

# Enforcing Arbitration Awards in Indiana

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WITH PRACTICAL LAW ARBITRATION

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

## SCOPE OF THIS NOTE

The prevailing party in an arbitration may need to ask a court to confirm the award to turn it into an enforceable judgment if the loser refuses to pay or voluntarily comply to satisfy the award. In the arbitration context, enforcement generally refers to judicial confirmation, modification, or correction of an arbitration award and entry of a judgment on it.

This Note explains how a party may enforce or challenge an arbitration award in Indiana state or federal court. It describes the relevant state and federal statutes, including the Indiana Uniform Arbitration Act (IUAA), 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 Indiana state or federal court.

This Note does not cover 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](#)). For information on compelling or staying arbitration in Indiana, see Practice Note, Compelling and Staying Arbitration in Indiana ([W-021-2833](#)).

## STATUTORY FRAMEWORK

A party seeking to enforce or challenge an arbitration award in Indiana must determine which law governs the judicial proceeding. In Indiana, the choices are:

- The Federal Arbitration Act (FAA) (see Federal Arbitration Act).
- The Indiana arbitration statutes, which include:
  - the general opt-in arbitration statute governing arbitration where parties without an arbitration agreement agree to arbitrate a dispute that would otherwise be subject to court litigation (Opt-In Arbitration Statute); and
  - the Indiana Uniform Arbitration Act (IUAA).
- (See Indiana 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 for certain types of contracts, disputes, and parties. The FAA:

- Governs domestic US arbitrations and applies to maritime disputes and contracts involving commerce, which the courts define 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. Alfabco, 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 state law governs that contract. If the parties want Indiana 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 FAA Chapter 1

Chapter 1 of the FAA applies to arbitrations and awards that involve:

- Maritime matters.
- Interstate or foreign commerce.

(9 U.S.C. § 2.)

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 that are governed by the New York Convention (9 U.S.C. §§ 201 to 208). The New York Convention applies to arbitration agreements and awards arising out of a legal commercial relationship, whether or not contractual, including a transaction, contract, or agreement as 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 *Pine Top Receivables of Ill., LLC v. Banco de Seguros del Estado*, 771 F.3d 980, 988 (7th Cir. 2014); *Certain Underwriters at Lloyd's London v. Argonaut Ins. Co.*, 500 F.3d 571, 577 (7th Cir. 2007)).

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 Practice Note, Enforcing arbitral awards under the New York Convention 1958: Overview ([W-010-9715](#))).

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](#)).

### The 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 to 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.

### INDIANA ARBITRATION LAW

Indiana's arbitration law is codified in the Arbitration and Alternative Dispute Resolution statute, which includes:

- The Opt-In Arbitration Statute, codified in Chapter 1 of the Arbitration and Alternative Dispute Resolution statute (Ind. Code §§ 34-57-1-1 to 34-57-1-26). The Opt-In Arbitration Statute governs arbitrations where the parties do not have a pre-dispute arbitration agreement but agree to submit to arbitration a dispute that otherwise would be subject to court litigation.
- The IUAA, codified in Chapter 2 of the Arbitration and Alternative Dispute Resolution statute (Ind. Code §§ 34-57-2-1 to 34-57-2-19). The IUAA sets out specific rules for court applications by arbitral parties, including applications to confirm, modify, or vacate arbitration awards.

The IUAA reflects Indiana's strong public policy favoring arbitration agreements (see *Marion Cmty. Sch. Corp. v. Marion Teachers Ass'n*, 873 N.E.2d 605, 608 (Ind. Ct. App. 2007); *Welty Bldg. Co. v. Indy Fedreau Co., LLC*, 985 N.E.2d 792, 798 (Ind. Ct. App. 2013)). The arbitration procedural framework under Indiana law is set by statute and not common law (see *Natare Corp. v. D.S.I., Duraplastec Sys., Inc.*, 855 N.E.2d 985, 986 (Ind. 2006)).

