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Expedited Remote Arbitration in the Age of COVID-19

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The disruption caused by the COVID-19 pandemic will leave many companies with less time and money to devote to litigating their business disputes.

So how can cash-strapped companies quickly and effectively resolve their business disputes in the wake of this global pandemic? One promising option – if both parties will agree to it – is expedited remote arbitration. A key principle of commercial arbitration is that the *parties* get to decide how their arbitration will be conducted. For example, the parties can agree to limit discovery to sharing key documents. They can agree that discovery must be completed within weeks or just a couple of months. They can agree that direct testimony will be given by written witness statements only, and that cross-examination of the witnesses will be conducted via videoconference. Or instead of cross-examination by the lawyers, they can agree that any examination of the witnesses will be limited to whatever questions the arbitrator might wish to pose. They can agree to a remote hearing conducted by videoconference, or they can agree to no hearing at all, with the arbitrator deciding the case based on nothing more than the documents and the lawyers' briefs. And they can require the arbitrator to issue her award within a short period of time. The options for saving time and money are numerous.

Indeed, many arbitral institutions are nudging the parties in this direction by expressly providing for such flexibility in their rules. For example, the American Arbitration Association's domestic arbitration rules provide for expedited procedures by agreement of the parties, including resolution based on documents only and issuance of an award within 14 days of a hearing. The International Chamber of Commerce allows for expedited procedures, including hearings by videoconference and issuance of an award within six months of the initial case management conference. Some arbitral institutions are now actively encouraging remote proceedings by video or telephone in response to the COVID-19 pandemic.

Arbitration provides multiple advantages even in the absence of a global pandemic. Perhaps the most notable advantage is that arbitral awards are enforceable in any of the 162 countries that have signed the New York Convention, a treaty governing the recognition and enforcement of foreign arbitral awards. In stark contrast to this, no similar treaty exists for court judgments, meaning that you can win an expensive and protracted court battle against a non-U.S. company only to find that your judgment is completely unenforceable and worthless in the country where your adversary's assets are located.

Parties can agree to arbitrate not only when they initially contract to do business together, but even after a dispute has already arisen. We can help in either event.

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