

Enforcing Arbitration Awards in California

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This Note summarizes the basic steps for converting arbitral awards into court judgments in California.

Like the US federal government, California has well-established policies favoring arbitration as an efficient alternative to litigation. Standing alone, however, contractual arbitral awards (as distinguished from arbitral awards resulting from court-ordered "judicial arbitration") have only the force and effect of a contract between the parties to the arbitration, until they are judicially confirmed (that is, "enforced"). This Note describes the process for enforcing contractual arbitral awards in California.

STATUTORY FRAMEWORK

In California, contractual arbitral awards can be enforced under the California Arbitration Act (CAA) (*Cal. Civ. Proc. Code* §§ 1280-1294.2) or the Federal Arbitration Act (FAA) (9 U.S.C. §§ 1-16, 201-208, 301-307).

THE CALIFORNIA ARBITRATION ACT

The CAA governs the enforcement of arbitral awards rendered in or outside of California (*Cal. Civ. Proc. Code* § 1286). The CAA generally applies to the enforcement of awards that do not involve interstate commerce or that otherwise fall outside the scope of federal statutes. Parties can also agree to apply the CAA's enforcement procedures in their arbitration agreements (see *Cronus Invs., Inc. v. Concierge Servs.*, 107 P.3d 217, 224 (Cal. 2005)).

California outlines procedures for international commercial arbitrations that take place in California in the 1996 California International Arbitration and Conciliation Act (CIACA) (*Cal. Civ. Proc. Code* §§ 1297.11-1297.432; see also *Practice Note, Choosing an Arbitral Seat in the US: California* (<http://us.practicallaw.com/1-501-0913>)). The CIACA does not outline procedures for judicial confirmation of arbitral awards. Therefore, awards rendered pursuant to the CIACA must be enforced under a separate state or federal statute.

The California Judicial Arbitration Law and the California Rules of Court require judicial arbitration of certain civil disputes (*Cal. Civ. Proc. Code* §§ 1141.10-1141.32; *Cal. R. Ct.* 3.811). Enforcement of awards rendered through judicial arbitration differs from enforcement of awards rendered through contractual arbitration and is not addressed in this Note.

THE FEDERAL ARBITRATION ACT

Chapter 1 of the FAA broadly governs the enforcement of arbitral awards rendered pursuant to a written contract that evidences a transaction involving interstate or foreign commerce or maritime transactions (9 U.S.C. §§ 1, 2; see also *Practice Note, Understanding the Federal Arbitration Act* (<http://us.practicallaw.com/0-500-9284>)). For the FAA to apply to enforcement of an arbitral award, the parties to the arbitration agreement need not have intended interstate activity when they entered the contract, nor must the dispute arise from the part of the transaction that involved interstate commerce (see *Shepard v. Edward Mackay Enters., Inc.*, 56 Cal. Rptr. 3d 326, 332 (Ct. App. 2007)). Some courts, including courts in California, interpret section 9 of the FAA as requiring that the parties consent to judicial confirmation in their arbitration agreement (see 9 U.S.C. § 9; *Commonwealth Enterprises v. Liberty Mut. Ins. Co.*, 958 F.2d 376, *2 (9th Cir. 1992) (unpublished); *Swissmex-Rapid S.A. de C.V. v. SP Sys., LLC*, 151 Cal. Rptr. 3d 229, 235 (Ct. App. 2012), as modified (Jan. 4, 2013) (noting that "[u]nlike the CAA [. . .] the FAA provides for judicial confirmation of arbitral awards only upon consent of the parties (9 U.S.C. § 9)"). However, several courts have held that specific consent language is unnecessary because parties to an arbitration implicitly consent to judicial confirmation (see *Booth v. Hume Pub., Inc.*, 902 F.2d 925 (11th Cir. 1990) (holding provision in agreement that arbitrator's determination would be final and binding, along with both parties' participation in the arbitration process was sufficient under FAA to confer authority on district court to confirm award, even in absence of explicit agreement for judicial enforcement of award)).