The IUAA is based on the Uniform Arbitration Act (UAA), which the National Conference of Commissioners on Uniform State Laws revised in 2000 when it promulgated the Revised Uniform Arbitration Act (RUAA). To date, the Indiana legislature has not introduced legislation to adopt the RUAA. For more information on the RUAA and a list of states that have adopted it, see Practice Note, Revised Uniform Arbitration Act: Overview ([W-004-5167](#)).

Because the IUAA governs most arbitrations in Indiana, this Note does not discuss the Opt-In Arbitration Statute in detail.

### INTERPLAY BETWEEN FEDERAL AND INDIANA ARBITRATION LAW

The FAA preempts conflicting state law only “to the extent that it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” (*Volt Info. Scis., Inc. v. Bd. of Trs.*, 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 governs arbitration agreements and awards in contracts involving interstate commerce, and the IUAA governs Indiana arbitration matters that are not preempted by the FAA (see *LaSalle Grp., Inc. v. Electromotion of Del. Cty., Inc.*, 880 N.E.2d 330, 331 (Ind. Ct. App. 2008)).

Under Indiana law, the parties to a contract can agree to use the FAA to interpret their contract if the contract implicates interstate commerce (see *MPACT Const. Grp., LLC v. Superior Concrete Constructors, Inc.*, 802 N.E.2d 901, 904 (Ind. 2004); *Earley v. Edward Jones & Co., LP*, 105 N.E.3d 1094, 1100 (Ind. Ct. App. 2018)). If the arbitration clause is silent on choice of law, the FAA applies to the arbitration and the award even if the contract contains a choice of law provision specifying that Indiana law governs that contract. If the parties want Indiana law to govern enforcement of their arbitration agreement or award, they must expressly state so in the arbitration clause of the contract (see *Hall St. Assocs.*, 552 U.S. at 590; *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 60 (1995)).

Indiana’s state courts have concurrent jurisdiction with federal courts to enforce the FAA. Unless the parties’ arbitration agreement requires that a party seek confirmation of an award in federal court, a party may seek confirmation of the award in either state or federal court. (See *Weldon v. Asset Acceptance, LLC*, 896 N.E.2d 1181, 1184 (Ind. Ct. App. 2008)).

Although the FAA’s substantive provisions apply whether a party seeks award enforcement in state or federal court, the FAA’s procedural provisions do not preempt state procedures in Indiana courts unless Indiana procedures defeat the Congressional objective of recognizing and enforcing arbitration agreements and awards under the FAA (see *In re Beck’s Superior Hybrids, Inc.*, 940 N.E.2d 352, 366 (Ind. Ct. App. 2011)). 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 Indiana law, a party must move for confirmation in a court of competent jurisdiction (9 U.S.C. § 9; Ind. Code §§ 34-57-2-12 and 34-57-2-16). Because it is intended to be a summary, expedited proceeding, a confirmation proceeding is usually faster than a typical lawsuit on the merits, especially if no party challenges the award.

### CONFIRMING AWARDS UNDER THE FAA

To confirm an arbitration award under the FAA, a party must file a petition for confirmation in a court of competent jurisdiction (9 U.S.C. § 9).

### 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 *Int’l Union of Operating Eng’rs, Local No. 841 v. Murphy Co.*, 82 F.3d 185, 188 (7th Cir. 1996)). The role of federal courts in reviewing the decision of an arbitrator is limited.

The court may not vacate or refuse to enforce an award, even if the court believes the award is clearly or grossly erroneous, as long as the arbitrator arguably:

- Construed the contract.
- Acted within the scope of the arbitrator’s authority.

(See *Johnson Controls, Inc. v. Edman Controls, Inc.*, 712 F.3d 1021, 1025 (7th Cir. 2013); *Hasbro, Inc. v. Catalyst USA, Inc.*, 367 F.3d 689, 692 (7th Cir. 2004); *Butler Mfg. Co. v. United Steelworkers of Am., AFL-CIO-CLC*, 336 F.3d 629, 632 (7th Cir. 2003).)

