Enforcing Arbitration Awards in Colorado

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

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. 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 Colorado state or federal court. It describes the relevant state and federal statutes, including the Colorado Revised Uniform Arbitration Act (CRUAA), jurisdictional and venue considerations, the procedure for confirming an award in state and federal court, and potential challenges to enforcement. This Note also briefly explains the legal standards and procedure for vacating, modifying, correcting, or appealing an arbitration award in Colorado 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

A party seeking to enforce an arbitration award in Colorado must determine which law governs the confirmation proceeding. There are two choices:

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

FEDERAL ARBITRATION ACT

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

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

The FAA applies to an exceedingly broad range of awards (see *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52 (2003)). Together with the New York Convention, the FAA covers the enforcement of most arbitral awards in the US. The FAA applies to arbitrations even if the contract containing the arbitration clause also contains a choice of law provision specifying that state law governs that contract. Therefore, if the parties want Colorado 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 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 described in Chapter 1 of the FAA (9 U.S.C. § 2). The New York Convention applies to international disputes, meaning disputes that involve non-US parties or property, even if the arbitration is held in the US (see *Bergesen v. Joseph Muller Corp.*, 710 F.2d 928, 932 (2d Cir. 1983)).

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 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.

COLORADO ARBITRATION LAW

Colorado's public policy strongly encourages the resolution of disputes through arbitration (see *Mountain Plains Constructors, Inc. v. Torrez*, 785 P.2d 928, 930 (Colo. 1990)). The Colorado Revised Uniform Arbitration Act (CRUAA) (C.R.S. §§ 13-22-201 to 13-22-230) governs arbitration in Colorado. The CRUAA is based on the Revised Uniform Arbitration Act (RUAA).

Colorado adopted the CRUAA in 2004 to supplement the Colorado Uniform Arbitration Act (CUAA). The CRUAA applies to:

- Colorado arbitration agreements dated on or after August 4, 2004.
- Earlier arbitration agreements if the parties agree.

(C.R.S. § 13-22-203.)

Colorado repealed and reenacted the provisions of the CUAA when it adopted the CRUAA in 2004. The CUAA has limited application because it governs Colorado arbitration agreements dated between July 14, 1975 and August 3, 2004 (C.R.S. § 13-22-230). Because the CUAA applies to few cases, this Note does not discuss the CUAA in detail.

The CRUAA requires Colorado courts construing the CRUAA to consider decisions from other states that construe the RUAA (C.R.S. § 13-22-229).

For information about the RUAA and a list of the states that have adopted it, see Practice Note, Revised Uniform Arbitration Act: Overview (w-004-5167).

INTERPLAY BETWEEN FEDERAL AND COLORADO ARBITRATION LAW

Federal law 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. of Leland Stanford Junior Univ.*, 489 U.S. 468, 476-77 (1989) (there is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy behind the FAA is simply to ensure that arbitration agreements are enforceable); *Byerly v. Kirkpatrick Pettis Smith Polian, Inc.*, 996 P.2d 771, 774 (Colo. App. 2000)).

Colorado law governs the construction of an arbitration agreement if the arbitration clause expressly provides that Colorado law governs (see *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 60 (1995); *1745 Wazee LLC v. Castle Builders Inc.*, 89 P.3d 422, 424 (Colo. App. 2003)). If the arbitration clause is silent about choice of law, the FAA applies to the arbitration and award even if the contract contains a choice of law provision specifying that state law governs that contract (see *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576,

590 (2008)). If the parties want Colorado procedural, statutory, or common law to govern enforcement of their arbitration agreement or award, they therefore must expressly state so in the arbitration clause of the contract.

Although the FAA's substantive provisions apply regardless of whether a party seeks enforcement in state or federal court, the FAA's procedural provisions do not preempt state procedures in Colorado courts (see *Byerly*, 996 P.2d at 774). Counsel should therefore 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 Colorado law, a party must move for confirmation in a court of competent jurisdiction (9 U.S.C. § 9; C.R.S. §§ 13-22-213 and 13-22-222). Because it is intended to be a summary expedited proceeding, a confirmation proceeding usually is faster than a typical lawsuit on the merits, especially if no party challenges the award.

CONFIRMING AWARDS UNDER THE FAA

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

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). Federal courts have a limited role in reviewing the decision of an arbitrator. If an arbitrator has arguably construed or applied the contract and has acted within the scope of his authority, the court may not overturn the award even if the court is convinced the arbitrator committed serious error (see *Youngs v. Am. Nutrition, Inc.*, 537 F.3d 1135, 1144 (10th Cir. 2008) (quoting *Eastern Associated Coal Corp. v. United Mine Workers*, 531 U.S. 57, 62 (2000))).