Chapter 2 of the FAA governs the enforcement of arbitral awards rendered pursuant to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) (9 U.S.C. §§ 201-208). To enforce an arbitral award under the



New York Convention, the award must arise out of "commercial" relationships, whether contractual or not, and one of the following components must be satisfied:

- At least one party is not a United States citizen (9 U.S.C. § 202).
- All parties are US citizens but the matter "involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states" (9 U.S.C. § 202).

The New York Convention generally adopts the provisions of the FAA. To the extent there is a conflict between the New York Convention and the FAA, the New York Convention applies (9 U.S.C. § 208).

Chapter 3 of the FAA governs the enforcement of arbitral awards rendered pursuant to the Inter-American Convention on International Commercial Arbitration (Panama Convention) (9 U.S.C. §§ 301–307). To enforce an arbitral award under the Panama Convention, the award must be rendered in a dispute between citizens of two or more of the 19 signatory South, Central and North American States (9 U.S.C. § 304). The Panama Convention generally adopts the provisions of the FAA. If there is a conflict between the Panama Convention and the FAA, the Panama Convention applies (9 U.S.C. § 307).

Where both the New York Convention and Panama Convention could apply to the enforcement of an arbitral award, the New York Convention controls unless the parties indicate the Panama Convention should apply or "a majority of the parties to the arbitration agreement are citizens of a State or States that have ratified or acceded to the Inter-American Convention and are member States of the Organization of the American States" (9 U.S.C. § 305). The Panama Convention incorporates many of the enforcement procedures outlined in the New York Convention (see 9 U.S.C. § 302).

INTERPLAY BETWEEN THE CAA AND THE FAA

If both the FAA and the CAA could apply to the enforcement of an arbitral award, the substantive provisions of the FAA preempt conflicting provisions in the CAA (*Swissmex-Rapid*, 151 Cal. Rptr. 3d at 233). Where there is federal subject matter jurisdiction, parties may enforce arbitral awards in either a California state court or a California federal court. In such a situation, the substantive provisions of the FAA will apply regardless of whether enforcement is sought in state or federal court. But, consistent with traditional choice of law principles, the procedural provisions of the FAA do not preempt California procedures in California state court. It is therefore important to carefully consider the differences between state and federal procedure before seeking judicial confirmation.

The following provisions, which California courts have deemed to be procedural, vary between state and federal statutes and may affect whether a party chooses to initiate the enforcement process in state or federal court:

Issue	California Procedure	Federal Procedure
Consent to Confirmation	Under the CAA, consent of the parties is not required to seek confirmation (<i>Swissmex-Rapid</i> , 151 Cal. Rptr. 3d at 235).	This point does not have a uniform answer under federal procedure. For example, some courts interpret section 9 of Chapter 1 of the FAA as permitting judicial confirmation of arbitral awards only where there is explicit party consent (see <i>Commw. Enter.</i> , 958 F.2d at *2; but see <i>Phoenix Aktiengesellschaft v. Escoplas, Inc.</i> , 391 F.3d 433, 436 (2d Cir. 2004)(consent to confirmation is not required under the New York Convention)). A more detailed discussion of this point is found under <i>Statutory Framework</i> .
Statute of Limitations	A petition for judicial confirmation must be filed no earlier than ten days after, but not later than four years from, the date of service of a signed copy of the award on the petitioner (<i>Cal. Civ. Proc. Code</i> §§ 1288, 1288.4).	Under Chapter 1 of the FAA, a petition for judicial confirmation must be filed within one year of the date the arbitral award is made (9 U.S.C. § 9). Under the New York and Panama Conventions, Chapters 2 and 3 of the FAA, a petition for judicial confirmation of a foreign award must occur within three years of the award (9 U.S.C. §§ 207, 302).

