



THE ENACTMENT OF THE DELAWARE RAPID ARBITRATION ACT

Earlier this month, the Governor of Delaware signed the Delaware Rapid Arbitration Act (DRAA) into law, ushering in what the State of Delaware hopes will be an efficient and cost-effective alternative to the traditional arbitration process. The DRAA is designed to accelerate arbitration disputes between business entities by enabling arbitrators to decide disputes within as few as 120 days, streamlining traditional arbitration procedures and limiting the jurisdiction of Delaware courts in arbitrations conducted under the DRAA.

Under the DRAA, an arbitrator, who will either be chosen by the parties to the dispute or appointed by The Court of Chancery of Delaware, must issue a final arbitration award within 120 days of accepting the appointment as arbitrator. The parties may, however, agree to extend the 120-day deadline by up to 60 days. In order to enforce this rigid timeframe, the DRAA imposes monetary penalties on arbitrators who fail to render timely arbitration awards, and those penalties escalate the longer a decision is delayed. The framers of the DRAA aim to enable its users to resolve swiftly any arbitration that may arise so that business entities, including those with an ongoing working relationship, can return to their regular course of business as soon as practicable.

The DRAA also curtails parts of the traditional arbitration process that frequently consume significant amounts of the disputing parties' time and resources. For example, the DRAA empowers arbitrators to make rulings and issue orders relating to what evidence and which witnesses may be presented during an arbitration hearing. This element of the DRAA reflects Delaware lawmakers' intent that the DRAA be used by sophisticated business entities that are willing to give up the right to comprehensive discovery in exchange for an expeditious conclusion to the underlying dispute. Consequently, the DRAA may not be used in consumer disputes to deny unsophisticated individuals the protections afforded to them in traditional litigation proceedings.

The State of Delaware intends for the DRAA to promote speed and predictability in the arbitration process while also limiting the expenses of the disputing parties by granting limited access to Delaware courts in a calculated manner. Unless otherwise provided for in an agreement between the parties, the only issue that the Supreme Court of Delaware may hear under a DRAA-governed dispute is a challenge to the final arbitration award. Even then, the Court is empowered only to vacate, modify, or correct the final award in accordance with the Federal Arbitration Act. Furthermore, the jurisdiction of the Court of Chancery of Delaware is limited under the DRAA to appointing an arbitrator in certain circumstances, enforcing arbitrator subpoenas, determining an arbitrator's fees and penalties, and issuing narrow injunctions.

The DRAA is an innovative and practical approach to arbitrations, which the State of Delaware hopes will be utilized by sophisticated business entities as a cost-savings tool.

Depending on your circumstances and preferences, the DRAA may be worthy of your consideration as another avenue for alternative dispute resolution, and we encourage you to contact the Thompson & Knight attorney with whom you regularly work, or any of the attorneys listed below, if you have any questions about the information contained in this Client Alert.

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