

## CONFIRMING ARBITRATION AWARDS: TAKING THE MYSTERY OUT OF A SUMMARY PROCEEDING<sup>†</sup>

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### I. INTRODUCTION

Arbitration has grown in popularity over recent decades. Aided by numerous federal and state judicial decisions and statutes

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<sup>†</sup> This Article updates an earlier article: Daniel D. Derner & Roger S. Haydock, *Confirming an Arbitration Award*, 23 WM. MITCHELL L. REV. 879 (1997).

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favoring the enforcement of arbitration agreements,<sup>1</sup> more parties are discovering that binding arbitration is an efficient, cost-effective, and flexible alternative to litigation.<sup>2</sup> For many businesses and individuals, arbitration has become the preferred way to resolve all types of disputes.

Because an arbitration award becomes enforceable as a civil judgment through the process of confirmation,<sup>3</sup> all possible legal remedies remain available and equally effective. Additionally, when parties seek confirmation, they do not relinquish the efficiency they gained through arbitration because the confirmation process is as simple and straightforward as arbitration itself and, of course, much simpler than litigation.

The Federal Arbitration Act (FAA)<sup>4</sup> and the arbitration statutes of all fifty states and the District of Columbia provide for the confirmation of arbitration awards,<sup>5</sup> yet many practitioners and

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1. See, e.g., *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002) (reaffirming the “liberal federal policy favoring arbitration agreements”); *Eric A. Carlstrom Constr. Co. v. Indep. Sch. Dist. No. 77*, 256 N.W.2d 479, 483 (Minn. 1977) (recognizing that the fundamental objectives of Minnesota’s arbitration law include the encouragement and facilitation of arbitration).

2. The United States Supreme Court recognized the advantages of arbitration most recently in *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 122–23 (2001).

3. See STEPHEN PATRICK DOYLE & ROGER SILVE HAYDOCK, *WITHOUT THE PUNCHES: RESOLVING DISPUTES WITHOUT LITIGATION* 8–12 (1991) (explaining various methods of alternative dispute resolution).

4. 9 U.S.C. §§ 1–16 (2000).

5. See *id.* § 9; ALA. CODE § 6-6-12 (LexisNexis 2005); ALASKA STAT. § 09.43.490 (2006); ARIZ. REV. STAT. ANN. § 12-1511 (2003); ARK. CODE ANN. § 16-108-211 (2006); CAL. CIV. PROC. CODE § 1285 (West 1982 & Supp. 2007); COLO. REV. STAT. ANN. § 13-22-222 (West 2005 & Supp. 2006); CONN. GEN. STAT. ANN. § 52-417 (West 2005); DEL. CODE ANN. tit. 10, § 5713 (1999); D.C. CODE ANN. § 16-4310 (LexisNexis 2005); FLA. STAT. ANN. § 682.12 (West 2003); GA. CODE ANN. § 9-9-12 (Supp. 2006); HAW. REV. STAT. ANN. § 658A-22 (LexisNexis 2002); IDAHO CODE ANN. § 7-911 (2004); 710 ILL. COMP. STAT. ANN. 5/11 (West 1999); IND. CODE ANN. § 34-57-2-12 (West 1999); IOWA CODE ANN. § 679A.11 (West 1998); KAN. STAT. ANN. § 5-411 (2001); KY. REV. STAT. ANN. § 417.150 (LexisNexis 2005); LA. REV. STAT. ANN. § 9:4209 (1997); ME. REV. STAT. ANN. tit. 14, § 5937 (2003); MD. CODE ANN., CTS. & JUD. PROC. § 3-227 (West 2006); MASS. GEN. LAWS ANN. ch. 251, § 11 (West 2004); MICH. COMP. LAWS ANN. § 600.5025 (West 2000); Mich. Ct. R. 3.602(I); MINN. STAT. § 572.18 (2006); MISS. CODE ANN. § 11-15-21 (2004); MO. ANN. STAT. § 435.400 (West 1992); MONT. CODE ANN. § 27-5-311 (2005); NEB. REV. STAT. ANN. § 25-2612 (LexisNexis 2004); NEV. REV. STAT. ANN. § 38.239 (LexisNexis 2006); N.H. REV. STAT. ANN. § 542:8 (LexisNexis 2006); N.J. STAT. ANN. § 2A:23A-12 (West 2000); N.M. STAT. ANN. § 44-7A-23 (West 2003); N.Y. C.P.L.R. 7510 (McKinney 1994); N.C. GEN. STAT. § 1-569.22 (2005); N.D. CENT. CODE § 32-29.3-22 (Supp. 2005); OHIO REV. CODE ANN. § 2711.09 (West 2006); OKLA. STAT. ANN. tit. 12,

courts remain unfamiliar with the process. This Article explains the confirmation process by addressing three basic questions: (1) Where can an award be confirmed?<sup>6</sup> (2) When can an award be confirmed?<sup>7</sup> (3) How can an award be confirmed?<sup>8</sup>

An additional predicate question is: who confirms an award? The answer to that question is not a disputed issue. The party to an arbitration award may seek to enforce it. Typically, this is the winning party, but it could be any party to the arbitration that seeks the benefit of the award.

The reality is that confirmation is not necessary in the vast majority of cases. Losing parties commonly abide by the arbitration award and pay what they owe or otherwise comply with the decision. Having been an active participant in a fair and effective process, parties to arbitrations tend to comply willingly with the results. And having enjoyed the benefits of avoiding the courtroom, parties are likely to want to keep it that way. But for those cases in which the court's enforcement authority is needed, the confirmation process is available. And the good news is that it is a straightforward process, just like arbitration itself.

Although confirmation requires judicial involvement, it is intended to be a summary proceeding.<sup>9</sup> The FAA expresses a presumption that courts shall confirm arbitration awards.<sup>10</sup> The court plays the administrative role of converting the award into a

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§ 1873 (West Supp. 2007); OR. REV. STAT. ANN. § 36.700 (West Supp. 2006); 42 PA. CONS. STAT. ANN. § 7313 (West 2007); R.I. GEN. LAWS § 10-3-11 (1997); S.C. CODE ANN. § 15-48-120 (2005); S.D. CODIFIED LAWS § 21-25A-23 (2004); TENN. CODE ANN. § 29-5-312 (2000); TEX. CIV. PRAC. & REM. CODE ANN. § 171.087 (Vernon 2005); UTAH CODE ANN. § 78-31a-123 (2002 & Supp. 2006); VT. STAT. ANN. tit. 12, § 5676 (2002); VA. CODE ANN. § 8.01-581.09 (2000); WASH. REV. CODE ANN. § 7.04.150 (West 1992); W. VA. CODE ANN. § 55-10-3 (LexisNexis 2000); WIS. STAT. ANN. § 788.09 (West 2001); WYO. STAT. ANN. § 1-36-113 (2005); *see also* UNIF. ARBITRATION ACT § 11 (amended 2000), 7 U.L.A. 472 (2005) (currently codified in twenty-seven states and the District of Columbia); REVISED UNIF. ARBITRATION ACT § 22, 7 U.L.A. 72 (2005) (currently codified in twelve states).

6. *See infra* Part II.A.

7. *See infra* Part II.B.

8. *See infra* Part II.C.

9. *See, e.g.*, Encyclopaedia Universalis S.A. v. Encyclopaedia Britannica, Inc., 403 F.3d 85, 89 n.2 (2d Cir. 2005) (citing Yusuf Ahmed Alghanim & Sons, W.L.L. v. Toys "R" Us, Inc., 126 F.3d 15, 23 (2d Cir. 1997)).

