

SAMPLE ENTRANCE EXAM TEST 1

Please keep the following in mind when reading the Fact Pattern below.

The cornerstone of arbitration is the parties' consent to arbitrate.

FACT PATTERN: An Australian company and an Armenian company enter into a nine-year franchise agreement for the Armenian company to operate the Australian restaurant brand Outback Grill in Armenia. The franchise agreement provides for the application of the Armenian law with a seat in Stockholm, and contains an arbitration clause providing for ICC¹ arbitration.

The Armenian company restructures three years later, creating a new holding company, which has not signed the franchise agreement.

The Australian company initiates arbitration against the new Armenian holding company, three years after the franchise agreement expires. The original Armenian company with which the Australian company had contracted no longer exists.

What barrier(s) to arbitration can you identify at this stage?

Assume these barrier(s) were overcome, and the tribunal rendered an award. The Armenian holding company initiated “set aside” proceedings in Stockholm, while at the same time, the Australian company seeks to enforce the award in Armenia.

Assume that Swedish law considers participants in a contract to have the arbitration clause automatically extended to them, while the Armenian law does not.

What problems do you see arising from this case, and would you favor enforcement or set-aside of the award? Why?

¹ International Chamber of Commerce.