

THE NEW TEXAS BUSINESS COURT

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BY

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I. INTRODUCTION

Texas in 2023 created a new specialty trial court (the “*Business Court*”) to hear significant business related disputes and a special intermediate court of appeals to hear appeals from the Business Court. The Business Court was created in the 88th Texas Legislative Session, which ended on May 29, 2023 (the “*2023 Legislative Session*”), by House Bill 19 (“*HB 19*”)¹ as a new chapter 25A (“§ 25A.001 et seq” or “*Chapter 25A*”) to the Texas Government Code (the “*Government Code*” or “*Gov. Code*”) with judges appointed by the Governor with the consent of the Senate. The Business Court provisions of the Government Code were further amended in the 89th Texas Legislative Session, which ended on June 3, 2025 (the “*2025 Legislative Session*”) by House Bill 40 (“*HB 40*”) effective September 1, 2025.² A separate bill (“*SB 1045*”) was passed in 2023 that amended § 22.201 of the Government Code to create a Fifteenth Court of Appeals (“*15th Court of Appeals*”) to hear appeals from the Business Court and certain other cases.

Both HB 19 and SB 1045 became effective September 1, 2023, but became operational only for actions commenced on or after September 1, 2024, which allowed time for appointing judges, arranging facilities, retaining staff, and adopting procedural rules.

The Business Court is currently seated in the major metropolitan areas of Texas (*see* map attached as *Appendix A*) with the expectation that the Texas Legislature will ultimately open the Business Court for the rest of Texas. The creation of the Business Court followed a long and winding road that commenced in 2015,³ and has from the beginning been strongly supported by the Texas Business Law Foundation (“*TBLF*”).⁴ Prior efforts stalled in the Legislature due largely to opposition from trial lawyer-focused organizations.

The Business Court is designed to handle a wide range of business disputes, including contract disputes, fiduciary duty claims, and other corporate governance issues. In creating a dedicated venue for resolving business disputes, the Legislature sought to expedite

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¹ HB 19 and its legislative history can be found at

<https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=88R&Bill=HB19>.

² HB 40 and its legislative history can be found at [TX HB40 | 2025-2026 | 89th Legislature | LegiScan](#).

³ See Byron F. Egan, Texas Chancery Courts: The Missing Link to More Texas Entities, *Texas Bar Journal*, Vol. 79, No. 2 at 98 (Feb. 2016).

⁴ For further information on the TBLF, see: <https://www.jw.com/wp-content/uploads/2016/09/1239.pdf>.

proceedings, install judges with specialized expertise, deliver more predictable outcomes for business disputes, and ultimately attract more businesses to Texas. Any challenges to the constitutionality of the Business Court will be decided by the Texas Supreme Court, which has been given exclusive and original jurisdiction over any such disputes.⁵

II. JUDGES WITH EXPERTISE AND TRAINING IN COMPLEX BUSINESS MATTERS

2.1 The Business Court is staffed with judges appointed by the Governor who possess specialized knowledge and expertise in handling complex business disputes. Judges are appointed for a two year initial term and may be reappointed by the Governor.⁶ By fostering a high level of specialized expertise among the judiciary, the Business Court provides a dedicated forum with a specialized judiciary that mirrors that of other popular venues for business disputes, while at the same time applying established Texas law.

2.2 A Business Court judge must be at least 35 years of age, a United States citizen and have been a resident of a county within the Division of the Business Court to which the judge is appointed for at least five years before appointment and must be a licensed attorney in Texas who has 10 or more years of experience in: (a) practicing complex civil business litigation; (b) practicing business transaction law; (c) serving as a judge of a court in Texas with civil jurisdiction; or (d) any combination of such experience.⁷ A Business Court judge may not have had his or her license to practice law revoked, suspended or subject to a probated suspension.⁸

III. OPINIONS, PROCEDURES AND POWERS

3.1 The Supreme Court has adopted rules for the issuance of written opinions by the Business Court and set fees for filings and actions in the Business Court. The Supreme Court and the Court of Criminal Appeals have approved rules of civil and appellate procedure for the Business Court and the 15th Court of Appeals, including rules providing for the removal and remand of cases to and from the Business Court and the assignment of cases to judges of the Business Court.⁹ The Business Court itself has adopted rules of practice and procedure consistent with the Texas Rules of Civil Procedure and the Texas Rules of Evidence.¹⁰ Except as otherwise provided in Chapter 25A, the practices, procedures, rules of evidence, issuance of process and writs and all other matters pertaining to the conduct of trials, hearings and other business in the Business Court are governed by the laws and rules prescribed for Texas district courts.

