

AAA/ICDR Adopts New Optional Appellate Arbitration Rules

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In a move that is bound to revolutionize both domestic and international arbitration, the American Arbitration Association ("AAA"), including its international arm, the International Centre for Dispute Resolution ("ICDR"), has adopted a new set of rules which will, for the first time, permit parties to appeal arbitral awards within the arbitration process itself - to an internal appellate panel. The rules, titled "Optional Appellate Arbitration Rules," became effective November 1, 2013. Appealability of arbitration awards has historically been extremely limited. Courts will not, as a rule, review the merits of an arbitral decision, the tribunal's interpretation of facts, or its application of the law. The only generally recognized objections to the enforcement/recognition of an arbitral award are those grounded in the tribunal's bias, where an award was fraudulently procured, or where the arbitrators exceeded their powers or otherwise conducted the proceedings in a manner that deprived a party of substantial fairness. The new rules, for the first time, provide for substantive appellate review of arbitral awards, permitting the parties to challenge errors of law and clearly erroneous factual determinations. "The appellate arbitral panel called for under the new rules applies a standard of review more expansive than that allowed by existing federal and state statutes to vacate an award. In this regard, the optional rules were developed for the types of large, complex cases where the parties agree that the ability to appeal is particularly important," said India Johnson, AAA's President and CEO. **The general parameters of the new rules are:**

- Parties may use the appellate rules only when there is an agreement of the parties, either by contract or stipulation.
- Parties are permitted to appeal on the grounds that the underlying award is based on errors of law that are material and prejudicial and/or on determinations of fact that are clearly erroneous.
- Appeals generally will be determined upon the written documents submitted by the parties, with no oral argument.
- The optional appellate rules anticipate a process that can be completed in about three months.

- The appellate panel consists of former federal and state judges and neutrals with strong appellate backgrounds.
- Parties may provide for the optional appellate rules whether or not the underlying award was conducted pursuant to the AAA's or ICDR's rules.

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