10. United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 38 (1987) (noting that the arbitrator has discretion to determine an appropriate remedy and that the courts have no authority to disagree with his honest judgment); Nationwide Mut. Ins. Co. v. Home Ins. Co., 429 F.3d 640, 643 (6th Cir. 2005).

judgment, and “a party simply has to follow applicable procedures in the court which has proper jurisdiction, and the confirmed award becomes an enforceable judgment.”<sup>11</sup> Even where one party objects to confirmation, the court plays a very limited supervisory role and is not authorized to review all aspects of the arbitration or to second-guess the arbitrator.<sup>12</sup>

This Article is intended to assist practitioners in enforcing valid and binding arbitration awards by converting them into state or federal court judgments. The Appendix to this Article provides forms for possible documents most commonly required for confirmation and a table summarizing the confirmation procedures currently in place in federal court, all fifty states, and the District of Columbia.

These rules are, of course, subject to change, and the forms are only suggested documents. This Article provides an overview and is not intended to replace a practitioner’s selection and drafting of proper documents and the careful reading of the laws specific to his or her proceedings. In addition, practitioners should review any applicable local rules, since these rules may govern some aspects of the confirmation process.

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11. DOYLE & HAYDOCK, *supra* note 3, at 9; *see also* D.H. Blair & Co. v. Gottdiener, 462 F.3d 95, 110 (2d Cir. 2006) (quoting Florasynth, Inc. v. Pickholz, 750 F.2d 171, 176 (2d Cir. 1984)).

12. The FAA creates a strong presumption favoring the confirmation of arbitration awards. In fact, the language of the statute states that the confirming court “must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title.” 9 U.S.C. § 9 (2000); *see also* Cytoc Corp. v. DEKA Prods. Ltd. P’ship, 439 F.3d 27, 32 (1st Cir. 2006) (“The authority of a federal court to disturb an arbitration award is tightly circumscribed.”); Riccard v. Prudential Ins. Co., 307 F.3d 1277, 1288 (11th Cir. 2002) (quoting Gianelli Money Purchase Plan & Trust v. ADM Investor Servs., Inc., 146 F.3d 1309, 1312 (11th Cir. 1998)) (noting that the FAA imposes a heavy presumption in favor of confirming arbitration awards); Menka v. Monchecourt, 17 F.3d 1007, 1009 (7th Cir. 1994); Int’l Bhd. of Elec. Workers, Local 429 v. Toshiba Am., Inc., 879 F.2d 208, 209 (6th Cir. 1989) (stating that “[c]ourts are bound by the arbitrator’s findings of fact . . . [and] serve only to enforce the arbitrator’s award”); Madison Teachers Inc. v. Madison Metro. Sch. Dist., 678 N.W.2d 311, 315 (Wis. Ct. App. 2004) (describing the court’s role as “[e]ssentially . . . supervisory in nature”); *see also infra* Part II.C.

## II. THE PROCESS

### A. *Where an Arbitration Award May Be Confirmed*

Arbitration clauses commonly include the statement: “An award may be entered in any court which has jurisdiction.”<sup>13</sup> This provision allows parties to seek confirmation in any court that has jurisdiction over the other party; furthermore, section 9 of the FAA requires this statement to appear in an arbitration agreement before a party may obtain confirmation.<sup>14</sup> This section requires that the above language be included for any court with jurisdiction to enforce the award. The absence of this provision may limit the court’s authority to enforce the award.

Typically, venue will be proper in jurisdictions in which the hearing was conducted, the award was signed, the award was issued by an arbitration organization, the losing party resides or does business, a forum has minimum contacts with a party, or a statute authorizes a court to enter judgment.<sup>15</sup> Arbitration awards can be confirmed in both state and federal courts.

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13. DOYLE & HAYDOCK, *supra* note 3, at 25.

14. The language of section 9 reads:

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service 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. If the adverse party shall be a nonresident, then the notice of the application shall be served 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 (2000).

15. See 4 IAN R. MACNEIL, RICHARD E. SPEIDEL & THOMAS J. STIPANOWICH, *FEDERAL ARBITRATION LAW: AGREEMENTS, AWARDS, AND REMEDIES UNDER THE FEDERAL ARBITRATION ACT* § 38.3.1.1–.3 (Supp. 1999).

### 1. *State Courts*

State courts routinely confirm arbitration awards. The FAA governs almost all arbitrations because it controls awards issued in cases involving interstate commerce, a broad standard encompassing virtually all transactions and relationships.<sup>16</sup> State courts must confirm arbitration awards rendered pursuant to the FAA because the United States Supreme Court has made it clear that federal law is supreme on this issue and supersedes any contrary state laws.<sup>17</sup> This holding requires state court judges to enforce arbitration awards, even if the judge dislikes arbitration or the award would be unenforceable under a state law.<sup>18</sup> State court judges, therefore, cannot simply refuse to enforce arbitration awards governed by the FAA.<sup>19</sup>

In those rare cases where the arbitration matter does not involve interstate commerce or where the parties agree, a state

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16. See 9 U.S.C. § 2 (providing that written arbitration agreements “involving [interstate] commerce” shall be enforceable); *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56 (2003) (stating that the FAA provides enforcement power consistent with the broadest allowable exercise of Congress’s Commerce Clause power); *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001); *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 274–75 (1995) (holding that the FAA’s interstate commerce language should be read broadly to extend its reach to the limits of Congress’s Commerce Clause power); *Southland Corp. v. Keating*, 465 U.S. 1, 12 (1984) (citing *Prima Paint Corp. v. Flood & Conklin Mfg.*, 388 U.S. 395, 420 (1967) (Black, J., dissenting)) (indicating that the substantive rules of the FAA were intended to apply in state as well as federal courts).

17. *Doctor’s Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996); *Caley v. Gulfstream Aerospace Corp.*, 428 F.3d 1359, 1367–68 (11th Cir. 2005); *Oblix, Inc. v. Winiecki*, 374 F.3d 488, 492 (7th Cir. 2004); *Faber v. Menard, Inc.*, 367 F.3d 1048, 1052 (8th Cir. 2004).

18. See, e.g., *Dobson*, 513 U.S. at 270 (“[T]he basic purpose of the Federal Arbitration Act is to overcome courts’ refusals to enforce agreements to arbitrate.”); *Southland Corp.*, 465 U.S. at 15–16 (holding that the FAA preempts state law and that state courts cannot apply state statutes that invalidate arbitration agreements); *Brake Masters Sys., Inc. v. Gabbay*, 78 P.3d 1081, 1085 (Ariz. Ct. App. 2003) (citing *First Options of Chicago v. Kaplan*, 514 U.S. 938 (1995)) (requiring that state courts follow the FAA’s substantive mandates on when arbitration awards shall be confirmed).

19. See *Doctor’s Assocs.*, 517 U.S. at 688 (“The ‘goals and policies’ of the FAA, this Court’s precedent indicates, are antithetical to threshold limitations placed specifically and solely on arbitration provisions. Section 2 ‘mandate[s] the enforcement of arbitration agreements.’”) (citation omitted); *Hubert v. Turnberry Homes, LLC*, No. M2005-00955-COA-R3-CV, 2006 WL 2843449 (Tenn. Ct. App. Oct. 4, 2006) (interpreting *Doctor’s Associates* as prohibiting states from enacting laws that single out arbitration clauses and inhibit their enforceability).

arbitration act may apply.<sup>20</sup> State acts typically codify the provisions of the Uniform Arbitration Act (UAA) or the Revised Uniform Arbitration Act (RUAA), both of which—like the FAA—require courts to enforce arbitration awards.<sup>21</sup> To date, thirty-eight states have adopted the uniform arbitration laws, and twelve have adopted them in part.

## 2. Federal Courts

The United States Supreme Court has concluded that the FAA does not serve as a basis for federal question jurisdiction “under 28 U.S.C. §1331 . . . or otherwise.”<sup>22</sup> Federal courts, therefore, will confirm arbitration awards but only where independent grounds for federal jurisdiction have been demonstrated. Diversity jurisdiction requires complete diversity between the parties and an amount in controversy exceeding \$75,000.<sup>23</sup> While there is some disagreement as to whether the amount in controversy is determined by the amount at stake in the underlying arbitration or

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20. See *Perry v. Thomas*, 482 U.S. 483, 493 n.9 (1987) (stating that section 2 of the FAA provides that state law may be applied “if that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally”). See *supra* note 5 for citations to the arbitration acts of all fifty states and the District of Columbia.

