

Enforcing Arbitration Awards in Ohio

PATRICK O. PETERS, JACKSON LEWIS P.C., WITH PRACTICAL LAW ARBITRATION

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A Practice Note explaining how to enforce arbitral awards in Ohio state and federal courts. This Note explains the procedure for confirming an arbitration award in Ohio and the grounds on which a party may challenge enforcement under Ohio and federal law, including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Federal Arbitration Act (FAA), and Ohio arbitration law. This Note also briefly explains the procedure for vacating, modifying, and correcting an arbitral award in Ohio.

SCOPE OF THIS NOTE

The prevailing party in an arbitration may need to enforce the arbitration award if the losing party fails to pay or comply voluntarily. In the arbitration context, enforcement generally refers to judicial confirmation of an arbitration award and entry of a judgment on it.

This Note explains how a party may enforce an arbitration award in Ohio state or federal court. It describes the relevant state and federal statutes, including the Ohio Arbitration Act (OAA) and the Ohio International Commercial Arbitration Act (OICAA), jurisdictional and venue considerations, the procedure for confirming an award in state and federal court, and the potential challenges to enforcement. This Note also briefly explains the legal standards and procedure for vacating, modifying, correcting, or appealing an arbitration award in Ohio state or federal court.

This Note does not cover the arbitration of medical claims or the mechanics of debt collection once a party obtains a judgment. For information about enforcing a federal judgment, see Practice Note, *Enforcing Federal Court Judgments: Basic Principles* ([1-531-5966](#)).

For more information about enforcing or challenging arbitration awards generally, see *Enforcing or Challenging Arbitration Awards in the US Toolkit* ([w-002-9420](#)).

STATUTORY FRAMEWORK

To enforce an arbitration award in Ohio, a party must first determine which law governs the enforcement procedure. There are two possibilities:

- The Federal Arbitration Act (FAA) (see *Federal Arbitration Act*).
- Ohio arbitration law (see *Ohio Arbitration Law*).

FEDERAL ARBITRATION ACT

US arbitration law greatly favors the enforcement of arbitration awards, including those rendered outside US territory. The FAA is the federal statute that governs arbitration. The FAA:

- Governs domestic US arbitrations and applies to maritime disputes and contracts involving commerce, which is defined broadly (9 U.S.C. §§ 1 to 16) (Chapter 1).
- Implements the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), subject to reciprocity and commercial reservations (9 U.S.C. §§ 201 to 208) (Chapter 2).
- Implements the Inter-American Convention on International Commercial Arbitration (Panama Convention) (9 U.S.C. §§ 301 to 307) (Chapter 3).

The FAA applies to an exceedingly broad range of awards (see *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52 (2003)). Together with the New York Convention, the FAA covers the enforcement of most arbitral awards in the US. The FAA applies to arbitrations even if the contract containing the arbitration clause also contains a choice of law provision specifying that Ohio law governs that contract. Therefore, if the parties want state procedural, statutory, or common law to govern enforcement of their arbitration agreement or award, they must expressly state so in the contract (see *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 590 (2008)).

For more information on the FAA, see Practice Note, *Understanding the Federal Arbitration Act* ([0-500-9284](#)).

Domestic Arbitrations Under the FAA

Chapter 1 of the FAA applies to:

- Domestic US arbitrations and awards.
- Maritime arbitrations and awards.
- Arbitrations and awards that:
 - involve foreign or interstate commerce; and
 - the New York Convention does not govern.

For more information on enforcing domestic arbitration awards under Chapter 1 of the FAA, see Practice Note, *Enforcing Arbitration Awards in the US: Enforcement of Arbitration Awards Under Chapter 1 of the FAA for Non-New York Convention Awards* ([9-500-4550](#)).