⁵ See *infra* Sections 11.1-11.3.

⁶ HB 19 § 6; §§ 25A.008, 25A.009.

⁷ § 25A.008(a).

⁸ § 25A.008(b).

⁹ Supreme Court of Texas Misc. Docket Nos. 24-9004 and 24-90051 (Feb. 6, 2024) and Court of Criminal Appeals of Texas Misc. Docket No. 24-002 (Feb. 6, 2024); § 25A.020.

¹⁰ See Local Rules of the Texas Business Court, which can be found on the website of the Business Court [local-rules-of-the-business-court-of-texas.pdf \(txcourts.gov\)](#), and which provides: The Local Rules will be uniformly applied in the Texas Business Court. However, parties must familiarize themselves with the Court's website ([TJB | About Texas Courts | Business Court \(txcourts.gov\)](#)) and the information available there, including any judge-or-division-specific practices, standing orders, the fee schedule, and various forms provided for the parties' convenience and use. These Local Rules are effective from the date of adoption through February 28, 2025, unless earlier revised by the Court.

3.2 Business Court judges issue written opinions explaining their decisions, which is a departure from the standard practice of most Texas civil district courts.¹¹ These opinions are intended to enhance the predictability of legal issues for Texas businesses by providing concrete guidance for critical issues of Texas corporate governance, fiduciary duties of officers, directors and managers, and interpretation of complex business transactional documents.

3.3 The Business Court has adopted simplified filing requirements, expedited scheduling, and enhanced case management techniques tailored to the unique needs of commercial litigation. The expectation is that such measures will reduce delays, improve efficiency, and provide litigants with a more predictable and timely resolution of their disputes.

3.4 The Business Court has the powers provided to Texas district courts by Chapter 24 of the Government Code, including the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment and supersedeas, and to grant any relief that may be granted by a district court.¹² A Business Court judge has all the powers, duties, immunities and privileges of a Texas district judge.¹³

IV. JURIES.

4.1 The Government Code provides that a party in an action pending in the Business Court has the right to a trial by jury “when required by the constitution.”¹⁴

4.2 A jury trial in a case filed initially in the Business Court must be held in a county in which the case could have been filed under Texas Civil Practice and Remedies Code § 15.002.¹⁵ A jury trial in a case removed to the Business Court must be held in the county in which the action was originally filed.¹⁶ However, a jury trial for a case in which a written contract specifies a county as venue for lawsuits must be held in that county.¹⁷ The parties and the Business Court judge may agree to hold the jury trial in any other county, but a party may not be required to agree to hold the jury trial in a different county.¹⁸ The drawing of jury panels, selection of jurors and other jury-related practices and procedures in the Business Court are the same as for the district court in the county in which the trial is held.¹⁹

¹¹ See, for example, *Primexx Energy Opportunity Fund, LP v. Primexx Energy Corporation*, 2025 Tex. Bus. 9 (March 10, 2025) which was a drag-along sale case arising from a private equity fund investment in a limited partnership in which the controlling partner of the limited partnership exercised its partnership agreement drag-along sale rights to force an exit event sale that two minority limited partners alleged was inadequate and in breach of the fiduciary and contractual duties under the partnership agreement and the Texas Business Organization Code.

¹² § 25A.004.

¹³ § 25A.005.

¹⁴ § 25A.015((a).

¹⁵ § 25A.015(b).

¹⁶ § 25A.015(c).

¹⁷ § 25A.015(d).

¹⁸ § 25A.015(3).

¹⁹ § 25A.015(f) and (g).

V. GEOGRAPHIC DIVISIONS

5.1 The Government Code creates a statutory court under § 1, Article V of the Texas Constitution which it calls a “business court.”²⁰

5.2 Chapter 25A of the Government Code specifies that the judicial district of the Business Court is composed of all counties in Texas and has eleven geographic Divisions (“*Divisions*”).²¹ Five of these Divisions are in main metropolitan areas, and began to hear cases commencing September 1, 2024.²² The five initial Divisions that began operations on September 1, 2024 are: the First Business Court Division [Dallas], Third Business Court Division [Austin], Fourth Business Court Division [San Antonio], Eighth Business Court Division [Fort Worth] and Eleventh Business Court Division [Houston, which after HB 40 includes Montgomery County].²³ The remaining six Business Court Divisions²⁴ will not become operational until funded through additional legislative appropriations at that time.²⁵

²⁰ § 25A.002.

