

MANNHEIMER SWARTLING'S

Concise Guide to Arbitration in Sweden



2019, SECOND EDITION



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About Mannheimer Swartling

Mannheimer Swartling is Sweden's leading law firm and provides businesses with high-quality legal advice globally. Our clients include major international enterprises and organisations as well as states. Our 400 lawyers are specialised across a broad spectrum of business law and sectors. We strive to understand the business challenges facing our clients, while deploying our cutting-edge legal skills to find the best solutions.

In addition to our three Swedish offices in Stockholm, Gothenburg and Malmö we have offices in Brussels, New York, Moscow, Hong Kong and Shanghai. We are not part of any formal alliances, but have close relations with other leading law firms around the globe, with whom we regularly cooperate to set up seamless international teams.

ABOUT THE FIRM'S DISPUTE RESOLUTION GROUP

Mannheimer Swartling's dispute resolution group consists of more than 70 lawyers and is represented in all of our offices in Sweden as well as in our offices in Hong Kong and Moscow.

The group represents clients, regardless of nationality or applicable law, in all matters arising from commercial disputes, such as early dispute assessment, arbitration, litigation, mediation and other alternative dispute resolution. Whilst our experience from arbitrations before the Stockholm Chamber of Commerce (SCC) is unparalleled, we also have extensive experience from arbitrations conducted under all major rules.

Our dispute resolution practice is consistently ranked as first tier by independent observers including Chambers and Partners, Legal 500, Who's Who Legal, and Global Arbitration Review. Examples of testimonials include the following:

‘Mannheimer Swartling is ‘hard to beat for high-value international arbitration work’, and it is also a market leader for litigation.’ (Legal500 2018)

‘Mannheimer Swartling excels in major international disputes and counts Swedish state-owned companies, financial institutions and blue-chips companies as clients.’ (Legal500 2019)

‘Swedish law firms have arbitration in their DNA – and none more so than Mannheimer Swartling.’ (Global Arbitration Review 2019)

Described as a ‘Nordic powerhouse’ and the ‘dominant player in the SCC’ by Chambers and Partners, who also notes that the firm is ‘well known across Europe for handling a significant caseload of commercial arbitrations, including ICC rules arbitrations’. (Chambers Europe, Arbitration: Europe-Wide 2019)

More information about our dispute resolution practice can be found at www.mannheimerswartling.se.

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In addition to the authors, many others within Mannheimer Swartling have assisted in various ways in the production of this guide. We are very grateful for all of their contributions.

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I. Introduction

With the establishment of the Arbitration Institute of the Stockholm Chamber of Commerce (the SCC) in 1917, the foundation was laid for Sweden to become a favoured seat for the resolution of international disputes through arbitration. The number of international arbitrations resolved in Stockholm increased significantly in the 1970s when the American Arbitration Association and the USSR Chamber of Commerce and Industry agreed to recognise Stockholm and the SCC as a preferred, neutral venue for arbitrations involving parties from the USA and the then Soviet Union. Since then, other East/West disputes have followed, in particular from China and other parts of Asia.

Over time, Stockholm has also become a preferred venue for energy disputes, including oil & gas, as well as for investor-state disputes, with the SCC being the second most common institution to which such disputes are referred, after the ICSID.

In choosing Sweden as the seat of arbitration, parties have found a venue with a deep-rooted respect for the fundamental principle of party autonomy and the safeguarding of the arbitral process by independent, arbitration-friendly courts. They have also found a body of arbitration law and procedure which is highly developed, easily available and in line with the latest innovations and best practices in international arbitration. These features have established Sweden as one of the most favoured places for international arbitration in the world.

This second edition of Mannheimer Swartling's Concise Guide to Arbitration in Sweden provides the essentials for anyone participating in an arbitration in Sweden, from the basis of the arbitration agreement, through the appointment of arbitrators and the conduct of the arbitral process, to the making, challenging and enforcement of the award. It addresses commercial arbitration as well as investment arbitration. It also contains general guidance on certain issues of Swedish contract law which frequently arise in disputes governed by Swedish substantive law.

Finally, it provides practical information for lawyers visiting Stockholm, including how to gain entry into the country, getting around, hearing venues, where to stay and eat, handling emergencies and, if time allows, sightseeing.

The first edition of this guide was published in 2014. Since then, the SCC has issued new arbitration rules (2017) and the Swedish Arbitration Act of 1999 has been revised (2019). Swedish courts have also continued to develop Swedish arbitration law. This second edition of the guide has been updated to reflect all of these developments.

We hope that you will find this guide to be of practical use when you are involved in your next arbitration in Sweden.

MANNHEIMER SWARTLING

Dispute Resolution Group

II. Arbitration in Sweden

I. THE ARBITRATION ACT

Arbitrations seated in Sweden are governed by the Arbitration Act of 1999 (*Sw: Lag (1999:116) om skiljeförfarande*), hereinafter referred to as the 'Arbitration Act' or simply the 'Act'. The Arbitration Act has undergone modernisation since 1999, with several revisions entering into force on 1 March 2019.

An English translation of the revised Arbitration Act is found in Appendix 1 to this guide. On SCC's website (www.sccinstitute.com), you will also find the Arbitration Act translated into Russian.

The Arbitration Act is fundamentally based on party autonomy. As a consequence, the conduct of an arbitration under the Act is primarily decided by the parties themselves and only secondarily by the arbitral tribunal. The Act imposes very few mandatory rules. The parties are thus free to contract out of the majority of its provisions. Nor does it aim to provide a complete regulatory regime. Instead, the Swedish legislator has sought to promote user-friendliness by keeping the Act short, simple and flexible. As a result, arbitration practices in Sweden have been able to meet the varying expectations of users from around the world and continuously develop in harmony with international standards.

During the process of the Act's enactment and its subsequent revisions, attention was generally given to the laws of other recognised foreign seats and, in particular, to the UNCITRAL Model Law. Like many other countries with longstanding traditions in arbitration, such as Switzerland, England and France, Sweden has not adopted the Model Law. However, although the Arbitration Act does not follow the Model Law in form, it essentially does so in substance. Lawyers familiar with the Model Law will thus find very few material differences between the two, and none that will have any real practical effects on the conduct of the arbitral proceedings.

The Arbitration Act is applicable to both domestic and international arbitrations.

The revisions to the Act entering into force on 1 March 2019 has further strengthened its ability to cater for international arbitrations and to ensure foreseeable and efficient proceedings.

2. THE ARBITRATION AGREEMENT

2.1 GENERAL REQUIREMENTS FOR ARBITRATION AGREEMENTS

Under the Arbitration Act, the following three requirements must be fulfilled in order for a valid and enforceable arbitration agreement to be in place.

(i) An agreement between the parties to refer disputes to arbitration

It is not required that the agreement be made in writing or in any particular form. Oral arbitration agreements are thus also recognised, but their existence may of course be difficult to prove if disputed. Unilaterally issued documents and undertakings are also regarded as ‘agreements’ for this purpose under the Arbitration Act.

(ii) Identification of a legal relationship

An arbitration agreement may concern future disputes as well as an already existing dispute. In respect of future disputes, the arbitration agreement must identify the legal relationship to be covered. The identification of the legal relationship can be explicit or implicit. However, it is not possible to conclude an effective arbitration agreement that, for example, covers ‘all future disputes between the parties’ without any limitation to a defined legal relationship. In practice, the legal relationship will usually consist of a commercial contract which refers to, and includes, the arbitration agreement as one of the final provisions of that contract.

(iii) A reasonably unambiguous reference to arbitration

In order to be regarded as a valid arbitration agreement, the agreement must refer to dispute resolution by way of ‘arbitration’ and not some other

form of dispute resolution. This requirement does not, however, prevent the parties from providing that they shall pursue other dispute resolution procedures (such as negotiation and mediation) before finally resorting to arbitration.

No further requirements for the validity of an arbitration agreement are set forth in the Arbitration Act. Consequently, an arbitration clause can be worded very briefly. A clause providing that ‘disputes arising out of this contract shall be settled by arbitration in Sweden’ is sufficient. Most arbitration agreements will also indicate the number of arbitrators, the language of the proceedings, the governing law, etc. However in the absence of any explicit wording of this kind, those matters can be determined by applying the default rules in the Arbitration Act or any applicable institutional or *ad hoc* rules.

Model arbitration and governing law clauses are set out in Appendix 7 to this guide.

2.2 LAW GOVERNING THE ARBITRATION AGREEMENT

An arbitration agreement providing for arbitration in Sweden will be governed by Swedish law, unless the parties have agreed that another law is to be applied. When assessing the scope of a choice of law clause included in the parties’ commercial contract (of which the arbitration agreement usually forms a part as one of the last provisions), the arbitration agreement will be regarded as a separate agreement (see Chapter 2.5 below). This means that, unless the parties have made it clear that the choice of law clause in the contract is to apply also to the arbitration agreement, Swedish law will assume that it applies only to the main, substantive agreement.

If no choice of law has been made for the arbitration agreement, section 48 of the Arbitration Act provides that it shall be governed by the law of the country in which, by virtue of the agreement, the proceedings have had, or shall have, their seat. Consequently, for an arbitration seated in Sweden, the arbitration agreement will be governed by Swedish law. This rule applies also in situations when the seat of the arbitration has been determined by an arbitral tribunal or an institution.

The law governing the arbitration agreement applies to questions such as the formation, interpretation, validity and termination of the arbitration agreement, as well as to the effects between the parties of a voluntary assignment.