### Court Jurisdiction

Although the FAA is 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, 25 n.32 (1983)); *Vaden v. Discover Bank*, 556 U.S. 49, 59 (2009); *Am.’s MoneyLine, Inc. v. Coleman*, 360 F.3d 782, 784 (7th Cir. 2004)). Before a federal court may enforce an award under Chapter 1 of the FAA, the petitioner must show that the court has either:

- Diversity jurisdiction.
- Federal question jurisdiction.

(See *Vaden*, 556 U.S. at 65-66; *Minor v. Prudential Sec., Inc.*, 94 F.3d 1103, 1105 (7th Cir. 1996), as amended (Oct. 1, 1996).)

Courts are split on whether they may “look through” to the arbitration claims in determining subject matter jurisdiction. In some courts, including the US Court of Appeals for the Seventh Circuit, the fact that the underlying arbitration involved federal claims does not confer federal subject matter jurisdiction for a petition to confirm, vacate, or modify an arbitration award under Sections 9, 10, or 11 of the FAA (see *Magruder v. Fid. Brokerage Servs. LLC*, 818 F.3d 285, 288 (7th Cir. 2016); see also *Goldman v. Citigroup Glob. Markets Inc.*, 834 F.3d 242, 353-55 (3d Cir. 2016); compare *Tenbrink v. Toshiba Am. Med. Sys., Inc.*, 2013 WL 3071276, at \*2 (S.D. Ind. June 18, 2013) (under the FAA, the court may look through to the underlying claim to establish federal question jurisdiction on a petition to compel arbitration under Section 4 of the FAA)).

Other courts have held that, in light of the US Supreme Court’s 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 Sections 9, 10, or 11 of the FAA presents a federal question (see *Landau v. Eisenberg*, 922 F.3d 495, 498 (2d Cir. 2019); *McCormick v. Am. Online, Inc.*, 909 F.3d 677, 682-84 (4th Cir. 2018) (applying a look through approach for petition to confirm, vacate, or modify award even if no party filed a petition to compel under FAA § 4); *Ortiz-Espinosa v. BBVA Sec. of P.R., Inc.*, 852 F.3d 36, 46-47 (1st Cir. 2017)).

The New York and Panama Conventions provide federal courts with subject matter jurisdiction to enforce foreign arbitration awards to which these conventions apply (9 U.S.C. §§ 203 and 302). These conventions provide federal subject matter jurisdiction for international arbitrations even if the arbitrations occur in the US (see *Indus. Risk Insurers v. M.A.N. Gutehoffnungshütte GmbH*, 141 F.3d 1434, 1441 (11th Cir. 1998); *Lander Co. v. MMP Invs., Inc.*, 107 F.3d 476, 482 (7th Cir. 1997)).

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).

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 2016 amendment to FRCP 4(m), the 90-day time limit for serving process does not apply to service abroad on corporations, partnerships, or associations. For information on serving international parties, see Practice Note, International Litigation: US Laws Governing Cross-Border Service of Process ([9-531-3925](#)).

Under the FAA, once the moving party serves a notice of a petition for enforcement or *vacatur* 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 venue 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 or *vacatur* 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.)

Under the New York and Panama Conventions, a party may file a petition for judicial enforcement or *vacatur* in either:

- Any court in which the parties could 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 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 have relied on the ordinary meaning of "may" to conclude that the one-year limitations period is permissive (*Val-U Constr. Co. of S.D. v. Rosebud Sioux Tribe*, 146 F.3d 573 (8th Cir. 1998); *Sverdrup Corp. v. WHC Constructors, Inc.*, 989 F.2d 148 (4th Cir. 1993)). The Second Circuit has ruled that the statute of limitations is mandatory, while the Fourth, Sixth and Eighth Circuits have held it to be permissive (see *Hare v. Hosto & Buchan, PLLC*, 774 F. Supp. 2d 849, 853 (S.D. Tex. 2011) (collecting cases)).

The Seventh Circuit has not ruled on this issue. However, the Indiana Court of Appeals has held that:

- The one-year period under the FAA for applying to confirm an award is mandatory.
- If a party seeking confirmation fails to file the confirmation motion within one year, dismissal is appropriate.