²¹ The Business Court Divisions are defined to match their correspondingly numbered Administrative Judicial Regions, as defined in Section 74.042 of the Government Code (§ 25.003).

²² § 25A.003.

²³ The five Divisions are:

- (a) First Administrative Judicial Region is composed of the counties of Collin, Dallas, Ellis, Fannin, Grayson, Kaufman, and Rockwall;
- (b) Third Administrative Judicial Region is composed of the counties of Austin, Bell, Blanco, Bosque, Burnet, Caldwell, Colorado, Comal, Comanche, Coryell, Falls, Fayette, Gonzales, Guadalupe, Hamilton, Hays, Hill, Lampasas, Lavaca, Llano, McLennan, Milam, Navarro, Robertson, San Saba, Travis, and Williamson;
- (c) Fourth Administrative Judicial Region is composed of the counties of Aransas, Atascosa, Bee, Bexar, Calhoun, DeWitt, Dimmit, Frio, Goliad, Jackson, Karnes, LaSalle, Live Oak, Maverick, McMullen, Refugio, San Patricio, Victoria, Webb, Wilson, Zapata, and Zavala;
- (d) Eighth Administrative Judicial Region is composed of the counties of Archer, Clay, Cooke, Denton, Eastland, Erath, Hood, Jack, Johnson, Montague, Palo Pinto, Parker, Somervell, Stephens, Tarrant, Wichita, Wise, and Young;
- (e) Eleventh Administrative Judicial Region is composed of the counties of Brazoria, Fort Bend, Galveston, Harris, Matagorda, Montgomery, and Wharton.

²⁴ The six remaining Business Court Divisions (which have not become operational) (§ 25A.003(n)) are:

- (a) Second Administrative Judicial Region is composed of the counties of Angelina, Bastrop, Brazos, Burleson, Chambers, Grimes, Hardin, Jasper, Jefferson, Lee, Liberty, Madison, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, Walker, Waller, and Washington;
- (b) Fifth Administrative Judicial Region is composed of the counties of Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Nueces, Starr, and Willacy;
- (c) Sixth Administrative Judicial Region is composed of the counties of Bandera, Brewster, Crockett, Culberson, Edwards, El Paso, Gillespie, Hudspeth, Jeff Davis, Kendall, Kerr, Kimble, Kinney, Mason, McCulloch, Medina, Menard, Pecos, Presidio, Reagan, Real, Sutton, Terrell, Upton, Uvalde, and Val Verde;
- (d) Seventh Administrative Judicial Region is composed of the counties of Andrews, Borden, Brown, Callahan, Coke, Coleman, Concho, Crane, Dawson, Ector, Fisher, Gaines, Garza, Glasscock, Haskell, Howard, Irion, Jones, Kent, Loving, Lynn, Martin, Midland, Mills, Mitchell, Nolan, Reeves, Runnels, Schleicher, Scurry, Shackelford, Sterling, Stonewall, Taylor, Throckmorton, Tom Green, Ward, and Winkler;
- (e) Ninth Administrative Judicial Region is composed of the counties of Armstrong, Bailey, Baylor, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Foard, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Hemphill, Hockley, Hutchinson, King, Knox, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Terry, Wheeler, Wilbarger, and Yoakum; and
- (f) Tenth Administrative Judicial Region is composed of the counties of Anderson, Bowie, Camp, Cass, Cherokee, Delta, Franklin, Freestone, Gregg, Harrison, Henderson, Hopkins, Houston, Hunt, Lamar, Leon, Limestone, Marion, Morris, Nacogdoches, Panola, Rains, Red River, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt, and Wood.

²⁵ § 25.003(n).

VI. JURISDICTION OF THE BUSINESS COURT

6.1 The Business Court has civil jurisdiction concurrent with district courts (including actions in which a district court has exclusive jurisdiction) in two different sets of specified actions in which the total amount in controversy (including all joined parties' claims) exceeds \$5,000,000. In each case, the minimum amount in controversy excludes interest, statutory damages, exemplary damages, penalties, attorneys' fees and court costs.