CHOICE OF LAW

Parties to an arbitration agreement that would otherwise be governed by a federal statute generally may choose to have their award enforced under state arbitration law (see *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989)). Federal and state courts are, however, split on the effect of broadly worded choice-of-law provisions. Federal courts have held that parties wanting to opt out of the FAA must specify the controlling state arbitration law in their arbitration clause, not through a generic choice-of-law provision (see *Wolsey, Ltd. v. Foodmaker, Inc.*, 144 F.3d 1205, 1209–13 (9th Cir. 1998)). Some California state courts have given

effect to broadly worded choice-of-law provisions, holding that those provisions incorporate California's arbitration rules into the contract (*Cronus Invs., Inc.*, 107 P.3d at 224). For more information, see *Practice Note, Drafting Arbitration Agreements Calling for Arbitration in the US: Choice of Law* (<http://us.practicallaw.com/2-500-4624>).

PRELIMINARY CONSIDERATIONS

Under both the CAA and the FAA, enforcement of an arbitral award is accomplished by filing a petition to confirm the arbitral award. In addition to determining the state or federal statute governing judicial enforcement of an arbitral award, the petitioner should consider, among other things:

- The appropriate forum and venue (see *Forum and Venue*)
- The finality of the award (see *Awards and Orders Subject to Review*).
- The applicable time limits (see *Time Limits*).

FORUM

In deciding whether a petition for confirmation of an arbitral award should be filed in California state or federal court, the petitioner should determine which court has both personal and subject matter jurisdiction.

Personal Jurisdiction

Parties that make an arbitration agreement in California that provides for arbitration within the state consent to the jurisdiction of California courts to enforce the resulting arbitral award (*Cal. Civ. Proc. Code* § 1293). Similarly, under the FAA, once notice of a petition for confirmation has been served on the parties, the court in the district where the award was made, or specified in the arbitration agreement as the forum for enforcement, "shall have [personal] jurisdiction [over the parties] as though [the parties] had appeared generally in the proceeding" (9 U.S.C. § 9).

When attempting to enforce a foreign arbitral award in California, the petitioner may invoke whatever statutory bases of jurisdiction the selected forum allows (personal jurisdiction, in rem or quasi-in-rem) if the exercise of jurisdiction comports with due process. If the petitioning parties can identify property owned by the respondent in California, the petitioner can typically seek enforcement of the award based on quasi-in-rem jurisdiction (see *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1127 (9th Cir. 2002)).

Subject Matter Jurisdiction

California state courts are courts of general subject matter jurisdiction. Therefore, a petition need only establish personal jurisdiction over the parties bound by the arbitral award in order to enforce that award (see *Cal. Civ. Proc. Code* § 1286).

In contrast, in federal court, the petitioner must establish both subject matter jurisdiction and personal jurisdiction in order to initiate judicial enforcement of an arbitral award. Federal courts have original jurisdiction over arbitral awards governed by the New York and Panama Conventions (9 U.S.C. §§ 203, 302). Indeed, if an action to enforce an award governed by either the New York or Panama Convention is filed in state court, the respondent may remove the proceeding to federal court (9 U.S.C. §§ 205, 302). Chapter 1 of the

FAA does not, however, create an independent basis for federal subject matter jurisdiction (see *Southland Corp. v. Keating*, 465 U.S. 1, 15 n.9 (1984)). Before a federal court may enforce awards governed by Chapter 1 of the FAA, the petitioner must establish either diversity jurisdiction or that the arbitration "arises under" or involved an interpretation of federal law (*Vaden v. Discover Bank*, 556 U.S. 49, 54 n.1, 67 (2009)).

Forum Selection Clauses

Arbitration agreements may contain a forum selection clause that specifies the forum for enforcement of an arbitral award. The FAA, the New York Convention and the Panama Convention give effect to the forum the parties selected and specified (9 U.S.C. §§ 9, 204, 302). A forum selection clause does not divest a California state court of subject matter jurisdiction. California state courts retain discretion to enforce forum selection clauses absent a showing that enforcing the clause would be unreasonable or contrary to public policy (see *Miller-Leigh LLC v. Henson*, 62 Cal. Rptr. 3d 83, 87 (Ct. App. 2007)).

