

# International Data Transfers

## Considering your options

### Standard contractual clauses

#### PROS

- Free & ready to use
- European Commission's approved
- No filing or approval formalities
- Suitable for one-off transfers

#### CONS

- Cumbersome as very strict non-negotiable requirements
- Unworkable for multiple and evolving transfers
- Risk of non-observance by data importers
- Being scrutinized by the CJEU

**VERDICT:** Widely used and accepted 'quick fix' but unlikely to be suitable as a long-term solution  
Subject to the same challenges that caused the invalidation of Safe Harbor

### Intra-Group Agreements and ad-hoc contracts

#### PROS

- Greater flexibility than model clauses
- If mirroring model clauses, less likely to be challenged
- Greater likelihood of compliance with requirements
- Suitable for evolving transfers

#### CONS

- Greater expenditure due to bespoke drafting
- Subject to authorisation requirements
- Delay caused by dialogue with supervisory authorities
- Risk of eventual non-approval

**VERDICT:** More realistic than model clauses but greater effort in drafting and interaction with regulators  
Good interim option to avoid legal uncertainty in the medium term

### Binding Corporate Rules (BCR)

#### PROS

- Globally regarded as 'gold standard' of compliance
- Obvious choice for flexibility & legal certainty
- Perfect model for meeting accountability obligations
- Natural evolution from global compliance programs

#### CONS

- Cumbersome and demanding approval process
- Lack of regulators' resources can delay approval
- Top management buy-in is essential
- Need for sufficient internal resources

**VERDICT:** An ideal framework for global privacy compliance  
Should be seen as an investment rather than a data transfers mechanism

### Privacy Shield

#### PROS

- Safe Harbor's weaknesses purposely addressed
- Improvements to overcome DPAs' objections
- Basis for global compliance programs
- Convenience

#### CONS

- Adequacy being challenged in CJEU
- Continued scepticism by some DPAs
- Legal uncertainty will continue
- Compliance scrutiny from tough US regulators

**VERDICT:** While uncertainty remains it is aimed at addressing adequacy requirements

### Explicit consent

#### PROS

- Derogation expressly mentioned by the GDPR
- No compliance mechanisms by importer required

#### CONS

- Practical impossibility of obtaining consent in this context that is informed, specific, and freely given
- Individuals able to subsequently withdraw consent

**VERDICT:** Like any of the other derogations, it is only a 'last resort' option  
The ability to rely on it in practice is extremely limited and unlikely to be accepted by regulators