The law governing the arbitration agreement does not apply to the question of whether a party had capacity or was authorised to enter into the arbitration agreement. The law applicable to these issues is instead determined by the applicable choice of law rules. For example, under Swedish choice of law rules the capacity of a company and the authority of its representatives are decided in accordance with the law of the company's place of incorporation (*lex incorporationis*).

Irrespective of the law governing the arbitration agreement, if the seat of the arbitration is in Sweden, Swedish law will always be applied to determine whether a dispute is arbitrable as a matter of Swedish public policy (see Chapter 8.2.1 below).

2.3 THE PRINCIPLE OF 'KOMPETENZ-KOMPETENZ'

Under section 2 of the Arbitration Act, the arbitral tribunal is authorised to rule on its own jurisdiction.

Although the arbitral tribunal has the power to rule on its own jurisdiction, a party may also request that a competent Swedish court rule on whether the arbitral tribunal has authority to decide the dispute. Such an action will often address the existence of an arbitration agreement or its applicability to the specific case. The action may be brought both before and after the initiation of arbitral proceedings. If the arbitration has already been initiated, the action must be brought before the court of appeal. Otherwise, the action may be brought before the district court. The arbitral tribunal may continue the arbitration pending the final outcome of the court proceedings.

If the arbitral tribunal finds that it lacks jurisdiction, it should dismiss the dispute by way of an award. If the arbitral tribunal affirms jurisdiction, such a finding should instead take the form of a decision (see further Chapter 6.5.1 below). A decision by which the arbitral tribunal affirms jurisdiction may be challenged by a party before the court of appeal as mentioned above. Such an action must be brought within 30 days from the date on which the party received the decision. Alternatively, a party may reserve its right to challenge the forthcoming award based on lack of jurisdiction (see further Chapter 8.3.9 below). In the event the arbitral tribunal issues an award dismissing the entire case for lack of jurisdiction, such an award may be appealed to the court of appeal under section 36 of the Arbitration Act (see Chapter 8.4 below).

As discussed in Chapter 8.5 below, Swedish courts are generally very reluctant to annul decisions by arbitral tribunals. An arbitral tribunal's finding with respect to jurisdiction is thus likely to be upheld in the majority of cases.

2.4 EXCLUSION AGREEMENTS

Under section 51 of the Arbitration Act non-Swedish parties are allowed to waive the right to challenge an award beforehand. In order to be valid, such a waiver must be explicit. It is not sufficient merely to state in the arbitration agreement that the award shall be final and binding.

The possibility to waive the right to challenge under section 51 only explicitly applies to such grounds for challenge as set forth in section 34 of the Arbitration Act (e.g. excess of mandate or procedural irregularities – see Chapter 8.3 below). However, according to a decision from the Swedish Supreme Court (*The Boeing Company et al. v. Space Corporation Energia et al.*; the Swedish Supreme Court, Ö 2528-14, 21 December 2015), parties (both Swedish and non-Swedish) are also free to exclude, in advance, the right to appeal under section 36 of the Arbitration Act. As mentioned above, under section 36 a party may appeal an award whereby the arbitral tribunal has disposed of the entire case without ruling on the merits (e.g. when a dispute has been dismissed due to lack of jurisdiction or following settlement; see Chapter 8.4 below).

It is not possible to waive the right to challenge an award marred by such grave defects that it is invalid under section 33 of the Arbitration Act (i.e. due to lack of arbitrability, violations of Swedish public policy or failure to meet the basic requirements that the award must be in written form and signed by the arbitrators; see Chapter 8.2 below).

2.5 THE DOCTRINE OF SEPARABILITY OF THE ARBITRATION AGREEMENT

Swedish law has since long recognised the doctrine of separability. The doctrine of separability means that when the validity of an arbitration agreement is assessed, it is to be regarded as an agreement separate from the main agreement into which it has usually been incorporated. This principle is laid down in section 3 of the Arbitration Act. The doctrine of separability has a broad ambit and is applicable to all situations in which

it will be relevant to assess how the status of the main agreement affects the validity of the arbitration agreement and vice versa.

2.6 FORMATION OF THE ARBITRATION AGREEMENT

As noted above, the Arbitration Act does not include any mandatory requirements as regards the form of the arbitration agreement.

The rules on formation relevant to an arbitration agreement are the same as for any other type of contract. Swedish contract law is generally based on the concept that an agreement is formed through acceptance of an offer (see further Part IV, Chapter 25.1 below). The exchange of offer and acceptance can be brought about in a number of different ways, such as through previous conduct between the parties or through reference to a set of general terms and conditions.

When commercial parties have agreed to apply one party's general terms and conditions, an arbitration clause included in those general terms and conditions will usually be considered binding, even if it has not been specifically brought to the attention of the other party.

2.7 INVALIDITY OF THE ARBITRATION AGREEMENT

The validity of an arbitration agreement under Swedish law is assessed in accordance with the general principles of Swedish contract law. It follows that an arbitration agreement may be deemed invalid on the same grounds as any other contract. Under the Swedish Contracts Act, an agreement may be held invalid if, for example, it results from duress or fraud (see further Part IV, Chapter 28.1 below).

In addition to the general rules on invalidity, section 36 of the Contracts Act provides that an agreement may be set aside or modified if it would be unconscionable to apply it having regard to factors such as the circumstances before or after the contract was made (see Part IV, Chapter 28.2 below).

It should be emphasised that the principle of '*pacta sunt servanda*' is fundamental in Swedish contract law. Although section 36 of the Contracts Act has a wide scope of application in theory, its main purpose is to protect inherently weaker parties such as consumers and employees. The scope for applying section 36 between commercial parties is, therefore, limited. Thus, as a general rule a commercial party will not be able to successfully invoke section 36 to escape an otherwise binding arbitration

agreement due to financial or commercial reasons. However, there is arguably some room for applying section 36 to modify or adjust an arbitration agreement in cases where its application would otherwise lead to an unreasonable result from the perspective of due process or access to justice. This could be the case when the arbitration agreement provides for an unequal treatment of the parties in respect of the appointment of arbitrators or if it otherwise gives one party an unfair procedural advantage. It would probably also be possible to use section 36 to adjust an arbitration clause which is somehow defective or impossible to apply and where the defect unfairly prevents a party from pursuing a legitimate claim.

2.8 SCOPE OF ARBITRATION AGREEMENTS

2.8.1 GENERAL PRINCIPLES FOR INTERPRETATION AND DETERMINATION OF THE SCOPE

The contractual scope of an arbitration agreement is determined in accordance with general principles of contract interpretation. Under Swedish law, it is the common intention of the parties at the time of entering into the contract that ultimately determines the content of an agreement. Although the common intention thus in theory prevails over the wording, in practice the wording has significant evidentiary value as to what the common intention was. A party alleging that the common intention differs from the clear wording of a contract usually faces a heavy burden of proof (see further Part IV, Chapter 27.2.1 below).

It is generally assumed that the parties, having agreed to arbitration, will have intended that all of their disputes reasonably connected to the legal relationship identified in the arbitration agreement will be settled by the same mechanism. The specific wording of the arbitration clause is not decisive for the interpretation of its scope, unless express limitations or exclusions have been made. The arbitration agreement will thus be interpreted broadly irrespective of whether it includes broad wording such as ‘disputes in any way arising out of or in connection with this agreement’.

Regardless of how broadly drafted and interpreted, the scope of an arbitration agreement cannot be extended beyond the limitation set forth in section 1 of the Arbitration Act. As mentioned above, section 1 of the Act provides that an arbitration agreement is only applicable to disputes concerning the legal relationship to which the arbitration agreement refers. This means that a tort claim or a claim based on another contract,

which forms part of a different legal relationship and which has not been identified in the arbitration agreement, may fall outside the scope of the arbitration agreement. If so, the arbitral tribunal will not have jurisdiction to decide such a claim, even if it may somehow be related to a claim that does fall within the scope of the arbitration agreement

Pursuant to section 23 of the Arbitration Act, counterclaims falling within the scope of the arbitration agreement are allowed.

A dispute concerning the arbitration agreement itself would also fall within the scope of the arbitration agreement.

2.8.2 THE DOCTRINE OF ASSERTION

In cases where e.g. the scope of the arbitration agreement has been limited to certain types of disputes, the question may arise as to whether the claim brought by the claimant is covered by the arbitration agreement. The solution adopted under Swedish law is that the assessment of whether the claim falls within the arbitration agreement is based on the assumption that the facts and the legal qualifications *asserted* by the claimant are correct. In this way, jurisdiction can be established without having to enter into and assess the factual merits of the case. Even if the claimant's assertions are later proven to be incorrect, the dispute will still be deemed covered by the arbitration agreement based on the assertions made. The case will thus be dismissed on the merits rather than for lack of jurisdiction.

2.9 MULTI-TIERED ARBITRATION AGREEMENTS

It is not uncommon that parties include provisions in their arbitration agreement to the effect that, for example, they must negotiate or mediate for a certain period of time before resorting to arbitration. It follows from section 19 of the Arbitration Act that the parties are entitled to agree on how the arbitration should be initiated. Thus, as a main rule, agreements providing for certain pre-arbitration steps or cooling-off periods are enforceable.

However, pre-arbitration procedural provisions have produced numerous disputes before national courts as well as international arbitral tribunals, and the outcomes have been far from consistent. It has been held in some cases that agreements to negotiate the resolution of disputes are invalid and/or unenforceable from a procedural point of view, and, at

most, may give rise to a right to damages if breached. Generally, the more specific and precise the parties' pre-arbitral obligations are, the more likely the clause will be upheld. For instance, a mere duty to negotiate without a definite time limit being stated might be regarded as too open-ended. Even when the arbitration agreement does contain a specified cooling-off period, it is often argued (sometimes successfully) that observance of the period is not required if it is clear that negotiations would be futile.

