

New Jersey Poised to Become Forum for International Arbitration and Mediation

The New Jersey legislature recently took a giant step to position itself as a favorable forum for disputes in international commercial and trade agreements that require arbitration and mediation. On February 6, 2017, the New Jersey Legislature enacted the New Jersey International Arbitration, Mediation, and Conciliation Act (N.J.S.A. 2A:23E-1) (Act). The objective of the Act is to encourage "the development of New Jersey as an international center for the resolution of international business, commercial, trade, and other disputes..."

The Act applies to the arbitration of disputes for both residents and non-residents where:

1. At least one person or entity is a nonresident of the United States; or
2. Two or more persons or entities, all of which are residents of the United States and if the dispute involves:
 - Property located outside of the United States;
 - A contract to be enforced or performed outside of the United States;
 - or some relation to one or more foreign countries.

The Act does not apply to disputes involving real property located in New Jersey (unless parties expressly submit the resolution of that dispute) and family and domestic law disputes.

The Act applies to "any arbitration within the scope of this act, without regard to whether the place of arbitration is within or without this State" if:

1. The arbitration provision expressly provides that New Jersey law applies;
2. In the absence of a choice of law provision, if in reading the contract as a whole, it is determined that New Jersey law applies; and
3. If the arbitral tribunal decides under applicable choice of law provisions that New Jersey law applies.

Comment: The Act will certainly raise New Jersey's profile as a forum for international arbitration. New York City is one of the most popular arbitral seats in the world. New Jersey, with its proximity to New York, Connecticut and Pennsylvania and with its international airports and rail system, is now an attractive alternative venue to New York for those seeking to resolve international business and trade disputes. Finally, foreign and domestic clients that are engaged in international commerce or trade may consider inserting New Jersey as the arbitral forum in their contracts, particularly those businesses based in New Jersey.

Footnotes:

1. There are three New Jersey arbitration statutes: the Uniform Arbitration Act (UAA), N.J.S.A. 2A:23B-1 to-32; the New Jersey Alternative Procedure for Dispute Resolution Act (NJAPDRA), N.J.S.A. 2A:23A-1 to-30; and N.J.S.A. 2A:24-1 to-11, which governs collective bargaining agreements.
2. "Center" is defined in the Act as "any center organized by a public research university, whose principal purpose is to facilitate the resolution of international business, trade, commercial and other disputes between persons by means of arbitration, mediation, conciliation and other means as an alternative to litigation."

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