6.2.1. The first specified set of \$5 million-minimum actions²⁶ include a (1) a derivative proceeding, (2) an action regarding the governance, governing documents or internal affairs of an organization, (3) an action in which a claim under a state or federal securities or trade regulation law is asserted against (a) an organization, (b) a controlling person or managerial official of an organization for an act or omission by the organization or by the person in the person's capacity as such, (c) an underwriter of securities issued by the organization or (d) the auditor of an organization, (4) an action by an organization, or an owner of an organization, if the action is brought against an owner, controlling person or managerial official of the organization and alleges an act or omission by that person in the person's capacity as such, (5) an action alleging that an owner, controlling person or managerial official breached a duty owed to an organization or an owner of an organization, including breach of a duty of loyalty or good faith, (6) an action seeking to hold an owner or governing person of an organization liable for an obligation of the organization, other than on account of a written contract signed by that person in a capacity other than as an owner or governing person, and (7) an action arising out of the Texas Business Organizations Code ("**TBOC**").²⁷

6.2.2. For purposes of the foregoing list of specified actions with a \$5,000,000 minimum amount in controversy: (i) "**controlling person**" means a person who directly or indirectly controls a governing person, officer or organization, so in theory there could be a controlling person of an individual director or officer; (ii) "**derivative proceeding**" means a civil action brought in the right of a domestic or foreign corporation, a domestic or foreign limited liability company, or a domestic or foreign limited partnership, to the extent provided by the TBOC; (iii) "**governing person,**" "**governing documents,**" "**internal affairs,**" "**managerial official,**" "**officer,**" and "**owner**" are defined in Chapter 25A in a substantively similar manner to their definitions in the TBOC; and (iv) "**organization**" is defined to mean a foreign or domestic entity or association, regardless of whether the organization is for profit or nonprofit, including: (A) a corporation; (B) a limited partnership; (C) a general partnership; (D) a limited liability partnership; (E) a limited liability company; (F) a business trust; (G) a real estate investment trust; (H) a joint venture; (I) a joint stock company; (J) a cooperative; (K) a bank; (L) a credit union; (M) a savings and loan association; (N) an insurance company; and (O) a series of a limited liability company or of another entity.²⁸

6.2.3. The \$5,000,000 minimum for the amount in controversy does not apply (and there is no minimum amount in controversy required) if a party to the action is a "**publicly traded company,**" which is defined as an entity whose voting equity securities are listed on a national securities exchange registered with the United States Securities and Exchange Commission under Section 6

²⁶ § 25A.004(b)

²⁷ § 25A.004(b).

²⁸ § 25A.001.

of the Securities Exchange Act of 1934 and any entity that is majority owned or controlled by such an entity.²⁹

6.3 The second specified set of \$5 million-minimum actions³⁰ include: (1) an action arising out of a “*qualified transaction*”;³¹(2) an action arising out of a business, commercial or investment contract or transaction in which the parties to the contract or transaction agreed in the contract or a subsequent agreement that the Business Court has jurisdiction of the action, except an action that arises out of an insurance contract; (3) an action arising out of a violation of the Texas Finance Code or Texas Business & Commerce Code by an organization or an officer or governing person acting on behalf of an organization, other than a bank, credit union or savings and loan association; (4) an action arising out of or relating to the ownership, use, licensing, lease, installation or performance of intellectual property, including: (x) computer software, software applications, information technology and systems, data security, pharmaceuticals, biotechnology products, and bioscience technologies, and (y) arising out of a trade secret as defined in Section 134A.002 of the Civil Practices and Remedies Code. The phrase “*qualified transaction*” is defined in Chapter 25A to mean a transaction, or series of related transactions, under which a party: (A) pays or receives, or is obligated to pay or is entitled to receive, consideration with an aggregate value of at least \$5 million; or (B) lends, advances, borrows, receives, is obligated to lend or advance, or is entitled to borrow or receive money or credit with an aggregate value of at least \$5 million, but excludes a transaction involving a loan or an advance of money or credit by a bank, credit union, or savings and loan institution;³² provided that the jurisdictional exclusion of banks, credit unions, and savings and loan associations does not apply where Business Court jurisdiction and venue are selected by a forum and venue selection provision in a contract that is the subject of the dispute or a subsequent agreement.³³ The Business Court has civil jurisdiction concurrent with district courts to enforce an arbitration agreement, appoint an arbitrator or review an arbitration agreement.³⁴

6.4 The Business Court has civil jurisdiction concurrent with district courts in an action seeking injunctive relief or a declaratory judgment under Chapter 37 of the Texas Civil Practice and Remedies Code involving a dispute based on a claim within the court’s jurisdiction described above.³⁵

6.5 The Business Court also has supplemental jurisdiction over any other claim so related to a case or controversy within the court’s jurisdiction that the claim forms part of the same case or controversy, provided such supplemental claims may proceed in the Business Court only on the agreement of all parties to the claim and a judge of the Business Court Division in which the action is pending.³⁶ If the parties involved do not agree on the claim proceeding in the Business Court,

²⁹ §§ 25.001(13) and 25.004(c).