2.10 PARTIES BOUND BY THE ARBITRATION AGREEMENT

Arbitration is based on contract and, as a starting point, the arbitration agreement will only bind the parties thereto. In certain cases, however, an arbitration agreement may also become binding on third parties.

As regards voluntary assignments, when a party transfers all of its rights and obligations under a contract which includes an arbitration agreement, the transferee will generally be bound by the arbitration agreement. Unless special circumstances prevail, the remaining party under the contract will also be bound by the arbitration agreement in relation to the transferee.

The question of whether a guarantor is bound by an arbitration agreement, which is included in the main contract between the creditor and debtor, is not addressed in the Arbitration Act. However, the prevailing view is that a guarantor is bound since the obligation under the guarantee is ancillary to the main obligation of the debtor.

As a general rule, a bankruptcy estate is bound by the bankruptcy debtor's arbitration agreements insofar as the dispute in question is arbitrable. This means that the estate may have to arbitrate claims which the estate may have against other parties under the bankruptcy debtor's agreements and vice versa. However, unless the bankruptcy creditors give their consent, the bankruptcy estate cannot be forced to arbitrate disputes that affect the rights of third parties (i.e. the creditors).

As a general rule, a third party may participate in arbitral proceedings only if such party is party to the applicable arbitration agreement and provided that the two other parties consent. However, there are exceptions to this rule to cater for *amicus briefs* in investment treaty arbitrations under Appendix III Article 3 of the 2017 SCC Rules (see Chapter 13 below).

2.II TERMINATION OF ARBITRATION AGREEMENTS

It is not possible for a party to terminate an arbitration agreement unilaterally, unless the specific arbitration agreement so provides. Thus, termination may only occur in accordance with the provisions of the arbitration agreement itself, e.g. through the lapse of a time limit, or pursuant to general rules of contract law such as, for example, through material breach of the agreement.

2.I2 ENFORCEMENT OF ARBITRATION AGREEMENTS

An arbitration agreement operates as a bar to court proceedings. Accordingly, if a party commences court proceedings with respect to a dispute which is arbitrable and covered by an arbitration agreement, the other party to that agreement may request that the court dismiss the case due to lack of jurisdiction. The right to request dismissal may, however, be forfeited if the other party has previously (i) opposed a request for arbitration concerning the same matter, alleging that there is no valid arbitration agreement; (ii) failed to appoint an arbitrator in due time; or (iii) failed to provide its share of the advance payment or other security for the compensation to the arbitrators. Further, the party must object to the jurisdiction of the court at the first opportunity when it pleads its case on the merits before the court. This will usually be in the statement of defence. When a timely and rightful objection to jurisdiction has been made with reference to an arbitration agreement, the court must grant a motion for a stay or dismissal.

3. THE ARBITRATORS

3.I NUMBER OF ARBITRATORS

The parties are free to agree on the composition and the appointment of the arbitral tribunal. If the parties have not specified the number of arbitrators, the Arbitration Act provides for three arbitrators as the default rule. If the SCC Rules apply, there is no default rule as to the number of arbitrators. Consequently, unless the parties have agreed otherwise, the SCC will decide – in light of the complexity of the case, the amount in dispute and other circumstances – whether the matter is to be decided by

a panel of three arbitrators or by a sole arbitrator. The SCC Rules for Expedited Arbitrations provide only for a sole arbitrator, although the parties are, of course, free to agree differently.

3.2 QUALIFICATION OF ARBITRATORS

The Arbitration Act gives the parties substantial freedom when it comes to the choice of arbitrators. The parties can appoint any person as an arbitrator provided that he or she (i) has full legal capacity to act as an arbitrator (the person must be over 18 years of age and not bankrupt or under any form of guardianship) and (ii) is independent and impartial.

The independence and impartiality requirements mean that there shall be no circumstances which may objectively diminish confidence in the arbitrator's independence and impartiality. A party-appointed arbitrator is under the same duty of independence and impartiality as an arbitrator who, for example, has been appointed by an arbitration institution.

The assessment of independence and impartiality is made solely on objective grounds and the decisive issue is whether the arbitrator may appear to lack independence and impartiality in the eyes of an objective third party who is aware of all the relevant circumstances; the test is not whether the arbitrator actually lacks independence or impartiality. Circumstances which may diminish confidence in the arbitrator's independence and impartiality may include, for example:

- (i) where the arbitrator or a person closely related to the arbitrator is a party, or otherwise may expect significant benefit or detriment from the outcome of the dispute;
- (ii) where the arbitrator or a person closely associated with the arbitrator is the director of a company or any other association which is a party, or otherwise represents a party or any other person who may expect significant benefit or detriment from the outcome of the dispute;
- (iii) where the arbitrator has taken a position in the dispute, as an expert or otherwise, or has assisted a party in preparing or conducting its case in the dispute; or
- (iv) where the arbitrator has received or demanded remuneration in violation of the provisions of the Arbitration Act.

The above list is by no means exhaustive and other circumstances may be deemed to create apparent lack of independence or impartiality. Among

other standards, the Supreme Court has referred to the IBA Guidelines on Conflicts of Interest in International Arbitration when assessing challenges to arbitrators based on lack of independence and impartiality. This is but one example of the interaction between the development of Swedish arbitration law and best practices in international arbitration.

A person who is asked to accept an appointment as an arbitrator is required to disclose immediately any and all circumstances that might render him or her incapable of serving as arbitrator, such as lack of impartiality or independence. An arbitrator must also inform the parties and the other arbitrators of any such circumstance as soon as all arbitrators have been appointed. Should circumstances of this kind arise thereafter, they must be disclosed by the arbitrator without delay.

Under the SCC Rules all arbitrators must submit a signed declaration of impartiality and independence to the SCC, disclosing any facts and circumstances which may give rise to justifiable doubts as to their independence or impartiality.

3.3 APPOINTMENT OF ARBITRATORS

Provided that the parties are treated equally, the parties enjoy considerable freedom in deciding on the procedure for appointment of arbitrators.

In the event that the parties have not agreed on the number of arbitrators or the procedure for their appointment, the default rule under section 13 of the Arbitration Act is that the arbitral tribunal is to be composed of three arbitrators, with the parties each appointing one arbitrator, and the arbitrators so appointed appointing the chairperson.

If a party obstructs the proceedings by refusing to appoint an arbitrator, the competent district court is authorised to assist in appointing arbitrators. Under the Arbitration Act, such assistance is available in the following situations (Arbitration Act, sections 14 and 15):

- (i) where there should be three arbitrators and the respondent has failed to name its arbitrator within 30 days of receipt of the claimant's appointment;
- (ii) where two party-appointed arbitrators have failed to appoint a third arbitrator within 30 days from the appointment of the second arbitrator;
- (iii) where the parties have agreed that an arbitrator shall be appointed jointly and the parties fail to agree on an arbitrator within 30 days

from the date when one of the parties notified the other party of the question of such joint appointment;

- (iv) where it has been agreed between the parties that an arbitrator is to be appointed by a third party and such appointment has not been made within 30 days from the date when the relevant third party was requested to undertake the appointment; and
- (v) where an arbitration has been initiated against more than one respondent and the respondents cannot agree on the appointment of an arbitrator, any such respondent may apply to have all arbitrators appointed by the district court. In such a case the district court will dismiss the arbitrator already appointed by the claimant.

An application for the appointment (or removal) of an arbitrator is generally handled swiftly, by a single judge and without any oral hearing. A decision by a district court granting a request to appoint or remove an arbitrator is final and may not be appealed.

If the SCC Rules apply and the dispute is to be resolved by a sole arbitrator, the parties are given 10 days to jointly appoint the arbitrator. In the event the parties fail to make the appointment, the arbitrator is appointed by the SCC, unless the parties agree otherwise. If the arbitral tribunal is to consist of more than one arbitrator, each party shall appoint an equal number of arbitrators and the SCC shall appoint the chairperson, unless the parties agree otherwise.

In cases of multi-party proceedings and provided that the multiple parties on either side fail jointly to appoint the arbitrator(s), the entire tribunal may be appointed by the SCC (see Chapter 4.5 below).

If the parties have different nationalities, the SCC shall appoint a sole arbitrator or a chairperson having a nationality other than that of the parties, unless there are reasons for not doing so or the parties agree otherwise.

3.4 ARBITRATOR'S RESIGNATION

An arbitrator may resign if he or she has valid reason for doing so. An arbitrator is considered to have a valid reason for resigning in cases of, for example, poor health, non-payment of adequate security for compensation or because the arbitrator finds him or herself prevented from prop-

erly performing his or her duties. The arbitrator may be liable in damages if he or she resigns without valid reason.

3.5 CHALLENGES TO, AND REPLACEMENT OF, ARBITRATORS

3.5.1 GROUNDS, PROCEDURE AND DEADLINES FOR CHALLENGING AN ARBITRATOR

Lack of independence or impartiality

An arbitrator who is partial or lacks independence may be removed upon the request of a party. Unless otherwise agreed between the parties (e.g. by agreeing on the application of the SCC Rules) the challenge is to be tried by the arbitral tribunal including the challenged arbitrator. If the challenge is accepted, and the arbitrator is thus removed, the decision is final and cannot be appealed. However, if the challenge is denied by the arbitral tribunal, a party may request that the district court try the challenge within 30 days of the arbitral tribunal's decision. A district court's decision to remove an arbitrator is final. A decision denying the challenge may, however, be appealed to the court of appeal within 30 days of receipt of the district court's decision.

A request for removal of an arbitrator must be made within 15 days from the date on which the challenging party became aware of the appointment and the circumstances giving rise the challenge, failing which the right to challenge is deemed forfeited.