(See *MBNA Am. Bank, N.A. v. Rogers*, 835 N.E.2d 219, 222 (Ind. Ct. App.), on reh'g, 838 N.E.2d 475 (Ind. Ct. App. 2005).)

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 arbitrator makes the award (9 U.S.C. §§ 207 and 302).

### Confirmation Procedure in Federal Court

A party applies to confirm an 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 already pending relating to the arbitration. 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; see *Webster v. A.T. Kearney, Inc.*, 507 F.3d 568, 571-72 (7th Cir. 2007)).
- 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 files a motion to confirm the award in the same case.

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
  - any extension 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 to the arbitrator in connection with any application to modify or correct the award.

(9 U.S.C. § 13.)



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 it had appeared generally in the proceeding. If the adverse party is:

- A resident of the district in which the arbitrator made the award, the moving party must serve either the party or its attorney in the same manner that a party must service notice of a motion in that court.
- Not a resident of the district in which the arbitrator made the award, the marshal of any district in which the adverse party is located must serve notice in the same way as it serves any other process of court.

(9 U.S.C. § 9.)

An application to confirm an arbitration award is a summary proceeding and does not involve a detailed reexamination of the facts (see *Masco Corp. v. Prostyakov*, 2012 WL 12871438, at \*1 (S.D. Ind. Mar. 30, 2012), *aff'd*, 558 F. App'x 685 (7th Cir. 2014); *Garmin Wurzburg GmbH v. Auto. Imagineering & Mfg., LLC*, 2015 WL 4491231, at \*3 (N.D. Ind. July 23, 2015)). The court treats the application as any other motion, but the other procedures of the Federal Rules of Civil Procedure are inapplicable (see *Webster*, 507 F.3d at 571; *Health Servs. Mgmt. Corp. v. Hughes*, 975 F.2d 1253, 1258 (7th Cir. 1992)).

The court may hear argument but does not hold a hearing with witnesses. 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 the award and enters judgment on it (see *Vacating Awards Under the FAA*).

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 with integrated notes and detailed drafting tips, see Standard Document, *Petition to Confirm Arbitration Award (Federal) (W-000-5309)*. For a sample petition to confirm a foreign arbitral award in federal court with integrated notes and detailed drafting tips, see Standard Document, *Petition to Recognize and Enforce Foreign Arbitration Award (Federal) (W-000-7469)*.

## CONFIRMING AWARDS UNDER THE IUAA

To confirm an arbitration award under the IUAA, a party files a motion, even if there is no lawsuit between the parties pending, for confirmation in a court of competent jurisdiction (Ind. Code §§ 34-57-2-12 and 34-57-2-16).

### Standard for Confirmation Under the IUAA

Indiana law favors enforcement of an arbitration award (see *Bopp v. Brames*, 677 N.E.2d 629, 634 (Ind. Ct. App. 1997)). On application of a party, the court must confirm an arbitration award unless another party timely challenges the award and persuades the court that there are grounds for vacating or modifying the award (Ind. Code § 34-57-2-12; see *N. Ind. Commuter Transp. Dist. v. Chi. Southshore & S. Bend R.R.*, 793 N.E.2d 1133, 1136 (Ind. Ct. App. 2003); *Vacating Awards Under the IUAA and Modifying or Correcting Awards Under the IUAA*).

## Indiana Court Jurisdiction

Under the IUAA, an agreement providing for arbitration in the state of Indiana confers jurisdiction on any Indiana circuit or superior court to enter judgment on the award (Ind. Code § 34-57-2-17).

## Indiana Venue

When there is already an action pending between the parties, for example because a party moved to compel arbitration, the party seeking award confirmation files the application as a motion in that case.

