

**POLICY STATEMENT**  
**REVISED UNIFORM ARBITRATION ACT (RUAA)**

1. **Background and Objectives of RUAA**

The Uniform Arbitration Act (UAA) was adopted by the Conference in 1955 and has been widely enacted (in 35 jurisdictions, and in similar form in additional 14 jurisdictions). UAA closely tracks the provisions of the Federal Arbitration Act (FAA) which was adopted in 1925. Neither UAA nor FAA have been amended since each were enacted. Therefore, for all practical purposes, American arbitration statutes have not been revised over the past 75 years. In 1995, the Conference appointed a Study Committee to study the feasibility of revising UAA. The Study Committee recommended 14 categories of subject matter for review by a Drafting Committee. The Revised Uniform Arbitration Act (RUAA) Drafting Committee has closely followed the Study Committee's report and revisions have been made in almost all of the categories identified by the Study Committee.

The prime objective of RUAA is to advance arbitration as a desirable alternative to litigation, but not to make arbitration simply another form of litigation. To this end, RUAA endeavors to render the arbitration process efficient, expeditious, and economical in a manner which is fair to the parties, and which promotes finality of the decision of the dispute submitted to arbitration. In accomplishing this goal, prime recognition is given to the agreement of the parties in the agreement to arbitrate. RUAA also recognizes that not only are more issues being submitted to arbitration, but they also have become increasingly complex, often involving higher monetary amounts. RUAA contains statutory coverage for a number of important issues that were not addressed in the UAA. RUAA also reflects aspects of arbitration practice as it has developed over the years. However, RUAA is a default Act on matters not covered by the agreement to arbitrate except for certain fundamental provisions which cannot be waived so as to insure fairness.

As of this writing, RUAA has been endorsed by the American Bar Association Section on Dispute Resolution.

2. **Summary of the Revisions under RUAA**

The following subjects were not addressed in the original UAA, and are now included in RUAA:

- (1) What forum (arbitrator or court) decides arbitrability of a dispute and by what criteria; (§ 6)
- (2) What forum issues provisional remedies such as attachments, restraining orders, etc.; (§ 8)
- (3) The process for initiating an arbitration; (§ 9)
- (4) Authority to consolidate arbitrations; (§ 10)
- (5) Requiring arbitrators to disclose facts which may affect impartiality; (§ 12)

- (6) Provisions for immunity of arbitrators and arbitration organizations; (§ 14)
- (7) Whether arbitrators can be required to testify in other proceedings; (§ 14)
- (8) Discretion of arbitrators to order discovery, issue protective orders, decide motions for summary dispositions, hold prehearing conferences, and otherwise manage the arbitration process; (§ 15)
- (9) Provisions for courts to enforce preaward rulings by the arbitrator; (§ 18)
- (10) Defining arbitration remedies including provisions for attorney's fees, punitive damages and other exemplary relief; (§ 21)
- (11) Specifying which sections of RUAA are not waivable or those that cannot be restricted unreasonably (this provision is designed to ensure fundamental fairness particularly in contract of adhesion situations); (§ 4)
- (12) Provisions for enforcing subpoenas to witnesses who reside in states other than the arbitration state; (§ 17)
- (13) Providing for vacatur when arbitrators fail to disclose facts which could reasonably affect impartiality; (§ 12 and § 23)
- (14) Standards for giving and receiving notice in arbitration proceedings. (§ 2)

### 3. **Federal Preemption**

In drafting and applying RUAA, the doctrine of federal preemption must be considered. Essentially, state arbitration acts must be consistent with the federal pro-arbitration policy; and cannot conflict with the provisions of the Federal Arbitration Act, when the underlying activity under consideration involves interstate commerce. The Supreme Court of the U.S. has developed the federal preemption doctrine so as to preclude state arbitration acts from containing provisions which restrict the availability of arbitration. The Drafting Committee feels that the provisions of RUAA do not conflict with the federal preemption doctrine. A more extensive discussion of federal preemption appears in pages II through IV of the prefatory note to RUAA.

### 4. **Contracts of Adhesion and Arbitration**

Much has been written about so-called contracts of adhesion involving arbitration. The Drafting Committee has discussed this subject at great length. It is the consensus that it would be desirable to be able to address this subject in RUAA. However, the federal preemption doctrine does not allow a state arbitration act to treat the validity of an arbitration agreement differently than would be the case for other types of contracts. Attached to this policy statement, is a brief report by a Task Force of the Drafting Committee which dealt with this subject and recommended that it not be addressed in RUAA because of federal preemption. Therefore, because of federal preemption, if the issue of contracts of adhesion is to be dealt with legislatively, it must be at the federal level, or possibly through state consumer protection acts.

## 5. Opting in for Judicial Review

The Drafting Committee also considered at great length whether provisions should be included to permit the parties to an arbitration agreement to contract to allow for judicial review of errors of facts or law in the arbitrator's award. The Drafting Committee was split on this issue, some members reasoning that such a provision would destroy a prime feature of arbitration which is its finality, and that judicial review should continue to be governed by the grounds for vacatur. It was also felt that such a provision would cause widespread drafting of such clauses in arbitration agreements so as to become common practice. On the other hand, some members felt that the party's agreement for appeals should be recognized if they chose to provide for it, and that parties might well wish to allow for appeals as a protective measure when agreeing to arbitration. The various U.S. Courts of Appeals that have taken up the issue have been evenly split 2-2. Two circuits upheld the validity of such an agreement for judicial review, and two circuits have held that it is not legally permissible. The Supreme Court of the U.S. has not ruled on this issue. Finally, at the first reading of RUAA last year, the issue was debated and considered by the Committee of the Whole. A sense of the house motion not to include an opting in for judicial review provision was adopted by an overwhelming vote of the Committee of the Whole. Because of this decisive sense of the house resolution, an opting in for judicial review provision has not been included in RUAA. The RUAA does not prohibit an opt in provision but essentially defers this issue to developing state and federal law. Also, under RUAA the parties continue to be free to agree on the review of the arbitrators' award by an arbitral panel, and to provide for this in their agreement. There is a growing tendency on the part of arbitration organizations to provide for this type of arbitral review in their arbitration rules.

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