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))). 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, 65-66 (2009).)

Courts are split on whether they may "look through" to the arbitration claims in determining subject matter jurisdiction. Some courts have held that, in light of the reasoning in *Vaden*, courts may look through to the underlying arbitration claims to determine if a petition to confirm, vacate, or modify an arbitration award under Sections 9, 10, or 11 of the FAA presents a federal question (see *Doscher v. Sea Port Grp. Sec., LLC*, 832 F.3d 372, 388 (2d Cir. 2016)). In other courts, the fact that the underlying arbitration involved federal claims does not confer federal jurisdiction for the petition to confirm or vacate (see *Goldman v. Citigroup Global Markets, Inc.*, 834 F.3d 242, 353-55 (3d Cir. 2016); *Magruder v. Fid. Brokerage Servs. LLC*, 818 F.3d 285, 288 (7th Cir. 2016)). The US Court of Appeals for the Tenth Circuit has not ruled on this issue.

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. Gutehoffnungshutte GmbH*, 141 F.3d 1434, 1441 (11th Cir. 1998)).

To establish personal jurisdiction in cases involving foreign awards, the petitioner may invoke personal jurisdiction, in rem jurisdiction, or quasi in rem jurisdiction as applicable if their use under the circumstances also comports with due process standards.

Where applicable, a court also may base jurisdiction over the defendant on an aggregation of state or national contacts under Federal Rule of Civil Procedure (FRCP) 4(k)(2). 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 confirmation on all parties, the federal court has personal jurisdiction over those parties (9 U.S.C. § 9).

Federal Venue

Arbitration agreements may contain forum selection clauses specifying the 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 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 Tenth Circuit has not addressed this issue.

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

CONFIRMING AWARDS UNDER THE CRUAA

A party seeking to enforce an arbitrator's award in Colorado state court under the CRUAA must apply to the court for an order confirming the award. The CRUAA permits courts to enforce arbitrators' pre-award or interim award rulings in aid of arbitration, as well as the final awards (C.R.S. § 13-22-218).

Standard for Confirmation

Under the CRUAA, an arbitration award is equivalent to a judgment and a reviewing court must give it that deference (see *Kutch v State Farm Mut. Auto Ins.*, 960 P.2d 93, 98-99 (Colo. 1998); *Judd Constr. Co. v. Evans Joint Venture*, 642 P.2d 922, 924 (Colo. 1982)). Unless a party timely moves to vacate or modify the award, the reviewing court must:

- Grant an application to confirm an arbitration award.
- Enter judgment on the award.
- Docket and record the judgment as any other judgment in a civil action.

(C.R.S. § 13-22-225.)

Colorado Court Jurisdiction

In Colorado, an agreement providing for arbitration in the state confers jurisdiction on any court of competent jurisdiction in the state to:

- Enforce the agreement.
- Enter judgment on the award.

(C.R.S. §§ 13-22-201(4) and 13-22-226.)

Colorado Venue

The Colorado district courts are the state trial courts of general jurisdiction (Colo. Const. art. VI, § 9), located in each of Colorado's 22

judicial districts (C.R.S. §§ 13-5-101 to 13-5-123). Under the CRUAA, a party must file a petition to confirm in the district court in either:

- The county where:
  - the arbitration hearing took place;
  - the parties provided for the arbitration hearing to take place (for example, if the agreement calls for a hearing in Boulder but the parties decide to hold the hearing in another county); or
  - the adverse party resides or has a place of business.
- Any Colorado county, if:
  - no adverse party resides or has a place of business in Colorado;
  - the hearing did not occur in Colorado; and
  - the parties' agreement does not specify a Colorado location for the hearing.

(C.R.S. § 13-22-227.)

Colorado courts generally enforce forum selection clauses unless the clause is contrary to public policy or a state statute (see *Cagle v. Mathers Family Tr.*, 295 P.3d 460 (Colo. 2013)).

Time Limits

Neither the CRUAA nor the former CUAA specifies a time limit for a party to confirm an arbitration award. Colorado courts have held that:

- There is no time limit under the CUAA for a party to start a confirmation proceeding.
- The deadline for confirming an award under the CRUAA is the state's general statute of limitations for the filing and execution on a judgment, which is 20 years under C.R.S. Section 13–52–102(2)(a).