VENUE

Under the CAA, a petition for judicial confirmation should be filed "in a court having jurisdiction in the county where the arbitration ... has been held" (*Cal. Civ. Proc. Code* § 1292.2). If the arbitration was not held in one county or if the arbitration was held outside of California, the petition can be filed in the county where the arbitration agreement was made or was to be performed (*Cal. Civ. Proc. Code* §§ 1292.2, 1292(a)). If the agreement was not made in California and does not specify a county for performance, the petition can be filed in any county where any party to the court proceeding resides or has a place of business (*Cal. Civ. Proc. Code* § 1292(b)). If there is not a county that meets any of these criteria, the petitioner may file in any county in California where personal jurisdiction can be established (*Cal. Civ. Proc. Code* § 1292(c)).

Under the FAA, if the arbitral agreement provides that judgment shall be entered by a particular court, a petition for judicial confirmation may be filed in that court (9 U.S.C. § 9). If no court is named in the arbitration agreement, the petition for confirmation may be filed in a court in the district where the arbitral award was made (9 U.S.C. § 9).

Under the New York and Panama Conventions, a petition for judicial confirmation may be filed in any court in which the underlying dispute could have been initiated absent the agreement to arbitrate or in the location designated for arbitration in the arbitration agreement if that location is within the US (9 U.S.C. §§ 204, 302).

AWARDS AND ORDERS SUBJECT TO REVIEW

Under the CAA, only final arbitral awards can be enforced. The "award" must be "in writing and signed by the arbitrators" and must "include a determination of all the questions submitted to the arbitrators the decision of which is necessary in order to determine the controversy" (*Cal. Civ. Proc. Code* § 1283.4).

Notwithstanding these requirements, interim or "partial final award[s]" can be subject to immediate review under California law when necessary to provide an effective remedy that is consistent with the parties' agreement and any agreed-upon rules governing the arbitration (*Hightower v. Superior Court (O'Dowd)*, 104 Cal. Rptr. 2d

209, 224-225, 221 n.29 (Ct. App. 2001) (recognizing, however, that an arbitrator cannot use partial or interim awards to correct or modify prior awards)).

Under the FAA, interim and partial awards can also be subject to enforcement pursuant to the parties' agreement or the applicable rules governing the arbitration (see *Lagstein v. Certain Underwriters at Lloyd's, London*, 607 F.3d 634, 643-44 (9th Cir. 2010)). In addition, partial or interim awards that finally and completely dispose of separate and independent claims can be enforced under federal law even if separate issues in the arbitration are pending (see *Bosack v. Soward*, 586 F.3d 1096, 1103-04 (9th Cir. 2009)).

TIME LIMITS

To enforce an arbitral award under the CAA, a petition to confirm must be filed no earlier than ten days after, but not later than four years from, the date of service of a signed copy of the award on the petitioner (*Cal. Civ. Proc. Code* §§ 1288, 1288.4).

To enforce an award under Chapter 1 of the FAA, a petition to confirm may be filed "at any time within one year after the award is made" (9 U.S.C. § 9). Federal appellate courts are, however, split on how strictly this provision is enforced. Some federal appellate courts strictly adhere to a one-year statute of limitations for enforcing awards under Chapter 1 of the FAA (see *Photopaint Techs., LLC v. Smartlens Corp.*, 335 F.3d 152, 160-61 (2d Cir. 2003)), while others have adopted a more permissive stance (see *Sverdrup Corp. v. WHC Constructors, Inc.*, 989 F.2d 148, 156 (4th Cir. 1993)).

To enforce an arbitral award under the New York or Panama Conventions (Chapters 2 and 3 of the FAA), a petition to confirm must be filed within three years from the date the award was made (9 U.S.C. §§ 207, 302).

