

## Arbitration Law FAQ: Chapter 1 of the Federal Arbitration Act



This Arbitration Law FAQ guide briefly explains what the Federal Arbitration Act is, and then answers some frequently asked questions about Chapter 1 of the Act. It is not legal advice, nor a substitute for legal advice, and should not be relied upon as such.

If you desire or require legal advice or representation in a matter concerning commercial, labor, or any other arbitration-law matter, then do not hesitate to contact a skilled and experienced arbitration-law attorney. This guide provides some general information that may be able to assist you in your search for legal representation, or in simply obtaining a better understanding of some arbitration-law basics.

### Arbitration Law FAQs: What is the Federal Arbitration Act?



The Federal Arbitration Act is a federal statute enacted in 1925 that makes certain (but not all) arbitration agreements "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. It was originally, and for many years, known as the "United States Arbitration Act," but for simplicity's sake we'll refer to it as the "Federal Arbitration Act," the "FAA," or the "Act."

It was passed at a time when courts were, for the most part, unwilling to enforce agreements to arbitrate because they thought that such agreements "divested" their "jurisdiction" over disputes that would ordinarily be decided by courts. In other words, many courts thought it wrong for courts to lend their assistance to the enforcement of contracts under which parties would agree to submit their disputes to private decision makers.

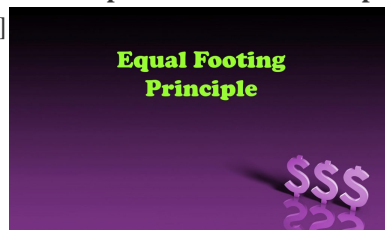
Even by the time the FAA was passed, arbitration was not new. For example, it can be traced back at least as far as medieval times, when various guilds used it as a way of resolving disputes according to what became known as the "law merchant," an informal body of rules and principles

that merchants believed should be applied to their disputes, but which common law courts did not, at the time, apply. The first arbitration agreement was reportedly included in a reinsurance contract in the late 18th century, and George Washington apparently included an arbitration clause in his will.

The FAA, as originally enacted, consisted of 14 provisions. In 1970 Congress designated those first 14 provisions as "Chapter 1" of the FAA, and added a "Chapter 2," which consists of various provisions implementing and enabling the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (a/k/a the "New York Convention"). In 1988 Congress added two additional provisions to Chapter 1 of the FAA, Sections 15 and 16. In 1990 Congress added to the FAA a Chapter 3, which consists of provisions implementing and enabling the Inter-American Convention on International Commercial Arbitration (a/k/a the "Panama Convention").

The remainder of this FAQ guide focuses on Chapter 1 of the FAA.

**Arbitration Law FAQs: What does Chapter 1 of the FAA do apart from declaring certain arbitration agreements to be valid, irrevocable, and enforceable? ]**



Section 2 of the Federal Arbitration Act is sometimes referred to as the Act's "enforcement command." It is the provision that declares certain (but not all) arbitration agreements to 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.

Under Section 2, "arbitration is a matter of contract, and courts must enforce arbitration contracts according to their terms." [Schein v. Archer & White Sales, Inc.](#), 586 U.S. \_\_\_\_, slip op. at \*4 (Jan. 8, 2019) (citation and quotation omitted). Section 2 also "requires courts to place arbitration agreements on an equal footing with all other contracts." [Kindred Nursing Centers Ltd. P'ship v. Clark](#), 137 S. Ct. 1421, 1424 (2017) (quotations and citations omitted).



Section 1 of the FAA provides some definitions and exempts from the FAA a fairly limited universe of agreements that would otherwise fall within the scope of the Act. See 9 U.S.C. § 1. The other provisions of Chapter 1 implement the enforcement command by lending judicial support to the enforcement of arbitration agreements and awards. These are briefly summarized below:

Section 3 ? Requires courts to stay litigation in favor of arbitration. 9 U.S.C. § 3.

Section 4 ? Provides for courts to compel arbitration.

Section 5 ? Provides for courts to appoint arbitrators when there has been a default in the arbitrator selection process.

Section 6 ? Provides that motion practice rules apply to applications made under the FAA, thereby expediting the judicial disposition of such applications.

Section 7 ? Provides for the judicial enforcement of certain arbitration subpoenas.

Section 8 ? Provides that where the basis for federal subject matter jurisdiction is admiralty, then the party claiming to be aggrieved may begin his proceeding [under the FAA] by libel and seizure of the vessel or other property?.? 9 U.S.C. § 8.

Section 9 ? Provides for courts to confirm arbitration awards, that is, enter judgment upon them.

