

# CLIENT ALERTS

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## Delaware Rapid Arbitration Act

4.14.2015

Delaware corporations have a new weapon in their arsenal of contract provisions relating to dispute resolution – the Delaware Rapid Arbitration Act.

The Delaware Rapid Arbitration Act (the “Act”) was signed by the Governor of Delaware on April 2, 2015. The Act provides a mechanism to resolve business disputes in a swift and efficient manner by utilizing voluntary arbitration conducted by expert arbitrators under stringent timelines. Much like existing arbitration methods, proceedings under the Act remain confidential, unless appealed.

The Act is not exclusive and does not prevent parties from using other means of dispute resolution. Rather, it provides a new option for parties looking for a speedy resolution of their disputes. The Act requires all arbitrations to be completed within 120 days, allowing one additional 60 day extension if the parties and the arbitrator agree.

To facilitate rapid resolution and certainty, the Act (1) imposes financial penalties on arbitrators who fail to decide a dispute within the timeframe specified by the Act, (2) eliminates pre-arbitration court battles over what matters may be arbitrated by vesting the arbitrator with the sole authority to determine the scope of the arbitration, and (3) permits review of arbitration decisions only by the Delaware Supreme Court.

To invoke rapid arbitration pursuant to the Act, the following must apply:

1. The parties must have a written and signed agreement to submit to arbitration, which includes an express reference to the “Delaware Rapid Arbitration Act;”
2. At least one party must be a business entity, formed under the laws of the state of Delaware or having its principal place of business in Delaware;

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3. No party to the agreement may be a consumer; and
4. The agreement must provide that it is governed by Delaware law, without regard to conflict of laws principles, regardless of whether the laws of Delaware govern the parties' other rights, remedies, liabilities, powers and duties.

Parties should consider the pros and cons before entering into Rapid Arbitration Agreements. While the Act provides speed and efficiency, parties who enter Rapid Arbitration Agreements may be deemed to have waived rights relating to personal and subject matter jurisdiction, the right to remove the matter to federal court, and the ability to appeal interim orders or rulings of the arbitrator, among others.

If you would like more information about the Delaware Arbitration Act or any other corporate law matter, please feel free to contact your Butzel Long attorney, the authors listed below or a member of our Corporate Practice Group.

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