As indicated above, the parties may agree that a request for removal of an arbitrator should instead be conclusively determined by an arbitral institution. The reference to an institution must be reasonably unambiguous in order to be effective. If the SCC Rules apply, the SCC, not the district court, decides whether an arbitrator shall be removed. The SCC's decision is binding.

The arbitral tribunal may continue the arbitration pending the outcome of a challenge.

Removal due to delay

Under section 17 of the Arbitration Act, an arbitrator who has delayed the proceedings may be removed by a district court upon the request of a party. The parties are free to agree, e.g. by referring to institutional rules in their arbitration agreement, that such a request for removal is instead to be conclusively determined by an arbitral institution.

3.5.2 PROCEDURE FOR APPOINTING A NEW ARBITRATOR

If the arbitrator's resignation or removal is due to circumstances that arose *before* the arbitrator accepted the appointment, the district court shall appoint a new arbitrator upon the application of a party. If the original appointment was made by a party, the district court shall appoint as replacement arbitrator a person designated by that party, unless there are specific reasons not to do so. If the arbitrator's resignation or removal is due to circumstances that arose *after* the arbitrator accepted the appointment, the replacement arbitrator is to be appointed applying the same procedure as used in making the original appointment.

If the SCC Rules apply, the party that appointed the replaced arbitrator shall appoint the new arbitrator unless otherwise deemed appropriate by the SCC.

The arbitral tribunal in its new composition shall decide to what extent the proceedings must be repeated for the benefit of the newly appointed arbitrator.

Where an arbitrator is discharged upon the request of a party because of delay, the district court or the arbitral institution (as the case may be) shall appoint the replacement arbitrator.

3.6 LIABILITY OF ARBITRATORS

There are no specific provisions in the Arbitration Act regulating the liability of arbitrators. The liability of an arbitrator is instead based on general principles of contract. This means that an arbitrator may be held liable in damages if he or she causes one or both the parties to incur a loss, cost or expense due to negligence in the performance of his or her duties.

The Arbitration Act does not contain any provisions on exclusion or limitation of arbitrator liability. If the arbitrators wish to limit or exclude their liability in an ad hoc arbitration, they must therefore make an agreement to that effect with the parties. This may be done by, for example, having the parties agree to a set of specific procedural rules including provisions on limitation or exclusion of liability.

Like most institutional rules, the SCC Rules include a general exclusion of liability for the arbitrators.

4. THE PROCEEDINGS

4.1 INTRODUCTION

An arbitration seated in Sweden can be tailored to fit the case and the expectations of the parties, regardless of their legal background and priorities. The Arbitration Act contains very few mandatory procedural rules. Similarly, the SCC Rules only provide an outline of the various steps to be taken in an arbitration, but not a comprehensive set of procedural rules. Instead, based on the principle of party autonomy, the arbitral procedure is primarily established by the parties' agreement and, failing such agreement, by directions from the arbitral tribunal.

When establishing the procedure, there are in principle two sets of rules that will decide the conduct of arbitral proceedings. First: the (few) mandatory rules set out in the Arbitration Act. Second (in the absence of such mandatory rules): the arbitration agreement including any institutional rules specified therein, such as the SCC Rules. These principle sets of rules will be further discussed below.

4.2 PARTY AUTONOMY AND DUE PROCESS

The principle of party autonomy is one of the cornerstones of Swedish arbitration. Under section 21 of the Act, the arbitral tribunal shall, in its handling of the dispute 'act in accordance with the decisions of the parties, unless they are impeded from doing so'. In short, this means that if the arbitral tribunal has ignored procedural instructions contained in the arbitration agreement or given by the parties in the course of the arbitration, this may constitute a challengeable error under section 34 of the Act (see Chapter 8.3.8 below). However, the arbitral tribunal is not required to comply with an agreement on procedural issues which is unlawful, violates public policy, is impossible to implement, or substantially changes the basis upon which the arbitrators accepted their mandate, e.g. in respect of timing and scope.

The principle of equal treatment of the parties is another fundamental principle of Swedish arbitration law. This principle is, amongst other, recognised in section 21 of the Arbitration Act, which provides that the arbitrators should handle the dispute in an 'impartial, practical and speedy manner'. The principle of equal treatment means that the parties must have the same procedural rights and duties. For example, the arbi-

tral tribunal may not determine that only one party may request production of documents, present evidence or otherwise present its case, or that only one party must comply with the timetable set for the arbitration. However, this requirement of equal treatment should not be interpreted to mean, for example, that merely because one party's request for production of documents has been granted, the other party's request must also be granted. Nor does it require that the parties necessarily be afforded exactly the same amount of time to present their respective cases at a hearing.

The due process requirements underpinning the principle of equal treatment sometimes override the principle of party autonomy. An agreement between the parties which was concluded before the arbitration, and affords only one party a procedural benefit, or which deprives one party of a procedural right it otherwise enjoys under the Arbitration Act, may be deemed invalid.

Finally and importantly, another aspect of due process is that each party should be given an opportunity to present its case to the extent necessary, orally and in writing. However, the expression, 'to the extent necessary', empowers the arbitral tribunal to exclude irrelevant, unnecessary or untimely submissions and material. In light of the fact that the arbitral tribunal must also ensure a speedy and cost-efficient handling of the proceedings, the arbitral tribunal may, for example, limit the exchange of briefs or the time for opening statements when it reasonably believes that the parties have had sufficient opportunity to present their respective cases. It also means that the arbitral tribunal can exclude evidence which it reasonably believes to be clearly irrelevant.

The requirement that each party should be given an opportunity to present its case further entails that each party must be given an opportunity to respond to the other party's case. This rule is peremptory, as a party cannot in advance of the arbitration waive its right to present its case. Each party must also be given an opportunity to review all documents and all other materials pertaining to the dispute which are presented to the arbitral tribunal by the opposing party or by any other person (section 24 (2) of the Arbitration Act).

As mentioned above, the parties must be allowed to present their cases either orally or in writing. In certain instances, where a party has been provided sufficient opportunity to present its case in several briefs, there may be no need also to give it the opportunity to repeat all facts at length

during the hearing – a reasonably brief opening statement may suffice. However, a party is always entitled to an oral hearing, if so requested, before the arbitral tribunal rules on the merits. The arbitral tribunal may deny a party the opportunity to elaborate on a question in writing, if it suffices that it be given that opportunity orally during a hearing. However, the principle of party autonomy applies. If, for instance, the parties agree that they would like more time for their opening statements, e.g. due to the complexity of the case, the arbitral tribunal has to comply.

The right of a party to present its case also means that it is entitled to be represented by legal counsel of its choice, including foreign counsel. On the other hand, there is no requirement that a party be represented by any legal counsel at all or by counsel admitted to a bar.

4.3 THE PLACE OF ARBITRATION

Any arbitration having its seat in Sweden is legally taking place in Sweden. This means that the procedural aspects of the arbitration are governed by Swedish law – *lex arbitri* (section 46 of the Act). The seat of arbitration is, therefore, decisive for most questions of a procedural nature which arise before, during and after the arbitration.

Regardless of the formal seat of arbitration, meetings or hearings during the proceedings may in practice be held elsewhere if found convenient. The Swedish Supreme Court has confirmed that the seat of arbitration is a purely legal concept, which neither requires that the dispute be heard by arbitrators physically sitting in Sweden nor that there be any other actual connection to Sweden.

If the SCC Rules apply, the SCC Board shall decide the seat of arbitration after the first exchange of submissions, unless otherwise agreed by the parties. Notwithstanding this, the arbitral tribunal is entitled to hold its deliberations at any place which it considers appropriate. As mentioned above, it also has the possibility to hold hearings at places other than the seat of arbitration (SCC Rules, Article 25 paragraphs 1 and 2).

4.4 COMMENCEMENT OF ARBITRATION AND CONSTITUTION OF THE ARBITRAL TRIBUNAL

4.4.1 REQUEST FOR ARBITRATION

Arbitral proceedings are formally initiated when the claimant requests that arbitration be commenced. This is made by filing a ‘request for arbitration’.

Pursuant to section 45 of the Arbitration Act, the day on which the respondent receives the request for arbitration is considered to be the equivalent of initiating legal action before a court of law (e.g. the filing of an application for a writ of summons). It follows that the respondent’s receipt of the request stops (‘tolls’) any statutory time bar. The day of receipt is also significant because, as from that day, the respondent has 30 days within which to appoint its arbitrator (section 14 of the Act). If the respondent fails to do so, the claimant may request that the respondent’s arbitrator be appointed by the district court. Furthermore, any time limit for rendering the award starts to run from the day of receipt of the request for arbitration, unless otherwise agreed between the parties.

A request for arbitration becomes effective – and the arbitration thus commences – when a party receives from the other party a written communication which meets the requirements for constituting a request for arbitration. Unless the parties have agreed otherwise, the following requirements must be fulfilled in order for arbitration to have been validly initiated (section 19 of the Arbitration Act):

- ‘1. An express and unconditional request for arbitration;
2. A statement of the issue which is covered by the arbitration agreement and which is to be resolved by the arbitrators; and
3. A statement of the party’s choice of arbitrator if the party is required to appoint an arbitrator.’

A request for arbitration that does not fulfil these requirements will not constitute a valid request for arbitration under the Arbitration Act. Consequently, no arbitration will be considered to have commenced. In this situation, the proceedings will not commence until the respondent receives supplementary information from the claimant that completes the request for arbitration. However, if the other party accepts an incomplete request by appointing its arbitrator, or otherwise responds to the request for arbitration in a manner that implies acceptance of commencement of

the arbitration, the arbitration will be deemed to have commenced despite the defect.

