

AAA AMENDMENTS TO THE COMMERCIAL ARBITRATION RULES AND MEDIATION PROCEDURES

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U.S. Complex Commercial Litigation and Disputes Alert

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Effective 1 September 2022, the American Arbitration Association (AAA) has updated its Commercial Arbitration Rules and Mediation Procedures, representing their first revisions since 1 July 2013. These amendments provide key updates and improvements to the commercial arbitration process, including with respect to the following:

CONSOLIDATION AND JOINDER

In likely the most significant revision of the amendments, under revised Rule R-8, parties can now request to consolidate arbitrations or join additional parties. The decision to permit consolidation or joinder rests with the case arbitrator (if one has been appointed) or a special arbitrator appointed by the AAA for the sole purpose of deciding consolidation or joinder. In assessing a request to consolidate, the arbitrator will consider (a) the terms and compatibility of the agreements to arbitrate, (b) applicable law, (c) whether the arbitrations raise “common issues of law or fact,” and (d) whether consolidation of the arbitrations would serve the interests of “justice and efficiency.” While consolidation and joinder have been available under the AAA’s Construction Industry Arbitration Rules for years, this is the first time such a procedure will be available under the Commercial Rules.

DISPOSITIVE MOTIONS

The amendments to Rules R-34 and R-49 now give arbitrators the ability to limit dispositive motion practice and award fees and expenses in accordance with any dispositive motion decision. Therefore, parties should be wary of excessive motions practice and confer on issues outside of formal submissions when possible.

CONFIDENTIALITY

Under new Rule R-45, the AAA has made clear that all matters relating to the arbitration and final award are confidential. Thus, attorneys and clients should be cautious publishing or disclosing any information related to ongoing or completed arbitration proceedings before the AAA. In addition, arbitrators may now issue confidentiality orders related to any matters in connection with the proceeding.

PROCEDURES FOR LARGE, COMPLEX COMMERCIAL DISPUTES

Under revised Rule R-1, the amount-in-controversy to qualify for the “Procedures for Large, Complex Commercial Disputes” has increased from US\$500,000 to US\$1,000,000. The key features of these procedures include, among other items, a mandatory preliminary hearing with the arbitrator(s), broad authority of arbitrator(s) to control and limit the discovery process, and a mandatory requirement that hearings take place on consecutive

days to maximize efficiency and minimize costs. Moreover, absent an agreement of the parties, in order for a large complex case to qualify for a panel of three arbitrators, the amount-in-controversy must now be at least US\$3,000,000 (up from the previous US\$1,000,000 threshold). Otherwise, one arbitrator will hear the case.

PROCEDURES FOR EXPEDITED ARBITRATIONS

In order to qualify for the Expedited Procedures, revised Rule E-2 provides that the amount-in-controversy must not exceed US\$100,000 (up from the previous US\$75,000). Furthermore, the new amendments further restrict discovery in cases governed by the Expedited Procedures. Except for exchanging exhibits that each party intends to rely on at the hearing, no further discovery is permitted unless expressly allowed by the arbitrator upon a finding of good cause.

CONDUCT OF PARTIES

The AAA's expectations for professionalism of all participants in the arbitration have been codified at revised Rule R-2. In fact, the AAA may now decline further administration of the case if the parties' and their representatives fail to uphold the AAA's Standards of Conduct.

REMOTE HEARINGS

Likely as a result of the manner in which hearings took place during the COVID-19 pandemic, amended Rule R-25 now expressly allows arbitrators to conduct hearings remotely by electronic means.

IMPACT ON ONGOING ARBITRATIONS

Unless otherwise stipulated to by the parties, the recent amendments to the AAA's Commercial Arbitration Rules and Mediation Procedures will not apply to any arbitrations initiated prior to the amendments' effective date of 1 September 2022.

If you have any questions with respect to the AAA's Commercial Arbitration Rules and Mediation Procedures, please feel free to contact the authors Richard F. Paciaroni and Justin N. Leonelli, or the [Complex Commercial Litigation and Disputes practice group](#) at any time.

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