21. See UNIF. ARBITRATION ACT § 11 (amended 2000), 7 U.L.A. 472 (2005); REVISED UNIF. ARBITRATION ACT § 22, 7 U.L.A. 72 (2005). Section 2 of the Federal Arbitration Act reads:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2 (2000).

22. *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25 n.32 (1983); see also *Peebles v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 431 F.3d. 1320, 1325 (11th Cir. 2005).

23. Federal law grants district courts original jurisdiction of:

[A]ll civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between— (1) citizens of different States; (2) citizens of a State and citizens or subjects of a foreign state; (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

28 U.S.C. § 1332(a) (2000).

the amount of the award itself, the safer analysis suggests that the award for which confirmation is sought should exceed \$75,000, at least where none of the parties seeks to re-open the dispute.<sup>24</sup> Parties can seek to confirm awards of less than \$75,000 in a state court.

Additionally, where an arbitration case involves a federal question, an award based on the determination of the federal question is subject to federal court jurisdiction.<sup>25</sup> Another possible ground for federal jurisdiction is if a specific federal statute permits the issuance of an arbitration award and allows a federal judge to confirm an award and convert it into a federal civil judgment.<sup>26</sup> If arbitration results in an award that meets one of these requirements, the federal court has jurisdiction to confirm the award.<sup>27</sup>

Section 9 of the FAA provides that if the parties to an arbitration agreement have not specified which court has authority to enter judgment based on the award, an application to confirm the award “may be made to the United States court in and for the district within which such award was made.”<sup>28</sup> Federal jurisdiction, however, is not limited to the district in which the award was issued.<sup>29</sup> After a split arose among the circuit courts regarding the interpretation of section 9 of the FAA,<sup>30</sup> the United States Supreme Court resolved the question by deciding that the section’s language is permissive and that parties are not limited to seeking confirmation in the jurisdiction in which their award was made.<sup>31</sup> Instead, the general venue statute applies,<sup>32</sup> so parties can seek confirmation in an appropriate federal district court.

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24. See, e.g., *Theis Research, Inc. v. Brown & Bain*, 400 F.3d 659, 662 (9th Cir. 2005); see also *Bull HN Info. Sys., Inc. v. Hutson*, 229 F.3d 321, 329 (1st Cir. 2000) (“[W]e think the better rule is to measure the amount in controversy by the amount at stake in the entire arbitration.”).

25. See 28 U.S.C. § 1331 (2000) (“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”).

26. See, e.g., *Dorn v. Dorn’s Transp., Inc.*, 562 F. Supp. 822, 824–25 (S.D.N.Y. 1983).

27. See *MACNEIL ET AL.*, *supra* note 15, § 9.2.3.5 (describing how to confirm, vacate, or modify awards in federal court).

28. 9 U.S.C. § 9 (2000).

29. *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 203–04 (2000).

30. *Id.* at 195.

31. *Id.* at 204.

32. See 28 U.S.C. § 1391 (2000).

*B. When an Arbitration Award May Be Confirmed*

The FAA provides that a party to arbitration may seek an order confirming the award “any time within one year after the award is made.”<sup>33</sup> While some jurisdictions have declined to enforce a strict one-year statute of limitations, deeming this provision merely permissive,<sup>34</sup> the careful practitioner will seek to confirm an award under the FAA within a year after the award is made. Although the FAA gives parties three months to seek to vacate, modify, or correct an award, parties seeking to confirm an award need not wait until this time has run.<sup>35</sup> As a tactical matter, some winning parties prefer to wait to confirm an award until after this three-month deadline to avoid prompting the losing party to take such action.

Neither the UAA nor the RUAA include a time period within which a motion to confirm must be filed.<sup>36</sup> Therefore, in the small group of intrastate commerce cases governed by state arbitration laws based on the uniform statutes, the general statute of limitations for filing and executing on a judgment determines the question of timing.<sup>37</sup> The arbitration acts of the states that have modified the uniform acts establish different statutes of limitations

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33. 9 U.S.C. § 9; *see supra* note 14 (setting forth the text of 9 U.S.C. § 9).

34. *See, e.g.,* Sverdrup Corp. v. WHC Constructors, Inc., 989 F.2d 148, 150 (4th Cir. 1993) (finding one-year period not mandatory); *see also* William M. Howard, Annotation, *Statute of Limitations Under Federal Arbitration Act on Filing of Motion to Confirm Award*, 3 A.L.R. FED. 2d 419 (2005). *But see* Photopaint Techs., LLC v. Smartlens Corp., 335 F.3d 152, 158 (2d Cir. 2003) (interpreting 9 U.S.C. § 9 as imposing a definite time limit).

35. 9 U.S.C. § 12 (2000); Johnson Land Co. v. C.E. Frazier Constr. Co., 925 So. 2d 80, 84 (Miss. 2006).

36. Section 22 of the Revised Uniform Arbitration Act provides:

After a party to an arbitration proceeding receives notice of an award, the party may make a [motion] to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to Section 20 [“Change of Award by Arbitrator”] or 24 [“Modification or Correction of Award”] or is vacated pursuant to Section 23 [“Vacating Award”].

REVISED UNIF. ARBITRATION ACT § 22, 7 U.L.A. 72 (2005).

Section 11 of the Uniform Arbitration Act provides:

Upon application of a party, the Court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 12 [“Vacating an Award”] and 13 [“Modification or Correction of Award”].

UNIF. ARBITRATION ACT § 11 (amended 2000), 7 U.L.A. 472 (2005).

37. *See* REVISED UNIF. ARBITRATION ACT § 22, cmt. 2, 7 U.L.A. 73 (2005).

for the issuance of an award and its subsequent confirmation.<sup>38</sup> Of course, arbitration being essentially a creation of contract, parties may agree to toll any applicable time limits.<sup>39</sup> Practitioners should be cautious in these instances as there may be limits to the tolling agreement, and any limitation in a standard form contract must be fair and reasonable to all parties, including the non-drafting party. Otherwise, a court may find part of the agreement to be unconscionable.

*C. How to Enforce an Arbitration Award*

In general, the confirmation process involves a formal request to the court for the entry of a judgment based on the arbitrator's award, usually through a motion or petition.<sup>40</sup> Since the FAA's procedural requirements are not comprehensive, they will be supplemented by state procedural rules that do not frustrate the federal policy of enforcing valid arbitration agreements.<sup>41</sup> Therefore, when it comes to procedural details, practitioners should study the state rules that apply in their jurisdiction, even if the arbitration in question is governed by the FAA.<sup>42</sup> But any state procedures that make it more difficult to obtain confirmation in state court versus federal court—whether created by statute, court rule, or judicial decision—are preempted by federal law and invalid.<sup>43</sup> States cannot use confirmation proceedings to complicate matters for a confirming party or otherwise defeat the

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38. See ALA. CODE §§ 6-6-12, -15 (LexisNexis 2005); CAL. CIV. PROC. CODE § 1288 (West 1982); CONN. GEN. STAT. ANN. §§ 52-416 to -417 (West 2005); GA. CODE ANN. §§ 9-9-12 (Supp. 2006); LA. REV. STAT. ANN. § 9:4209 (1997); MISS. CODE ANN. §§ 11-15-19, -21 (2004); N.H. REV. STAT. ANN. § 542:8 (2006); N.Y. C.P.L.R. 7510 (McKinney 1994); OHIO REV. CODE ANN. § 2711.09 (West 2006); R.I. GEN. LAWS § 10-3-11 (1997); W. VA. CODE ANN. § 55-10-3 (LexisNexis 2000); WIS. STAT. ANN. § 788.09 (West 2001).