Further, a request for arbitration must be in writing. There is no requirement that it must be signed. A submission by e-mail is sufficient, provided that the sender can prove that the respondent has actually received it (see further below regarding requirements on service of notices).

There are two exceptions to the requirement that a request for arbitration be in writing. If a written arbitration agreement has been entered into concerning an already existing dispute and the agreement includes a clear statement of the issue in dispute, there is no need to notify the opposing party in writing of the issue in dispute. Similarly, no written notification is required when the parties, in the presence of the arbitral tribunal, enter into a new or expanded arbitration agreement on issues they want the arbitral tribunal to determine. In the latter case, there is no need for the claimant to file a new request for arbitration in order for the proceedings to be deemed commenced with respect to the new issue and for the arbitral tribunal to resolve the dispute.

The requirement that a request for arbitration be express and unconditional also implies that a mere proposal to arbitrate, or an expression of intent to initiate arbitration sometime in the future, does not constitute a valid request for arbitration. Nor does notification that a party will request arbitration if payment is not received by a certain date, or if the dispute is not resolved by a certain date, constitute a valid request for arbitration.

The second requirement for a valid request for arbitration is that it must include a statement of the issue covered by the arbitration agreement which is to be resolved by the arbitral tribunal. The purpose of this rule is to establish a preliminary framework for the proceedings and to enable the respondent to appoint a suitable arbitrator based on this information.

Requests for relief do not need to be included in the request for arbitration. Under section 23 of the Arbitration Act, the claimant may present the relief sought at a later stage of the proceedings. Nor does the matter in dispute have to be described exhaustively or in detail in the request for arbitration and the claimant is not required to state legal grounds for its claims. In practice, however, the request for arbitration

usually includes at least a preliminary statement of the relief sought. This is also a requirement under Article 6 of the SCC Rules.

Facts, legal grounds and arguments presented in the request for arbitration may be substantially developed in the course of the proceedings before the arbitral tribunal. Moreover, the Arbitration Act enables the claimant to subsequently introduce new claims, as well as for the respondent to present counterclaims (section 23 of the Act). Accordingly, the description of the dispute contained in the request for arbitration is preliminary and provides only a partial framework for the arbitration.

The third requirement for a valid request for arbitration is that it includes a statement of the requesting party's choice of arbitrator (if the arbitration agreement requires the party to appoint one). Failure to do so means that the claimant has not made a request for arbitration within the meaning of the Arbitration Act. The purpose of this requirement is to expedite the proceedings. Since claimant has a better knowledge of the dispute than the opposing party, the claimant should appoint an arbitrator before the respondent.

If the arbitration agreement provides that the parties are jointly to appoint all of the arbitrator(s), or for a sole arbitrator to be appointed by the district court, it is not necessary for the claimant to suggest an arbitrator in the request for arbitration. If the arbitration agreement provides that the dispute is to be decided by three arbitrators, but the claimant nevertheless prefers a less expensive route with a sole arbitrator, the claimant should still appoint an arbitrator and seek the opposing party's consent to having the dispute decided by a sole arbitrator. Thus, in such a case, the claimant should not omit to nominate an arbitrator in the request for arbitration.

4.4.2 REQUIREMENTS ON REQUESTS FOR ARBITRATION UNDER THE SCC RULES

As mentioned in the preceding Chapter, the rules set forth in the Arbitration Act with respect to the commencement of arbitration are non-mandatory. The parties are thus free to agree that the arbitration is to commence in a different manner. Accordingly, if the parties' arbitration agreement refers to institutional arbitration, the requirements laid down by those rules take precedence over the fall-back rules of the Act.

Under Article 8 of the SCC Rules, the arbitration is deemed commenced on the date when the SCC receives the request for arbitration.

Accordingly, as opposed to arbitrations commenced under the Arbitration Act, in this respect the date when the respondent receives the request for arbitration is irrelevant under the SCC Rules.

Article 6 of the SCC Rules sets out the requirements for a valid request for arbitration. The request must include the following:

- (i) Details of the parties and their counsel.
- (ii) A summary of the dispute.
- (iii) A preliminary statement of the relief sought by the claimant, including an estimate of the monetary value of the claim(s).
- (iv) A copy or description of the arbitration agreement or clause under which the dispute is to be settled.
- (v) Where claims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each claim is made
- (vi) Comments on the number of arbitrators and the seat of arbitration.
- (vii) If applicable, details of the arbitrator appointed by the claimant.

Upon filing the request for arbitration, the claimant must pay the registration fee in accordance with Article 7 and Appendix IV of the SCC Rules. If the claimant fails to pay the registration fee after having received a reminder from the SCC, the request for arbitration will be dismissed (Articles 7(2) and 12(ii)). Evidence of payment should preferably be enclosed with the request, thereby expediting the proceedings.

The SCC normally asks that a request for arbitration be accompanied by a power of attorney for counsel for the claimant. If a power of attorney is not submitted, arbitration will still be deemed to have commenced, but the SCC will request counsel to supplement its submission with the required documents.

4.4.3 SERVICE OF REQUESTS FOR ARBITRATION AND COMMUNICATIONS WITH PARTIES

A party is considered to have received the request for arbitration when that party is notified of the request and has been given the opportunity to read it. It is, therefore, of great importance that the claimant obtains some reliable form of written evidence showing that the respondent (through an authorised person) has actually received the request for arbi-

tration. The importance of securing evidence of service should be stressed, since the sender has the burden of proof in this respect.

The Arbitration Act does not set out formal requirements with respect to service of a request for arbitration. The Supreme Court has clarified that the Swedish Service of Documents Act is not applicable to arbitral proceedings, but that service of the request for arbitration must be effected personally. It is, therefore, of great importance that the claimant makes sure that the opposing party actually receives the request for arbitration and secures proof thereof.

It is common that commercial agreements include 'notice provisions'. Case law suggests that, in the absence of evidence that the request has actually been received by an authorised representative of the opposing party, compliance with such a notice provision may be insufficient in order to achieve proper service of a request for arbitration. Even when in compliance with the notice provision, it is therefore important that the claimant at least check public records in order to verify the accuracy of the address stated in the provision.

Applying the SCC Rules avoids the uncertainty of establishing the exact time of the respondent's receipt of the request. Once the request for arbitration has been received and accepted by the SCC, the arbitration is deemed commenced and the SCC assumes responsibility for serving the request for arbitration on the respondent.

The requirements of the SCC Rules for proper service of documents are relatively low. In principle, it is sufficient to send a request for arbitration by email. However, in practice, the SCC makes great efforts to ensure that the respondent actually receives the request for arbitration. Service is deemed achieved when reasonable efforts have been made to reach the respondent.

Article 5 of the SCC Rules provides that any notice or communication from the SCC is to be sent to the last known address of the addressee. Delivery can be either by courier or registered mail, e-mail or other means of communication that provides a record of sending. Further, it is stated that a notice will be deemed received by the addressee on the date it would normally have been received given the chosen means of communication. The same rules apply to the arbitral tribunal's communications to the parties. This is not an issue when all parties participate in the proceedings, in which case the parties have normally agreed on the means of communication to be used during the proceedings. However, if one party

is absent, the arbitral tribunal should endeavour to send all communications, including the other party's submissions, to the last known address and, preferably, use both ordinary mail and email throughout the arbitration.

4.4.4 WITHDRAWAL OF A REQUEST FOR ARBITRATION

There is no provision under the Arbitration Act addressing the withdrawal of a request for arbitration. However, provided that a notification of withdrawal is received by the opposing party not later than the same time as the party is served notice of the request, the request should have no effect pursuant to general principles of law.

In that event the request for arbitration is withdrawn before the full arbitral tribunal is constituted but after the opposing party has been served the request, the respondent is entitled under section 28 of the Arbitration Act to demand that a final determination be made of the claim referred to arbitration by the claimant, notwithstanding the withdrawal. An arbitral tribunal should thus be constituted if the respondent nominates its arbitrator.

4.4.5 ANSWER TO REQUEST FOR ARBITRATION

The Arbitration Act provides that, if the claimant has appointed its arbitrator in the request for arbitration, the respondent must notify the claimant of its choice of arbitrator within thirty days of the date of service of the request for arbitration. The two arbitrators thus appointed shall then appoint the chairperson of the arbitral tribunal, at which point the arbitral tribunal is constituted.

Apart from the requirement to appoint an arbitrator within thirty days, the Arbitration Act is silent with respect to the manner in which the respondent is to answer the request for arbitration.

If the arbitration is conducted under the SCC Rules, however, the Secretariat of the SCC sends the respondent a copy of the request for arbitration (and documents attached). The Secretariat also sets a time limit within which the respondent must submit an answer to the SCC. Usually the respondent is given two weeks to submit its answer. The respondent's answer must include:

- (i) any objections concerning the existence, validity or applicability of the arbitration agreement; however, failure to object shall not pre-

- clude the respondent from raising such objections at any time up to and including the submission of the statement of defence;
- (ii) an admission or denial of the relief sought in the request for arbitration;
 - (iii) a preliminary statement of any counterclaims or set-offs, including an estimate of the monetary value thereof;
 - (iv) where counterclaims or set-offs are made under more than one arbitration agreement, an indication of the arbitration agreement under which each counterclaim or set-off is made;
 - (v) comments on the number of arbitrators and the seat of arbitration; and
 - (vi) if applicable, details of the arbitrator appointed by the respondent.

The Secretariat sends the respondent's answer to the claimant and the claimant may be given an opportunity to comment on the answer, depending on the circumstances of the case. Under Article 9(3) of the SCC Rules, failure by a respondent to submit an answer will not prevent the arbitration from proceeding. Under the SCC Rules, the Board of the SCC appoints the chairperson unless the parties have agreed otherwise (Article 17 of the SCC Rules).

