

Brief the Board: The Procedural Pre-nup

How to Leverage Arbitration Effectively for your Business

Evaluate the Potential Risks and Rewards of Arbitration

Risks



- Not necessarily less costly or expeditious
- Result may be less predictable than a court ruling
- Intervention by the courts is not totally excluded
- Confidentiality not guaranteed

Rewards



- Confidentiality can be protected
- Control over process and decision-maker
- Ability to customize
- Possible efficiencies and cost savings

Understanding and Evaluating Arbitration Clauses

An arbitration clause should:



- **Select the decision-maker & establish jurisdiction**
 - Choose a familiar jurisdiction and arbitrator



- **Maintain status quo**
 - Ensure parties continue to perform their obligations pending final resolution of the dispute



- **Protect confidentiality**
 - Include a confidentiality agreement and address confidentiality over documents



- **Set the appropriate scope for your arbitration clause**
 - Ensure your clause reflects your intentions about which disputes will be arbitrated and which disputes will be litigated



- **Control appeal rights**
 - Eliminate or limit appeal rights – consider whether appeals should be to a private arbitration panel or to the courts