

Module 3:

Drafting, Evidence and Award Writing in International Arbitration

What is the aim of the course?

This module provides candidates with the knowledge required to understand and consider evidence, to weigh it up and analyse submissions, arrive at a conclusion and write a final, reasoned and enforceable Arbitration Award in compliance with UNCITRAL Model Law.

This course focuses on the processes followed by an Arbitrator in defining the issues that have to be decided by an Award, dealing with the submissions made by the parties, analysing the appropriate law, evaluating the evidence, applying the law to that evidence, arriving at a conclusion and then writing a final, reasoned and enforceable Award.

What are the learning outcomes?

On successful completion of this course candidates, will be able to demonstrate sound conceptual, technical and/or practical knowledge of:

- recognising and evaluating evidence,
- the issues that arise from the parties' submissions,
- being able to create structure and deal with all the issues that arise,
- deciding matters in dispute logically and in accordance with the law,
- the skills required to write Awards correctly,
- the discursive and operative parts of the Award,
- being able to deal with the parties' costs and interest of an Award,
- allocating Arbitrator's fees and expenses,
- demonstrating compliance with the legal and other requirements for an enforceable Award.

What is covered within the syllabus?

- Basic Concepts & Types of Evidence
- The Burden and Standard of Proof
- Hearsay

- Privilege
- Written Evidence and Disclosure of Documents
- Witnesses
- Expert Witnesses
- Introduction: The Purpose of the Award
- The Need for Plain Language
- Legal and Substantive Requirements
- Identifying the Issues for Determination
- Reasoning and Decision Making
- Structure of an Award
- The Form of the Award
- Publishing the Award

How is the course delivered?

The course is delivered over a period of three months, with a combination of private study and three face-to-face tutorials.

Will the Tutorials be recorded?

Due to data protection laws, we do not guarantee that tutorials will be recorded. CIARB is committed to supporting candidates to be successful in their courses and to achieve successful outcomes in their assessments. **We therefore strongly recommend candidates attend all scheduled face-to-face tutorials.**

Our face-to-face tutorials are designed to be interactive teaching and learning experiences taught by Senior Tutors who will assess your individual needs. Candidates therefore will be at a disadvantage if they do not attend all tutorials.

How will I be assessed?

The award writing exam will assess your ability, in the context of an **ad hoc arbitration**, to write an award as a sole arbitrator that withstands scrutiny under the **NYC Model Law and UNCITRAL procedural rules**. The award will be assessed on:

Technical merit: The drafting of the formalities and the operative award is technically accurate, comprehensive, and comprehensible.

- *Comprehensive:* includes a Header; names the Award, identifies the Parties, the Arbitrator and Counsel, an Introduction; the Facts of the Case; the Arbitration Agreement; the Applicable Laws and Rules to the Procedure and Substance; the Procedure for appointing the arbitrator; the Procedural History; the Jurisdiction; the

Reasoning and Issues in Dispute; Pre and Post Award Interest; Costs; Dispositive, Place, Date and Signature.

- *Accurate*: The above details are complete and accurate including the Tribunal's Jurisdiction and Governing Parameters, and that the Procedural History demonstrates due process and that all parties had full opportunity to present their cases.
- *Comprehensible*: Language, formatting and numbering do not fundamentally obscure the meaning through incoherence, or ambiguity.

Juridical Merit: All the discrete Issues in the Dispute are identified, analysed with an appropriate level of factual and legal rigour, and effectively addressed. The findings are logically and unambiguously summarised as an enforceable Award.

- **The Factual and Legal Analysis:** For each issue the Facts and Law are identified; the Application of the Law to the Facts is explained; a Conclusion on the resulting liability and quantum is clearly articulated. Each Issue is effectively addressed, whether Interlocutory/Preliminary, Substantive, or Evidential.
- **Due Process:** The Procedural History is comprehensive from the Notice of Arbitration to the Award. It includes representation and witnesses; demonstrates due process and that all parties had full opportunity to present their case; it leaves nothing unfinished.
- **Costs and Interest:** The award consolidates the findings on Costs and Interest comprehensively and coherently, taking account of compliance and sequencing. It includes the arbitrator's fee, the hearing costs, procedural costs and the parties' costs, and other costs.
- **Scrutiny:** The award is drafted to the standards required by the NYC and UNCITRAL Law, contains the necessary facts to counter grounds for vacatur and addresses scrutiny points including defective arbitration agreements, denial of procedural fairness, improper tribunal composition and/or procedure, excess of jurisdiction.

