



Alternative Dispute Resolution in the Delaware Court of Chancery

Posted by Rachelle Silverberg, Wachtell, Lipton, Rosen & Katz, on Saturday March 6, 2010

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New rules take effect this week in Delaware governing the arbitration of business disputes in the Delaware Court of Chancery. The rules implement amendments to Delaware law, adopted last year, granting the Chancery Court jurisdiction to arbitrate certain business disputes, and compliment rules already in place governing the Court's mediation of business and technology disputes.

Under the new law, the Court of Chancery has jurisdiction to arbitrate "business disputes," which would include most complex corporate and commercial disputes. At least one of the parties must be a business entity, and at least one must be organized under Delaware law or have its principal place of business in Delaware. No party can be a consumer. In a claim exclusively for monetary damages, the amount in controversy must be at least \$1 million. All parties must consent to the arbitration.

Arbitration in the Court of Chancery can have numerous advantages over litigation or other forms of arbitration, in that it provides prompt and confidential resolution by an experienced and sophisticated arbitrator. The arbitration will be heard by either a judge or master sitting permanently in the Court of Chancery. The petition and all subsequent arbitration proceedings are confidential, and are not included in the Court's public docketing system (unless there is an appeal). A preliminary conference will be held within 10 days of the filing of a petition, with a final hearing taking place within 90 days of the filing.

Selection of arbitration in the Delaware Chancery Court may be appropriate for many complex commercial ventures and arrangements among U.S. entities, as well as those involving non-U.S. entities, often presenting the most straightforward, predictable and efficient form of dispute resolution, including for buy-sell arrangements, purchase price adjustments, governance disputes in joint ventures, and a wide variety of similar situations. Litigation, in Delaware and elsewhere,

will continue to be a feature of disputes involving public company merger and acquisition transactions and governance matters, and planning for stockholder litigation in particular is a crucial part of transactional and governance preparedness. But serious thought should be given to selecting arbitration in the Delaware Chancery Court as a dispute resolution mechanism for other forms of corporate and commercial disputes, both in transactions and more generally.

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