When a party starts an action seeking relief relating to arbitration, such as an initial motion to confirm an arbitration award, the party must file the initial motion in the circuit court or superior court of:

- The county:
  - the parties identified in their arbitration agreement as the place of the hearing;
  - where the arbitration hearing occurred; or
  - where the adverse party resides or has a place of business if the parties' arbitration agreement does not specify a county and the hearing has not taken place.
- Any Indiana county, if:
  - the adverse party has no residence in Indiana;
  - the arbitration hearing has not occurred; and
  - the parties' arbitration does not specify a county.

(Ind. Code § 34-57-2-18.)

In situations where the filing party may file in any Indiana county, counsel should consult Indiana Trial Rule 75 for the courts' venue requirements (Ind. R. Trial P. 75).

## Timing Under the IUAA

The IUAA does not impose a deadline by which a party must move to confirm an arbitration award (see *MBNA Am. Bank*, 835 N.E.2d at 221). A party may move for award confirmation at any time. However, the court may not rule on the motion to confirm until 90 days after the arbitrator or arbitral institution mails a copy of the award to the parties (Ind. Code § 34-57-2-12).

A party intending to seek confirmation of an award should consider waiting for the 90-day period to elapse before filing the confirmation motion because any adverse party's failure to seek modification or *vacatur* of the award during that 90-day period bars the adverse party from raising those challenges in response to a motion to confirm (see *State Dep't of Admin., Pers. Div. v. Sightes*, 416 N.E.2d 445, 450 (Ind. Ct. App. 1981); *Vacating Awards Under the IUAA and Modifying or Correcting Awards Under the IUAA*).

## Procedure to Confirm Awards Under the IUAA

A party seeks confirmation of an arbitration award by filing a motion, which the court hears in the same manner and on the same notice as it hears any motion (Ind. Code § 34-57-2-12). Unless the parties agree otherwise, when a party's motion to confirm is the initial application to a court involving the arbitration, the moving party must serve notice to the other party in the same manner provided by law for service of a summons in a civil action (Ind. Code § 34-57-2-16).

Although the IUAA does not identify the specific papers the movant must file, the motion to confirm an arbitration award generally should:

- Attach copies of:
  - the arbitration agreement; and
  - the award.
- Identify the parties.
- State the procedural history to date, such as:
  - the date and amount of the award;
  - the lack of satisfaction or payment;
  - any motion a party filed to vacate or modify the award; and
  - the relief the movant seeks.

Once the court issues an order that confirms, modifies, or corrects an arbitration award under the IUAA, the court must enter judgment on the order (Ind. Code § 34-57-2-12). An Indiana court may not relitigate any factual question determined in the arbitration (see *Fiducial Inv. Advisors v. Patton*, 900 N.E.2d 53, 64 (Ind. Ct. App. 2009)).

The court confirms an arbitration award by entering a judgment consistent with the award (see *Zeckel v. Paskins*, 625 N.E.2d 1284, 1286 (Ind. Ct. App. 1993)). The court clerk docket the judgment, which is as enforceable as any other judgment (Ind. Code §§ 34-57-2-12 and 34-57-2-15). Under Indiana law, it is not necessary to confirm an arbitration award for it to have preclusive effect. A final award resulting from an arbitration proceeding has the same res judicata effect as a court judgment. (See *Nat'l Wine & Spirits, Inc. v. Ernst & Young, LLP*, 976 N.E.2d 699, 704 (Ind. 2012).)

For more information on commencing an action in Indiana state courts, see State Q&A, Commencing an Action: Indiana ([W-000-1864](#)).

## VACATING, MODIFYING, OR CORRECTING AWARDS

Both the FAA and the IUAA permit a party to:

- Challenge an arbitration award.
- 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 with integrated notes and detailed drafting tips, see Standard Document, Petition to Vacate, Modify, or Correct Arbitration Award (Federal) ([W-000-5608](#)).

### VACATING AWARDS UNDER THE FAA

#### Standard for Vacating Awards Under the FAA

Under the FAA, judicial review of arbitration awards is extremely limited and the court cannot review the merits of the arbitrator's decision (see *Prate Installations, Inc. v. Chi. Reg'l Council of Carpenters*, 607 F.3d 467, 470 (7th Cir. 2010)).