New York Convention

Chapter 2 of the FAA implements the New York Convention and provides federal court jurisdiction for the enforcement of international awards under the New York Convention (9 U.S.C. §§ 201 to 208). It applies to arbitration agreements and awards arising out of a legal commercial relationship, whether or not contractual, including a transaction, contract, or agreement described in Chapter 1 of the FAA (9 U.S.C. § 2). The New York Convention applies to international disputes, meaning disputes that involve non-US parties or property, even if the arbitration is held in the US (see *Bergesen v. Joseph Muller Corp.*, 710 F.2d 928, 932 (2d Cir. 1983) and *Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH*, 141 F.3d 1434, 1441-42 (11th Cir. 1998)).

The statute does not deem an agreement arising out of a relationship entirely between US citizens to fall under the New York Convention unless that relationship:

- Involves property located abroad.
- Contemplates performance or enforcement abroad.
- Has some other reasonable relation to one or more foreign states. (9 U.S.C. § 202.)

If there is a conflict between the New York Convention and the FAA, the New York Convention applies (9 U.S.C. § 208). An arbitration award issued in a country that is a signatory to the New York Convention is generally enforceable in the US, subject to the New York Convention's provisions for refusal of enforcement and recognition (see Article, *Fifty Years of the New York Convention on Arbitral Awards: Success and Controversy* ([3-384-4388](#))).

For more information on enforcing international arbitration awards under the New York Convention, see Practice Note, *Enforcing Arbitration Awards in the US: Enforcement of Arbitration Awards Under Chapter 2 of the FAA Implementing the New York Convention* ([9-500-4550](#)).

Panama Convention

The Panama Convention applies to arbitrations arising from a commercial relationship between citizens of nations that have signed the Panama Convention if, with certain exceptions, the parties are not all US citizens (9 U.S.C. §§ 301-307). Chapter 3 of the FAA incorporates the Panama Convention into US law (9 U.S.C. §§ 203 and 302). If both the Panama Convention and the New York Convention apply to an international arbitration, the New York Convention controls unless:

- The parties expressly agree that the Panama Convention applies.
- A majority of the parties to the arbitration agreement are citizens of a nation or nations that:
 - have ratified or acceded to the Panama Convention; and
 - are member states of the Organization of American States. (9 U.S.C. § 305.)

Because parties most often enforce arbitration awards under the New York Convention or the FAA's domestic arbitration provisions, this Note does not provide a detailed analysis of the Panama Convention.

OHIO ARBITRATION LAW

Ohio arbitration law consists of:

- The Ohio Arbitration Act (OAA), codified in Chapter 2711 of the Ohio Revised Code, R.C. §§ 2711.01 through 2711.24, pertaining to non-international arbitrations.
- The Ohio International Commercial Arbitration Act (OICAA), codified in Chapter 2712 of the Ohio Revised Code, R.C. §§ 2712.01 through 2712.91, pertaining to international arbitrations of commercial disputes in Ohio.

The OAA

The OAA applies to all arbitrations in Ohio except for:

- International commercial arbitrations.
- Real estate disputes, except disputes regarding:
 - certain valuation issues;
 - rent due under a lease; and
 - boundaries. (R.C. § 2711.01(B).)

The OAA also includes a section governing the arbitration of medical claims (R.C. §§ 2711.21 through 2711.24), which this Note does not discuss.

The OICAA

The OICAA applies to international commercial arbitrations that occur in Ohio. The OICAA's applicability is subject to any other agreement between the US and any other country, such as the New York Convention. (R.C. § 2712.02.)

INTERPLAY BETWEEN FEDERAL AND OHIO ARBITRATION LAW

The US Supreme Court favors arbitration under the FAA and construes the FAA to preempt conflicting state laws when the contract containing the arbitration clause involves some trace of commerce (see *Stutler v. T.K. Constructors Inc.*, 448 F.3d 343, 345 (6th Cir. 2006); *Fazio v. Lehman Bros.*, 340 F.3d 386, 393 (6th Cir. 2003); see also *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 476-77 (1989) (there is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy behind the FAA is simply to ensure that arbitration agreements are enforceable)).

