

The Benefits of Arbitration Increase with the AAA's Launch of Revised Commercial Arbitration Rules

An increasing number of companies are choosing arbitration over litigation in court to resolve commercial disputes. The reasons for this trend relate to some advantages associated with arbitration, including greater control over the process, shorter time to resolution, confidentiality of the proceedings, and parties' ability to select their arbitrators.

The American Arbitration Association (AAA) is one of the better known and most frequently utilized forums for arbitration. Recently, the AAA revised its Commercial Arbitration Rules. These revisions take effect on October 1, 2013. The revisions to the Commercial Arbitration Rules directly address parties' preferences "for a more streamlined, cost effective, and tightly-managed arbitration process that avoids the high costs of litigation."

The most significant updates to the Commercial Arbitration Rules are discussed below:

Mediation

Among the major changes is the addition of a mediation step in the arbitration process. New rule R-9 requires all cases with claims in excess of \$75,000 to conduct mediation at some point during the arbitration process. However, the new rule does allow a party to unilaterally opt out of mediation. Incorporating mediation as a part of the arbitration process can be helpful in resolving disputes early and with significant cost savings.

Greater Arbitrator Control

Other important rule changes revolve around the arbitrator's authority to more effectively manage the arbitration process. These updates include: (a) directing arbitrators to schedule a preliminary hearing after the appointment of the tribunal and providing arbitrators and parties with a checklist of items to discuss at the hearing to ensure efficiency (R-21); (b) providing arbitrators with a greater degree of control to restrict the scope of discovery (R-22); (c) allowing arbitrators to allocate costs of producing documents (R-23); and (d) providing arbitrators the authority to order sanctions for abusive or objectionable behavior (R-58).

POSTED:

Oct 1, 2013

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Access to Dispositive Motions

Historically, arbitral organizations have discouraged or even forbid dispositive motions, such as motions to dismiss and motions for summary judgment. However, new rule R-33 specifically grants arbitrators the authority to make rulings on dispositive motions if the moving party first shows that the motion is likely to succeed and will dispose of or narrow the issues in the case. This rule is likely to eliminate claims that clearly have no merit and reveal factual information about the claims that do survive.

Availability of Emergency Relief

Another major update is the availability of emergency measures of protection. Under new rule R-38, a party may seek emergency relief prior to the assembly of a tribunal by notifying the AAA and other parties of the type of relief sought and reasons why the relief is required on an emergency basis. The AAA must then appoint a single "emergency arbitrator" within one business day and that arbitrator must establish a schedule to consider the relief sought within two business days.

Reinhart's Commercial and Competition Law Practice frequently represents clients in arbitration and mediation before forums such as the AAA, JAMS, and the Financial Industry Regulatory Authority (FINRA). Our Team also assists clients in determining whether arbitration is appropriate for their needs and drafts and updates arbitration clauses in commercial contracts.

If you would like to know more about the new rules or about how arbitration agreements may affect your business, Reinhart's Commercial and Competition Law Group would be glad to help you. Please contact your Reinhart attorney or any member of our [Commercial and Competition Law Group](#).

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