The court may vacate an award under the FAA if:

- A party obtained an award by corruption, fraud, or undue means.
- An arbitrator was partial or corrupt.

- An 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
  - engaging in any other conduct that prejudiced the rights of any party.
- An arbitrator exceeded his 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 have also 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 Street Associates, L.L.C. v. Mattel, Inc.*, 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.

(*Hall St. Assocs.*, 552 U.S. at 586; see also *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 672 (2010) (whether manifest disregard survives as a ground for *vacatur* after *Hall Street* remains undecided).)

The federal courts of appeals are split on whether manifest disregard of the law remains a proper ground for *vacatur* after *Hall Street*. The Seventh Circuit has held that manifest disregard is not a ground for vacating an award unless the award either:

- Directs the parties to violate the law.
- Violates the legal rights of third parties who did not consent to arbitration.

(See *Renard v. Ameriprise Fin. Servs., Inc.*, 778 F.3d 563, 567 (7th Cir. 2015) (citing *George Watts & Son, Inc. v. Tiffany & Co.*, 248 F.3d 577, 579-81 (7th Cir.2001)); see also *Affymax, Inc. v. Ortho-McNeil-Janssen Pharm., Inc.*, 660 F.3d 281, 285 (7th Cir. 2011) (suggesting in dicta that the manifest disregard doctrine may apply where different arbitrators issue incompatible awards, one of which may require a party to do the impossible).)

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), (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 Awards 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). A party's failure to seek *vacatur* of the award within this three-month period waives any defenses to confirmation of the award (see *Int'l Union of Operating Eng'rs*, 82 F.3d at 188).

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 start an action by filing a petition, in the same manner 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. If the court finds sufficient grounds for *vacatur* and the time to issue the award, as required under the agreement, has not yet expired, the court may direct a rehearing by the same arbitrators (9 U.S.C. § 10(b)).

### VACATING AWARDS UNDER THE IUAA

#### Standard for Vacating Awards Under the IUAA

The standard for vacating an award under the IUAA is similar to the standard for *vacatur* under the FAA (see Standard for Vacating Awards Under the FAA). Indiana courts may not review the merits of arbitration awards *de novo* or relitigate the factual questions determined in the arbitration (see *Wright v. City of Gary*, 963 N.E.2d 637, 643 (Ind. Ct. App. 2012)).

Under the IUAA, the court may vacate an arbitration award if the party seeking *vacatur* shows that:

- A party obtained the award by corruption or fraud (Ind. Code § 34-57-2-13(a)(1)).
- The rights of a party were prejudiced by:
  - evident partiality by an arbitrator appointed as a neutral;
  - corruption by any of the arbitrators; or
  - arbitrator misconduct.
 (Ind. Code § 34-57-2-13(a)(2)).
- The arbitrators exceeded their powers and the court cannot correct the award without affecting the merits of the decision (Ind. Code § 34-57-2-13(a)(3)).
- The arbitrators refused to:
  - postpone the hearing despite the requesting party having shown sufficient cause for a postponement; or
  - hear evidence material to the controversy.
 (Ind. Code § 34-57-2-13(a)(4)).
- The arbitrators conducted the hearing:
  - contrary to the provisions of the IUAA; or
  - in a way that substantially prejudiced the rights of a party.
 (Ind. Code § 34-57-2-13(a)(4)).

- The party seeking *vacatur*:
  - was not a party to a valid arbitration agreement;
  - was not compelled to arbitrate by a court order; and
  - did not participate in the arbitration hearing without raising an objection.
 (Ind. Code § 34-57-2-13(a)(5)).

A court may also vacate an award due to an arbitrator's manifest disregard of the law (see *Wright*, 963 N.E.2d at 645 (citing *Sw. Parke Educ. Ass'n v. Sw. Parke Cmty. Sch. Trs. Corp., Bd. of Sch. Trs.*, 427 N.E.2d 1140, 1147 (Ind. Ct. App. 1981))). Application of the manifest disregard doctrine to vacate an arbitration award is severely limited in Indiana. It may apply when the party seeking *vacatur* shows the arbitrator understood and correctly stated the law but disregarded it. (See *Droscha v. Shepherd*, 931 N.E.2d 882, 890-91 (Ind. Ct. App. 2010)).