The FAA applies to arbitrations even if the contract containing the arbitration agreement has a choice of law provision specifying that Ohio law governs the contract (see *Kaz Co. v. Esselte Corp.*, 2005 WL 3088563, at *4 (N.D. Ohio Nov. 17, 2005) (stating the FAA governs whenever an agreement impacts interstate commerce)). However, parties may agree to enforcement of their arbitration agreement under state procedural, statutory, or common law (see *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 590 (2008)). Under Ohio law, the parties may not expand the grounds for review of the award beyond the grounds listed under the OAA (see *City of Piqua v. FOP, Ohio Labor Council*, 924 N.E.2d 876, 883 (Ohio Ct. App. 2009)).

Ohio state law determines whether an arbitration agreement exists under the FAA (see *Tillman v. Macy's, Inc.*, 735 F.3d 453, 456 (6th Cir. 2013); and see *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 281 (1995) (states may regulate contracts, including arbitration clauses, under general contract law principles and may invalidate an arbitration clause on the same grounds for revoking a contract); *Floss v. Ryan's Family Steak Houses, Inc.*, 211 F.3d 306, 314 (6th Cir. 2000)).

Although the FAA's substantive provisions apply regardless of whether a party seeks enforcement in state or federal court, the FAA's procedural provisions do not preempt Ohio procedures in Ohio state court. Therefore, counsel should carefully consider the differences between state and federal procedure before filing a petition for confirmation.

CONFIRMING AWARDS

To confirm an arbitration award under either the FAA or Ohio arbitration law, a party must file a petition or motion to confirm the award. A confirmation action is intended to be a summary expedited proceeding and is usually faster than a regular lawsuit on the merits, particularly if no party challenges the award.

CONFIRMING AWARDS UNDER THE FAA

Section 9 of the FAA governs the confirmation of arbitral awards. For the FAA to apply to the enforcement proceedings, the parties' agreement must state that a court may enter judgment on the award. (9 U.S.C. § 9.)

For more information on confirming an arbitration award in federal court, see Practice Note, *Enforcing Arbitration Awards in the US: General Confirmation Procedure: Application by Motion or Petition* ([9-500-4550](#)). For a sample petition to confirm an arbitration award in federal court, see Standard Document, *Petition to Confirm Arbitration Award (Federal)* ([w-000-5309](#)). For a sample petition to enforce an international award under the New York Convention, see Standard Document, *Petition to Confirm Foreign Arbitration Award (Federal)* ([w-000-7469](#)).

Standard for Confirmation Under the FAA

The court must confirm the award unless it finds grounds to vacate, modify, or correct the award (9 U.S.C. § 9; see *PureWorks, Inc. v. Unique Software Sols., Inc.*, 554 F. App'x 376, 380 (6th Cir. 2014)). Federal courts have a limited role in reviewing the decision of an arbitrator (see *Shelby Cnty. Health Care Corp. v. AFSCME, Local 1733*, 967 F.2d 1091, 1094 (6th Cir. 1992); and see *Dawahare v. Spencer*, 210 F.3d 666, 669 (6th Cir. 2000)). If the arbitrator arguably construed the contract and acted within the scope of the arbitrator's authority,

a court may not overturn the award, even if the court is convinced the arbitrator committed serious error (see *Nationwide Mut. Ins. Co. v. Home Ins. Co.*, 429 F.3d 640, 643 (6th Cir. 2005)).

Federal Court Jurisdiction

Although the FAA creates federal substantive law that requires parties to honor arbitration agreements, Chapter 1 of the FAA does not create any independent federal subject matter jurisdiction (see *Southland Corp. v. Keating*, 465 U.S. 1, 16 n.9 (1984) (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983))). Before a federal court may enforce awards governed by Chapter 1 of the FAA, the petitioner must show that the court has either:

- Diversity jurisdiction.
- Federal question jurisdiction.

(See *Vaden v. Discover Bank*, 556 U.S. 49 (2009).)