39. See *Photopaint Techs., LLC v. Smartlens Corp.*, 335 F.3d 152, 158–60 (2d Cir. 2003) (finding that the FAA establishes a strict one-year limit but that the parties had agreed to a longer time period).

40. See DOYLE & HAYDOCK, *supra* note 3, at 66.

41. *Volt Info. Scis., Inc. v. Bd. of Trs. of the Leland Stanford Junior Univ.*, 489 U.S. 468, 476 (1989) (“There is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy is simply to ensure the enforceability, according to their terms, of private agreements to arbitrate.”).

42. See *infra* Appendix for samples of the listed documents. See *infra* Table of Confirmation Procedures for a comparison of the rules in federal court and all fifty states plus the District of Columbia.

43. *Volt*, 489 U.S. at 477.

strong federal policy favoring the use of arbitration.<sup>44</sup>

*1. Necessary Documents*

**MOTION OR PETITION.** The confirmation process is generally initiated with a motion or petition<sup>45</sup> establishing the identity of the parties, a description of the arbitration agreement, a reference to the arbitration award, and a statement of the relief sought.<sup>46</sup> A lawyer or a pro se party may submit this document.<sup>47</sup>

**ARBITRATION AGREEMENT.** The FAA requires the party moving for confirmation to file a copy of the arbitration agreement along with the petition.<sup>48</sup> In those rare cases that are not governed by the FAA, it is still best practice to provide the court with the agreement or some other prima facie evidence that the parties agreed to arbitrate their dispute.<sup>49</sup> If the arbitration agreement is readily

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44. See *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 270 (1995); *Southland Corp. v. Keating*, 465 U.S. 1, 15–16 (1984).

45. See DOYLE & HAYDOCK, *supra* note 3, at 66.

46. See *infra* Appendix for a sample motion.

47. See *Wood v. Hampton-Porter Inv. Bankers*, No. C-02-5367 MMC, 2004 WL 546888, at \*3 (N.D. Cal. Mar. 11, 2004) (granting motion to confirm arbitration award in favor of Wood, a pro se plaintiff); *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972) (finding generally that allegations in a pro se complaint are to be held to less stringent standards than formal pleadings drafted by attorneys).

48. Section 13 of the Federal Arbitration Act reads:

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action.

The judgment so entered 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 (2000).

49. See *MBNA Am. Bank, N.A. v. Credit*, 132 P.3d 898, 902 (Kan. 2006) (cautioning that credit card companies not take a “casual approach” to establishing for the court that both parties agreed to arbitrate their disputes); *MBNA Am. Bank, NA v. Straub*, 815 N.Y.S.2d 450, 457 (N.Y. Civ. Ct. 2006) (requiring submission, in the consumer credit context, of written arbitration agreement and proof that the cardholder agreed to its terms); see also *infra* Part II.E.

available, it ought to be provided to the court. If the agreement is not readily available, the party seeking confirmation will need to provide evidence that the other party agreed to an arbitration clause. For example, business records made in the ordinary course of business may support a statement that a party was provided with a written arbitration agreement that they accepted by their subsequent conduct.<sup>50</sup> Alternatively, a party's use of a credit card can be used as evidence of an agreement to arbitrate.<sup>51</sup>

ARBITRATION AWARD. A copy of the arbitration award must accompany the motion or petition.<sup>52</sup> The award may be a summary award, which includes conclusions and a decision, or a detailed award, which includes findings of fact and conclusions of law, or an explanation of the basis for the award.<sup>53</sup> The form of the award is determined by the parties' agreement or by the applicable code of rules. For example, the National Arbitration Forum (FORUM) Code of Procedure states that "[a]n Award is a summary Award unless a prior Written agreement of the Parties requires reasons, findings of fact or conclusions of law or a Written notice is filed by a party seeking reasons, findings of fact or conclusions of law."<sup>54</sup> A duplicate copy is usually sufficient, although some jurisdictions may require a copy certified by the arbitration organization.<sup>55</sup> Any party can obtain the original document from the arbitration organization that administered the award, such as the FORUM or the American Arbitration Association.<sup>56</sup>

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50. See, e.g., *Tikkanen v. Harris & Harris, Ltd.*, 461 F. Supp. 2d 863, 867-68 (E.D. Wis. 2006) (allowing business records to demonstrate that plaintiffs were provided with the arbitration agreement and finding that plaintiffs agreed to mediate by failing to properly notify of their lack of acceptance).

51. See, e.g., *Grasso v. First USA Bank*, 713 A.2d 304, 309 (Del. Super. Ct. 1998) (finding that language indicating a change of terms was an "offer to extend credit," which was accepted by cardholder's use of the credit card); *Hutcherson v. Sears Roebuck & Co.*, 793 N.E.2d 886, 889-92 (Ill. App. Ct. 2003) (upholding a "change of terms" provision, including an arbitration clause, which was accepted by consumer's use of credit card); *Fedotov v. Peter T. Roach & Assocs., P.C.*, No. 03 Civ. 8823(CSH), 2006 WL 692002 (S.D.N.Y. Mar. 16, 2006) (compelling arbitration where plaintiff received arbitration agreements with credit card and manifested assent to the agreement's terms by using the card).

52. See *infra* Appendix for a sample arbitration award.

53. See DOYLE & HAYDOCK, *supra* note 3, at 65.

54. NAT'L ARB. FORUM, CODE OF PROC. R. 37H (2006), available at <http://www.adrforum.com/users/naf/resources/20060501CodeOfProcedure072106.pdf>.

55. See, e.g., *MBNA Am. Bank, N.A. v. Credit*, 132 P.3d 898, 901 (Kan. 2006) (asserting court's willingness to vacate awards where the arbitration award is not properly attached).

56. See NAT'L ARB. FORUM, CODE OF PROC. R. 39F (2006), available at <http://www.adrforum.com/users/naf/resources/20060501CodeOfProcedure072106.pdf>.

**AFFIDAVIT.** Some jurisdictions require a separate affidavit setting forth the facts of the arbitration agreement, the hearing, and the award.<sup>57</sup> In most jurisdictions, a party may include this information in the motion or petition, which also may be verified, i.e., signed by the party<sup>58</sup> and notarized.

**PROPOSED ORDER.** Many courts require the party seeking confirmation to submit a proposed order for the judge to sign, converting the arbitration award to a judgment.<sup>59</sup>

**MEMORANDUM OF LAW.** Some jurisdictions require a memorandum of law to support the request for confirmation. The memo should contain a concise summary of the applicable law establishing that the judge has the power and the obligation to confirm the arbitration award. The information provided in this Article and cited statutes and cases can be helpful in drafting this memo.<sup>60</sup>

## 2. *Confirmation Fee*

Confirmation fees vary in amount among jurisdictions. Some charge reduced fees for confirmation proceedings, reflecting their summary nature, while others require the party seeking confirmation to pay the same fee that applies to motions, petitions, or civil actions. The administrative clerk of court in the jurisdiction in which the arbitrator issued the award will know the exact amount of the filing fee.

## 3. *Service*

The party seeking confirmation must serve confirmation documents on all parties against whom confirmation is sought so that they have an opportunity to respond, if they wish, or to appear at a hearing, if one is held. Service by mail is sufficient in many jurisdictions, although some require personal service.<sup>61</sup> The time

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[www.adrforum.com/users/naf/resources/20060501CodeOfProcedure072106.pdf](http://www.adrforum.com/users/naf/resources/20060501CodeOfProcedure072106.pdf) (“Parties may request a duplicate original of an Award or Order or a copy of other filed Documents and pay the fee as determined by the Forum.”).

57. See *infra* Appendix for a sample affidavit.

58. See *Worldwide Asset Purchasing, LLC v. Karafotias*, 801 N.Y.S.2d 721, 725 (N.Y. Civ. Ct. 2005) (finding that petition verified only by party’s attorney “on information and belief” is not prima facie evidence of an arbitration agreement).