CONFIRMATION PROCEDURE

Under both the CAA and the FAA, the procedure to confirm an arbitral award is intended to be expedited, and usually proceeds faster than a regular lawsuit. The procedures outlined below do not account for any local court or judge-specific rules, both of which counsel should review carefully before initiating any effort to confirm an arbitral award.

CONFIRMING AWARDS UNDER THE CAA

The Petition

Requests for confirmation of an arbitral award must be submitted in petition form. The California Courts website offers a form by which a party may petition to confirm a contractual arbitral award (*Jud. Council of Cal. Form ADR-106*). The petition to confirm must include the following:

- The names of all parties to the arbitration (*Cal. Civ. Proc. Code* § 1285).
- The substance of, or an attached copy of, the agreement to arbitrate (*Cal. Civ. Proc. Code* § 1285.4).
- The names of the arbitrators (*Cal. Civ. Proc. Code* § 1285.4).
- The award and the written opinion of the arbitrators, if any (*Cal. Civ. Proc. Code* § 1285.4).

While a petitioning party should try to comply with these requirements, courts have held—due to the strong policy favoring voluntary arbitration—that "substantial compliance with the applicable statute" can be sufficient to enforce an arbitral award (*Canadian Indem. Co. v. Ohm*, 76 Cal. Rptr. 902, 904 (Cal. Ct. App. 1969)).

Service of the Petition

Petitions to enforce an arbitral award should be served according to the procedures outlined in the arbitration agreement. If the arbitration agreement does not specify any procedures for service, counsel should refer to California Civil Procedure Code Section 1290.4. No less than ten days' notice must be provided to the responding party before any hearing on the confirmation petition (*Cal. Civ. Proc. Code* § 1290.2).

Judicial Review of the Award

Pursuant to California law, "[i]f a petition or response under this chapter is duly served and filed, the court shall confirm the award as made, whether rendered in this state or another state, unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding" (*Cal. Civ. Proc. Code* § 1286; see also *Brinker v. Super. Ct.*, 1 Cal. Rptr. 2d 358, 360 (Cal. Ct. App. 1991) ("[U]nder California law, the judgment of a sister state must be given full faith and credit if that sister state had jurisdiction over the parties and the subject matter, and all interested parties were given reasonable notice and opportunity to be heard"). A court should draw all reasonable inferences to support the award and display substantial deference towards the panel's determination of its contractual authority (see *Evans v. CenterStone Dev. Co.*, 35 Cal. Rptr. 3d 745, 749 (Cal. Ct. App. 2005)).

The California Supreme Court has held that, by agreement, the parties may expand the scope of judicial review of arbitral awards where enforcement would be governed by state law (*Cable Connection, Inc., v. Directv, Inc.*, 190 P.3d 586, 589 (Cal. 2008) ("We adhere to our holding in *Moncharsh*, recognizing that contractual limitations may alter the usual scope of [judicial] review"). Therefore, where enforcement of an arbitral award would likely be in California state court under state law, parties may expressly provide in their arbitration agreement for the grounds on which an award may be reviewed.

Under the CAA, a petition to vacate or to correct an arbitral award must be served and filed no later than 100 days after the date of the service of a signed copy of the award on the petitioner (*Cal. Civ. Proc. Code* § 1288). However, the petition may not be filed any earlier than ten days after service of the signed copy of the award (*Cal. Civ. Proc. Code* § 1288.4).

A petition to correct or vacate an award must set out the grounds on which the request for relief is based (*Cal. Civ. Proc. Code* § 1285.8). Under California Civil Procedure Code Section 1286.2, an arbitral award under the CAA may be vacated if:

- The award was procured by corruption, fraud or other undue means.
- There was corruption in any of the arbitrators.
- The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.

- The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision on the controversy submitted.
- The rights of the party were substantially prejudiced by the arbitrators':
 - refusal to postpone the hearing on sufficient cause being shown for a postponement;
 - refusal to hear material evidence; or
 - other conduct that is contrary to California arbitration law.
- An arbitrator making the award either failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware or was subject to disqualification under California law but failed to disqualify himself as required.

