

Standard Contractual Clauses and Data Transfer Agreements

What is changing?

Standard contractual clauses (“**SCCs**”) are a commonly used data transfer mechanism to safeguard the international transfer of personal data and provide rights of action to data subjects. In June 2021, the EU replaced its 2004 SCCs (the “**Old SCCs**”) with a new set of SCCs to reflect the stringent data transfer requirements under the EU GDPR and take into account the Schrems II ruling (the “**New SCCs**”).

Additionally, following Brexit, the UK released the International Data Transfer Agreement (“**IDTA**”) and the UK Addendum to the New SCCs, to be used in the transfer of UK or UK and EU personal data.

In light of these changes, firms must review the SCCs they have in place to determine whether replacement agreements are necessary. Firms must discontinue their use of the Old SCCs by 21 March 2024 and ensure a full review of all data transfer agreements currently in place is carried out in good time to allow for the execution of any replacement agreements prior to 21 March 2024.

Who is impacted?

In relation to the transfer of EU data, any SCCs which refer to "Regulation (EU) 2016/679" are the New SCCs and are valid. Firms should undertake a general review of any inserted commercial terms which depart from the EU's prescribed template.

In relation to the transfer of EU data, any SCCs which refer to "Directive 95/46/EC" are the Old SCCs and should be replaced by the New SCCs before 21 March 2024.

In relation to the transfer of UK data, any SCCs which refer to "Directive 95/46/EC" are the Old SCCs and should be replaced by either the IDTA (for the transfer of UK data only) or the UK Addendum alongside the New SCCs (for the transfer of EU and UK data) before 21 March 2024.

How can we help?

We are helping clients with the following:

- reviewing data transfer agreements firms have in place to determine whether they are valid and compliant with data protection law;
- drafting, reviewing and negotiating New SCCs, including any unique commercial terms;
- advising as to the use of an IDTA or UK Addendum in large scale data transfers; and
- drafting, reviewing and negotiating an IDTA, or UK Addendum to a set of New SCCs.

For further information and assistance, please contact Leela Fair, Managing Director, EMEA:
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