

Enforcing Arbitration Awards in Michigan

DANIEL D. QUICK AND EDWARD H. PAPPAS, DICKINSON WRIGHT PLLC,
WITH PRACTICAL LAW ARBITRATION

Search the [Resource ID numbers in blue](#) on Practical Law for more.

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

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 voluntarily comply. 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 an arbitration award in Michigan state or federal court. It describes the relevant state and federal statutes including the Michigan Uniform Arbitration Act (MUAA), 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, or correcting an arbitration award in Michigan 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](#)).

STATUTORY FRAMEWORK

To enforce an arbitration award in Michigan, a party first must determine whether state or federal law governs the enforcement procedure. In Michigan, a party may enforce an arbitration award under:

- The Federal Arbitration Act (FAA) (see Federal Arbitration Act).
- Michigan arbitration law (see Michigan Arbitration Law), including:
 - the Michigan Uniform Arbitration Act (MUAA) (see Michigan Uniform Arbitration Act);
 - the now-repealed Michigan Arbitration Act (see Michigan Arbitration Act); and
 - Michigan common law (see Michigan Common Law Arbitration).

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. §§ 1-16) (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. §§ 201-208) (Chapter 2).
- Implements the Inter-American Convention on International Commercial Arbitration (Panama Convention) (9 U.S.C. §§ 301-307) (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 Michigan 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 FAA Chapter 1

Chapter 1 of the FAA applies to:

- Domestic US arbitrations and awards.
- Maritime arbitrations and award.
- 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. § 201-208). 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 described in Chapter 1 of the FAA (9 U.S.C. § 2). The New York Convention applies to international disputes even if the arbitration is held in the US (see *Bergesen v. Joseph Muller Corp.*, 710 F.2d 928, 932 (2d Cir. 1983); *Championsworld, LLC v. United States Soccer Fedn., Inc.*, 890 F. Supp. 2d 912, 926-27 (N.D. Ill. 2012)).

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](#)).

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. §§ 301-307). 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.

MICHIGAN ARBITRATION LAW

Michigan has three sources of arbitration law:

- The Michigan Uniform Arbitration Act for proceedings that begin on or after July 1, 2013.
- The Michigan Arbitration Act, repealed on July 1, 2013 but still applicable to proceedings that began before July 1, 2013.
- Michigan arbitration common law.

Michigan Uniform Arbitration Act

The MUAA repealed the former Michigan Arbitration Act (MAA) (see Michigan Arbitration Act). It is applicable to all arbitration agreements made on or after its effective date of July 1, 2013. (MCL §§ 691.1683(1) and 691.1711.) Except for specific MUAA provisions on vacating awards (see *Vacating an Award Under the MUAA*), the MUAA does not apply to arbitrations between members of a voluntary organization, such as a labor union, if the organization both:

- Requires arbitration of member disputes.
- Administers the arbitration. (MCL § 691.1683(2).)

The MUAA, based on the Revised Uniform Arbitration Act, provides:

- For the enforcement of arbitration agreements and awards.
- Procedures for the arbitration of disputes. (MCL § 691.)

Michigan Arbitration Act

The MUAA repealed the MAA, but the MAA continues to govern arbitral proceedings that began before July 1, 2013 (see *Fette v. Peters Const. Co.*, 871 N.W.2d 877, 882 (Mich. App. 2015)).

When applicable, the MAA governs all contractual arbitration agreements except collectively bargained employment agreements

(MCL § 600.5001(3)). The MAA requires parties to put their arbitration agreement in writing and expressly state that the circuit court may enter judgment on any resulting award (MCL § 600.5001). Without this language, Michigan common law governs an arbitration agreement made before July 1, 2013. (See *Wold Architects & Engr's v. Strat*, 713 N.W.2d 750, 755 (Mich. 2006); *Evanston Ins. Co. v. Cogswell Props., LLC*, 683 F.3d 684, 694 (6th Cir. 2012).)

Michigan Common Law Arbitration

Michigan common law arbitration:

- Applies when parties agree to arbitration but fail to provide in writing that the circuit court may enter judgment on the resulting award.
- Allows the parties to revoke their arbitration agreement unilaterally at any time before the arbitrator issues the award.

(*Wold*, 713 N.W.2d at 755-56; *Evanston*, 683 F.3d at 694.)

Michigan statutory arbitration does not preempt Michigan common law arbitration (see *Wold*, 713 N.W.2d at 755). However, it is unclear if the FAA unilaterally preempts Michigan common law arbitration (see *Hetrick v. Friedman*, 602 N.W.2d 603, 606-07 (Mich. App. 1999)).

Michigan courts have not yet decided whether common law arbitration survived the state's enactment of the MUAA.

INTERPLAY BETWEEN FEDERAL AND MICHIGAN 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)). The FAA applies to arbitrations even if the contract containing the arbitration agreement has a choice of law provision specifying that Michigan law governs the contract. 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)).