(*Cal. Civ. Proc. Code § 1286.2*.)

An award may be corrected if there is either:

- Evident miscalculation or mistake.
- Issuance in excess of the arbitrator's powers.
- Imperfection in the form of the award.

(*Cal. Civ. Proc. Code § 1286.6*; see also *Richey v. AutoNation, Inc.*, No. S207536, 2015 WL 363177, at *4, 7 (*Cal. Jan. 29, 2015*) (analyzing a California court's ability to vacate or correct an award and recognizing that "arbitrators may exceed their powers by issuing an award that violates a party's unwaivable statutory rights or that contravenes an explicit legislative expression of public policy" but upholding the award because the arbitrator had not committed a prejudicial legal error)).

If the court determines any respondent is not bound by the arbitration award or was not a party to the arbitration, the court "shall" dismiss the proceeding as to that respondent (*Cal. Civ. Proc. Code § 1287.2*). The court may also ultimately remand an award to the arbitrator (*Mossman v. Oakdale*, 87 *Cal. Rptr. 3d* 764, 771-72 (*Cal. Ct. App.* 2009).).

Post-Confirmation

"If an award is confirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action of the same jurisdictional classification; and it may be enforced like any other judgment of the court in which it is entered, in an action of the same jurisdictional classification." (*Cal. Civ. Proc. Code § 1287.4*.) Under California law, most enforceable judgments are subject to the state's Enforcement of Judgments Law (see *Cal. Civ. Proc. Code §§ 680.010-724.260*). The California Courts website offers Form EJ-130 for the writ of execution. A court may reconsider an order that confirms an arbitral award (*Cal. Civ. Proc. Code § 1008*).

CONFIRMING AWARDS UNDER CHAPTER 1 OF THE FAA

The Petition

Requests for confirmation of an arbitral award must be submitted by motion or petition (9 *U.S.C. § 13*). Together with the petition or motion, a party seeking confirmation under Chapter 1 of the FAA must file:

- The arbitration agreement.
- The selection or appointment of the arbitrator or umpire.
- If there is a written extension for the time within which the award must be made, any such extension.
- The arbitral award.
- Any notices, affidavits or other papers "used upon an application to confirm, modify, or correct the award," together with each court order on the application.

(9 *U.S.C. § 13*.)

Service of the Petition

If the respondent is a resident of the district in which the arbitral award was made, service of the petition to confirm the award "shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court" (9 *U.S.C. § 9*). For nonresident respondents, service of the petition to confirm shall be made "by the marshal of any district within which the adverse party may be found in like manner as other process of the court" (9 *U.S.C. § 9*).

Judicial Review of the Award

Upon review of an arbitral award, a court may confirm, vacate, modify or correct the award (9 *U.S.C. §§ 9, 10, 11*). The court may also remand the award to the arbitrator (*Sunshine Mining Co. v. United Steelworkers of Am.*, 823 *F.2d* 1289, 1295 (9th *Cir.* 1987), as amended Aug. 10, 1987).

Under Chapter 1 of the FAA, a court may, on the application of a party to an arbitration, vacate the award on one of the following grounds:

- The award was obtained by corruption, fraud or undue means.
- Any of the arbitrators were partial or corrupt.
- The arbitrators were guilty of misconduct in:
 - refusing to postpone the hearing on sufficient cause shown;
 - refusing to hear evidence pertinent and material to the controversy; or
 - any other behavior by which the rights of any party have been prejudiced.
- The arbitrators exceeded their powers or so imperfectly executed them that they did not make a mutual, final and definite award on the subject matter submitted.

(9 *U.S.C. § 10*.)

Notice of a motion to vacate, modify or correct an award must be served on the adverse party or its attorney within three months of filing or delivery of the award (9 *U.S.C. 12*).