4.5 MULTIPARTY ARBITRATIONS

Arbitration involving more than two parties, i.e. multiparty arbitration, has become increasingly common. The most straightforward scenario is that the contract (and its arbitration agreement) have been entered into by several parties and that one or several of those parties initiates arbitration against one or several of the other parties. In this situation, all parties involved in the arbitration will have already been named in the request for arbitration, either as claimant(s) or respondent(s). Normally, the claimants will have been able to agree on the appointment of an arbitrator and named that arbitrator in the request for arbitration. Similarly, the respondents are often able to agree on a common name to be appointed as an arbitrator. In such case, the multiparty situation poses no problem with respect to the constitution of the arbitral tribunal. If, however, the respondents are unable to agree on the appointment, the SCC Rules provide that the SCC is to appoint the entire arbitral tribunal, including the 'claimants' arbitrator'. The reason for this is that the parties could be

viewed as not being treated equally if the claimants had an opportunity to appoint an arbitrator of their choice while the respondents did not have opportunity to do so, perhaps because of conflicting interests of the respondents. A similar rule is found under section 14 of the Arbitration Act.

Another multiparty situation is one in which all potential parties are not named in the request for arbitration and a party wishes to intervene at a later stage, or a party to the arbitration wishes to join another party (intervention and joinder). The fundamental principle in Swedish arbitration is that, unless the parties agree otherwise, a party can neither be forced into an already existing arbitration through joinder nor insist on intervening. The same applies under the New York Convention, Article V(1)(d), which allows refusal to recognise and enforce arbitral awards where '[t]he composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties'. Accordingly, intervention and joinder require consent of all parties involved. That consent may be given when the situation arises or beforehand in the arbitration agreement or the rules referred to therein.

The same limits that apply to intervention and joinder apply to consolidation of multiple arbitrations between two parties. Under Swedish law, an arbitration clause must contemplate a specific legal relationship in order to be binding upon the parties. Therefore, the possibility to consolidate multiple arbitrations, even between the same parties, is limited. Unless the parties consent, all of the relevant arbitration agreements must allow for consolidation in order for such consolidation to be possible. Such an agreement is most commonly found in institutional rules referred to in the arbitration agreement, but may also have been drafted by the parties themselves in anticipation of a multi-party situation.

If the applicable arbitration rules provide for consolidation and joinder/intervention, the parties are deemed to have given their consent to such measures in advance. Accordingly, if the SCC Rules are referred to for an arbitration in Sweden, Articles 13, 14 and 15 (which provide for joinder, multiple contracts in a single arbitration and consolidation) will be fully respected by the Swedish courts.

Under Article 13 of the SCC Rules a party to an arbitration may request the SCC to *join one or more additional parties to the arbitration*. Such a request for joinder must be made as early as possible. If such a

request is made after the submission of the answer, it may not be considered, unless the SCC decides otherwise.

The SCC may grant an application provided that the SCC does not manifestly lack jurisdiction over the dispute between the parties, including any additional party requested to be joined to the arbitration.

If the SCC grants a request for joinder, any decision as to the arbitral tribunal's jurisdiction over a party joined to the arbitration must be made by the arbitral tribunal. The SCC's decision does, therefore, not affect the arbitral tribunal's power to decide on its own jurisdiction over the claims.

In case where the SCC grants a request for joinder and the additional party does not agree to an arbitrator already appointed, the SCC may release the arbitrators and appoint the entire arbitral tribunal, unless all parties, including the additional party, agree on a different procedure for the appointment of the arbitral tribunal.

Under Article 14 of the SCC Rules, the parties to an arbitration may make claims arising out of or in connection with *more than one contract in a single arbitration*. If the parties cannot agree on this issue, the SCC will decide after consulting the parties and having regard to:

- (i) whether the arbitration agreements under which the claims are made are compatible;
- (ii) whether the relief sought arises out of the same transaction or series of transactions;
- (iii) the efficiency and expeditiousness of the proceedings; and
- (iv) any other relevant circumstances.

Again, it is up to the arbitral tribunal to decide on its jurisdiction over the claims. The SCC will only make a preliminary, *prima facie* finding on jurisdiction.

In all cases where the SCC Board decides that the claims may proceed in a single arbitration, any decision as to the arbitral tribunal's jurisdiction over the claims shall be made by the arbitral tribunal.

Lastly, Article 15 of the SCC Rules provides a possibility for *consolidation of arbitrations*. At the request of a party, the SCC may decide to consolidate a newly commenced arbitration with an already pending arbitration, if:

- (i) the parties agree to consolidate;
- (ii) all the claims are made under the same arbitration agreement; or
- (iii) where the claims are made under more than one arbitration agreement, the relief sought arises out of the same transaction or series of transactions and the SCC Board considers the arbitration agreements to be compatible.

The parties' consent is thus not required. However, in deciding whether to consolidate, the SCC must consult with the parties, as well as the arbitral tribunal, and take into consideration:

- (i) the stage of the pending arbitration;
- (ii) the efficiency and expeditiousness of the proceedings; and
- (iii) any other relevant circumstances.

If consolidation is granted, the SCC may release any arbitrator already appointed.

For guidance with respect to how to draft an arbitration agreement that allows for multiparty and multi-contract arbitration, reference may be had to the IBA Guidelines for Drafting International Arbitration Clauses (www.ibanet.org).

4.6 WRITTEN SUBMISSIONS

Once the arbitral tribunal is constituted and is in receipt of the file, it will usually set the timetable and the basic rules of the procedure through a first procedural order. To start with, the arbitral tribunal should seek to have the parties agree upon the timetable and the procedural rules to be applied. Under Article 28 of the SCC Rules, the arbitral tribunal must promptly hold a case management conference with the parties in order to organise, schedule and establish procedures for the conduct of the proceedings. If and to the extent the parties cannot agree on the order proposed by the arbitral tribunal, the basic rule is that the arbitral tribunal shall determine the procedure. As described above, unless the parties otherwise agree, the arbitral tribunal may organise the proceedings in any way it sees fit as long as the due-process requirements of equal treatment and the parties' right to be given a reasonable opportunity to present their case are respected.

The first procedural order may be very short, outlining only the written submissions to be made. But it may also be quite detailed, including a number of detailed procedural rules to be applied during the arbitration. If it may be assumed that the parties will have substantially different expectations with regard to certain procedural issues, it is usually a good idea to adopt more detailed procedural rules at the outset in order to bring those expectations closer together and thereby avoid, or at least limit, future conflicts.

Once the basic rules and the timetable have been set, the arbitration usually proceeds with an exchange of written submissions. The primary purpose of the first exchange of written submissions (the statement of claim and the statement of defence), is to define the issues to be determined by the arbitral tribunal and to set the framework for the dispute. In virtually all arbitrations, the first exchange of submissions is followed by at least one further round of submissions: the claimant's 'reply' and the respondent's 'rejoinder'. If there is a counterclaim, that claim is usually dealt with in parallel, such that the 'statement of defence' is also the 'statement of counterclaim', and the 'reply' also serves as the 'statement of defence to counterclaim'. The counter-respondent is usually afforded the opportunity to conclude the pre-hearing phase by filing its 'rejoinder to counterclaim'. In those instances, the arbitral tribunal normally orders the claimant / counter-respondent to limit the brief to the counterclaim, so as not to create any perception of imbalance through the same party getting to have both the first and the last word.

Well-managed arbitrations involving counsel who adhere to the procedure and arbitrators who are willing to enforce the agreed procedure usually do not require any briefs prior to the hearing other than the four briefs (or five, if there is a counterclaim) outlined above. This presupposes, however, that all facts and evidence relied upon by the parties are included as early as possible in the proceedings and that the arbitral tribunal makes clear that evidence withheld by a party for tactical reasons until the last submission may be rejected. These kinds of orders by the arbitral tribunal usually have the intended effect of creating a 'front-loaded' procedure. However, it is often difficult to assess whether evidence that is introduced in the last submission could and should have been introduced earlier. To avoid the risk of a challenge to an award, in practice arbitral tribunals therefore tend to allow also late evidence to be introduced into the proceedings, rather than dismissing it; however, they

then provide an opportunity for the other party to respond. Short, supplementary briefs before or after the hearing are therefore not uncommon even if the first procedural order has provided for a strict cut-off date. In addition, there is of course nothing to prevent the parties from agreeing on briefs in addition to the usual four (or five). Furthermore, in certain kinds of disputes, notably construction disputes that include a great number of (sometimes minor) sub-claims and issues, it is fairly common to allow three or even four rounds of submissions before the hearing.

Submission of the statement of claim and the statement of defence is expressly provided for in Article 29 of the SCC Rules and indirectly provided for under section 23 of the Arbitration Act. The specific requirements that apply with respect to these submissions will be discussed below. Apart from these provisions, there are no predetermined rules with respect to the written submissions to be made by the parties. Thus, the parties may structure their briefs in any way they and the arbitral tribunal see fit for the relevant dispute.

As of the time of printing of this guide, the SCC was working on a new technical solution aiming to facilitate the management of arbitration cases by providing a secure electronic platform to which documents (such as submissions, exhibits, procedural orders etc.) can be uploaded and subsequently accessed by the other parties involved in the same arbitration. The platform is intended to be launched in September 2019.

4.6.1 STATEMENT OF CLAIM

Section 23 of the Arbitration Act sets forth the minimum requirements for the claimant's statement of claim and the respondent's statement of defence, unless otherwise agreed between the parties. The statement of claim must contain the claimant's request for relief in respect of the issue stated in the request for arbitration and the material facts relied upon in support. Failing this, the arbitral tribunal should order the claimant to remedy deficiencies.