³⁰ § 25.003(d).

³¹ As defined in § 25.001(14).

³² § 25A.001(14).

³³ § 25A.004(d)(2); *see EGAN ON ENTITIES: Corporations, Partnerships and Limited Liability Companies in Texas* (5th Ed. 2025) § 2.2.2(c).

³⁴ § 25A.004(d-1).

³⁵ § 25.004(e).

³⁶ § 25A.004(f); Rule 2 of the Local Rules of the Texas Business Court provides: A party is deemed to agree to this Court’s supplemental jurisdiction of any claim, including a counterclaim, cross-claim, or third-party claim, unless that party moves to sever or otherwise objects within 30 days after the later of (1) the moving party’s appearance in this Court; or (2) the filing of the first pleading or removal notice containing fair notice of the claim.

the claim may proceed in a court of original jurisdiction concurrently with any related claims proceeding in the Business Court.³⁷

6.6 Notwithstanding the foregoing, the Business Court does not have jurisdiction over the following claims: (1) a health care liability claim arising under Chapter 74 of the Texas Civil Practices and Remedies Code, (2) a claim in which a party seeks recovery of monetary damages for bodily injury or death, (3) a claim of legal malpractice,³⁸ or (4) a claim related to a consumer transaction to which a consumer in Texas is a party arising out of a violation of state or federal law. In addition, unless the claim falls within the Business Court’s supplemental jurisdiction, the Business Court does not have jurisdiction over (1) a civil action brought by or against a governmental entity or to foreclose on a lien on real or personal property an individual owns at the time the action is filed, (2) a claim arising out of Subchapter E of Chapter 15 (which governs covenants not to compete) and Chapter 17 (relating to deceptive trade practices) of the Texas Business & Commerce Code (“*TBCC*”), the Texas Estates Code, the Texas Family Code, the Texas Insurance Code or Chapter 53 (which governs mechanic’s liens) and Title 9 (which governs trusts) of the Texas Property Code, (3) a claim arising out of the production or sale of a farm product as defined in TBCC § 9.102, or (4) a claim related to the duties and obligations under an insurance policy.³⁹

VII. APPOINTMENT AND TERMS OF BUSINESS COURT JUDGES

7.1 As required by Chapter 25A, the Governor has appointed two judges to each of the First, Third, Fourth, Eighth and Eleventh Business Court Divisions.⁴⁰ If the Legislature provides the funding, the Governor is required to appoint one judge to each of the remaining six Divisions of the Business Court.⁴¹

7.2 A Business Court judge is appointed to serve for a term of two years beginning on September 1 of every even-numbered year. Business Court judges may be reappointed.⁴² Any appointments by the Governor are with the advice and consent of the Texas Senate.⁴³ If a Business Court judge vacancy occurs, the Governor, with the advice and consent of the Senate, must appoint another person to serve for the remainder of the unexpired term.⁴⁴

7.3 A Business Court judge may be removed from office in the same manner and for the same reasons as a state district judge.⁴⁵ A Business Court judge is disqualified and subject to mandatory recusal for the same reasons a state district judge is subject to disqualification or recusal in a pending case, pursuant to the same procedures as used for a district judge.⁴⁶

³⁷ *Id.*

³⁸ § 25.004(h).

³⁹ § 25A.004(g).

⁴⁰ § 25A.009(a)(1).

⁴¹ §§ 25A.001(a)(2) and 25A.003.

⁴² § 25A.009(b).

⁴³ § 25A.009(a).

⁴⁴ § 25A.010.

⁴⁵ § 25A.012(a).

⁴⁶ § 25A.012(b).