For an overview of confirming and vacating arbitral awards in the federal courts, see *Practice Note, Enforcing Arbitration Awards in the US* (<http://us.practicalaw.com/9-500-4550>).

Post-Confirmation

If an arbitral award is confirmed, a judgment is docketed that "shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered" (9 *U.S.C. § 13*). Unless a specific federal statute

applies, California's enforcement laws govern the enforcement of money judgments issued by a federal court in California (*Fed. R. Civ. P. 69(a)*); see generally *Hilao v. Estate of Marcos*, 95 F.3d 848 (9th Cir. 1996)).

CONFIRMING AWARDS UNDER CHAPTERS 2 AND 3 OF THE FAA

The Petition

Applications for confirmation of an arbitral award must be submitted by motion or petition. Together with the petition or motion, a party seeking confirmation under Chapters 2 or 3 of the FAA must file:

- The arbitration agreement
- The selection or appointment of the arbitrator or umpire.
- The arbitral award.
- If there is a written extension for the time within which the award must be made, any such extension.
- Any notices, affidavits or other papers "used upon an application to confirm, modify, or correct the award," together with each court order on the application.

(9 U.S.C. §§ 13, 208, 307.)

Applications for confirmation under the New York Convention must also include:

- The duly authenticated original award or a duly certified copy of it.
- The original arbitration agreement or a duly certified copy of it.

(Art. IV, *New York Convention*.)

"If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent." (Art. IV, *New York Convention*.)

Service of the Petition

If the respondent is a resident of the district where the arbitral award was made, service of the petition to confirm the award "shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court" (9 U.S.C. §§ 9, 208, 307). For nonresidents, service of the petition to confirm shall be made "by the marshal of any district within which the adverse party may be found in like manner as other process of the court" (9 U.S.C. §§ 9, 208, 307).

Judicial Review of the Award

The FAA dictates that "[t]he court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention" (9 U.S.C. §§ 207, 302). The New York and Panama Convention's enumerated defenses or exceptions to the mandatory recognition or enforcement of a foreign arbitral award are incorporated by reference in 9 U.S.C. §§ 207, 302, respectively (see *China Nat'l Metal Prod. Imp./Exp. Co. v. Apex Digital, Inc.*, 379 F.3d 796, 799 (9th Cir. 2004)).

Both the New York and Panama Conventions have seven defenses to enforcement enumerated under Article V to each Convention:

- The parties were incapacitated or the agreement invalid under applicable law.
- The party against whom the arbitration was awarded did not have notice of the arbitrator or arbitration, or was denied the opportunity to present a case.
- The award went beyond the matters submitted to the arbitrator or the scope of the arbitration.
- The composition of the arbitral authority or arbitral procedures were not in accordance with the arbitral agreement.
- The award is not yet binding, or has been set aside or suspended by a competent authority.
- The subject matter is not capable of settlement by arbitration under the applicable law.
- Recognition or enforcement of the award would be contrary to public policy.

(Art. V, *New York Convention*; Art. V, *Panama Convention*.)

The party opposing enforcement bears the burden of proof (see *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 665 F.3d 1091, 1096 (9th Cir. 2011)). In addition, the FAA applies to all proceedings under the New York and Panama Conventions to the extent that the FAA's provisions are not in conflict with the provisions of the respective Convention (9 U.S.C. § 208). Some courts have, however, declined to apply the FAA's implied defenses to confirmation to a proceeding under the New York Convention (for example, *Yusuf Ahmed Alghanim & Sons, W.L.L. v. Toys "R" Us, Inc.*, 126 F.3d 15, 20 (2d Cir. 1997), cert. denied, 522 U.S. 1111 (1998) with *Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH*, 141 F.3d 1434, 1446 (11th Cir. 1998), cert. denied, 525 U.S. 1068 (1999)).

Post-Confirmation

If an arbitral award is confirmed, a judgment is docketed and "shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered" (9 U.S.C. §§ 13, 208, 307).

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