The Arbitration Act does not require the claimant to file or even identify any evidence, oral or documentary, together with the statement of claim. In domestic arbitrations in Sweden, which may be more or less influenced by practices before Swedish courts, evidence is sometimes only submitted and specified towards the end of the written phase of the proceedings. In international arbitrations in Sweden, however, it is commonly agreed by the parties or determined in a first procedural order by

the arbitral tribunal that all evidence, including witness statements and expert reports, relied on by the claimant in support of the allegations in the statement of claim are to be referenced in, and submitted together with, the statement of claim. This is also the default rule under the SCC Rules, under which the documents on which the claimant relies are to be submitted together with the statement of claim.

Article 29 of the SCC Rules provides that a statement of claim should be submitted by the claimant within a period set by the arbitral tribunal. The statement of claim must include the following (if not already submitted):

- (i) the specific relief sought;
- (ii) the factual and legal basis the claimant relies on; and
- (iii) any evidence the claimant relies on.

4.6.2 STATEMENT OF DEFENCE

Under the Arbitration Act, the respondent must state its position in relation to the claimant's request for relief and state the facts supporting its own position within the time set by the arbitral tribunal. Thus, the statement of defence should contain an acceptance or denial of the claimant's request for relief. If the respondent wishes to object to the jurisdiction of the arbitral tribunal, that objection must, as a general rule, be made no later than in the statement of defence. Failing this, the objection may be considered to have been waived.

Article 29 of the SCC Rules provides a few additional requirements compared to the Arbitration Act. Pursuant to Article 29, a statement of defence should be submitted by the respondent within a period set by the arbitral tribunal. The statement of defence must include the following (if not already submitted):

- (i) objections concerning the existence, validity or applicability of the arbitration agreement;
- (ii) a statement whether, and to what extent, the respondent admits or denies the relief sought by the claimant;
- (iii) the factual and legal basis the respondent relies on;

- (iv) any counterclaim or set-off claim and the grounds on which it is based; and
- (v) any evidence the respondent relies on.

4.7 REQUEST FOR RELIEF

The scope of the arbitral tribunal's jurisdiction is set by the arbitration agreement and supplemented by agreements or admissions made by the parties during the course of the proceedings. The request for relief ultimately defines the limits of the arbitral tribunal's mandate and is, therefore, of fundamental importance to the outcome of the proceedings. The request for relief also has decisive implications for the *res judicata* effect of the award and the *lis pendens* effect of the proceedings.

There are no explicit requirements as to how the request for relief should be formulated. An arbitral tribunal has the power to order performance, either of a specific action or payment of monies, and to grant injunctive and declaratory relief, if either of the parties so requests. Declaratory claims seeking to establish the existence of a certain fact or an alleged interpretation of a contract may also be granted by the arbitral tribunal. However, since the request for relief to some extent defines the limits of the arbitral tribunal's mandate, it has to be specified to such a degree that there is no doubt as to how the award is to be phrased if the relief is granted. The parties must explicitly and unequivocally state what they wish the arbitral tribunal to decide. An undefined request for 'appropriate relief' or similar is not sufficient.

The arbitral tribunal has the power to dismiss a request for relief that is not sufficiently specific and clear. Before doing so, however, the arbitral tribunal has an obligation to seek clarification from the party making the request in question. Failure to do so may constitute a procedural error and leave the award open to challenge.

4.7.1 FACTS RELIED ON IN SUPPORT OF REQUEST FOR RELIEF

In both domestic and international arbitrations in Sweden, the parties are expected to specify the factual allegations they rely upon in support of their respective requests for relief. The arbitral tribunal is bound by the factual allegations made by the parties. The arbitral tribunal may thus not grant a request for relief on the basis of facts not relied upon by a party as being relevant for the relief sought. If it does, this may give cause to chal-

lenge the award under section 34 of the Arbitration Act (see Chapter 8.3.4(ii) below). This restriction is explained by fundamental due process requirements. In order for the respondent to be afforded a fair opportunity to present its case, it must be able to understand what case the claimant is advancing, i.e. what alleged facts the claimant is relying on as relevant for its requested relief.

4.7.2 AMENDMENT AND WITHDRAWAL OF A CLAIM

Under section 23 of the Arbitration Act and Article 30 of the SCC Rules, the claimant may submit new requests for relief and the respondent its own request, for relief (counterclaim or set-off claim). However, two conditions must be fulfilled. First, the new claims must fall within the scope of the arbitration agreement. Second, the consideration of those claims must not be deemed inappropriate by the arbitral tribunal. It is thus within the discretion of the arbitral tribunal, taking into consideration the time at which the new claim is submitted and other circumstances, to decide if that new claim should be allowed. For reasons of procedural economy and efficiency, the arbitral tribunal should, in most situations, be generous in allowing a new claim as long as it falls within the scope of the arbitration agreement. If the new claim is not allowed, the party seeking to introduce it may instead be forced to initiate another arbitration, resulting in delay and additional costs. However, the timing of the new claim is of fundamental importance, since the late introduction of claims must not be allowed to be used as a means to obstruct the proceedings. Subject to the same conditions, each party may amend or supplement previously presented claims and introduce new facts in support of its case. However, if the arbitral tribunal has issued a procedural order with cut-off date(s) for the introduction of new facts and evidence, that order ought to override the right of a party under the Arbitration Act to amend its case. Moreover, the right to amend or supplement a claim under section 23 of the Act is not mandatory and the parties may thus agree to disregard or amend that section.

If a party submits a claim that is not covered by the arbitration agreement, that claim may nevertheless be tried by the arbitral tribunal if the opposing party fails to raise a jurisdictional objection. In that case, the original arbitration agreement is considered to have been extended to cover the new claim as well.

If a party withdraws a claim, the arbitral tribunal should dismiss (without prejudice) that part of the dispute unless the opposing party requests a ruling on the merits of the withdrawn claim (section 28 of the Arbitration Act). The right of the opposing party to a ruling is aimed at preventing the withdrawing party from later initiating a new arbitration concerning the same claim or otherwise from keeping the respondent in suspense.

4.8 INTERIM RELIEF

4.8.1 IN GENERAL

Unless the parties have agreed otherwise, the arbitral tribunal may, at the request of a party, order the other party to undertake a certain interim measure to secure the claim which is to be determined in the dispute. The arbitral tribunal has extensive authority to decide on the particular measure to be undertaken in order, for instance, to secure evidence.

In Sweden, as in most jurisdictions, an arbitral tribunal's decision to order interim measures is not enforceable. However, the parties are contractually bound by such decisions as between themselves and a party's failure to comply with this kind of decision may be given weight by the arbitral tribunal in other respects, for example when determining liability for loss caused or when calculating damages. In practice, parties therefore tend to comply with interim relief ordered by arbitral tribunals, regardless of the lack of enforceability.

4.8.2 INTERIM MEASURES GRANTED BY AN ARBITRAL TRIBUNAL

Under section 25 (4) of the Arbitration Act, the arbitral tribunal may, unless otherwise agreed by the parties, decide at the request of a party that the other party must undertake a certain interim measure to secure the disputed claim during the proceedings. The arbitral tribunal has extensive powers to grant different types of interim measures, including measures which only indirectly secure the enforcement of the disputed claim.

Section 25 (4) of the Act has been modelled on Article 17 of the UNCITRAL Model Law and empowers an arbitral tribunal to grant the same interim measures as provided for in that Article. Therefore, an arbitral tribunal may grant interim measures for the following purposes:

- To maintain or restore the status quo pending determination of the dispute;
- To take action that would prevent, or to refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;
- To provide a means of preserving assets out of which a subsequent award may be satisfied; or
- To preserve evidence that may be relevant and material to the resolution of the dispute.

The arbitral tribunal has wide discretion to decide when it is justifiable to grant a request for interim measures.

As explained above, in most jurisdictions, including Sweden, orders issued by the arbitral tribunal granting interim measures are not enforced by the courts and/or the enforcement agencies through enforcement proceedings. (A few jurisdictions do enforce orders for interim measures ordered by international arbitral tribunals.) Moreover, arbitral tribunals are not empowered to order interim measures against third parties. However, with respect to measures required to secure evidence, an arbitral tribunal is allowed to request a third party to preform voluntarily. Since an arbitral tribunal's decision to grant interim relief is not enforceable, a party is also free to apply to a court to obtain an enforceable interim measure even though it has already applied for, or even been granted, an interim measure by the arbitral tribunal.

Pursuant to section 27 of the Arbitration Act, orders for interim measures are to be designated as decisions rather than awards. However, under Article 37(3) of the SCC Rules, an interim measure may take the form of an order or an award. As a starting point, a decision on interim measures, albeit formally designated as an award, would still be considered a decision on substance and would not be recognised as an enforceable award in Sweden. However, there is currently no case law which addresses whether this would be the case also where the parties have specifically agreed that the arbitral tribunal shall have the power to render interim relief in the form of an award (as in the case of the SCC Rules). The designation of the interim measure as an 'award' may also be useful in certain other jurisdictions in which enforcement of the measure may be sought.

The Arbitration Act empowers the arbitral tribunal to require that the party requesting the interim measure provide reasonable security for any loss which may be incurred by the other party as a result of the interim measure (see section 25 (4) of the Act). The security can take various forms, such as a bank guarantee, or a pledge over receivables on a bank account.