Section 10 ? Authorizes courts to vacate arbitration awards in certain limited circumstances.

Section 11 ? Authorizes courts to modify or correct arbitration awards in certain limited circumstances.

Section 12 ? Provides rules concerning the service of a motion to vacate, modify, or correct an award, including a three-month time limit.

Section 13 ? Specifies papers that must be filed with the clerk on motions to confirm, vacate, modify, or correct awards and provides that judgment entered on orders on such motions has the same force and effect of any other judgment entered by the court.

Section 14 ? Specifies that agreements made as of the FAA's 1925 effective date are subject to the FAA.

Section 15 ? Provides that Enforcement of arbitral agreements, confirmation of arbitral awards, and execution upon judgments based on orders confirming such awards shall not be refused on the basis of the Act



commerce? These arbitration provisions are pre-dispute arbitration agreements because they are defined by Part [D] as provision[s] to settle a controversy thereafter arising out of such contract or transaction, or [out of] the refusal to perform the whole or any part of such contract or transaction?.

9 U.S.C. § 2

(emphasis added). In other words, agreements to submit future disputes to arbitration.

Parts [A] through [E] of Section 2 make the FAA applicable also to written, post-dispute arbitration agreements, that is, agreements to arbitrate existing disputes arising out of maritime transactions or contract[s] evidencing transactions involving commerce? To that end Part [E] makes Section 2 applicable to agreement[s] in writing to submit to arbitration an existing controversy arising out of maritime transaction, (Part [B]) contract evidencing a transaction involving commerce (Part [C]), or refusal to perform the whole or any part of such a contract or transaction. (Part[D]). 9 U.S.C. § 2 (emphasis added).

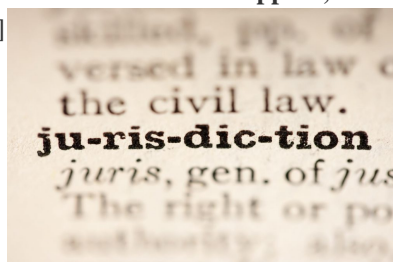
**Arbitration Law FAQs: Are there any Arbitration Agreements Falling Under FAA Section 2 that are Exempt from Chapter 1 of the FAA? ]**



**Federal Arbitration Act Section 1**

Yes. Section 1 of the FAA provides that nothing [in the FAA] shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce? According to the United States Supreme Court, this exemption applies only to contracts of employment of transportation workers? [Circuit City Stores, Inc. v. Adams](#), 532 U. S. 105, 119 (2001). But those contracts of employment include not only contracts establishing an employer-employee relationship, but also contracts establishing independent contractor relationships. [New Prime Inc. v. Oliveira](#), 586 U.S. \_\_\_, slip op.at 6, 7, & 15 (Jan. 15, 2019).

**Arbitration Law FAQs: If the Chapter 1 of the Federal Arbitration Act applies, does that mean all FAA litigation falling under Chapter 1 can be brought in federal court? ]**



No. Chapter 1 of the Federal Arbitration Act does not confer an independent basis for federal court subject matter jurisdiction over applications for the relief authorized by Chapter 1. Put differently making an application under the FAA does not raise a federal question over which a federal court could, under 28 U.S.C. § 1331, base subject matter jurisdiction.

But that doesn't mean that federal courts cannot have subject matter jurisdiction over Chapter 1 Federal Arbitration Act proceedings. If the requirements for diversity jurisdiction are met, including complete diversity of citizenship between the parties, and an amount in controversy that exceeds \$75,000.00, excluding interest and costs, then a federal court will have subject matter jurisdiction under the diversity jurisdiction. See 28 U.S.C. § 1332.

**Does Chapter 1 of the Federal Arbitration Act apply in state court?**



Yes. State courts are required to enforce arbitration agreements under Section 2 of the FAA. Basically, they must enforce arbitration agreements falling under the FAA, putting them on the same footing as other contracts. See *Kindred Nursing Centers*, 137 S. Ct. at 1424.

Most or all states have their own arbitration statutes. New York's arbitration statute, for example, is codified in Article 75 of the New York Civil Practice Law and Rules (?CPLR?). Depending on applicable state law, state courts may carry out Section 2's enforcement command using their own arbitration statute's provisions, even if they are different than those provided by Chapter 1 of the FAA. But if enforcement of the FAA through the provisions of the state's arbitration code would undermine the purposes and objectives of the FAA, then the offending state arbitration code provisions would be preempted (i.e., superseded) by the FAA to the extent that they conflict with the FAA.

If you are interested in learning more about the Federal Arbitration Act, see [here](#), [here](#), and [here](#).

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