The fact that the award provides relief that is unavailable at law or in equity is not a ground for vacating or refusing to confirm the award (Ind. Code § 34-57-2-13).

Under Indiana law:

- Arbitrator partiality is an arbitrator's bias or interest in the outcome of the dispute that is direct and definite (see *Bopp*, 677 N.E.2d at 633; see also *Safety Nat'l Cas. Co. v. Cinergy Corp.*, 829 N.E.2d 986, 1003 (Ind. Ct. App. 2005) (a party may only challenge the partiality of an arbitration award or arbitrator after the arbitration proceedings)).
- An arbitrator does not exceed the arbitrator's authority by:
  - making a mistake of fact; or
  - erroneously interpreting the law.
- (See *Fiducial Inv. Advisors*, 900 N.E.2d at 60; *Wright*, 963 N.E.2d at 645.)
- The prejudice to a party constituting a ground for *vacatur* involves problems in the administration of the arbitration proceedings, such as the time, place, notice, and procedure of the hearings (see *Droscha*, 931 N.E.2d at 890).

A party seeking *vacatur* under the IUAA bears the burden of proving the *vacatur* grounds (see *Sch. City of E. Chi., Ind. v. E. Chi. Fed'n of Teachers, Local No. 511, A.F.T.*, 622 N.E.2d 166, 168 (Ind. 1993); *Riley v. AAA Auto., LLC*, 67 N.E.3d 1131, 1135 (Ind. Ct. App. 2017)). The court's review is limited to determining whether the requesting party establishes any of the grounds for *vacatur* (see *Madison Cty. Bd. of Comm'rs v. Am. Fed'n of State Cty. & Mun. Emps. Local 3609*, 45 N.E.3d 868, 874-75 (Ind. Ct. App. 2015)).

#### Procedure to Vacate Awards Under the IUAA

A party requests *vacatur* of an award under the IUAA the same way a party requests confirmation of an award (see Procedure to Confirm Awards Under the IUAA). The party files a motion to vacate within 90 days after the arbitrator mails the award (Ind. Code § 34-57-2-13). However, the 90-day period does not begin to run until the movant learns of the *vacatur* grounds if the motion is based on:

- Corruption.
  - Fraud.
  - Other undue means.
- (Ind. Code § 34-57-2-13(b).)

A party's application to the arbitrator for reconsideration of the award does not toll the 90-day time limit for seeking *vacatur* or correction of the award in court (see *Groves v. Groves*, 704 N.E.2d 1072 (Ind. Ct. App. 1999)). If a party dissatisfied with the award requests reconsideration by the arbitrator, the party should simultaneously move in court for *vacatur* or correction, as applicable.

If the court denies the *vacatur* motion and no party has moved to modify or correct the award, the court must confirm the award (Ind. Code § 34-57-2-13(d); see *Modifying or Correcting Awards Under the FAA*). Unless the court vacates the award on the ground that there is no arbitration agreement, the court may order a rehearing before either:

- The same arbitrator if the court vacates on grounds that the arbitrators:
  - exceeded their authority; or
  - refused to postpone the hearing or hear material evidence.
- A new arbitrator, if the court vacates the award on any other ground.

(Ind. Code § 34-57-2-13(c).)

## MODIFYING OR CORRECTING AWARDS UNDER THE FAA

### Standard for Modifying or Correcting Awards Under the FAA

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

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 Awards 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 arbitrator's 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 Awards Under the FAA*).

## MODIFYING OR CORRECTING AWARDS UNDER THE IUAA

The IUAA permits a party to ask the court to modify or correct an arbitration award.

