

Proposed Arbitration Rules

- | | |
|-----------------|-----------------------------|
| Rule 96. | Scope of Rules |
| Rule 97. | Commencement of Arbitration |
| Rule 98. | Arbitration Hearing |



**XI-C. RULES GOVERNING PRIVATE
ARBITRATION PROCEEDINGS FOR
BUSINESS DISPUTES**

[Revisor's note. -- Standing Order dated [], provided: "WHEREAS, the Chancellor and Vice Chancellors of the Court of Chancery have given consideration to the potential filing costs associated with arbitration of business disputes under Court of Chancery Rules [96-98], and costs for scanning documents to be filed electronically under Court of Chancery Rule 79.1;

"Now, therefore, this [#] day of [month], 2009, it is ORDERED:

"1) The fee for filing a petition for arbitration under Chancery Rules [96-98] shall be a total of \$12,000. The fee shall be divided equally between the parties.

"2) In addition, for each day after the first day that the Chancellor, a Vice Chancellor or a Master in Chancery is engaged in arbitration, a total fee of \$6,000 per day shall be equally divided between the parties. All such arbitration fees shall be deposited by the Register in Chancery in the Court's Arbitration Fund Account.

"3) The fee for scanning documents for purposes of e-Filing shall be \$2.00 per page, and shall be payable by the party requesting such scanning to the office of the Register in Chancery.

"This Standing Order shall be effective immediately, and shall be posted in the offices of the Register in Chancery in New Castle, Kent and Sussex Counties."]

Rule 96. Scope Of Rules

(a) These rules shall govern the procedure in arbitration proceedings for business disputes pursuant to 10 Del. C. § 349.

(b) In the case of disputes involving solely a claim for monetary damages, a matter will be eligible for arbitration only if the amount in controversy exceeds one million dollars.

(c) The parties with the consent of the Arbitrator may change any of these arbitration rules by agreement and/or adopt additional arbitration rules. Except to the extent inconsistent with these rules, or as modified by the Arbitrator or the parties, Court of Chancery Rules 26 through 37 shall apply to the Arbitration proceeding.

(d) *Definitions.* (1) "Arbitration" means the voluntary submission of a dispute to an Arbitrator for final and binding determination and includes all contacts between the Arbitrator and any party or parties, until such time as a final decision is rendered or the parties discharge the Arbitrator.

(2) "Arbitrator" means a judge or master sitting permanently in the Court. Absent agreement of the parties, the Arbitrator shall not have served as the Mediator in a mediation of the dispute under Court of Chancery Rules.

(3) "Preliminary conference" means a telephonic conference with the parties and/or their attorneys or other representatives within 10 days after the commencement of the

arbitration (i) to obtain additional information about the nature of the dispute and the anticipated length of hearing and scheduling, (ii) to obtain conflicts statements from the parties, and (iii) to consider with the parties whether mediation or other non-adjudicative methods of dispute resolution might be appropriate.

(4) “Preliminary hearing” means a telephonic conference with the parties and/or their attorneys or other representatives as soon as practicable after the preliminary conference to consider, without limitation: (i) service of statements of claims, damages and defenses, a statement of the issues asserted by each party and positions with respect thereto, and any legal authorities upon which the parties rely, (ii) stipulations of fact, (iii) the scope of discovery, (iv) exchanging and premarking of exhibits for the hearing, (v) the identification and availability of witnesses, including experts, and such matters with respect to witnesses, including their qualifications and expected testimony as may be appropriate, (vi) whether, and to what extent, any sworn statements and/or depositions may be introduced, (vii) the length of hearing, (viii) whether a stenographic or other official record of the proceedings shall be maintained, (ix) the possibility of mediation or other non-adjudicative methods of dispute resolution, and (x) the procedure for the issuance of subpoenas.

(5) “Scheduling order” means the agreement of the parties and/or the Arbitrator to the pre-hearing activities and the hearing procedures that will govern the arbitration.

(6) “Arbitration hearing” means the proceeding, which may take place over a number of days, pursuant to which the petitioner presents evidence to support its claim and the respondent presents evidence to support its defense, and witnesses for each party shall submit to questions from the Arbitrator and the adverse party, subject to the discretion of the Arbitrator to vary this procedure so long as parties are treated equally and each party has the right to be heard and is given a fair opportunity to present its case.

(7) “Consent to Arbitrate,” means a written or oral agreement to engage in arbitration in the Court of Chancery and shall constitute consent to these rules. Provided that the parties and the amount in controversy meet the eligibility requirements in 10 Del. C. § 347, which apply to the arbitration of business disputes under 10 Del. C. § 349, a consent to arbitrate is acceptable if it contains the following language: “The parties agree that any dispute arising under this agreement shall be arbitrated in the Court of Chancery of the State of Delaware, pursuant to 10 Del. C. § 349.”