59. See *infra* Appendix for a sample order.

60. See *infra* Appendix for a sample memorandum of law.

61. See *infra* Table of Confirmation Procedures (providing each jurisdiction’s

and other requirements for service vary widely, with time periods varying from five to thirty days.

#### 4. *Hearing*

In most jurisdictions, confirmation occurs without a hearing unless the adverse party submits a response or requests a hearing. In those jurisdictions that require the judge to review and consider the motion or petition at a hearing, the party seeking confirmation must serve a notice of the hearing on the opposing party, along with all the other required documents.<sup>62</sup> At the hearing, the party seeking the confirmation may rely on the documents submitted and should answer any of the judge's questions. In an unusual case, the judge may need testimony from a witness regarding the arbitration process and the award.

#### 5. *Determination*

In all jurisdictions, a court official must review the arbitration documents to determine the propriety of issuing an order of confirmation. In some jurisdictions, this official may be a court clerk or administrator rather than a judge. If there is no opposition or response to the confirmation request, a judge, clerk, or administrator has the power to issue an order in favor of the filing party.<sup>63</sup> If a party challenges confirmation, a judge may review the challenge at a hearing.

#### 6. *Filing*

The administrator or clerk of court will proceed to enter an arbitration award as a judgment after finding that confirmation is appropriate. Typically this is done by the court filing the order and issuing a judgment that is then entered as a final judgment. The mechanics of this process vary depending on the court's docket and filing system.

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service requirements).

62. *See id.*

63. *See, e.g.*, FED. R. CIV. P. 55(a) ("When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.").

### 7. *Defenses*

In most cases, arbitration awards are confirmed and entered as judgments without opposition from the adverse party. Having received the proper hearing and notice, a party to arbitration usually cannot successfully challenge the award because there are very limited grounds for doing so.<sup>64</sup> The United States Supreme Court has held that courts must confirm arbitration awards unless there exists a challenge under the FAA or an applicable state arbitration act.<sup>65</sup> Available grounds include extraordinary circumstances such as fraud, corruption, and procedural misconduct but do not permit the court to reconsider the merits of the dispute.<sup>66</sup> If a confirmation proceeding is initiated after the

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64. Under the FAA, an order vacating an award may be issued only:

- (1) where the award was procured by corruption, fraud, or undue means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a) (2000). A court may modify or correct an award under the FAA:

- (a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
- (b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
- (c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

9 U.S.C. § 11 (2000). *See also* UNIF. ARBITRATION ACT. §§ 12, 13 (amended 2000), 7 U.L.A. 497, 674–75 (2005) (requiring similar grounds for vacating, modifying, or correcting an award); REVISED UNIF. ARBITRATION ACT. §§ 20, 23, 24, 7 U.L.A. 66, 73, 83–84 (2005) (requiring the same); MACNEIL ET AL., *supra* note 15, § 40:41:18 (describing in detail the proof needed to vacate, modify, or correct an award).

65. *See* Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 220 (1985) (stating that Congress intended the courts to “enforce [arbitration] agreements into which parties had entered”).

66. 9 U.S.C. § 10 (2000); *see also* Lattimer-Stevens Co. v. United Steelworkers, AFL-CIO, Dist. 27, Sub-Dist. 5, 913 F.2d 1166, 1169 (6th Cir. 1990) (describing a court’s review of an arbitration award as “one of the narrowest standards of judicial review in all of American jurisprudence”); Madison Teachers Inc. v. Madison Metro. Sch. Dist., 678 N.W.2d 311, 315 (Wis. Ct. App. 2004) (“Essentially the court’s role is supervisory in nature—to insure that the parties receive what they bargained for when they agreed to resolve certain disputes through final and binding arbitration.”).

time to challenge the award has elapsed, defenses that could have been raised in such a challenge are time-barred.<sup>67</sup>

#### 8. *Judicial Review of Defenses*

As stated above, a judge has restricted authority in reviewing an arbitration award. The confirmation process is supposed to be a summary proceeding, and judges can only review an award on limited grounds.<sup>68</sup> While judges may be inclined to want broader authority and may be curious about what happened in the arbitration process, they have no discretion to extend their authority or second-guess the arbitrator's decision. If it were otherwise, arbitration would become less efficient and cost-effective, frustrating or defeating state and federal policies supportive of arbitration. Further, federal law controls the overall confirmation process, and idiosyncratic state procedures would surely defeat the strong national policy favoring the use of arbitration.

#### D. *Awards in Cases Where Consumers Fail to Participate in the Arbitration*

A few state courts have recently developed rules for confirmations involving a particular set of circumstances in which the FAA is found to be inapplicable: where credit card companies seek to confirm awards against cardholders who did not participate in the arbitration. The key to understanding these few cases is that the courts applied state law to determine whether the arbitration award was enforceable because the courts found insufficient information in the record to conclude that the FAA applied.

For example, in *Worldwide Asset Purchasing, LLC v. Karafotias*,<sup>69</sup> the New York Civil Court, relying on New York's Civil Practice Law and Rules ("CPLR"),<sup>70</sup> requested evidence to support the conclusion that both parties did in fact agree to arbitrate their

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67. See *Wallace v. Buttar*, 378 F.3d 182, 197–98 (2d Cir. 2004); *Sheet Metal Workers Int'l Ass'n, Local Union No. 36 v. Systemaire, Inc.*, 241 F.3d 972, 975–76 (8th Cir. 2001).

68. See, e.g., *Coast Trading Co. v. Pac. Molasses Co.*, 681 F.2d 1195, 1198 (9th Cir. 1982) (stating that the courts will not examine the merits of the award but will review to make sure it reflects the parties' agreement).

69. 801 N.Y.S.2d 721 (N.Y. Civ. Ct. 2005).

70. See N.Y. C.P.L.R. 32, 75 (McKinney 2001).

dispute.<sup>71</sup> The court clarified that judicial review of default petitions should be commenced under New York's CPLR unless the written consumer contract provides for the service and award requirements to be considered under the FAA.<sup>72</sup> To adequately demonstrate the FAA's applicability, the practitioner is advised to provide the court with a copy of the written arbitration agreement or evidence of an arbitration agreement based on the parties' conduct together with evidence of the parties' agreement to arbitrate under the provisions of the FAA.<sup>73</sup> In most instances, such a reference to the applicability of the FAA is provided in the arbitration award or the rules of the arbitration administrator. For instance, Rule 48B of the FORUM Code of Procedure states that the FAA applies and governs arbitration agreements and proceedings.<sup>74</sup> Where explicit reference to the FAA is not included in the petition to confirm, the courts may wriggle free of the FAA and impose more onerous state law confirmation requirements.<sup>75</sup>

When responding to petitions to confirm in *Karafotias*<sup>76</sup> and *Straub*,<sup>77</sup> the New York state courts diverged from the requirements of the FAA by requiring the party seeking confirmation to make a prima facie showing that both parties agreed to submit their dispute to arbitration. If the other party is not present to acknowledge the agreement, then the court will look for the written arbitration agreement, proof that the cardholder accepted the agreement through writing or conduct, and proof that the party seeking confirmation properly served notice of the arbitration hearing and award.<sup>78</sup>

As of February 2006, Pennsylvania courts will not confirm arbitration awards in the consumer credit context if the cardholder did not participate in the arbitration.<sup>79</sup> Instead of seeking

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71. *Karafotias*, 801 N.Y.S.2d at 724.

72. *Id.* at 723.

73. *MBNA Am. Bank, NA v. Straub*, 815 N.Y.S.2d 450, 452 (N.Y. Civ. Ct. 2006).

74. NAT'L ARB. FORUM, CODE OF PROC. R. 48B (2006), available at <http://www.adrforum.com/users/naf/resources/20060501CodeOfProcedure072106.pdf>.

75. *Straub*, 815 N.Y.S.2d at 455-56.

76. 801 N.Y.S.2d 721.

77. 815 N.Y.S.2d 450.

