



The Sedona Conference

Commentary on Managing International Legal Holds

(August 2022 Public Comment Version)

The Sedona Conference Working Group 6 on International Electronic Information Management, Discovery, and Disclosure (WG6) developed the *Commentary on Managing International Legal Holds* (“*Commentary*”) to expand upon Guideline 12 of *The Sedona Conference Commentary on Legal Holds, Second Edition: The Trigger & The Process* (which addresses the implications of preserving information located outside of the United States) by focusing on “international legal holds,” defined as legal holds involving preservation obligations that cross international borders. The *Commentary* provides guidance and practice points for implementing international legal holds while at the same time complying with potentially conflicting international data protection laws and regulations.

Section I is the introduction to the *Commentary*. Section II of the *Commentary* provides an overview of preservation and international data protection requirements. Section III sets out practice points to help organizations and counsel navigate international legal holds that may potentially conflict with international data protection laws.

The practice points outlined in Section III are as follows:

- **Practice Point 1:** Determine Whether the Preservation of Personal Data Is Necessary, and Then Determine Whether a Data Protection Law Applies
- **Practice Point 2:** Apply the Data Protection Law’s Guiding Principles for Processing Personal Information to Every Preservation Step or Process
- **Practice Point 3:** Document the Lawful Basis for Preservation and Preservation Steps Taken Thereafter
- **Practice Point 4:** Take Steps to Minimize the Scope of Preserved Information
- **Practice Point 5:** Consider Involving Data Protection Officers, Supervisory Authorities, or Work Councils
- **Practice Point 6:** Communicate Clearly with Data Subjects, Advising What Materials the Organization is Preserving, and What Steps Will be Taken as to Personal Information
- **Practice Point 7:** Make Sure Legal Hold Notices are Translated in Accordance with Local Law
- **Practice Point 8:** Reevaluate and Release Legal Holds and Dispose of Information When No Longer Needed

The full text of *The Sedona Conference Commentary on Managing International Legal Holds, Public Comment Version*, is available free for individual download from The Sedona Conference website at

https://thesedonaconference.org/publication/Commentary_on_Managing_International_Legal_Holds.

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