Rule 97. Commencement Of Arbitration

(a) *Petition.* (1) Arbitration is commenced by submitting to the Register in Chancery a petition for arbitration (hereinafter a “petition”) and the filing fee specified by the Register in Chancery. The petition must be signed by Delaware counsel, as defined in Rule 170(b). Sufficient copies shall be submitted so that one copy is available for delivery to each party as hereafter provided, unless the Court directs otherwise.

(2) The petition shall be sent by the Register in Chancery, via next-day delivery, to either a person specified in the applicable agreement between the parties to receive notice of the petition or, absent such specification, to each party’s principal place of business or

residence. The petitioning party shall provide the Register in Chancery with addresses of each party.

(3) The petition shall contain a statement setting forth the nature of the dispute, the names and addresses of all other parties, the claims and the remedy sought. The petition must also contain a statement that all parties have consented to arbitration by agreement or stipulation, that at least one party is a business entity, that at least one party is a business entity formed or organized under the laws of Delaware or having its principal place of business in Delaware, and that no party is a consumer with respect to the dispute. In the case of disputes involving solely a claim for monetary damages, the petition must contain a statement of the amount in controversy.

(4) *Confidentiality.* The Register in Chancery will not include the petition as part of the public docketing system. The petition and any supporting documents are considered confidential and not of public record until such time, if any, as the proceedings are the subject of an appeal. In the case of an appeal, the record shall be filed by the parties with the Supreme Court in accordance with its Rules, and to the extent applicable, the Rules of this Court.

(b) *Appointment of the Arbitrator.* Upon receipt of a petition, the Chancellor will appoint an Arbitrator.

(c) *Date, Time, and Place of Arbitration.* The Arbitrator will set the date, time, and place of the arbitration hearing at the preliminary hearing. The arbitration hearing generally will occur no later than 90 days following receipt of the petition.

(d) *Exchange of Information.* There shall be prehearing exchange of information necessary and appropriate for the parties to prepare for the hearing and to enable the Arbitrator to understand the dispute, unless the parties agree, with the approval of the Arbitrator, to forego prehearing exchange of information. The parties shall, in the first instance, attempt to agree on prehearing exchange of information, which may include depositions, and shall present any agreement to the Arbitrator for approval. The Arbitrator may require additional exchange of information between and among the parties, or additional submission of information to the Arbitrator. If the parties are unable to agree, they shall present the dispute to the Arbitrator who shall direct such prehearing exchange of information as he/she deems necessary and appropriate.

Rule 98. Arbitration Hearing

(a) *Participation.* At least one representative of each party with an interest in the issue or issues to be arbitrated and with authority to resolve the matter must participate in the arbitration hearing. Delaware counsel, as defined in Rule 170(b), shall also attend the arbitration hearing on behalf of each party.

(b) *Confidentiality.* Arbitration hearings are private proceedings such that only parties and their representatives may attend, unless all parties agree otherwise. An Arbitrator may not be compelled to testify in any judicial or administrative proceeding concerning any matter relating to service as an Arbitrator. All memoranda and work product contained in the case files of an Arbitrator are confidential. Any communication made in or in connection with the arbitration that relates to the controversy being arbitrated, whether made to the Arbitrator or a

party, or to any person if made at an arbitration hearing, is confidential. Such confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding with the following exceptions: (1) Where all parties to the arbitration agree in writing to waive the confidentiality, or (2) where the confidential materials and communications consist of statements, memoranda, materials, and other tangible evidence otherwise subject to discovery, which were not prepared specifically for use in the arbitration hearing. A settlement agreement, however, shall not be confidential unless the parties otherwise agree in writing.

(c) *Civil Immunity.* Arbitrators shall be immune from civil liability for or resulting from any act or omission done or made in connection with the Arbitration, unless the act or omission was made or done in bad faith, with malicious intent, or in a manner exhibiting a willful, wanton disregard of the rights, safety, or property of another.

(d) *Mediation Option.* The parties may agree at any stage of the arbitration process to submit the dispute to the Court for mediation. The judge or master assigned to mediate the dispute may not be the Arbitrator unless the parties agree.

(e) *Settlement Option.* The parties may agree, at any stage of the arbitration process, to seek the assistance of the Arbitrator in reaching settlement with regard to the issues identified in the petition prior to a final decision from the Arbitrator. Any settlement agreement shall be reduced to writing and signed by the parties and the Arbitrator. The agreement shall set forth the terms of the resolution of the issues and the future responsibility of each party.

(f) *Award.* (1) The Arbitrator may grant any remedy or relief that the Arbitrator deems just and equitable and within the scope of any applicable agreement of the parties.

(2) In addition to a final award, the Arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders and awards.

(3) Upon the granting of a final award, a final judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree.

(4) The Arbitrator is ineligible to adjudicate any subsequent litigation arising from the issues identified in the petition.

(g) *Costs for Arbitration.* Costs shall be assessed in accordance with a schedule to be maintained by the Register in Chancery.