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Delaware Court of Chancery Adopts New Arbitration Rules for Business Disputes

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The Court of Chancery of the State of Delaware recently adopted a procedure to implement its new statutory ability to conduct confidential arbitrations for certain business disputes. This new judicial product is intended to allow parties prompt access to the top business court in the nation – arbitration hearings are expected to be held within 90 days of the date a petition for arbitration is filed and arbitrators must be a sitting judge or master of the Court. Put simply, parties invoking this procedure can be assured of confidential, quick and competent resolution of their claims. The background of this new procedure and a description of the attributes is below.

Background. In April 2009, the General Assembly amended Title 10 of the Delaware Code to add Section 349 which granted the Court of Chancery the statutory authority to arbitrate business disputes when the parties consent and when the dispute involves at least one business entity, at least one party is an entity organized under Delaware law or with its principal place of business in Delaware, no party is a consumer and, in the case of a claim for monetary damages, the amount in dispute exceeds \$1,000,000. In January 2010, the Court of Chancery issued a standing order setting a fee schedule for arbitrations and adopted new rules 96, 97 and 98, effective February 1, 2010, to govern arbitrations commenced pursuant to the new statutory authority.

Procedure and Attributes. An arbitration is commenced by filing a petition with the Register in Chancery along with the filing fee of \$12,000, to be shared equally by the parties. See Ch. Ct. R. 97(a)(1); Standing Order Dated January 4, 2010. The petition must describe the nature of the dispute and contain a statement that the parties have consented to arbitration and meet the other jurisdictional requirements of Section 349. The petition must be signed by Delaware counsel and the filing party must state that the jurisdictional prerequisites have been met.

The filing of a petition to arbitrate is confidential and the Register in Chancery will not include the petition as part of the public docketing system. Ch. Ct. R. 97(a)(4). In the case of an appeal the parties are required to file the record with the Supreme Court according to its rules.

Upon receipt of a petition to arbitrate, the Chancellor will appoint an arbitrator who, by rule, must be a judge or master sitting permanently on the Court of Chancery. Ch. Ct. R. 96(d)(2) & 97(b). The arbitrator will then contact counsel for the parties to schedule a preliminary conference to be held within 10 days of the date the petition was filed. At the preliminary

conference, the arbitrator will discuss the nature of the dispute, conflicts information and whether other alternative dispute mechanisms might be appropriate and set a date for a preliminary hearing as soon as practicable thereafter.

The preliminary hearing is expected to be similar to a scheduling conference in an expedited matter in the Court of Chancery where the parties and the arbitrator are expected to be able to discuss the substance of the claims as well as the process the parties will follow to prepare the case for arbitration, and the arbitration hearing itself, including the date for the hearing. See Ch. Ct. R. 96(d)(4). By rule, the arbitration hearing “generally” will occur no later than 90 days following receipt of the petition. Ch. Ct. R. 97(e). After the preliminary hearing, the arbitrator will issue a scheduling order setting to govern the pre-hearing activities and hearing procedures, including the date. Ch. Ct. R. 97(d).

The rules also contemplate a pre-hearing exchange of information between the parties and with the arbitrator. The parties may, with approval of the arbitrator, waive pre-hearing exchange of information.

The Hearing. The cost for the first day of an arbitration hearing, and each subsequent day, is \$6,000, to be shared equally by the parties. At least one representative of each party with authority to resolve the matter must participate in the arbitration hearing. Ch Ct. R. 98. The hearing is confidential and all materials and communications exchanged at an arbitration hearing are confidential unless the parties otherwise agree.

At any time in the process the parties may agree to mediate their dispute. The mediator may not be the arbitrator unless the parties agree. The parties may also ask the arbitrator to assist in settlement negotiations prior to a final decision. Ch. Ct. R. 98.

The Final Order. If the matter is submitted to the arbitrator for a final decision and no settlement is reached, the arbitrator may grant any remedy or relief he deems just or equitable. He may also make interim, interlocutory or partial rulings, orders and awards. Upon granting of a final award from the arbitrator, a final judgment shall be entered and may be enforced as any other final judgment. Appeals from a final judgment may be taken directly to the Delaware Supreme Court or the parties may agree in advance that any final order is not subject to appeal.