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## THE AMERICAN ARBITRATION ASSOCIATION PUBLISHES NEW COMMERCIAL ARBITRATION AND MEDIATION RULES

On September 1, 2022, the new AAA Commercial Arbitration Rules and Mediation Procedures (the “**Amended Rules**”) of the American Arbitration Association (“AAA”) came into effect. The Amended Rules put an end to a two-year process in which case-management and administrative groups, party surveys, arbitrators, and the Law and Practice and LCC Committees of the AAA-ICDR Council came together to standardize longstanding AAA practices and revise certain provisions. With the new set of rules, the AAA strives for further efficiency and innovation in the administration and resolution of disputes.

### BACKGROUND

The primary goal behind the Amended Rules is to facilitate and promote the use of technology in arbitration proceedings (*i.e.*, strengthening cybersecurity, privacy and data protection), along with the standardization of practices related to the consolidation of arbitration proceedings, arbitrators’ authority and confidentiality. With this revised set of rules, the AAA follows the path adopted by other relevant arbitral institutions in focusing on the efficiency of the dispute resolution procedure.

### KEY PROVISIONS

❖ ***Expedited Procedures and Large, Complex Disputes (R-1(b) and R-1(c))***. Under R-1(b) of the Amended Rules, the Expedited Procedures will apply by default to disputes with amounts of up to USD 100,000, unless the parties agree or the AAA determines otherwise. On the other hand, R-1(c) extends the application of the Procedures for Large, Complex Commercial Disputes to any claim of at least USD 1 million.

❖ ***Consolidation of Arbitrations and Joinder of Additional Parties (R-8)***. R-8 provides for the first AAA commercial rule actively supporting the consolidation of multiple arbitrations as well as the joinder of additional parties to an ongoing proceeding.

Consolidation is based on consent of the relevant parties and, absent such consent, the AAA might direct that the consolidation request be decided by the arbitrator appointed in the first-filed case or may appoint a consolidation arbitrator for the sole purpose of deciding on the consolidation request.

A joinder request is also based on consent of the relevant parties and, absent consent from the relevant parties, the request must be submitted to the AAA prior to the appointment of an arbitrator or within 90 days of the date in which the AAA determines that all administrative filing requirements have been satisfied. If no arbitrator has yet been appointed, the AAA may appoint an arbitrator for the sole purpose, again, of deciding on the joinder request.

❖ ***Limiting the Number of Permitted Strikes (R-13)***. The Amended Rules provide the AAA discretion to limit the number of permitted strikes that each party will have in selecting an arbitrator from the list transmitted by the AAA, which will include 10 names from the National Roster. It is important to note that the parties do not need to exchange selection lists and that the parties should be encouraged to return the list within the specified deadline, as the AAA would otherwise consider that the party has accepted all 10 names.

The AAA may appoint all the arbitrators if the dispute involves two or more claimants or two or more respondents, unless agreed otherwise by all the parties.

❖ ***Use of Video, Audio and Other Electronic Devices (R-22; R-25; R-33; and E-7).*** R-22, R-25, and R-33(c) allow the arbitrators to take advantage of technology and use electronic means (when appropriate) for conducting preliminary hearings, the hearings and the presentation of evidence (provided that both parties have a full opportunity to present any material and relevant evidence and, regarding witnesses, provided that the other party has an opportunity for cross-examining such witness).

Regarding arbitrations conducted under the Expedited Procedure rules, E-7 provides discretion to the arbitrator to select the method of the hearing, opening the possibility to take advantage of electronic means.

❖ ***Dispositive Motions (R-34).*** Pursuant to R-34, arbitrators are now entitled to allow dispositive motions provided that such motions are likely to succeed and to dispose of or narrow the issues in the case.

❖ ***Availability of Emergency Relief (R-39).*** Emergency relief under R-39 is available to all disputes initiated under clauses or agreements entered on or after October 1, 2013, but it is expressly carved out from cases administered pursuant to the Expedited Procedures.

❖ ***Confidentiality (R-45).*** By default, and unless otherwise required by applicable law, court order or the parties' agreement, the arbitration and the award shall be kept confidential by the AAA and the arbitrator. Additionally, upon the parties' agreement or a party's request, the arbitrator has discretion to issue confidentiality orders regarding any matter in connection with the arbitration and may take measures to protect trade secrets and confidential information.

❖ ***Interpretation of Awards (R-52).*** Following a recently adopted ICDR rule, the AAA includes a revision to the Amended Rules allowing the parties to request the arbitrators' interpretation of the award. The Amended Rules also include a 20-day time limit since the transmittal of the award for doing so.

❖ ***Limiting Discovery in Disputes Subject to the Expedited Procedure (E-5(b) and E-5(c)).*** In an attempt to foster economy and efficiency, E-5(b) limits, unless expressly allowed by the arbitrator, the scope of discovery available to the parties to the exchange of copies of all exhibits that they intend to submit at the hearing.

❖ ***Cybersecurity, Privacy and Data Protection (P-2).*** Harnessing on the experience gained and lessons learned throughout the COVID-19 pandemic, the Amended Rules encourage the arbitrator and the parties to have discussions about cybersecurity, privacy and data protection at the outset of the proceedings, all of which have been included to the list of topics that should be considered during Preliminary Hearing Procedures.

❖ ***Third-Party Funding (P-2(xii)).*** Following a general trend, and to ensure that conflicts are avoided, the list of topics that should be considered during Preliminary Hearing Procedures also includes third-party funding sources and whether they should be disclosed. It is important to highlight that this is not a requirement to disclose the existence of a funding sources but a suggestion to consider whether the existence of a funding source should be disclosed.

❖ ***Official Record of Proceedings (R-29).*** The revised R-29 provides the parties with an opportunity to request the hearing transcripts. The interested party shall arrange directly with a transcriber or transcription service and must notify the arbitrator and the other parties at least seven days prior to the hearing. R-29(b) also limits the means for recording the proceedings to the transcription of the hearing.

E-5(c) prohibits motion practice by default, unless allowed by the arbitrator if good cause is shown.

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