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**New Chancery Arbitration Authority Offers
Potential Advantages Over Traditional Arbitration**

On April 2, 2009, Delaware enacted a statute that for the first time authorizes the Delaware Court of Chancery to arbitrate business disputes, even where no underlying litigation has been filed in the court. Making Delaware's expert chancellors available to arbitrate business disputes is a potentially groundbreaking development. The new law, 10 *Del. C.* § 349, enables parties either to agree to Chancery arbitration in contracts before any actual dispute arises, or to stipulate to arbitration to resolve existing disputes. The procedure is intended to apply to complex corporate, commercial or alternative entity disputes, including technology disputes, and is Delaware's most recent step to expand the Court of Chancery's ADR jurisdiction. In 2003, the state enacted a similar law, 10 *Del. C.* § 347, enabling the court to *mediate* certain business disputes.

The new law, [available for download here](#), allows parties to agree to arbitrate any dispute in the Court of Chancery that qualifies for mediation under the mediation statute. Business disputes are eligible for arbitration if: (1) the parties consent to the arbitration by express agreement or stipulation; (2) at least one of the parties is a "business entity", defined by statute to include corporations, statutory and business trusts, partnerships, limited liability companies, and certain other types of entities; and (3) at least one party is a business entity formed under Delaware law or having its principal place of business in Delaware. No party to the dispute may be a "consumer", defined as an individual who purchases or leases merchandise primarily for personal, family or household purposes. Also, for business disputes that solely involve a claim for money damages, the amount in controversy must be at least \$1 million.

Extending arbitration authority to the Court of Chancery over a broad range of business disputes offers a number of potential advantages over traditional arbitration:

Expertise - Because Delaware is the domicile of a majority of the country's largest corporations, the state's Court of Chancery has more opportunities to adjudicate complex business disputes than any other court in the United States. As a result, the court is widely acknowledged to be the most knowledgeable and sophisticated business court in the country.

Economy - Although traditional arbitration proceedings provide cost savings compared to litigation, even further cost savings might be possible through Chancery arbitration proceedings. Projected filing fees of \$10,000, which would include a single day arbitration session with a chancellor, may well be far less than fees charged by ADR organizations for similar sized business disputes.

Expedition - With its vast experience in handling TRO's, preliminary injunctions, and summary proceedings, the Court of Chancery is well positioned to adjudicate arbitration proceedings with great dispatch. The chancellors are skilled and experienced in moving litigation parties along toward trial and in "cutting to the chase" in identifying and focusing on key issues in the case. These attributes are likely to call more arbitration cases to agreed resolution.

Rapid Final Resolution - Two aspects of Delaware's new Chancery arbitration procedure suggest that rapid final resolution may be a hallmark of the new procedure. The parties may stipulate that the decision of the court is final under a separate statute that also went into effect on April 2. If they do not, the only appeal route is to the Delaware Supreme Court, which has original jurisdiction over Chancery arbitration appeals.

Documents submitted to the Court of Chancery in an arbitration will be confidential and not public. But documents may become public if a party appeals the court's arbitration decision to the Delaware Supreme Court.

The Court of Chancery will adopt procedural rules governing arbitration proceedings in the coming months. Arbitration procedures can reasonably be expected to mirror those governing Chancery mediation, including quite possibly the following: (1) fees of \$10,000 for the initial petition plus \$5,000 for each day after the first day a member of the Court of Chancery is involved in an arbitration session; (2) any member of the Court and any Master in Chancery may conduct the arbitration; and (3) the parties may request a particular member of the court to serve as arbitrator.

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