7.4 Being a Business Court judge is a full-time job. A Business Court judge may not engage in the private practice of law.⁴⁷

7.5 The Chief Justice of the Texas Supreme Court can assign to serve, as a visiting judge of a Division of the Business Court, a retired or former judge or justice who satisfies the qualifications required of a Business Court judge.⁴⁸ A visiting judge on the Business Court is subject to objection, disqualification or recusal in the same manner as a visiting district judge.⁴⁹

VIII. INITIAL FILING, REMOVAL AND REMAND

8.1 An action within the jurisdiction of the Business Court may be filed in the Business Court. The party filing the action must plead facts to establish Business Court subject matter jurisdiction and venue in a county in a Division of the Business Court, and the Business Court is required to assign the action to that Division.⁵⁰ Venue may be established as provided by law, by a party's governing documents, or, if a written contract specifies a county as venue for the action, as provided by the contract.⁵¹

8.2 If the Business Court does not have jurisdiction of the action, the Business Court must, at the option of the party filing the action, either transfer the action to a district court or county court at law (in a county of proper venue) or dismiss the action without prejudice to the party's rights.⁵² After an action is assigned to a Division of the Business Court, if the Business Court determines that the Division's geographic territory does not include a county of proper venue for the action, the Business Court must: (1) if an operating Division of the Business Court includes a county of proper venue, transfer the action to that Division; or (2) if there is not an operating Division of the Business Court that includes a county of proper venue, at the option of the party filing the action, transfer the action to a district court or county court at law in a county of proper venue.⁵³

8.3 A party to an action filed in a district court or county court at law that is within the jurisdiction of the Business Court may remove the action to the Business Court.⁵⁴ If the Business Court does not have jurisdiction of the action, the Business Court must remand the action to the court in which the action was originally filed.⁵⁵ A party to an action filed in a district court or county court at law in a county of proper venue that is not within an operating Division of the Business Court in which the action is filed may not remove or transfer the action to the Business Court.⁵⁶

8.4 The right to remove an action to the Business Court has time deadlines. A party may file an agreed notice of removal at any time during the pendency of the action.⁵⁷ If all parties to the action have not agreed to remove the action, the notice of removal must be filed: (1) not later than

⁴⁷ § 25A.013.

⁴⁸ § 25A.014(a).

⁴⁹ *Id.*

⁵⁰ § 25A.006(a).

⁵¹ *Id.*

⁵² § 25A.006(b).

⁵³ § 25A.006(c).

⁵⁴ § 25A.006(d).

⁵⁵ *Id.*

⁵⁶ § 25A.006(e).

⁵⁷ § 25A.006(f).

the 30th day after the date the party requesting removal of the action (x) was served with process in accordance with applicable rules or (y) discovered, or reasonably should have discovered, facts establishing the Business Court's jurisdiction over the action; or (2) if an application for temporary injunction is then pending, not later than the 30th day after the date such application is granted, denied, or denied as a matter of law. The notice of removal must be filed with the Business Court and the court in which the action was originally filed.⁵⁸ On receipt of the notice, the clerk of the court in which the action was originally filed is required immediately to transfer the action to the Business Court in accordance with rules adopted by the Texas Supreme Court, and the Business Court clerk must assign the action to the appropriate Division of the Business Court.⁵⁹

8.5 The judge of a court in which an action is filed may request the presiding judge for the court's administrative region to transfer the action to the Business Court if the action is within the Business Court's jurisdiction.⁶⁰ The judge is required to notify all parties of the transfer request and request a hearing on the transfer request.⁶¹ After a hearing on the request, the presiding judge may transfer the action to the Business Court if the presiding judge finds the transfer will facilitate the fair and efficient administration of justice.⁶² The Business Court clerk must assign an action that is so transferred to the appropriate Division of the Business Court.⁶³

8.6 Upon establishment of jurisdiction and venue over an action, the Business Court judge must by order declare the county in which any jury trial for the action will be held as determined under Section 25A.015.

IX. APPEALS

Except in instances when the Texas Supreme Court has concurrent or exclusive jurisdiction, the Fifteenth Court of Appeals has exclusive intermediate jurisdiction over an appeal from an order or judgment of the Business Court or an original proceeding relating to an action or order of the Business Court.⁶⁴ It also has intermediate jurisdiction over civil cases brought by or against the State or any of its instrumentalities other than various criminal, family law and tort matters.⁶⁵ The 15th Court of Appeals has statewide jurisdiction, is located in Austin, Texas, and has a chief justice and four other justices.⁶⁶ The procedures governing an appeal or original proceeding from the Business Court are generally the same as the procedures for an appeal or original proceeding from a district court.

X. ADMINISTRATION OF THE BUSINESS COURT

10.1 The appointed Business Court judges by majority vote, not later than September 15 of even-numbered years, must select one of their members to serve as administrative presiding

⁵⁸ *Id.*

⁵⁹ § 25A.006(g).