Courts are split on whether they may "look through" to the arbitration claims in determining subject matter jurisdiction. Some courts have held that, in light of the reasoning in *Vaden*, courts may look through to the underlying arbitration claims to determine if a petition to confirm, vacate, or modify an arbitration award under §§ 9, 10, or 11 of the FAA presents a federal question (see *Doscher v. Sea Port Grp. Sec., LLC*, 2016 WL 4245427, at *13 (2d Cir. Aug. 11, 2016)). In other courts, the fact that the underlying arbitration involved federal claims does not confer federal jurisdiction for the petition to confirm or vacate (see *Goldman v. Citigroup Global Markets, Inc.*, 2016 WL 4434401, at *9-10 (3d Cir. Aug. 22, 2016); *Magruder v. Fid. Brokerage Servs. LLC*, 818 F.3d 285, 288 (7th Cir. 2016)). The Court of Appeals for the Sixth Circuit has not yet ruled on this issue.

Federal courts have subject matter jurisdiction over enforcement proceedings for arbitration awards governed by the New York Convention or Panama Convention (9 U.S.C. §§ 203 and 302). These conventions provide federal subject matter jurisdiction for international arbitrations even if they occur in the US (see *Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH*, 141 F.3d 1434, 1441 (11th Cir. 1998)).

To establish personal jurisdiction in cases involving foreign awards, the petitioner may invoke personal jurisdiction, in rem jurisdiction, or quasi in rem jurisdiction, as applicable, if their use under the circumstances also comports with due process standards. Where applicable, a court also may base jurisdiction over the defendant on an aggregation of state or national contacts under Federal Rule of Civil Procedure (FRCP) 4(k)(2) (see *Norcold, Inc. v. Greg Lund Prods.*, 109 F. Supp. 2d 819, 822 (S.D. Ohio 2000)). The moving party must serve international parties under FRCP 4, because neither the FAA nor the New York Convention provides direction on how to properly serve international parties.

Under the FAA, once the moving party serves a notice of a petition for confirmation on all parties, the federal court has personal jurisdiction over those parties (9 U.S.C. § 9).

Federal Venue

Arbitration agreements may contain forum selection clauses specifying the forum for an arbitration award's enforcement. The FAA, the New York Convention, and the Panama Convention generally give effect to the forum the parties specify (9 U.S.C. §§ 9, 204, and 302).

For domestic arbitrations under Chapter 1 of the FAA, a party seeking enforcement must file the application for judicial confirmation in either:

- The court the parties specified for entering judgment on the award in the arbitration agreement, if any.
- Any court in the district where the arbitrator issued the award, if the arbitration agreement does not identify a particular court for entry of judgment on the award.

(9 U.S.C. § 9.)

If the parties consent to final and binding arbitration and fully participate in the arbitration process, the courts deem their consent and participation to evidence their consent to having a court confirm the resulting award.

Under the New York and Panama Conventions, a party may file a petition for judicial confirmation in either:

- Any court in which the parties may have brought the underlying dispute if there had been no agreement to arbitrate.
- A location specified for arbitration in the arbitration agreement if that location is within the US.

(9 U.S.C. §§ 204 and 302.)

Timing Under the FAA

A party to the arbitration may apply for an order confirming the award within one year after the arbitrator makes the award (9 U.S.C. § 9). The federal courts of appeals are split on whether this time limitation is mandatory. Some courts, including the US Court of Appeals for the Second Circuit, have interpreted Section 9 as a strictly enforced, one-year statute of limitations (see *Photopaint Techs., LLC v. Smartlens Corp.*, 335 F.3d 152 (2d Cir. 2003)). Other courts, including the US Courts of Appeals for the Fourth and Eighth Circuits, have relied on the ordinary meaning of “may” to conclude that the one-year limitations period is permissive (*Sverdrup Corp. v. WHC Constructors, Inc.*, 989 F.2d 148 (4th Cir. 1993); *Val-U Constr. Co. of S.D. v. Rosebud Sioux Tribe*, 146 F.3d 573 (8th Cir. 1998)). The US Court of Appeals for the Sixth Circuit has held that the one-year period is permissive (*Wachovia Secs., Inc. v. Gangale*, 125 Fed. App'x 671, 767 (6th Cir. 2005); *Kentucky River Mills v. Jackson*, 206 F.2d 111, 120 (6th Cir. 1953)).

