

SILE PART B

ARBITRATION

Responses to Frequently Asked Questions

Dear candidates

As I have been receiving a series of common questions, I set out my responses below for the benefit of the entire cohort.

(1) Sample Question 9

The better answer should be C. In accordance with my handout, section 2(1) of the Evidence Act provides that the Act does not apply to arbitration proceedings. At the same time, the Evidence Act does not prohibit parties from agreeing to adopt the Evidence Act. Article 19 of the Model Law / section 23 of the Arbitration Act gives parties the autonomy to agree on the procedure to be followed by the tribunal, including the power to determine the admissibility, relevance, materiality and weight of any evidence. On that basis, whilst there is no case law deciding this point parties to an arbitration ought to be able to agree to adopt provisions of the Evidence Act if they so wish (albeit rare in practice).

(2) Sample Question 10

The answer is D because it is not the case that any dispute involving an insolvent party is necessarily non-arbitrable. In *Larsen Oil* [2011] SGCA 21, it was made clear by the Court of Appeal in [45] – [47] that a distinction should be drawn between disputes involving an insolvent company that stem from its pre-insolvency rights and obligations, and those that arise only upon the onset of insolvency due to the operation of the insolvency regime. Many of the statutory provisions in the insolvency regime are in place to recoup for the benefit of the company's creditors losses caused by the misfeasance and/or malfeasance of its former management, and such claims are non-arbitrable. However, disputes involving an insolvent company that stem from its *pre*-insolvency rights and obligations would be arbitrable.

(3) Key differences to note between AA and IAA

I mentioned three key differences during the Contact Sessions.

First, in granting a stay of court proceedings in favour of arbitration, under the IAA as long as the arbitration is valid, the Court must grant the stay. Under the AA the Court has the discretion whether to grant a stay even if the arbitration agreement is valid.

Second, under section 45 of the AA, the Court may, provided certain requirements are satisfied, determine *any* question of law arising in the course of the arbitration proceedings. Such questions of law are *not* limited to questions concerning the arbitration agreement.

Third, under section 49 of the AA, a party may appeal to the Court on a question of law arising out of an award made in the proceedings, again subject to certain requirements being satisfied. In 2019 public consultations were taken on whether a similar mechanism ought to be introduced to the IAA, but to date that has not yet been implemented.

(4) When does the AA/IAA apply?

Section 3 of the AA provides that the AA applies to any arbitration where the seat is Singapore and where the IAA does not apply.

Section 5 of the IAA provides that the IAA applies (i) to an international arbitration (and the criteria for what constitutes an international arbitration is set out in that section); or (ii) any arbitration where the parties agree that the IAA applies.

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