

## CLIENT MEMORANDUM

# New Rules Adopted by AAA Allow for Optional Review of Arbitration Awards by a Panel of Appellate Arbitrators

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## AUTHORS

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On November 1, 2013, the American Arbitration Association (the “AAA”) issued new Optional Appellate Arbitration Rules that allow for review of arbitral awards by a special appellate arbitral panel. Under the Federal Arbitration Act, an arbitration award may be set aside only by a court; and the grounds for setting aside an arbitration award are extremely narrow. The new Optional Appellate Arbitration Rules allow for a much broader review of arbitration awards by a special panel of appellate arbitrators. These new rules are optional and are available for both domestic and international cases. An optional appellate procedure for arbitration awards is also offered by CPR and JAMS in their arbitration rules.

Traditionally, one of the advantages of arbitration has been finality. However, the benefits of finality may be outweighed in certain large, complex cases by the loss of the right to appellate review of an award on the merits. The AAA has adopted these optional appellate rules in order to address such concerns.

The appeal procedure is only available where it is agreed to by all the parties to the arbitration, either in the arbitration clause or by post-dispute stipulation. We recommend that if reference is to be made to the Optional Appellate Arbitration Rules in the arbitration clause, the ability of a party to invoke appellate review be limited to those cases where the underlying award exceeds a certain monetary threshold. The trigger allowing for appellate review should be tied to the award itself, not to the amount of damages claimed in the initial demand for arbitration.

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Key provisions of the new Optional Appellate Arbitration Rules are as follows:

- Parties are permitted to appeal on the grounds that the underlying award is based on errors of law or clearly erroneous determinations of fact that are material to the outcome.
- The appeal is submitted to an appellate arbitration panel consisting of former federal and state judges or arbitrators with strong appellate backgrounds.
- The AAA anticipates that the appeals process would be completed in about three months.
- Parties may provide for appellate review under the AAA's Optional Appellate Arbitration Rules even where the underlying arbitration was not administered by the AAA or the ICDR.

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If you have any questions regarding this memorandum, please contact Steven H. Reisberg (212 728-8257; [sreisberg@willkie.com](mailto:sreisberg@willkie.com)) or the Willkie attorney with whom you regularly work.

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