For international arbitration awards, any party seeking confirmation of an award under the New York or Panama Conventions must file its application with the court within three years from the date the award was made (9 U.S.C. §§ 207, 302).

Confirmation Procedure in Federal Court

Section 9 of the FAA governs confirmation of arbitral awards. For the FAA to apply to the enforcement proceedings, the parties' agreement must state that a court may enter judgment on the award. Any party may apply to the court within one year after issuance of the arbitration award to confirm the arbitration award. (9 U.S.C. § 9.)

A party applies for judicial confirmation of an arbitration award by serving and filing in the federal district court either:

- A petition to confirm. A party uses a petition if there is no lawsuit regarding the arbitration already pending. A petition to confirm an arbitration award allows the petitioner to request that the court

confirm an award without first filing a complaint. When a party commences an action in federal court by filing a petition without an accompanying complaint, the court treats the petition as a motion to confirm an arbitration award. (9 U.S.C. § 6; *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95 (2d Cir. 2006).)

- A motion to confirm. If a lawsuit involving the arbitration is already pending (for example, because a party moved to compel or stay arbitration at the start of the case), a party seeking to confirm the arbitration award does not need to start a new proceeding by filing a petition to confirm. The party instead returns to the court where the case is already pending and files a motion to confirm the award.

The party seeking confirmation must also file with the petition or motion:

- The arbitration agreement, including the parties' agreement, if any, on:
 - selecting an arbitrator; and
 - extensions of time, such as an agreement extending the deadline for the arbitrator to issue the award.
- A copy of the award.
- Any documents a party submitted in connection with any application to modify or correct the award.

The moving party must serve notice of the confirmation application on the adverse party, at which point the court assumes jurisdiction over the adverse party as though the adverse party had appeared generally in the proceeding. If the adverse party is:

- A resident of the district in which the award was made, the moving party must serve either the party or the party's attorney in the same manner that a party must serve notice of a motion in that court.
 - A non-resident of the district, the moving party must serve notice:
 - by the marshal of any district in which the adverse party is found; or
 - in the same way as it serves any other process.
- (9 U.S.C. § 9.)

An application to confirm an arbitration award is a summary proceeding. The court may hear argument but does not hold a hearing with witnesses and the parties do not present evidence. The court confirms the arbitration award based on the parties' submissions and argument, if any. If no party challenges the enforcement and the court finds no grounds for modifying or vacating the award, the court confirms it and enters judgment (see *Vacating Awards Under the FAA and Modifying or Correcting Awards Under the FAA*).

CONFIRMING AWARDS UNDER OHIO LAW

To confirm an arbitration award under either the OAA or the OICAA, a party submits an application to the court of common pleas requesting an order confirming the award (R.C. §§ 2711.09 and 2712.69).

An application to confirm an arbitration award is a hybrid procedural device under Ohio law. The application initiates a case but is not a complaint, even though it may result in a final order and judgment, and the courts refer to it as a motion. (See *Ohio Farmers Inc. Co. v. Akron*,

2011 WL 2852944, at *3 (Ohio App. 9 Dist., July 20, 2011); *Geiger v. Morgan Stanley Dean Witter, Inc.*, 2010 WL 2501522, at *4 (Ct. App. June 22, 2010).

For information on starting a case in the Ohio courts, see State Q&A: Commencing an Action: Ohio ([w-000-1580](#)). For information on the state court system in Ohio, see Practice Note, State Court System (OH) ([w-000-3267](#)).

