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Delaware Enacts Streamlined Arbitration Process

The Delaware Rapid Arbitration Act (DRAA), [10 Del. C. § 5801 et seq.](#), is designed to be a streamlined arbitration process that will allow for “prompt, cost-effective, and efficient” resolution of business disputes. (10 Del. C. § 5802.) It was signed into [law](#) on April 2, 2015, and became effective on May 4, 2015.

Who Can Use the DRAA?

The DRAA is completely voluntary. All parties must explicitly agree to arbitration under the DRAA for such an arbitration to occur. Specifically, in order to be subject to the DRAA, there must be a written agreement (either forming the basis for the dispute or a separate agreement consenting to arbitration under the DRAA) that is signed by all parties to the arbitration and includes an express reference to the “Delaware Rapid Arbitration Act”. Moreover, the agreement must provide that it shall be governed by or construed under the laws of Delaware regardless of whether Delaware law governs the parties’ other rights, remedies, liabilities, powers, and/or duties. Additionally, at least one party to the agreement must be a business entity formed or organized under the laws of Delaware or having its principal place of business in Delaware. Finally, no party to the agreement may be a consumer as that term is defined in [6 Del. C. § 2731](#). (10 Del. C. § 5803(a).)

How Does the DRAA Work?

After the parties opt into the DRAA process, the first step is the selection of an arbitrator. While the DRAA provides for arbitration by one or more arbitrators, this article refers to only one arbitrator. Under the DRAA, the parties may specifically identify which arbitrator they want to hear their disputes or designate a process for selecting an arbitrator. If the parties’ agreement does not specifically identify either of these alternatives, then the parties may petition the Delaware Court of Chancery to appoint an arbitrator. Moreover, if the arbitrator selected by agreement is unable or unwilling to act as the arbitrator in the case or if the parties are unable to select an arbitrator in accordance with their agreement, then the Court of Chancery may also select an arbitrator. (10 Del. C. § 5805.)

The DRAA requires that every party to an agreement invoking the DRAA consent to the exclusive submission to an arbitrator on all issues of substantive and procedural arbitrability. (10 Del. C. § 5803(b)(2).) This is designed to avoid a party’s attempt to delay or prevent arbitration by seeking an injunction of the arbitration from a court at the outset of a case. The parties to the arbitration also waive objection to the exclusive personal and subject matter jurisdiction in Delaware’s courts for certain limited purposes including the appointment of an arbitrator, entering judgment after an arbitration, enforcing a subpoena upon the request of an arbitrator, determining an arbitrators fee, and, before an arbitrator accepts appointment, issuing an injunction in aid of an arbitration. (10 Del. C. § 5803(b)(4); 10 Del. C. § 5804(b).)

The point of the DRAA is to get a fast resolution to a case. To that end, unless agreed otherwise, the arbitrator must issue a final award within 120 days of the appointment. (10 Del. C. § 5808(b).) The parties (with the arbitrator’s consent) may extend this period by up to 60 days. (10 Del. C. § 5808(c).) If the arbitrator does not issue the final award by the deadline, his/her fees are reduced or eliminated. (10 Del. C. § 5806(b).) This will likely result in reduced discovery and a reduced cost for the parties. Indeed, to facilitate the timely resolution of disputes, the arbitrator has the authority to make interim rulings and issue interim orders to determine what evidence and which witnesses will be presented at the hearing, and those rulings cannot be appealed or challenged. (10 Del. C. § 5807(a).) Moreover, the arbitrator has the authority to administer oaths, compel the attendance of witnesses and production of documents and evidence, issue subpoenas if provided for by the agreement, and to make rulings, issue orders, and impose sanctions to ensure the arbitration is resolved in a timely, efficient, and orderly manner. (10 Del. C. § 5807(b).)

In the final award, the arbitrator has broad discretion to grant whatever relief he/she deems appropriate, whether legal or equitable in nature, including money damages, injunctions, and specific performance. (10 Del. C. § 5808.) Once the arbitrator issues the final award, any challenge to it must be made within 15 days and is done directly to the Delaware Supreme Court. (10 Del. C. § 5809(b).) The Supreme Court may only vacate, modify, or correct the final award in conformity with the [Federal Arbitration Act](#). (10 Del. C. § 5809(c).) Additionally, the parties can agree to eliminate appellate review of a final award entirely or agree to appellate review by one or more arbitrators. (10 Del. C. § 5809(d).) Unless the final award is challenged within the 15 day period, the award is automatically confirmed 5 days after that period expires (or 5 days after the final award is issued if the agreement provides for no appellate review). (10 Del. C. § 5810(a).)

What Are the Benefits of Using the DRAA?

The most obvious benefits of the DRAA are the speed with which commercial disputes will be resolved and the reduced cost associated with that resolution. By agreeing to forego some procedures that are typical in litigation, disputes will be resolved at less expense and in six months or less. The DRAA enables the parties to streamline their disputes and reduce issues that generally arise at all stages of litigation or a traditional arbitration. Delaware entities and those involved in business with Delaware entities should keep the DRAA in mind as contracts are negotiated and disputes arise. It may be an effective tool for efficiently resolving disputes.

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