arbitral tribunal on the issue and in the absence of an agreement by the parties.

15.30 - 16.15 **Case scenarios on ‘Protecting legal privileges and commercial confidences’**

16.15 – 16.45 *Coffee break*

16.45 – 17.00 **Non-party documents – techniques to get them if you need them**

Non-party discovery in arbitration can prove to be a virtual minefield both for parties and arbitrators: not only do practices vary significantly depending on the seat of the arbitration, the availability (and scope) of non-party discovery also relies on a delicate balance between arbitrators’ authority and courts’ power. This session will address practical challenges when seeking relevant evidence from non-parties to the arbitration such as competitors, third party advisors or investigative bodies.

17.00 - 17.45 **Case scenarios on ‘Non-party documents – techniques to get them if you need them’**

17.45 – 18.00 **Concluding remarks**