



Delaware Legislature Amends Code To Invite Mediation and Arbitration of Commercial Contracts

Client Advisories

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In a further effort to encourage the resolution of business disputes by means of arbitration and mediation, the Delaware legislature amended Title 10 of the Delaware Code related to choice of law and forum selection clauses in commercial contracts. The new law permits parties to have disputes arbitrated or mediated by a member of the Superior Court by voluntary agreement. This law also vests jurisdiction with the Delaware Supreme Court to hear any action to enforce or to vacate an Order issued by a member of the Superior Court as an arbitrator. Because arbitration is traditionally private, the bill maintains proceedings in the Superior Court as confidential but, makes clear that the record will be filed with the Supreme Court in the event of appeal. Notably, the U.S. Chamber of Commerce has ranked the Delaware judiciary first in the country for the past eight years.

This new law authorizes the Superior Court to arbitrate or mediate cases under the following conditions:

1. The parties have consented by agreement or by stipulation to the mediation or arbitration by Courts of Delaware;
2. At least one party is a business entity formed or organized under the laws of Delaware, or has Delaware as its principal place of business, or the business dispute is governed by Delaware law;
3. No party is a consumer with respect to the business dispute;
4. The amount in controversy is not less than \$100,000; and
5. The Superior Court would have subject matter jurisdiction to adjudicate the dispute notwithstanding this law.

See 10 Del. C. § 546.

Paragraph (2) above contemplates that businesses with no connection to Delaware except a choice of law provision in their contracts could bring their disputes by arbitration or mediation to the Superior Court of

Delaware. As long as all five conditions are met, the Delaware Superior Court will accept jurisdiction over the alternative dispute matter.

If you have any questions about the 10 Del. C. § 546 decision or its possible impact on you or your business, please contact Jack Shrum, Esq. at 302-356-6632 or email jshrum@archerlaw.com.

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