### Standard for Modifying or Correcting Awards Under the IUAA

The standard for modifying or correcting awards under the IUAA is similar to the standard under the FAA (see *Standard for Modifying or Correcting Awards Under the FAA*). Under the IUAA, the court may modify or correct an award if it finds either:

- There was an evident miscalculation in figures or an evident mistake in the description of any:
  - person;
  - thing; or
  - property.
- The arbitrator issued an award on a matter that the parties did not submit to arbitration if the court can correct the award without affecting the merits of the decision.
- The award is imperfect in a matter of form not affecting the controversy's merits.

(Ind. Code § 34-57-2-14(a).)

The court may deny a motion to modify an award due to evident miscalculation if either:

- There is no record of the arbitration proceeding.
- The party seeking modification fails to submit the arbitration record to the court.

(See *Hooker Builders, Inc. v. Smalley*, 691 N.E.2d 1256, 1257–58 (Ind. Ct. App. 1998); *Angell Enters., Inc. v. Abram & Hawkins Excavating Co., Inc.*, 643 N.E.2d 362, 365–66 (Ind. Ct. App. 1994) (the court must presume an award is justified by the evidence when the party seeking modification fails to provide a record of the arbitration proceedings).)

### Procedure for Modifying or Correcting Awards Under the IUAA

A party asks a court to modify or correct an award under the IUAA in the same way a party moves to confirm an award (see *Procedure to Confirm Awards Under the IUAA*). The party files a motion within 90 days after the arbitrator mails the award (Ind. Code § 34-57-2-14(a)). The moving party may join an application to modify or correct with an application in the alternative to vacate (Ind. Code § 34-57-2-14(c)).

If the moving party establishes any of the statutory grounds for correction or modification, the court must:

- Modify or correct the award as necessary to give effect to the award's intent.
- Confirm the award as modified or corrected.

(Ind. Code § 34-57-2-14(b).)

If the moving party does not establish any of the statutory grounds for correction or modification, the court must confirm the original award (Ind. Code § 34-57-2-14(b)).



### Modification and Correction of Awards by the Arbitrators

The IUAA permits simultaneous requests to modify and correct an arbitration award before both the court and the arbitral tribunal. The arbitrators may modify or correct their award:

- On application by the party seeking modification or correction in court, if:
  - the party's motion for modification or correction is pending in the court; and
  - the moving party submits the request to the arbitrators within 20 days of delivery of the award to the movant.
- At the request of the court.

(Ind. Code § 34-57-2-10.)

The 20-day time limit for a party to seek modification or correction from the arbitrators has strategic implications for the aggrieved party because a party may not seek *vacatur* of a defective arbitration award if the party fails to seek modification or correction of the award from the arbitrators. Where an award requires clarification, for example because the award fails to adequately show what questions the arbitrators decided, the correct procedure is for the aggrieved party to move the arbitrators for modification or correction of the award within 20 days of delivery of the award before seeking judicial assistance. (See *Angell Enters.*, 643 N.E.2d at 366.)

In exceptional circumstances, the court may also remand an award to the arbitrators for further clarification or analysis of an award that is:

- Ambiguous.
- Imprecise.
- Unclear.
- Otherwise unenforceable.

(See *Gibbs v. Douglas M. Grimes, P.C.*, 491 N.E.2d 1004 (Ind. Ct. App. 1986).)

### AWARDS AND ORDERS SUBJECT TO APPEAL

Both the FAA and the IUAA permit a party to appeal certain arbitration orders, including:

- An order:
  - confirming an award or denying a summary action to confirm an award;
  - modifying or correcting an award; or
  - vacating an award without directing a rehearing.
- Any final judgment or decree entered under the FAA or the IUAA, as applicable, including a court's entry of judgment on an award.

(9 U.S.C. § 16; Ind. Code § 34-57-2-19.)

An appeal of an order confirming, modifying, correcting, or vacating an arbitration award is the same as an appeal from other orders or judgments in a civil action (Ind. Code § 34-57-2-19(b)). For information on civil appeals in Indiana, see State Q&A, Initial Civil Appeals: Indiana ([W-000-1903](#)).

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