⁶⁰ § 25A.006(k).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ § 25A.007; Gov. Code § 22.220(d).

⁶⁵ Gov. Code §§ 22.201 and 22.2151.

⁶⁶ Gov. Code §§ 22.201, 21.2151 and 22.216.

judge.⁶⁷ If a vacancy occurs in the position of administrative presiding judge, the remaining Business Court judges must select as soon as practicable a judge of the court to serve as administrative presiding judge for the remainder of the unexpired term.⁶⁸

10.2 The administrative presiding judge of the Business Court must manage administrative and personnel matters on behalf of the Business Court and must appoint a clerk whose office is to be located in Travis County in facilities provided by the State of Texas.⁶⁹ The clerk must accept all filings in the Business Court and fulfill the legal and administrative functions of a district clerk.

10.3 Each Business Court judge must maintain chambers in the county the judge selects within the geographic boundaries of the Division to which the judge is appointed in facilities provided by the State of Texas.⁷⁰ A Business Court judge may hold court at any courtroom within the geographic boundaries of the Division to which the judge is appointed as the court determines necessary or convenient for a particular civil action.⁷¹ To the extent practicable, a county using existing courtrooms or facilities must accommodate the Business Court in the conduct of the court's hearings and other proceedings.

10.4 Remote proceedings, other than a jury trial, may be conducted in the Business Court to facilitate the resolution of a matter before the court.⁷² However, the Business Court may not require a party or attorney to remotely attend a court proceeding in which oral testimony is heard unless the parties agree.⁷³ The Business Court must provide reasonable notice to the public that a proceeding will be conducted remotely and an opportunity for the public to observe the remote proceeding.⁷⁴

10.5 In a county in which a Business Court Division sits, the sheriff, in person or by deputy, must attend the Business Court as required by the court.⁷⁵ The sheriff or deputy is entitled to reimbursement from the State of Texas for the cost of attending the Business Court.⁷⁶ The Business Court has authority to appoint personnel necessary for the operation of the court, including personnel to assist the clerk of the court, staff attorneys for the court, staff attorneys for each judge of the Business Court, court coordinators and administrative assistants.⁷⁷ All personnel, including the Business Court clerk, are employees of the Office of Court Administration of the Texas Judicial System and are state employees for all purposes, including accrual of leave time, insurance benefits, retirement benefits, and travel regulations.⁷⁸ The Business Court is administratively attached to the Office of Court Administration of the Texas Judicial System, but that Office does not have any authority or responsibility related to the duties of the Business Court.⁷⁹ That Office must provide administrative support to the Business Court as necessary to enable the Business

⁶⁷ § 25A.009(d).

⁶⁸ *Id.*

⁶⁹ § 25A.017(c).

⁷⁰ § 25A.017(d).

⁷¹ § 25A.017(d).

⁷² § 25A.017(a).

⁷³ *Id.*

⁷⁴ § 25A.017(g).

⁷⁵ § 25A.017(h).

⁷⁶ *Id.*

⁷⁷ § 25A.017(i).

⁷⁸ § 25A.017(i).

⁷⁹ § 25A.0171.

Court to carry out its duties under Chapter 25A and may employ personnel necessary to provide administrative support to the Business Court.

10.6 To promote the orderly and efficient administration of justice, the Business Court judges may exchange benches and sit and act for each other in any matter pending before the court.⁸⁰

10.7 The Office of Court Administration of the Texas Judicial System is required to submit to the Texas Legislature a report on the number and types of cases heard by the Business Court in the preceding year no later than December 1 of each year with respect to the preceding year.⁸¹

XI. CHALLENGES TO CONSTITUTIONALITY OF BUSINESS COURT

11.1 As HB 19 was being debated in the Legislature, some opponents suggested that they would challenge its constitutionality in the courts. As a consequence, Section 4 of HB 19 provides that “The Texas Supreme Court has exclusive and original jurisdiction over a challenge to the constitutionality of this Act and may issue injunctive or declaratory relief.”⁸²

11.2 Chapter 25A of the Government Code provides that the Business Court is a statutory court created by the Texas Legislature under Article 5, Section 1 of the Texas Constitution:

Sec. 1. JUDICIAL POWER VESTED IN COURTS; LEGISLATIVE POWER REGARDING COURTS. The judicial power of this State shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

The Legislature’s authority to create new courts and provide for the selection of their judges was upheld by the Texas Supreme Court in *Jordan v. Crudgington*, 149 Tex. 237, 231 S.W. 2d 641 (Tex. 1950). Some opponents of the Business Court have claimed that the Business Court is unconstitutional because its structure and powers are comparable to those of a state district court, making it a *de facto* state district court without complying with other provisions of the Texas Constitution applicable to state district courts. These arguments track the dissenting opinion in *Jordan*, which was not persuasive to the Texas Supreme Court majority in 1950, or to the Texas Legislature.

