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## AAA Launches Revised Arbitration Rules

On September 9, 2013, the American Arbitration Association (“AAA”) published revisions to its Commercial Arbitration Rules (the “Rules”), which are generally applicable to domestic commercial disputes. The revised rules will apply to arbitrations filed as of October 1, 2013. With the avowed goal of making arbitration more expeditious and cost-effective, the new Rules address various aspects of the process. The four most important ones are discussed below.

### 1. Mediation

While the current rules provide that the parties may agree to conduct a mediation at any stage of the arbitration proceeding, new Rule R-9 renders mediation mandatory, providing that “the parties shall mediate their dispute” under the AAA’s Commercial Mediation Procedures in all cases where a claim or counterclaim exceeds \$75,000. Absent an agreement of the parties to the contrary, the mediation is to occur concurrently with the arbitration and in a manner that does not delay the proceeding. However, the new Rules do allow a party to opt-out unilaterally from mediation after notification to the AAA and the other parties.

### 2. Effective Management of the Arbitration Process

The new Rules also introduce several provisions intended to arm the arbitral tribunal with effective case management tools. These include: (a) directing the arbitrators to convene a preliminary hearing as soon as practicable following the appointment of the tribunal, and including a checklist of possible items to be discussed during the preliminary hearing (Rule R-21); (b) allowing production of electronically stored documents to be completed in the manner most convenient and economical to the producing party (Rule R-22); (c) allowing the arbitrators to allocate the costs of producing documents (Rule R-23); and (d) giving the arbitrators the authority to impose sanctions to address abusive conduct (Rule R-58).

### 3. Dispositive Motions

Arbitral tribunals historically have been reluctant to entertain dispositive motions, such as motions for summary judgment or motions to dismiss for failure to state a claim. Current practice with respect to dispositive motions has been changing, however. In recognition of the new trend, the revised Rules expressly grant the arbitrators the authority to hear dispositive motions, so long as the party who intends to bring such a motion first shows that the motion is likely to succeed in disposing of or narrowing the issues in dispute (Rule R-33). This required showing may serve to prevent a party from filing a dispositive motion as a delaying tactic, while ensuring that motions aimed at streamlining the process or avoiding costly hearings are entertained.

#### 4. Emergency Measures of Protection

Another significant revision to the Rules concerns the power of an “emergency arbitrator” to grant interim relief before the arbitral tribunal is constituted. While there is an “emergency measures of protection” procedure under the current Rules, parties are required to affirmatively opt-in to this procedure by an agreement following the onset of a dispute or in their arbitration agreement. Under the new Rules, this procedure applies by default (Rule R-38). Given this difference, the emergency measures of protection provision will apply only to agreements to arbitrate entered into on or after October 1, 2013.

Under the new Rule R-38, a party may request the AAA to appoint an emergency arbitrator, prior to the constitution of the tribunal. Within one business day, the AAA must appoint a single emergency arbitrator, who must then establish a schedule for the consideration of the application for emergency relief within two business days. This provision makes clear that it is not intended to prevent applications to national courts for provisional relief.

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If you have any questions about the above, please feel free to contact any of your regular contacts at the firm or any of our partners, counsel and senior attorneys listed under [“Litigation and Arbitration”](#) in the “Practices” section of our website at <http://www.clearygottlieb.com>.

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