Standard for Confirmation Under the OAA and OICAA

Ohio law restricts the scope of a court's review of an arbitration award (see *Lake Cnty. Bd. of Mental Retardation & Dev. Disabilities v. Prof'l Ass'n for Teaching of Mentally Retarded*, 641 N.E.2d 180, 182 (Ohio 1994)). Under both the OAA and the OICAA, unless the court finds grounds to vacate, modify, or correct an award (see *Vacating Awards Under Ohio Law and Modifying or Correcting Awards Under Ohio Law*), the court must:

- Grant a party's application to confirm an arbitration award.
- Enter judgment on the confirmed award.

(R.C. §§ 2711.09 and 2712.69.)

Ohio Court Jurisdiction and Venue

Under the OAA, a party may file a petition for judicial confirmation in any court of common pleas that has jurisdiction over the non-compliant party (R.C. § 2711.03).

When parties make an arbitration agreement in Ohio that provides for arbitration in Ohio, they automatically consent to the jurisdiction of Ohio courts to enforce the resulting arbitral award (R.C. § 2711.01). However, a court has jurisdiction to confirm only final arbitration awards (see *Reserve Recycling, Inc. v. East Hoogewerff, Inc.*, 2005 WL 315376, at *3 (Ohio Ct. App., Cuyahoga County Feb. 10, 2005)).

Any party to an international arbitration governed by the OICAA may apply to a court of common pleas for an order confirming the award (R.C. § 2712.69(A)).

Forum selection clauses are presumptively valid under Ohio law unless the party opposing enforcement of the clause establishes all of the following:

- The clause is fraudulent or overreaching.
- Enforcing the clause:
 - violates a strong public policy; and
 - results in inconveniences so severe that renders the clause unreasonable.

(See *Zilbert v. Proficio Mortg. Ventures, L.L.C.*, 2014 WL 1776004, at *4-5 (Ct. App. May 1, 2014).)

Confirmation Procedure in Ohio Court

A party moving to confirm an award under the OAA must file with the motion:

- The agreement.
- Any paper showing the selection or appointment, if any, of any additional arbitrator.
- Each written extension of the arbitrator's deadline to make the award.

- The award.
- Each notice, affidavit, or other paper any party used on any application to confirm, modify, or correct the award.
- A copy of each order the court issued on any application to confirm, modify, or correct the award.

(R.C. § 2711.09.)

The party applying for confirmation must serve the application on the adverse party or its attorney at least five days before the hearing on the application (R.C. § 2711.09).

If the court grants the motion, it must enter judgment on the award as if the court rendered judgment in a civil action (R.C. § 2711.14).

Timing Under the OAA

The Ohio Arbitration Act has a timeliness provision that mirrors the FAA, requiring a party to file an application to confirm the arbitration award within one year after the arbitrator makes the award (R.C. § 2711.09). However, this one-year period is not a strict statute of limitations, and courts extend the one-year deadline for good cause (see *Ohio Farmers Ins. Co. v. Akron*, 2011 WL 2852944, at *3 (Ohio App. 9 Dist., July 20, 2011); *Cleveland Police Patrolmen's Ass'n v. City of Cleveland*, 668 N.E.2d 548 (Ohio Ct. App., Cuyahoga County 1995)).

Timing Under the OICAA

A party wishing to confirm an international award under the OICAA must file the application within the time provided under Ohio law for the enforcement of judgments (R.C. § 2712.69(D)(1)). That time limit is currently five years (R.C. § 2329.07(A)(1)).

VACATING, MODIFYING, OR CORRECTING AWARDS

Both the FAA and Ohio law permit a party to challenge or request modification or correction of an arbitration award. For detailed information on vacating, modifying, or correcting arbitration awards in federal court, see Practice Note, *Vacating, Modifying, or Correcting an Arbitration Award in Federal Court* ([w-000-6340](#)). For a sample petition to vacate an arbitration award in federal court, see Standard Document, *Petition to Vacate, Modify, or Correct Arbitration Award (Federal)* ([w-000-5608](#)).