78. See *id.* for additional details regarding the nature of proof required under these circumstances.

79. PA. R. CIV. P. 1327 (providing that a party in a consumer credit transaction may file a motion to confirm an award only if the opposing party attended the arbitration hearing or signed a writing after the claim was filed with

confirmation, the prevailing party must file a civil action, serve process through an expensive procedure using the local sheriff, and—after obtaining no response—receive a default judgment.<sup>80</sup> These rules clearly frustrate the federal policy of having all arbitration agreements enforced on the same terms and, just as clearly, are preempted by the FAA.

This Pennsylvania court-imposed rule reflects judicial hostility focused on some types of arbitrations.<sup>81</sup> All parties—including credit card companies and consumers—are entitled to the same arbitration rights provided by the FAA. The FAA treats all parties identically and makes no distinctions among different parties. Further, the Pennsylvania rule imposes excessive burdens on businesses engaged in interstate commerce and unnecessarily increases costs for consumers.

Arbitration cases, like court cases, require a defendant to respond to a claim and participate in the hearing process. If a party fails to do so, a default award may be readily issued and should be confirmed in the same way that a contested case award is confirmed.<sup>82</sup> To date, however, the Pennsylvania rules have neither been revoked nor ruled unfair and unenforceable.

#### *E. International Arbitration Awards*

As business disputes increasingly involve international parties or transactions, international arbitrations are becoming more common. The term “international arbitration” has two primary definitions. First, when two disputing parties originate from different countries, their arbitration is international, even if it takes place in the United States.<sup>83</sup> Second, when two domestic parties enter into a dispute implicating international issues, this situation also results in an international arbitration.<sup>84</sup> An international treaty

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the arbitrator, agreeing to arbitration).

80. See PA. R. CIV. P. 1326–1331.

81. See *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 269–70 (1995).

82. See NAT'L ARB. FORUM, CODE OF PROC. R. 36 (2006), available at <http://www.adrforum.com/users/naf/resources/20060501CodeOfProcedure072106.pdf>; see also *Shamah v. Schweiger*, 21 F. Supp. 2d 208, 210–11, 217 (E.D.N.Y. 1998) (confirming National Association of Security Dealers arbitration award following default proceeding).

83. *Bergesen v. Joseph Muller Corp.*, 710 F.2d 928 (2d Cir. 1983).

84. 5 ROGER S. HAYDOCK, PETER B. KNAPP & JOHN O. SONSTENG, *METHODS OF PRACTICE: CIVIL ADVOCACY* § 12.15 (2d ed. 2007).

known as the New York Convention<sup>85</sup> governs the enforceability of both types of international arbitrations.<sup>86</sup> Over 130 countries, including the United States, are signatories to this treaty. It is implemented in the United States through section 201 of title 9 of the United States Code.<sup>87</sup>

An international arbitration award is enforceable where the parties entered a recognizable arbitration agreement. The New York Convention defines an arbitration agreement broadly as a written agreement, signed by the parties, to submit a dispute to arbitration.<sup>88</sup> This definition encompasses both a signed arbitration agreement and an arbitration clause in a signed document.<sup>89</sup> Furthermore, most countries, including the United States, apply the New York Convention only to arbitrations in which the controversy involves a commercial transaction or relationship or in which one of the parties is a commercial entity or individual.<sup>90</sup> The United States also requires “reciprocity” in order to enforce the award, that is, the award must be issued in a country that is a signatory to the New York Convention.<sup>91</sup>

Where these requirements are met, international arbitration awards are readily confirmed. United States courts liberally favor recognizing and enforcing foreign arbitral awards.<sup>92</sup> In order to enforce an international award, the party seeking enforcement must simply provide to the court a certified copy of the award and a certified copy of the arbitration agreement.<sup>93</sup> One effect of the widespread acceptance of the New York Convention is that “[i]t is far easier to enforce an arbitration award worldwide than it is to attempt to enforce a civil judgment. There is no comparable

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85. *Id*; see also 9 U.S.C. § 201 (2000); *Bergesen*, 710 F.2d at 930–31 (“Under the auspices of the United Nations, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards was convened in New York City in 1958 to resolve difficulties created by two earlier treaties.”).

86. *Bergesen*, 710 F.2d at 933.

87. 9 U.S.C. § 201.

88. Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. 2, *adopted* June 10, 1958, 21 U.S.T 2517, 330 U.N.T.S. 4739.

89. *Id*.

90. 9 U.S.C. § 202.

91. *Id*. § 304.

92. See *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 516–17 (1974); 5 HAYDOCK ET AL., *supra* note 84, § 12.15.

93. Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. IV, *adopted* June 10, 1958, 21 U.S.T 2517, 330 U.N.T.S. 4739; 5 HAYDOCK ET AL., *supra* note 84, § 12.15.

worldwide treaty—no full faith and credit international law concept—requiring countries to enforce judicial judgments from other countries.”<sup>94</sup> And courts are commonly reluctant to do so.<sup>95</sup>

### III. CONCLUSION

This Article presents an overview of the confirmation process in federal and state courts. Interested parties can direct questions about confirmation procedures in a specific court to the responsible court clerk or administrator. Where parties encounter court officials or judges who are unfamiliar with the process, the parties may need to explain just how simple and straightforward the process is. Appropriately, parties who have obtained an award efficiently and affordably through arbitration do not need to give up these benefits when they seek to enforce the award. It is up to court clerks and judges to maintain the advantages of arbitration, including its efficiencies and cost-effectiveness.

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94. 5 HAYDOCK ET AL., *supra* note 84, § 12.15.

95. *Id.* For more information about international arbitrations, see Jane L. Voltz & Roger S. Haydock, *Foreign Arbitral Awards: Enforcing the Award Against the Recalcitrant Loser*, 21 WM. MITCHELL L. REV. 867 (1996).

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CONFIRMING ARBITRATION AWARDS

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**APPENDIX**

**MOTION TO CONFIRM ARBITRATION AWARD**

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Petitioner(s),

vs.

**MOTION TO CONFIRM  
ARBITRATION AWARD**

Respondent(s).

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Based upon the award of the Arbitrator, as provided in the attached documents, Petitioner requests that the Court confirm the arbitration award as a judgment and enter judgment against the Respondents(s) in the amount(s) of \$\_\_\_\_\_.

Respectfully submitted,

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Petitioner

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**ARBITRATION AWARD**

Petitioner(s),

vs.

AWARD

Respondents(s).

The undersigned arbitrator:

1. Acknowledges that all documents and evidence submitted in this arbitration have been reviewed and considered.

2. Finds that the Petitioner has filed with [name of arbitration organization] and properly and timely served on Respondent an arbitration claim.

3. Finds that Respondent has responded to this claim as required by the applicable arbitration code of procedure.

4. Has conducted a hearing in accord with the applicable arbitration code of procedure.

5. Finds that the evidence submitted in this case supports the issuance of this award.

6. Issues an Award in favor of the Petitioner and against Respondent in the amount of \$\_\_\_\_\_ as damages, \$\_\_\_\_\_ as recoverable arbitration fees, and \$\_\_\_\_\_ as reasonable attorney fees, for a total award of \$\_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Arbitrator

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CONFIRMING ARBITRATION AWARDS

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**AFFIDAVIT**

Petitioner(s),

vs.

AFFIDAVIT

Respondent(s).

Affiant, being duly sworn under oath, states:

1. I am [name and title].

2. An arbitration award was issued on \_\_\_\_\_, \_\_\_\_\_ by Arbitrator [arbitrator's name] in [location of arbitration]. An exact copy of this award is attached to this affidavit as Exhibit A.

3. This arbitration involved the following parties: [names of parties]. These parties signed and agreed to this arbitration as evidenced by an arbitration agreement attached to this affidavit as Exhibit B.

4. The arbitration award was obtained pursuant to the agreement of the parties, the rules of the arbitration organization, and the law.

Notary Subscription

Signature \_\_\_\_\_

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**ORDER**

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Petitioner(s),

vs.

