

Fine Print

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ARBITRATING BUSINESS DISPUTES: PLAN AHEAD

By Anthony J. LaCerva, Esq.

Litigators love going to court. But sometimes business people feel the courts don't give their case the attention it deserves. Arbitration can be an effective alternative in resolving commercial disputes. It is a private, confidential process that can be tailored to handle a particular controversy. The parties, not the courts, have virtually complete control over the process because the arbitration procedures are agreed upon when the business contract is drafted—before any dispute arises. Addressing the following issues up front can eliminate the need to litigate over them later.

■ Arbitrator(s)

Specify the number of arbitrators, identify them by name, or make sure they have particular qualifications. For instance, contracting parties might choose to have panels of three arbitrators hear disputes over a certain dollar amount, and to require that the arbitration panel include either lawyers or non-lawyers with a certain amount of construction industry experience.

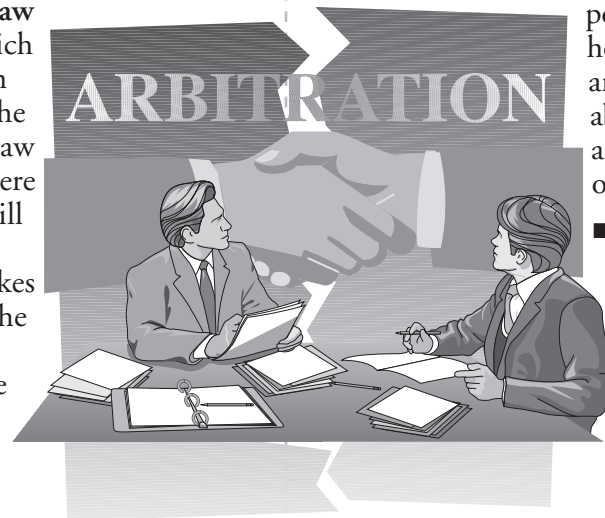
■ Place of Arbitration

Select a city roughly in-between the principal locales of the businesses. Or, to deter claims with little merit, the parties can agree that any

arbitration demand must be heard on the other party's home turf.

■ Governing Law

Specify which law will govern the merits of the dispute. The law of the state where the contract will be principally performed makes good sense. The parties should also specify the arbitration law that will apply.



■ Administration

Decide whether it is worthwhile to specify an administrator for the arbitration proceeding. While not without problems, an administrator can serve as a valuable buffer between

potentially hostile parties and may be able to rein in an overzealous arbitrator.

■ Remedies

Set some limits on the arbitrators' powers, particularly with respect

cont. on page 2

KEY CONSIDERATIONS WHEN ADDING PRIVATE EQUITY TO YOUR PORTFOLIO

By Joseph K. Juster, Esq.

A private equity investment is an investment in a privately held company either made directly or, more typically, through private investment funds. The investment fund professionals actively guide the companies the fund acquires to optimize their value.

Private equity seeks to earn a higher return than publicly traded stock to compensate for the lack of a public market to which the investment can be sold. Here are some things to consider when adding private equity to your portfolio:

1. **Diversification.** Avoid "one-shot" deals where all can be lost.
2. **Quality Sponsors.** It all gets down to an investment in people. Be proud of

cont. on page 2



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ARBITRATING, cont. from page 1

to the remedies available, such as curtailing the power to award punitive or consequential damages.

Arbitration can be effective in resolving business disputes when the contracting parties can agree on the basic rules that will govern the procedure. The key is to

Arbitration can be effective... when the contracting parties can agree on the basic rules that will govern the procedure.

exercise the ability to control the proceedings before there is any dispute, since it may be much harder to come to terms after a controversy has arisen.

Tony LaCerva is a partner in the litigation group in the Cleveland office of Calfee, Halter & Griswold LLP.

IN THE HOPPER

Pending state legislation that could affect small business

On October 1, 2003, the federal do-not-call registry became effective. This new law, which has allowed residential telephone customers to register their desire not to be solicited by telephone, is affecting businesses that engage in telemarketing. While Ohio does not currently have its own do-not-call law, Senate Bill 28 has passed the Ohio Senate, and is now being considered in the Ohio House of Representatives. Generally, the bill would increase enforcement power in state and local courts and give residential consumers additional protection by increasing their ability to file individual complaints in small claims courts.

A few highlights of the bill follow. Senate Bill 28 would:

- require the Ohio Attorney General to either directly operate and maintain a do-not-call registry, or accept a national registry maintained by the federal government;
- require telephone solicitors to pay a reasonable fee to obtain a copy of or access to an Ohio registry, assuming the Attorney General chooses to operate one;
- prohibit a telephone solicitor from 1) making an unsolicited call to a telephone number more than 90 days after it appears on the registry, 2) making a solicitation call other than between 8 a.m. and 9 p.m., and 3) failing to connect the call to a “live” person within two seconds after the call is answered;
- require a telephone solicitor to keep its own do-not-call list, and to promptly disclose the solicitor’s name, entity, and any goods or services being sold;
- require local telephone directory providers to include information about the registry;
- allow the Ohio Attorney General to investigate non-complying solicitors and enforce the bill’s provisions;
- require a court to impose a civil penalty for violations of Ohio’s bill;
- allow residential telephone subscribers who receive prohibited telephone solicitation calls to bring legal action and receive relief or monetary damages.

To review this bill, visit www.legislature.state.oh.us/

From the OSBA Office of Government Relations.

Web site resource for small businesses:

To learn about programs offered by the U.S. Dept. of Labor’s Office of Small Business, go to <http://www.dol.gov/osbp>.

PRIVATE EQUITY, cont. from page 1

the character, integrity and judgment of the people in whom you are investing.

3. Quality Co-investors. Similarly, ask yourself if you are proud to be among the investment group. Can you speak to the character, integrity, judgment and investment acumen of your co-investors?

4. Simple, Understandable Products or Services. Do you understand what you’re investing in? Compare an electric toothbrush with disposable brushes to a free space, optical transceiver (whatever that is). If you don’t understand it, you probably shouldn’t invest in it.

5. Use of Proceeds. Understand how your money will be spent. For pure research and development? To test a product? To commercialize a proven product? To enrich the promoter?

6. Projected Return. As Yogi Berra said, “If you don’t know where you’re going, you’ll probably end up there.” You should know the projected return and the risks assumed in trying to achieve it. Higher risk investments should yield higher returns—annualized Internal Rate of Return (IRR) of 15-30%. If less is projected, you should probably not bother. If more is projected, you should probably run for cover.

7. Legal Rights. Before committing to invest, understand your rights (and obligations) as a minority shareholder or limited partner with respect to (among other things):

- Management fees and carried interests
- Dilution
- Distributions
- Capital calls
- Transfers of interests
- Tag-along/drag-along rights
- Registration rights

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