VACATING AWARDS UNDER THE FAA

Standard for Vacating Under the FAA

Under the FAA, a court may vacate an award if:

- A party obtained an award by corruption, fraud, or undue means.
- The arbitrator was partial or corrupt.
- The arbitrator engaged in misconduct by:
 - refusing to postpone the hearing on sufficient cause shown;
 - refusing to hear evidence pertinent and material to the controversy; or
 - any other behavior that has prejudiced the rights of any party.
- The arbitrator exceeded the arbitrator's powers or so imperfectly executed them that the arbitrator did not make a mutual, final, and definite award on the matters the parties submitted to arbitration.

(9 U.S.C. § 10.)

Some US courts also have held that courts may vacate arbitral awards governed by the FAA on the common law ground of manifest disregard of the law. However, the continued viability of this holding as a ground for vacatur is uncertain after the US Supreme Court's decision in *Hall St. Assocs. LLC v. Mattel, Inc.*, 552 U.S. 576, 586 (2008), which held that:

- The FAA lists the exclusive grounds for refusing to enforce an award and it does not list manifest disregard of the law as one of the grounds.
- Parties may not agree to expand the scope of judicial review of arbitral awards.

The federal courts of appeals are split on whether manifest disregard remains a proper ground for vacatur after *Hall Street*, but manifest disregard remains a ground to vacate an arbitral award in the Sixth Circuit (see *Coffee Beanery, Ltd. v. WW, L.L.C.*, 300 F. App'x 415, 418-19 (6th Cir. 2008)).

Although the New York Convention does not expressly provide for vacating awards, it provides grounds for opposing the enforcement of awards. These grounds include challenges to the validity of:

- The award.
- The arbitral panel.
- The arbitration agreement.
- The arbitration process.

(New York Convention, Art. V(1) and (2).)

For information on opposing enforcement of awards under the New York Convention, see Practice Note, Enforcing Arbitration Awards in the US: Defending Against Enforcement ([9-500-4550](#)).

Procedure to Vacate Under the FAA

A party seeking to vacate an arbitral award under the FAA must serve an application to vacate on the adverse party or its attorney within three months after the arbitrator delivers the award (9 U.S.C. § 12).

If a party previously filed a lawsuit relating to the arbitration, such as a proceeding to compel arbitration or confirm the award, the party seeking to vacate the award must file the vacatur application as a motion in the same case (see *IDS Life Ins. Co. v. Royal All. Assocs., Inc.*, 266 F.3d 645, 653 (7th Cir. 2001)).

If there is no lawsuit already pending involving the arbitration, a party seeking to vacate, modify, or correct an arbitration award must commence an action by filing a petition, as required by a court before confirming the award (see Confirmation Procedure in Federal Court).

The application to vacate is a summary proceeding. The court may hear oral argument but does not hold a hearing with witnesses. The court decides the application on the parties' submissions and argument, if any. The court may direct a rehearing by the same arbitrators if:

- The court finds sufficient grounds for vacatur.
- The time within which the agreement required the award has not yet expired.

(9 U.S.C. § 10(b).)

VACATING AWARDS UNDER OHIO LAW

Under the OAA and the OICAA, Ohio courts have the authority to vacate, modify, and correct arbitration awards (R.C. §§ 2711.13 and 2712.69).

Standard for Vacating Under the OAA

The grounds for vacating an award under the OAA are similar to the grounds to vacate under the FAA (see Standard for Vacating Under the FAA). The court must grant an application to vacate an OAA arbitration award if it finds either:

- The award was obtained by corruption, fraud, or undue means.
- The arbitrator was partial or corrupt.
- The arbitrator engaged in misconduct by:
 - refusing to postpone the hearing on sufficient cause shown;
 - refusing to hear evidence pertinent and material to the controversy; or
 - any other behavior that has prejudiced the rights of any party.
- The arbitrator exceeded the arbitrator's powers or so imperfectly executed them that the arbitrator did not make a mutual, final, and definite award on the matters the parties submitted to arbitration.