(See *Estate of Guido v. Exempla, Inc.*, 292 P.3d 996, 1002 (Colo. App. 2012)).

Confirmation Procedure in Colorado Court

A party submits an application to confirm in the Colorado district court. The CRUAA refers to the application as a motion (C.R.S. § 13-22-205(1)). The moving party serves notice of the motion:

- In the same way as it serves a summons in a civil action if there is no action involving the arbitration pending (for example, if a party previously started an action to compel arbitration).
- As required by law or court rule for serving motions in pending cases, if there is an action involving the arbitration already pending.

(C.R.S. § 13-22-205(2).)

For information on commencing an action in Colorado state court, see State Q&A, Commencing an Action: Colorado (w-000-3615).

The rules governing motion practice in the district courts under C.R.C.P. 121 § 1–15(4) do not apply to confirmation motions, because the confirmation proceeding is intended to be a summary proceeding where the court does not need oral argument or evidentiary hearings (see *BFN-Greeley LLC v. Adair Group, Inc.*, 141 P.3d 937, 942 (Colo. App. 2006)).

VACATING, MODIFYING, OR CORRECTING AN AWARD

Both the FAA and the CRUAA 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 if:

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

(9 U.S.C. § 10.)

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

(552 U.S. 576, 586 (2008).)

The federal courts of appeals are split on whether manifest disregard remains a proper ground for *vacatur* after *Hall Street*, and the Tenth Circuit has expressly declined to decide the issue (see *Hicks v. Cadle Co.*, 355 F. App'x 186, 197 (10th Cir. 2009)).

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 Under the FAA

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

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

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

The application to vacate is a summary proceeding. The court may hear oral argument but does not hold a hearing with witnesses. The court decides the application on the parties' submissions and argument, if any. 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 COLORADO STATE COURT

Standard for Vacating in Colorado State Court

Under the CRUAA, the court may vacate an arbitration award if it finds that:

- The award was procured by corruption, fraud, or other undue means.
- There was:
  - evident partiality by an arbitrator appointed as a neutral;
  - corruption by an arbitrator; or
  - misconduct by an arbitrator prejudicing the rights of a party to the proceeding.
- An arbitrator:
  - refused to postpone the hearing on showing of sufficient cause for postponement;
  - refused to consider material evidence;
  - conducted the hearing in a way that substantially prejudiced the rights of a party;
  - conducted the hearing without proper notice to the parties; or
  - exceeded his powers.
- There was no agreement to arbitrate, unless the objecting party participated in the arbitration without raising the objection.

(C.R.S. § 13-22-223(1).)

These statutory grounds are the only grounds for *vacatur* available under Colorado law. The Colorado courts applying the CRUAA do not recognize the doctrine of manifest disregard of law as a ground for *vacatur*. (See *Coors Brewing Co. v. Cabon*, 114 P.3d 60 (Colo. App. 2004).)

Procedure to Vacate

A party seeking to vacate an arbitration award under the CRUAA must file a motion to vacate within 91 days after either:

- Receiving notice of the award.
- The applicant learned or should have learned of the grounds to vacate, if the grounds the applicant asserts are corruption, fraud, or other undue means.

(C.R.S. § 13-22-223(2).)

Unless the court vacates the award on the ground that there was no valid agreement to arbitrate, the court may order a rehearing before:

- The same arbitrator who issued the award.
- A different arbitrator if the court vacates the award due to arbitrator:
  - corrpution;
  - fraud;
  - evident partiality; or
  - other misconduct.

(C.R.S. § 13-22-223(3).)

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 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 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 Under the FAA).

MODIFYING OR CORRECTING AWARDS UNDER COLORADO LAW

Standard for Modifying or Correcting Awards Under Colorado Law

The CRUAA permits a court to modify or correct an arbitration award on the same grounds as under the FAA (C.R.S. § 13-22-224)

(see Procedure to Modify or Correct Under the FAA). A party may also submit a request to modify or correct directly to the arbitrator (C.R.S. § 13-22-220.) Under the CRUAA, a party may join a motion to modify or correct an award with a motion to vacate the award (C.R.S. § 13-22-224(3)).

Procedure for Modifying or Correcting

Under the CRUAA, a party must move to modify or correct an award within 91 days after receiving notice of either:

- The award.
- A modified or corrected award.

(C.R.S. § 13-22-224(1).)

AWARDS AND ORDERS SUBJECT TO APPEAL

Both the FAA and CRUAA 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 decision under the FAA, including a court's entry of judgment.

(9 U.S.C. § 16; C.R.S. § 13-22-228.)

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