

Is Arbitration the Best Option for My Business?

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While arbitration provisions have become commonplace in various types of contracts, entities should keep in mind that including arbitration provisions in their agreements may not always be the best option.

Although arbitration provisions are often included for cost-saving purposes, arbitration is often more expensive than going to court. To begin with, initiating arbitration is more costly than filing a lawsuit. The fees for filing a complaint in court may cost around \$200, while initiating a claim to arbitrate with certain arbitration organizations may cost a commercial entity anywhere from \$750 (for claims up to \$75,000) to over \$10,000 (for claims over \$10,000,000). Also, a case that proceeds to its first hearing may incur additional administrative fees of \$800 to \$12,500. Furthermore, parties to an arbitration have to pay arbitrators an hourly rate (which may be several hundred dollars per hour), and some arbitrators require minimum daily fees. As a case becomes more complicated and time-consuming, these costs can quickly add up.

Cost factors should particularly be kept in mind in regards to the recent optional appellate arbitration rules promulgated by certain arbitration organizations. Traditionally, arbitration decisions could not be appealed to another arbitrator or arbitration tribunal, and arbitration decisions were rarely questioned by courts. Now, parties may include an arbitration provision that enables arbitration decisions to be appealed to an appellate tribunal. While the ability to appeal can be beneficial, the appeal adds additional time and costs to the matter, eradicating many of the perceived benefits of utilizing arbitration in the first place.

Finally, courts provide potential benefits to some litigants that are unavailable in arbitration. For example, creditors with confession of judgment clauses in their contracts may wish to utilize that option against debtors in court. Additionally, some litigants might benefit from the fact that the court process is typically lengthier than arbitration, as this length may deter frivolous lawsuits and promote settlement.

Despite concerns about arbitration, it can certainly have its benefits which may outweigh the benefits of litigation. The decision whether to include an arbitration provision in your contractual agreements depends on the industry, your relationship with clients and vendors, and various other factors. Barley Snyder's attorneys regularly consult clients on important contractual provisions. If you have additional question, please do not hesitate to contact us.

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