(R.C. § 2711.10.)

Standard for Vacating Under the OICAA

The grounds to vacate under the OICAA are similar to the grounds to vacate under the New York Convention. The court must grant an application to vacate an international award under the OICAA if it finds either:

- The arbitration agreement is unenforceable because:
 - a party lacked capacity to agree to arbitration;
 - the agreement is invalid under the law to which the parties agreed; or
 - the agreement is invalid under the law of the country where the arbitrator issued the award.
- The challenging party did not:
 - receive notice of the arbitrator's appointment; or
 - have an opportunity to present its case.
- The award resolves matters that the parties did not submit to arbitration, unless the challenging party participated without objection.
- The arbitration tribunal or procedure:
 - was improper under the parties' agreement, unless the challenging party waived the objection;
 - had a material conflict, unless the challenging party waived the conflict;
 - conducted the proceedings so unfairly that the proceedings substantially prejudiced the rights of the challenging party.

(R.C. § 2712.70.)

Procedure to Vacate Under Ohio Law

A party that wishes to vacate a domestic arbitration award under the OAA must:

- File a motion to vacate in the common pleas court.

- Serve notice of the motion on the adverse party within three months after the arbitrator or arbitral institution delivers the award.

(R.C. §2711.13.) Unlike the one-year period for filing an application to confirm an arbitration award (see Timing Under the OAA), the Ohio courts do not extend the OAA's three-month time limit for filing a motion to vacate (see *Greenwald v. Shayne*, 910 N.E.2d 536, 541 (Ohio Ct. App. 2009)).

A party that wishes to vacate an international arbitration award under the OICAA must file a motion to vacate within 90 days of receiving the award (R.C. §2712.69(D)(2)).

MODIFYING OR CORRECTING AWARDS UNDER THE FAA

Standard for Modifying or Correcting Under the FAA

A court may modify or correct an award under the FAA if:

- There was an evident material mistake in:
 - the calculation of figures; or
 - the description of any person, thing, or property the award references.
- The arbitrator entered an award on a matter that the parties did not submit to arbitration, unless it does not affect the merits of the decision on the matter that the parties submitted to arbitration, in which case the court confirms the award uncorrected.
- There is an issue in the award's form that does not affect the controversy's merits.

(9 U.S.C. § 11.)

The FAA also authorizes courts to modify or correct an award to effect the award's intent and promote justice between the parties (9 U.S.C. § 11).

Neither the New York Convention nor the Panama Convention identifies any grounds for modifying or correcting an award. Courts may have some leeway under the New York Convention, but only if the modification or correction does not interfere with the New York Convention's clear preference for confirming awards (see *Admart AG v. Stephen & Mary Birch Found., Inc.*, 457 F.3d 302, 309 (3d Cir. 2006)).

Procedure to Modify or Correct Under the FAA

A party seeking to modify or correct an award must serve an application on the adverse party or its attorney within three months after the filing or delivery of the award (9 U.S.C. § 12). The proceedings are substantially similar to the proceedings on an application to vacate (see Procedure to Vacate Under the FAA).

MODIFYING OR CORRECTING AWARDS UNDER OHIO LAW

Standard for Modifying or Correcting in Ohio State Court

The OAA permits a court to modify or correct an arbitration award on substantially the same grounds as under the FAA (see Standard for Modifying or Correcting Under the FAA).

The OICAA does not provide for a party to request modification or correction. However, when a party moves to vacate an award, the statute permits the court to modify or correct the award for any

evidence miscalculation or mistake not affecting the merits (R.C. § 2712.69(F)).

Procedure for Modifying or Correcting

A party submits a motion to modify or correct in the same manner as a motion to confirm or vacate.

AWARDS AND ORDERS SUBJECT TO APPEAL

Both the FAA and Ohio law permit a party to appeal an order confirming, vacating, modifying, or correcting an arbitration award (RC §§ 2711.15 and 2712.73; 9 U.S.C. § 16).

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