**ORDER**

Respondent(s).

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This Court has considered the request of Petitioner to confirm an arbitration award and has reviewed all documents.

THIS COURT ORDERS that the arbitration award issued in this case in the amount of \$ \_\_\_\_\_ be confirmed and that a judgment be entered immediately in the amount of \$ [same amount] in favor of [Petitioner's name] and against [Respondent's name].

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge

2007]

CONFIRMING ARBITRATION AWARDS

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**MEMORANDUM OF LAW**

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Petitioner(s),

vs.

**MEMORANDUM IN SUPPORT OF MOTION  
TO CONFIRM ARBITRATION AWARD**Respondent(s).

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This memorandum is submitted on behalf of Petitioner [name of Petitioner] in support of its motion, pursuant to 9 U.S.C. § 9, to confirm an arbitration award. This motion should be granted and the award confirmed into a judgment because the arbitration was in all respects proper and the award is final and binding.

*Statement of Facts*

On or about [date] Petitioner and Respondent entered into an agreement which provided that the parties would settle any dispute arising out of the agreement by arbitration according to [applicable arbitration administrator and code of procedure].

*Procedural Background*

On or about [date] Petitioner filed an arbitration claim with the [arbitration administrator] claiming \$\_\_\_\_\_ in damages due to Respondent. On [date] the arbitrator(s) issued Petitioner an award of \$\_\_\_\_\_. Petitioner now moves to confirm this award.

*Explanation*

The Federal Arbitration Act, 9 U.S.C. § 9, provides that “within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected.” Accordingly, this court has the obligation to confirm Petitioner’s arbitration award into a judgment. *See Doctor’s Assocs., Inc. v. Cassarotto*, 517 U.S. 681 (1996) (stating the purpose of the Federal Arbitration Act is to ensure that private agreements to arbitrate are enforced); *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265 (1995) (“[T]he basic purpose of the Federal Arbitration Act is to overcome courts’ refusals to enforce agreements to arbitrate.”); *Southland Corp. v. Keating*, 465 U.S. 1,

15–16 (1984) (holding the Federal Arbitration Act preempts state law and state courts cannot apply state statutes that invalidate arbitration agreements).

The standard of review of an arbitrator’s decision by the court is very narrow. The scope of review is limited, and the court may not examine the merits of the decision except to the extent that the award exceeds the agreement of the parties. *See Burchell v. Marsh*, 58 U.S. 344, 349 (1854) (stating the appropriate scope of judicial review is whether the award is the honest decision of the arbitrator, made within the scope of the arbitrator’s power, and that a court will not otherwise set aside an award for error). *See also D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 110 (2d Cir. 2006) (quoting *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984)) (“Normally, confirmation of an arbitration award is ‘a summary proceeding that merely makes what is already a final arbitration award a judgment of the court’ . . .”); *Coast Trading Co. v. Pacific Molasses Co.*, 681 F.2d 1195, 1197–98 (9th Cir. 1982).

Here, the arbitrator(s), having considered the pleadings and other evidence presented at the hearing, determined that Respondent was liable to Petitioner. There are no grounds for vacating, modifying, or correcting an arbitration award enumerated in 9 U.S.C. §§10–11 which exist, and Respondent has not made any motion to vacate, modify, or correct the award.

*Conclusion*

Petitioner respectfully requests an order confirming an arbitration award into a judgment in the amount of \$\_\_\_\_\_ for Petitioner [name of Petitioner] and against Respondent.

Dated:\_\_\_\_\_

\_\_\_\_\_  
Petitioner

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## CONFIRMING ARBITRATION AWARDS

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**TABLE OF CONFIRMATION PROCEDURES\***

Jurisdiction	Relevant Statute	What Method of Initial Service Is Required?	What Procedure Is Used to Initiate the Confirmation Process?	Are Attorney Fees Recoverable?	What Is the Statute of Limitations?	Is There a Waiting Period Before Confirmation Can Be Sought?	Is a Notice of Hearing Required?
<b>Federal Courts</b>	9 U.S.C. § 9	Applicable District Court rules for service of motion	Application by motion	Statute silent	1 year	None	Yes, statute requires service upon adverse party
<b>Alabama</b>	ALA. CODE § 6-6-12	By attachment or writ	Filing file and award w/Circuit Court	Statute silent	None	10 days	Yes, within 10 days
<b>Alaska</b>	ALASKA STAT. § 09.43.490	Personal service or certified mail	Application to the court	Yes, court may award fees and costs at its discretion	None	None	Yes, must serve the notice within 5 days of serving a responsive pleading
<b>Arizona</b>	ARIZ. REV. STAT. ANN. §12-1511	Personal service	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, within 5 days (10 days if by mail)
<b>Arkansas</b>	ARK. CODE ANN. § 16-108-211	Personal service or certified mail	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, within 10 days (13 days if by mail)

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Jurisdiction	Relevant Statute	What Method of Initial Service Is Required?	What Procedure Is Used to Initiate the Confirmation Process?	Are Attorney Fees Recoverable?	What Is the Statute of Limitations?	Is There a Waiting Period Before Confirmation Can Be Sought?	Is a Notice of Hearing Required?
<b>California</b>	CAL. CIV. PROC. CODE § 1288	Personal service or registered / certified mail	By petition	Yes, court shall award fees and costs	4 years	10 days	Yes, within 10 days
<b>Colorado</b>	COLO. REV. STAT. ANN. § 13-22-222	Personal service	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 5 days before the hearing
<b>Connecticut</b>	CONN. GEN. STAT. ANN. § 52-417	Personal service or mail	Application by motion	Statute silent	1 year	None	Yes, court issues a citation directing adverse party to appear
<b>Delaware</b>	DEL. CODE ANN. tit. 10, § 5713	Personal service	Filing a complaint or application	Yes, court may award fees and costs at its discretion	1 year	None	Yes, no later than 2 days before the hearing (5 if by mail)

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## CONFIRMING ARBITRATION AWARDS

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<b>District of Columbia</b>	D.C. CODE ANN. § 16-4310	Personal service or mail	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, court issues a notice of hearing
<b>Florida</b>	FLA. STAT. ANN. § 682.12	Personal service or certified mail	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, within a "reasonable time" before hearing
<b>Georgia</b>	GA. CODE ANN. § 9-9-12	Personal service	Application by motion	Statute silent	1 year	None	Yes, no later than 5 days before the hearing
<b>Hawaii</b>	HAW. REV. STAT. ANN. § 658A-22	Personal service	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 18 days before the hearing
<b>Idaho</b>	IDAHO CODE ANN. § 7-911	Personal service	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 5 days before the hearing
<b>Illinois</b>	710 ILL. COMP. STAT. ANN. § 5/11	Personal service	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, notice must be given within the time determined by the applicable court

Jurisdiction	Relevant Statute	What Method of Initial Service Is Required?	What Procedure Is Used to Initiate the Confirmation Process?	Are Attorney Fees Recoverable?	What Is the Statute of Limitations?	Is There a Waiting Period Before Confirmation Can Be Sought?	Is a Notice of Hearing Required?
<b>Indiana</b>	IND. CODE ANN. § 34-57-2-12	Personal service or mail	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 5 days before the hearing (10 if by mail)
<b>Iowa</b>	IOWA CODE ANN. § 679A.11	Personal service	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, court issues notice and objections may be filed within 10 days thereafter
<b>Kansas<sup>1</sup></b>	KAN. STAT. ANN. § 5-411	Certified mail (as a summons)	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 5 days before the hearing
<b>Kentucky</b>	KY. REV. STAT. ANN. § 417.150	Personal service or certified / registered mail	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, notice within a "reasonable time" before the hearing
<b>Louisiana</b>	LA. REV. STAT. ANN. § 9:4209	Registered or certified mail	Application by motion	Statute silent	1 year	None	Yes, no later than 5 days before the hearing

