

**Insights**

## **CROSS-BORDER LITIGATION AND INVESTIGATIONS FACE EVEN GREATER UNCERTAINTY**

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### **SUMMARY**

It was already arduous for organisations to reconcile the demands of litigation and investigations in a foreign jurisdiction with the obligations under the EU's General Data Protection Regulation. The Schrems II decision, and the regulatory consequences stemming from it, added a further layer of complexity.

On 16 July 2020, the Court of Justice of the European Union invalidated the EU-US Privacy Shield and confirmed – in a qualified way – the validity of the imperfect, but popular, European Commission-approved standard contractual clauses (“SCCs”).

The loss of the less popular Privacy Shield will impact investigations and cross-border litigation far less than the uncertainty that now accompanies the use of SCCs, especially when organisations have time constraints imposed by the proceedings.

There remain only limited tools available for groups to manage their data following the Schrems II ruling. Organisations now need to conduct and document a risk assessment to decide whether SCCs provide adequate protection in light of the local legal framework of the recipient's country and, where they do not, to deploy additional measures.

Kate Brimsted, Geraldine Scali and Jack Dunn wrote about this in our Emerging Themes in Financial Regulation 2021 publication.

### **RELATED PRACTICE AREAS**

- Litigation & Dispute Resolution
- Financial Regulation Compliance & Investigations

- Emerging Themes in Financial Regulation 2023
- Data Privacy & Security
- General Data Protection Regulation

## MEET THE TEAM



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