



## AAA/ICDR Introduces Optional Appellate Arbitration Rules

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Historically, a court can set aside an arbitration award based only on narrow statutory grounds. Over the past few years, a number of arbitral institutions have adopted appellate arbitration rules in order to afford parties a means of review that is not statutorily restricted. The American Arbitration Association (AAA)/International Centre for Dispute Resolution (ICDR) is the latest arbitral institution to provide parties with an alternate means of appeal. As described by the AAA/ICDR, the Appellate Rules “provide . . . a standard of review greater than that allowed by existing federal and state statutes.”

Highlights of the AAA/ICDR’s Optional Appellate Arbitration Rules that became effective on November 1, 2013 are:

- The Appellate Rules are only available if there is an agreement of the parties, either by contract or stipulation;
- The parties may agree to the Appellate Rules without regard to whether the underlying arbitration was conducted pursuant to the AAA’s or ICDR’s Rules;
- Appeal is permitted 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; and,
- Appeals will typically be determined upon written submissions with no oral argument.

The AAA/ICDR has established an Appellate Panel consisting of former federal and state judges, and neutrals with strong appellate backgrounds. An Appeal Tribunal will consist of three appellate arbitrators, unless the parties agree to a single arbitrator.

The appellate process can be completed in approximately three months.

For those parties interested in providing for appeal through use of the new AAA/ICDR Appellate Rules, the AAA/ICDR suggests the following clause accompany the arbitration clause:

“Notwithstanding any language to the contrary in the contract documents, the parties hereby agree: that the Underlying Award may be appealed pursuant to the AAA’s Optional Appellate Arbitration Rules (“Appellate Rules”); that the Underlying Award rendered by



the arbitrator(s) shall, at a minimum, be a reasoned award; and that the Underlying Award shall not be considered final until after the time for filing the notice of appeal pursuant to the Appellate Rules has expired. Appeals must be initiated within thirty (30) days of receipt of an Underlying Award, as defined in Rule A-3 of the Appellate Rules, by filing a Notice of Appeal with any AAA office. Following the appeal process, the decision rendered by the appeal tribunal may be entered in any court having jurisdiction thereof.”

One of the perceived benefits of arbitration is that awards are subject to limited court review. Whether parties will find it advantageous to engraft the Optional Appellate Arbitration Rules on to the arbitration process, a process that some complain has become too prolonged and too expensive, remains to be seen.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors:

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