

The Deal Pipeline

Line extension

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Recent legislation and rule changes in Delaware now permit the Court of Chancery to arbitrate a broad range of business disputes. Arbitration in the Court of Chancery, which is widely regarded as the nation's premier business court, is a promising alternative to more traditional forms of arbitration and litigation, and it should prove to be an effective method for resolving many complex disputes.

Under the new rules, Court of Chancery arbitration is available for business disputes in which at least one party either is a Delaware business entity (that is, corporation, limited partnership, or limited liability company) or has its principal place of business in the state, the amount in controversy exceeds \$1 million or equitable relief is sought, and the parties have consented to arbitration in the court.



Cases will be decided by a single arbitrator, appointed by the chancellor from among the judges and masters of the court; however, the parties should be able to specify that the arbitrator must be a judge. One of the most significant advantages of Delaware Chancery arbitration is that the rules provide that the final hearing will be held within 90 days after the arbitration is filed. Although the rules allow prehearing discovery, including depositions, this accelerated time frame is likely to curtail discovery significantly.

The arbitrator has the power to grant any relief that he or she deems just and equitable. Arbitration awards will be enforceable in foreign jurisdictions under the New York Convention, just like any other arbitration award. The rules also preserve other typical features of arbitration, including confidentiality and limited appellate review.

The Court of Chancery arbitration rules are designed to be more effective, more efficient and less expensive than both litigation and other forms of arbitration. Among the key advantages is the quality of arbitrators. The judges of the Court of Chancery are well known and respected in the business and legal communities, with extensive experience in handling complex business disputes. The Court of Chancery also has a reputation as one of the fastest and most efficient courts in the country. The new arbitration rules are crafted to provide a fast alternative to its traditional procedures. Prolonged battles over the selection of the arbitrator cannot happen, as the arbitrator will be appointed by the chancellor within 10 days of the commencement of the arbitration.

Arbitration in Delaware also promises to combat two common criticisms of traditional arbitration. First, the unfortunate trend in arbitration is toward increasingly onerous discovery, even when it may not be necessary. The rules should allow for an appropriate balance: Litigation-style discovery, including depositions, is available when it is called for, but the arbitrator is empowered to cabin discovery to what is "necessary and appropriate."

Second, a common criticism of arbitrators is that they make compromise awards rather than choosing a clear winner. As sitting judges who decide difficult cases on a routine basis, arbitrators in the Court of Chancery should be less inclined to just "split the baby." The Court of Chancery arbitration rules also grant arbitrators broad power to render any decision that is just and equitable, and the judges serving on that court have extensive experience in crafting equitable remedies.

Arbitration in the Court of Chancery should be desirable in a broad range of significant business and contract disputes in

which the judges of the court can draw on their extensive experience in resolving complex business disputes. Indeed, almost any dispute requiring a decision maker with general business acumen could be a candidate for arbitration in the Court of Chancery. Some examples may include disputes regarding partnership, limited partnership and LLC agreements; asset purchase agreements; joint venture agreements; private-company mergers and acquisitions; investment advisory agreements; and investment banking, accounting, audit or other professional-services agreements.

Although Delaware's new arbitration rules have not as yet been tested, we believe that they have much promise. Clients and counsel should give close consideration to this new alternative when they draft dispute resolution clauses in their agreements.

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