This assessment is completed via LearnADR, CIARB's online learning platform. Candidates will be given 48 consecutive hours within a 5-day window to submit their award online. Candidates must achieve 70% in Part A, Part B and overall to pass the assessment.

Part A: Focuses on the technical merit and counts as 40% towards the overall mark.

Part B: Focuses on the judicial merit and counts as 60% towards the overall mark.

The assessment is split into two stages:

Stage One: This consists of the papers in the case. They are sufficient to enable you to grasp the nature of the case and the likely legal problems. Most of the documents are extracts only. You should consider the recitals you intend to include and the relevant law.

Stage Two: This is the equivalent of the hearing stage. It includes an extract from your (i.e. the arbitrator's) notebook. This records the oral evidence and arguments the arbitrator has heard, as well as any other relevant documents. From the evidence you must make your findings of fact. Different candidates will no doubt make different findings. This is of no consequence, except that it means there are a great many possible answers to the question. When you have made your findings of fact, write the award. It must be a final award as regards the issues you decide.

Stage One of the assessment is released via LearnADR 10 days before the assessment start date.

Stage Two is released at 12 pm noon London Time on the assessment start date via LearnADR too.

Stage 2 will be available for 5 days from the assessment start date and within those 5 days, you will have 48 consecutive hours to submit your award back onto LearnADR.

The assessment fee is not included in the course fee. It must be registered and paid for separately. The assessment fee is £408 inclusive of VAT.

Results are dispatched to candidates normally twelve weeks from the deadline date of the submission. Candidates will be informed of any delays.

What are the entry requirements?

In order to register for the course, candidates must:

- have successfully completed and passed the CIArb Module 1 Law, Practice and Procedure,
- have successfully completed and passed the CIArb Module 2 Law of Obligations, or
- been granted an exemption from the CIArb Module 2 Law of Obligations.

Additionally, candidates are expected to have a minimum of five years' professional workplace experience as, for example, a lawyer, surveyor, accountant, insurer, shipbroker or similar. This experience must involve communicating with others, problem-solving, managing workloads effectively, decision-making and the exercise of judgment.*

*Please note that candidates who started Ciarb pathway training before December 2022 are not expected to meet the **additional** eligibility criteria provided, they complete the full pathway by 31 December 2024.

All candidates enrolling on any Ciarb course/assessment are required to ensure that their command of spoken and written English is adequate for the course/assessment for which they have applied. Ciarb does not require any evidence of this standard prior to enrolment on a course/assessment. However, it is the candidate's responsibility to ensure their English language skills are at a Professional Working Proficiency level, in order to meet the required standard when enrolling for any Ciarb course/assessment. It is recommended that candidates have achieved a standard that is, as a minimum, equivalent to the International English Language Testing System (IELTS) level 7 or a score of 94-101 in the Test of English as a Foreign Language (TOEFL) system. *(Please note that we do not require an official IELTS or TOEFL result).*

Please contact the British Council for further details on how to improve your English skills: <https://learnenglish.britishcouncil.org/>

What is the course fee and what does it include?

The course fee is RM4,158.00 for Ciarb members and RM4,989.60 for non-members. The fee includes registration on the course, study materials and refreshments throughout the day.

What happens when I register for the course?

Upon successful registration on the course, candidates will receive confirmation they are booked on the course. Candidates will receive their course materials approximately 2 weeks before the course start date by email on the condition that 70% of the course fee has been received. The balance is payable before the course start date.

What is CIARB's policy on cancellation of courses?

CIARB reserves the right to cancel or change the date, venue or content of programmes and the names of speakers, lecturers and tutors. Candidates will be provided with adequate notice of any change. If CIARB has to cancel a course, candidates will be provided with a full refund or the opportunity to transfer their registration to the next course. Should a candidate wish to cancel/defer their registration of a course, notification must be received in writing to ciarbmb@gmail.com. Deferral charges apply. Please refer to the Fee Terms and Conditions for full details.

What is my next step when I complete the course?

On successful completion of this course and its corresponding assessment, candidates:

- schedule a Peer Interview with CI Arb's Membership department in order to apply for Fellow grade membership of CI Arb and take advantage of a range of educational and professional benefits.
- Candidates are only eligible to apply for the relevant membership grade for a maximum of 2 years after having successfully completed the course & assessment.