Michigan 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); *Madison Dist. Pub. Sch. v. Myers*, 637 N.W.2d 526, 530 (Mich. App. 2001); *Arrow Overall Supply Co. v. Peloquin Enters.*, 323 N.W.2d 1 (Mich. 1982); and see *Allied-Bruce Terminix*, 513 U.S. at 281 (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)).

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

CONFIRMATION PROCEDURE

To confirm an arbitration award under either the FAA or the MUAA, a party must move for confirmation in a court of competent jurisdiction (9 U.S.C. § 9; MCL § 691.1702). Because it is intended to be a

summary, expedited proceeding, a confirmation proceeding usually is faster than a regular lawsuit on the merits, especially if no party challenges the award.

CONFIRMING AWARDS UNDER THE FAA 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. §§ 10, 11; 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 Cty. 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 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)); *Green v. Ameritech Corp.*, 200 F.3d 967, 973 (6th Cir. 2000)). 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 v. Discover Bank*, 556 U.S. 49 (2009).)

However, 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, 302).

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.

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, a federal court has personal jurisdiction over those parties in either the district:

- Where the arbitrator made the award.
- The parties specified in the award as the forum for enforcement. (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.)

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

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. Appx. 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.
- Specify the court.

If the parties’ agreement satisfies both requirements, 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 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 about 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; *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 files a motion to confirm the award in the same case.

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

- The arbitration agreement, including the parties’ agreement, if any, on:
 - selecting an arbitrator; and
 - an 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 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 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, the moving party may serve notice:
 - by the marshal of any district in which the adverse party is located; and
 - 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. The court may hear argument, but does not hold a hearing. 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 an Award 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)*.

CONFIRMING AWARDS IN MICHIGAN STATE COURT

The MUAA sets out the procedure to confirm awards governed by the MUAA (see Michigan Uniform Arbitration Act). The procedure for confirming non-MUAA awards is codified in Rule 3.602 of the Michigan Court Rules. (MCR 3.602(A).)

Standard for Confirmation

Whether an award is a MUAA award or a non-MUAA award, such as an MAA award, a Michigan trial court (circuit court) must confirm an arbitrator's award when a party moves for confirmation unless the court finds grounds to vacate, modify, or correct the award (MCL §§ 691.1700, 691.1703, and 691.1704; MCR 3.602(l)). On a motion to confirm an arbitration award, the court may not review the merits of the arbitration award or the factual findings of the arbitrator and must grant the motion unless the court vacates, modifies, or corrects the award (*Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509 (2001); *Sheriff of Lenawee Cty. v. Police Officers Labor Council*, 607 N.W.2d 742, 746 (Mich. App. 1999); *Port Huron Area Sch. Dist. v. Port Huron Educ. Ass'n*, 393 N.W.2d 811, 815 (Mich. 1986)).

The circuit court must enforce the confirmed award or other order(s) issued in the same manner as any other order that the circuit court issues (MCL § 600.5079).

Michigan Court Jurisdiction

Parties that agree to arbitrate in Michigan consent to the jurisdiction of Michigan courts to enforce the resulting arbitration award (MCL § 691.1706(2)).

Michigan Venue

Michigan courts generally enforce the contractual forum selection clause in a contract (MCL § 600.745(3); see *Turcheck v. Amerifund Fin. Inc.*, 725 N.W.2d 684, 689 (Mich. App. 2006); *Offerdahl v. Silverstein*, 569 N.W.2d 834, 835 (Mich. 1997)). Parties may specify a county for enforcement of the resulting award in their arbitration agreement.

The party seeking to enforce an award under the MUAA must make its motion in either the Michigan county:

- Specified in the arbitration agreement.
- Where the arbitration hearing occurred, if the arbitration agreement does not specify a Michigan county.

(MCL § 691.1707.)

If the parties' agreement does not specify a county for enforcement of the award and the hearing occurred outside Michigan, a party may move to confirm the award in any county:

- Where an adverse party resides or has a place of business.
- In the state if no adverse party resides or has a place of business in Michigan.

(MCL § 691.1707.)

Time Limits

Unlike the FAA, the MUAA does not impose a time limit on when a party must seek to confirm an award (MCL § 691.1702). However, a party seeking to confirm a non-MUAA award (such as an award to which the MAA still applies) must move for confirmation within one year after the arbitrator renders the award (MCR 3.602(l); see *City of Huntington Woods v. Ajax Paving Indus., Inc.*, 492 N.W.2d 463, 464 (Mich. App. 1992)).

Confirmation Procedure in Michigan State Court

Whether or not the MUAA governs an arbitration, the party seeking to confirm an arbitration award in Michigan state court must either:

- File a complaint to commence an action and confirm the award, if no action involving the arbitration is pending in Michigan state court (for information on commencing an action in Michigan, see State Q&A, Commencing an Action: Michigan ([w-000-1971](#))).
- Move to confirm the award in the pending Michigan state court case involving the arbitration, if any.