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<b>Maine</b>	ME. REV. STAT. ANN. tit. 26, § 5937	Personal service or 1 <sup>st</sup> class mail	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, notice to be included with the motion, giving opponent an opportunity to object
<b>Maryland</b>	MD. CODE ANN., CTS. & JUD. PROC. § 3-227	Personal service or certified mail	By petition	Yes, court may award fees and costs at its discretion	None	None	Yes, after service of petition, party issues "Intent to Defend" within 15 days
<b>Massachusetts</b>	MASS. GEN. LAWS ANN. ch. 251, § 11	Personal service or certified / registered mail	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 7 days before the hearing (10 if by mail)
<b>Michigan</b>	MICH. COMP. LAWS ANN. § 600.5025	Personal service or mail	Application by confirmation	Statute silent	1 year	None	Yes, no later than 7 days before the hearing (9 if by mail)
<b>Minnesota</b>	MINN. STAT. § 572.18	Personal service or 1 <sup>st</sup> class mail	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 5 days before the hearing
<b>Mississippi</b>	MISS. CODE ANN. § 11-15-21	Personal service or mail	Application by motion	Statute silent	1 year	None	Yes, no later than 5 days before the hearing

Jurisdiction	Relevant Statute	What Method of Initial Service Is Required?	What Procedure Is Used to Initiate the Confirmation Process?	Are Attorney Fees Recoverable?	What Is the Statute of Limitations?	Is There a Waiting Period Before Confirmation Can Be Sought?	Is a Notice of Hearing Required?
<b>Missouri</b>	MO. ANN. STAT. § 435.400	Personal service	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 5 days before the hearing
<b>Montana</b>	MONT. CODE ANN. § 27-5-311	Personal service or mail	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 5 days before the hearing
<b>Nebraska</b>	NEB. REV. STAT. ANN. § 25-2612	Personal service or certified mail	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, notice given within a "reasonable time" before the hearing
<b>Nevada</b>	NEV. REV. STAT. ANN. § 38.239	Personal service	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 5 days before the hearing
<b>New Hampshire</b>	N.H. REV. STAT. ANN. § 542:8	Personal service	Application to Superior Court	Statute silent	1 year	None	Yes, party has 10 days to object and request an oral hearing

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<b>New Jersey</b>	N.J. STAT. ANN. § 2A:23A-12	By certified / registered mail return receipt requested, or by personal service	Initiate summary action, following procedure in N.J. Rules of Court Rule 4:67	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 10 days before the hearing
<b>New Mexico</b>	N.M. STAT. ANN. § 44-7A-23	Personal service or mail	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 5 days before the hearing (8 if by mail)
<b>New York<sup>u</sup></b>	N.Y. C.P.L.R. 7510	Personal service or 1 <sup>st</sup> class mail	Application by "special procedure"	Statute silent	1 year	None	Yes, no later than 8 days before the hearing
<b>North Carolina</b>	N.C. GEN. STAT. § 1-569,22	Personal service	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 5 days before the hearing
<b>North Dakota</b>	N.D. CENT. CODE § 32-29.3-22	Personal service, facsimile, or mail	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 14 days before the hearing
<b>Ohio</b>	OHIO REV. CODE ANN. § 2711.09	Personal service, certified / express mail	Application by motion	Statute silent	1 year	None	Yes, no later than 5 days before the hearing

Jurisdiction	Relevant Statute	What Method of Initial Service Is Required?	What Procedure Is Used to Initiate the Confirmation Process?	Are Attorney Fees Recoverable?	What Is the Statute of Limitations?	Is There a Waiting Period Before Confirmation Can Be Sought?	Is a Notice of Hearing Required?
<b>Oklahoma</b>	OKLA. STAT. ANN. tit. 12, § 1873	Personal service, certified mail	Application by motion	Yes, court may add "reasonable" fees and costs at its discretion	None	None	Yes, no later than 5 days before the hearing
<b>Oregon</b>	OR. REV. STAT. ANN. § 36.700	Personal service or certified mail, return receipt requested	By petition	Yes, court may award fees and costs at its discretion	None	None	Yes, must serve copy of petition
<b>Pennsylvania<sup>iii</sup></b>	42 PA. CONS. STAT. ANN. § 7313	Personal service	By petition	Yes, court may award fees and costs at its discretion	None	None	Yes, governed by local county courts
<b>Rhode Island</b>	R.I. GEN. LAWS § 10-3-11	Personal service by mail	Application by motion	Statute silent	1 year	None	Yes, no later than 10 days before the hearing
<b>South Carolina</b>	S.C. CODE ANN. § 15-48-120	Personal service or mail	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 10 days before the hearing (15 if by mail)

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<b>South Dakota</b>	S.D. CODIFIED LAWS § 21-25A-23	Personal service	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 5 days before the hearing
<b>Tennessee</b>	TENN. CODE ANN. § 29-5-312	Personal service	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 5 days before the hearing
<b>Texas</b>	TEX. CIV. PRAC. & REM. CODE ANN. § 171.087	Personal service or certified / registered mail	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 3 days before the hearing (6 if by mail)
<b>Utah</b>	UTAH CODE ANN. § 78-31a-123	Personal service or mail	By petition	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 20 days before the hearing
<b>Vermont</b>	Vt. STAT. ANN. tit. 12, § 5676	Personal service or mail	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, party has 15 days to object; hearing unless no issue of fact
<b>Virginia</b>	VA. CODE ANN. § 8.01-581.09	Personal service or mail	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 10 days before the hearing

Jurisdiction	Relevant Statute	What Method of Initial Service Is Required?	What Procedure Is Used to Initiate the Confirmation Process?	Are Attorney Fees Recoverable?	What Is the Statute of Limitations?	Is There a Waiting Period Before Confirmation Can Be Sought?	Is a Notice of Hearing Required?
<b>Washington</b>	WASH. REV. CODE ANN. § 7.04.150	Personal service or mail	Application by motion	Yes, court may award fees and costs at its discretion	1 year	None	Yes, no later than 5 days before the hearing
<b>West Virginia</b>	W. VA. CODE ANN. § 55-10-3	Personal service	Application by motion	Statute silent	None	None	Yes, no later than 10 days before the hearing
<b>Wisconsin</b>	Wis. STAT. ANN. § 788.09	Personal service	Application by motion	Statute silent	1 year	None	Yes, no later than 5 days before the hearing (8 if by mail)
<b>Wyoming</b>	WYO. STAT. ANN. § 1-36-113	Personal service or registered / certified mail	Application by motion	Yes, court may award fees and costs at its discretion	None	None	Yes, no later than 10 days before the hearing

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\* As explained in this article, state laws cannot make the confirmation process more onerous than the federal confirmation proceedings. For example, the federal statute of limitations, not a more restrictive state law, would apply to proceedings in state court.

<sup>i</sup> In *MBNA Am. Bank, N.A. v. Credit*, 132 P.3d 898 (Kan. 2006), the Supreme Court of Kansas vacated a consumer credit arbitration award, finding that the party seeking confirmation bears the burden of establishing the existence of a challenged arbitration agreement. Here, the bank failed to attach a copy of the arbitration agreement to its motion to confirm or to otherwise demonstrate that the agreement existed, so the court vacated the award. *Id.* at 901-02.

<sup>ii</sup> The Civil Court of the City of New York recently issued an opinion outlining the procedure for confirmation of a consumer credit arbitration award. *MBNA Am. Bank, NA v. Straub*, 815 N.Y.S.2d 450 (N.Y. Civ. Ct. 2006). This case generally requires the party seeking confirmation to submit a copy of the written arbitration agreement, proof that the cardholder agreed to and was bound by the arbitration, and a showing that notice of the arbitration hearing and award were properly served. *Id.* at 452-54.

<sup>iii</sup> Recently enacted rules from the Supreme Court of Pennsylvania prohibit confirmation of arbitration awards stemming from consumer credit transactions where one party does not participate in the arbitration. PA. R. CIV. P. 1326-1331.