The constitutionality of the 15th Court of Appeals was challenged, and upheld, by the Texas Supreme Court in *In Re Dallas County Texas and Marian Brown in her official capacity as Dallas County Sheriff*, 697 S.W. 3d 142 (Tex. 2024), in which the Supreme Court wrote:

We hold that the Fifteenth Court is a constitutional court of appeals, that the jurisdictional provisions in S.B. 1045 do not violate Article V, § 6(a) of the Constitution, and that the appointment of the new court’s justices complies with Article V. § 28(a) of the Constitution and applicable statutes. Without hearing oral

⁸⁰ § 25A.009(f).

⁸¹ § 21.0171(a).

⁸² HB 19 § 4(a).

argument, we construe the County’s injunction request as a petition for writ of mandamus and deny all requested relief.

11.3 If the appointment of judges by the Governor to the Business Court is held by the Texas Supreme Court to be unconstitutional, the Business Court will instead be staffed by retired or former judges or justices who are appointed to the Business Court as provided for visiting judges and justices in Chapter 25A. Such appointments would be made by the Chief Justice of the Supreme Court and not the Governor.

XII. SAMPLE FORUM SELECTION PROVISIONS

Parties can insert forum selection clauses in their governing documents and contracts that specify that qualifying disputes will be adjudicated in Business Court.⁸³

12.1 A forum selection clause for a contract could read as follows:

Any claim, charge, allegation, demand, suit, cause of action, action, complaint, dispute or controversy (“**Claim**”) arising out of, relating to, or in connection with, this Agreement or any conduct related to, arising out of, or in connection with, the performance or nonperformance of this Agreement, including an action or claim regarding the interpretation, inducement, performance or nonperformance of this Agreement, whether in law or in equity, shall exclusively be brought in the [First] Business Court Division of the State of Texas (“**Texas Business Court**”) (and [, if the Claim would be within the Court’s supplemental jurisdiction]⁸⁴ the parties shall have an affirmative obligation to seek any needed consent of a judge of the Texas Business Court to include the Claim), if the matter meets the jurisdictional requirements of the Texas Business Court and the Texas Business Court is then accepting new case filings; and, if the Claim does not meet the jurisdictional requirements of the Texas Business Court or it is not then accepting new filings, then the matter shall be exclusively brought in a federal district court in the [Northern District of Texas, Dallas] Division (the “**Federal Court**”) or, if the Federal Court does not have jurisdiction, in a Texas state district court or federal district court in Dallas County, Texas.

12.2 A forum selection clause for bylaws of a Texas corporation could read as follows:

Unless the corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the corporation, (ii) any action asserting a claim for or based on a breach of a fiduciary duty owed by any current or former director or officer or other employee of the corporation to the corporation or the corporation’s shareholders, including a claim alleging the aiding and abetting of such a breach of fiduciary duty, (iii) any action asserting a claim against the corporation or any current or former director or officer or other employee of the corporation arising pursuant to any provision of the TBOC or the certificate of formation or these bylaws (in each case, as they may be amended from time to time), (iv) any action asserting a claim related to or involving the

⁸³ See *EGAN ON ENTITIES Corporations, Partnerships and Limited Liability Companies in Texas* (5th Ed. 2025) §2.2.2(c).

⁸⁴ See sections 6.3 and 6.5 above.

corporation that is governed by the internal affairs doctrine, or (v) any action asserting an “internal entity claim” as that term is defined in Section 2.115 of the TBOC, shall be the Texas Business Court in the [First] Business Court Division (“***Texas Business Court***”) of the State of Texas; provided that if the Texas Business Court is not then accepting filings or determines that it lacks jurisdiction for such action, the United States District Court for the [Northern] District of Texas, [Dallas] Division (the “***Federal Court***”) or, if the Federal Court lacks jurisdiction for such action, a Texas state district court of [Dallas] County, Texas; and provided further this Article shall not apply to any direct claims under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

XIII. CONCLUSION

By offering a specialized forum for resolving significant business disputes, Texas is enhancing its capacity to address the needs of its business community.