(MCR 3.602(l) and staff comment to 2014 amendment (noting that the amendments of MCR 3.602 apply to all other forms of arbitration that are not described in the MUAA); see *Jaguar Trading Ltd. P'ship v. Presler*, 808 N.W.2d 495, 496 (Mich. App. 2010).)

After the court confirms the award, it is enforceable in the same manner as a judgment in an ordinary civil action (MCL § 691.1705).

VACATING, MODIFYING, OR CORRECTING AN AWARD

Both the FAA and the MUAA 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 AN AWARD UNDER THE FAA

Standard for Vacating Under the FAA

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

- 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 that the FAA governs on the common law ground of manifest disregard of the law. However, the continuing viability of manifest disregard of the law as a ground for vacatur is uncertain because the US Supreme Court has 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.

(See *Hall St. Assocs. LLC v. Mattel, Inc.*, 552 U.S. 576, 586 (2008).)

The federal courts of appeal 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: Enforcement of Arbitration Awards Under Chapter 2 of the FAA Implementing the New York Convention: Defending Against Enforcement* ([9-500-4550](tel: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. The court decides the application on the parties' submissions and argument, if any. If the court finds sufficient grounds for vacatur and the time within which the agreement required the award has not yet expired, the court may direct a rehearing by the same arbitrators (9 U.S.C. § 10(b)).

VACATING AN AWARD IN MICHIGAN STATE COURT

Standard for Vacating

Both the MUAA and the MAA permit a court to vacate an arbitration award on the same grounds as those available under the FAA (MCL § 691.1703(1)(a)-(d); MCR 3.602(J)(2); see Standard for Vacating Under the FAA). The MUAA also permits vacatur if the court finds that:

- There was no agreement to arbitrate.
- A party suffered substantial prejudice because the arbitrator conducted the proceedings without proper notice.

(MCL § 691.1703(1)(e), (f).)

If a court denies an application to vacate the award, the court must confirm the award unless there is an application to modify or correct the award pending (MCL § 691.1703(4)).

If a court vacates an award on a ground other than a lack of agreement to arbitrate, the court may order a rehearing before either:

- A new arbitrator, if the court vacates the award due to a previous arbitrator's fraud or partiality.
- The same arbitrator.

(MCL § 691.1703(3).)

Although the MUAA does not apply to labor union arbitrations that a union administers (see Michigan Uniform Arbitration Act), a court may vacate a non-MUAA labor arbitration award if:

- The award was obtained by corruption, fraud, or undue means.
- The arbitrator was partial or corrupt.
- 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.

(MCL § 1683.)

Procedure to Vacate MUAA Awards

A party seeking to vacate an award moves to vacate in the same way that a party moves to confirm an award (MCL § 691.1703(1); MCR 3.602(J)(1); see Confirmation Procedure in Michigan State Court). If there is no action pending, the party must commence an action before filing the motion.

Under the MUAA, the aggrieved party must file a motion to vacate an award within 90 days after receiving notice of either:

- The award.
- A modified or corrected award (see Modifying or Correcting Awards Under the MUAA).

(MCL § 691.1703(2).)

If the ground for vacating the award is corruption, fraud, or undue means, the aggrieved party must file the motion within 90 days after the party knows or should know of the ground (MCL § 691.1703(2)).

Procedure to Vacate Non-MUAA Awards

If there is no action pending, a party seeking to vacate a non-MUAA award must file a complaint to vacate it within 91 days of the date of the award. However, if the grounds for vacatur are corruption, fraud, or other undue means, the deadline for moving to vacate is 21 days after the applicant discovers the corruption, fraud, or other undue means. (MCR 3.602(J).)

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 THE MUAA Standard for Modifying or Correcting in Michigan State Court

Both the MUAA and the MAA permit a court to modify or correct an arbitration award on the same grounds as under the FAA (MCL § 691.1704(1); MCR 3.602(K); see Standard for Modifying or Correcting Under the FAA.)

Procedure for Modifying or Correcting

A party applies to modify or correct an arbitration award by filing a motion to modify or correct in the same way that a party files a motion to confirm an award (see Confirmation Procedure in Michigan State Court).

The party seeking to modify or correct an award must file the motion:

- For MUAA awards, within 90 days of receiving notice of the award (MCL § 691.1704(1)).
- For non-MUAA awards, within 91 days of the date of the award (MCR 3.602(K)(2)).

In the same filing, the party also may ask the court alternatively to vacate the award (MCL § 691.1704(3); MCR 3.602(K)(4)).

If the court grants the motion to modify or correct, the court modifies or corrects the award. If there is no motion to vacate pending, the court confirms the award as modified or corrected. (MCL § 691.1704(2); MCR 3.602(K)(3).)

AWARDS AND ORDERS SUBJECT TO APPEAL

Both the FAA and the MUAA 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.
- A judgment or decree a court entered under the FAA or MUAA, as applicable.
(MCL § 691.1708; 9 U.S.C. § 16.)

ABOUT PRACTICAL LAW

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at legalsolutions.com/practical-law. For more information or to schedule training, call **1-800-733-2889** or e-mail referenceattorneys@tr.com.