

Do You Know Who Will Decide Whether Your Next Dispute Is Subject to Arbitration?

In a **client alert**, Pepper Hamilton surveys the effects of incorporating an arbitration provider's rules or common arbitration provisions on who determines questions of arbitrability.

"While questions of arbitrability are ordinarily decided by a court, contracting parties can agree to delegate questions of arbitrability to an arbitrator instead," the alert explains. "Because an arbitrator deciding questions of arbitrability is contrary to the ordinary course of events, contracting parties must express their intent to delegate questions of arbitrability to an arbitrator 'clearly and unmistakably.' When doubt exists as to the parties' intent to 'arbitrate arbitrability,' the FAA's presumption in favor of arbitrability is reversed."

The authors conclude: if you want a court to decide whether, and to what extent, your dispute is subject to arbitration, you must be mindful of the impact that incorporating an arbitration provider's rules or a broad arbitration provision into your agreement can have on the question of who will decide arbitrability.

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