4.8.3 EMERGENCY ARBITRATOR

In 2010, the SCC adopted a set of emergency rules (hereinafter referred to as the ‘Emergency Rules’). The Emergency Rules are appended to both the SCC Arbitration Rules and the SCC Rules for Expedited Arbitration. They facilitate the appointment of an emergency arbitrator entrusted with the authority to order interim measures before an arbitral tribunal has been constituted.

The emergency arbitrator has the same authority to order interim measures as an ordinary tribunal under the SCC Rules. A party can request the appointment of an emergency arbitrator at any time until the case has been referred to an arbitral tribunal, at which time corresponding interim measures are instead available through the arbitral tribunal.

The purpose of the Emergency Rules is to provide for a quick appointment of an emergency arbitrator and for swift decisions. As soon as an application for the appointment of an emergency arbitrator is received by the SCC, it shall be forwarded to the other party. The SCC shall then seek to appoint an emergency arbitrator within 24 hours. Referral of the application to the emergency arbitrator is to be made immediately following his or her appointment. Challenges of the emergency arbitrator must be made within 24 hours after a circumstance giving rise to challenge becomes known to a challenging party.

Any decision on interim measures by the emergency arbitrator must be made within five days from referral to the emergency arbitrator (unless the period is extended by the SCC Board). Such a decision shall be reasoned and made in writing.

Unless otherwise agreed by the parties, the emergency arbitrator shall have no role in any future arbitration relating to the dispute.

An emergency decision is binding upon the parties (although not enforceable in most jurisdictions). Such a decision can be changed by the emergency arbitrator or an arbitral tribunal. Further, an emergency decision ceases to be binding: (i) upon rendering of the final award by the

arbitral tribunal; (ii) after 30 days from the rendering of the decision should no arbitration have been commenced or (iii) after 90 days from the rendering of the decision, should a case not have been referred to an arbitral tribunal (e.g. due to the parties failing to pay the advance on costs to the SCC).

The fee for an emergency arbitrator is currently fixed at EUR 20,000. The fee must be paid by the applicant in advance at the time of the request. The applicant's cost in this respect can, if requested by a party, be apportioned by the emergency arbitrator in the emergency decision or otherwise in a final award by an arbitral tribunal.

Between 2010 and 2018, there have been 34 requests for an emergency arbitrator. The time limits, which admittedly are quite aggressive, have proven feasible. In almost all cases, an emergency arbitrator has been appointed within 24 hours from the application and the majority of decisions have been rendered within the prescribed 5 days.

The Emergency Rules offer little guidance as regards the standards to be met for emergency relief to be granted. The Emergency Rules simply provide that any interim measure deemed appropriate by the emergency arbitrator may be ordered. Thus, no explicit criterion of urgency is required to grant emergency relief under the Emergency Rules. However, in practice urgency is usually viewed as a requirement for a successful application. Most of the emergency arbitrators appointed to date have applied a test similar to the one under Article 26 of the UNCITRAL Arbitration Rules. Apart from urgency it is thus, generally necessary for the applicant to demonstrate (i) that harm, not adequately reparable by an award of damages, is likely to result if the measure is not ordered; (ii) that such harm substantially outweighs the harm that is likely to be caused to the party against whom the measure is directed if the measure is granted; and (iii) that there is a reasonable possibility that the requesting party will ultimately succeed on the merits of its claim.

4.9 SUMMARY PROCEDURE

In 2017, an innovative provision was introduced to the SCC Rules. By this rule, which is found in Article 39, a factual or a legal issue can be determined by the arbitral tribunal in a summary procedure, thereby saving time and costs. It is intended for cases that include, for example, an assertion by the requesting party that:

- (i) an allegation by the other party of fact or law, which is material to the outcome of the case, is manifestly unsustainable;
- (ii) even if the facts alleged by the other party are assumed to be true, no award could be rendered in favour of that party under the applicable law; or
- (iii) any issue of fact or law, which is material to the outcome of the case is, for any other reason, suitable to determination by way of summary procedure.

The party requesting a summary procedure must indicate the grounds for its request, propose a form of summary procedure and demonstrate that such procedure is efficient and appropriate for that particular case. The other party will be given an opportunity to submit comments on the request, after which the arbitral tribunal will issue an order either dismissing the request or fixing the summary procedure in an appropriate form.

Summary procedure is a case management tool that is available at any time during the arbitration.

4.IO HEARINGS

4.IO.I GENERAL

Upon a party's request and provided that the parties have not agreed otherwise, at least one hearing must be held prior to the determination of an issue on the merits. A party's right to a hearing is absolute in the sense that a request for a hearing may not be denied by the arbitral tribunal, save for the – arguably rare – cases where the parties have already agreed that no hearings are to be held during the arbitration.

The right to a hearing does not extend to issues other than the substantive matters, which have been referred to the arbitral tribunal for determination. In other words, the right to a hearing applies to issues relevant to the merits of the case. Consequently, a party cannot require, but may very well request, that the arbitral tribunal arrange a hearing solely to deal with, for example, questions pertaining to case administration.

In certain circumstances, the parties may forfeit their right to a hearing due to their own inaction. The preparatory works to the Arbitration Act explain that the arbitral tribunal can order the parties to request a hearing within a certain period. Should both parties fail to do so before the given

deadline, they will be considered to have impliedly waived their right to a hearing. However, considering the great importance that Swedish legal tradition attaches to the right to a hearing, the arbitral tribunal should be wary of drawing any firm conclusions based solely on the parties' failure to request a hearing within a stipulated period. Before denying a party a hearing due to the party having missed a deadline for requesting a hearing, the arbitral tribunal must be confident that the deadline imposed was not unreasonable and that the party had adequate time to consider whether a hearing was necessary. If this is not the case, the decision not to hold a hearing may be considered a violation of due process, exposing the resulting award to the risk of being set aside in subsequent challenge proceedings.

In practice, the vast majority of arbitrations involve at least one hearing, during which the parties are allowed to present their respective legal arguments and evidence – and to challenge those presented by the other party. This hearing is often referred to as the 'main hearing', the 'final hearing' or the 'merits hearing'.

Depending on the complexity of the case before the arbitral tribunal, the merits hearing may be preceded by other forms of meetings or hearings, as will be discussed below.

The arbitral tribunal has considerable flexibility in determining the venue of hearings. Unless the parties have agreed otherwise, the arbitral tribunal may in principle decide to hold meetings and hearings in a different place or country than the seat of arbitration. Notwithstanding the flexibility granted to the arbitral tribunal in this respect, it should always set the time, date and place for hearings in consultation with the parties.

4.10.2 PROCEDURAL MEETINGS

As soon as the arbitral tribunal has been constituted, a meeting or, perhaps more commonly, a telephone conference is often arranged with the parties. The primary purpose of this first meeting between the arbitral tribunal and the parties is to discuss and, if possible, agree on the timetable for the proceedings. The SCC Rules require that the arbitral tribunal promptly summon the parties to a case management conference with a view to setting a provisional timetable, including a date for rendering the final award. Although not a legal requirement, it is advisable also in ad hoc arbitrations under the Arbitration Act to fix the timetable for the entire arbitration at the outset of the proceedings. In less complex mat-

ters, this may be done through e-mail correspondence rather than at a meeting.

Another important purpose of the first meeting is to discuss the rules applicable to the conduct of the proceedings. As discussed above, few details are provided in the Arbitration Act or the major institutional rules with respect to the conduct of the proceedings. The Act and the SCC Rules also do not require Terms of Reference. However, the SCC Rules do provide that procedural rules for the conduct of the arbitration are to be adopted in connection with the case management conference.

As indicated above, the first procedural meeting usually results in a procedural decision by the arbitral tribunal, taking the form of a 'first procedural order', which includes a provisional timetable and detailed procedural rules. The written phase of the arbitration then proceeds in accordance with this order. Unless issues arise that require intermittent meetings, the next occasion when the arbitral tribunal and the parties will meet is often at a 'pre-hearing conference', usually conducted by telephone.

In international arbitrations in Sweden, the pre-hearing conference generally deals with practical and procedural issues that need to be arranged or settled before the hearing. These may be issues relating to booking the hearing venue and arranging court reporters and interpreters, or how to schedule witnesses and/or experts for appearance at the hearing. The merits of the case as such are normally not discussed at this meeting, although certain clarifications may be sought, for example, with respect to the relief sought.

In domestic Swedish arbitrations, as well as in international arbitrations with predominantly Swedish arbitrators and counsel, the pre-hearing conference sometimes has a somewhat different purpose. Inspired by the Swedish Code of Judicial Procedure, in addition to sorting out practical and procedural issues the meeting may be used to clarify the parties' respective cases, including requests for relief and facts, legal arguments and evidence relied upon. In these cases, the meeting is often referred to as a 'preparatory hearing'. This meeting may be useful for the arbitral tribunal and the parties' understanding of what factual and legal issues are in dispute, so as to focus the merits hearing on truly contentious issues. However, if non-Swedish parties or counsel are involved in the arbitration, it is submitted that a preparatory hearing of this kind, if at all, should be arranged only after the arbitral tribunal has explained in detail

what it wants to achieve with the meeting and what it expects from the parties.

4.IO.3 JURISDICTIONAL HEARINGS

It may be necessary to hold a jurisdictional hearing in cases where the respondent challenges the arbitral tribunal's jurisdiction (or competence) and the arbitral tribunal decides to bifurcate the proceedings to resolve the jurisdictional objection separately before proceeding to the merits of the case. Similarly to a merits hearing, a jurisdictional hearing is preceded by written submissions as well as procedural meetings as described above. At the jurisdictional hearing, witnesses and experts relevant to the issue of jurisdiction may be heard, usually in accordance with the format of a merits hearing. Should the arbitral tribunal subsequently rule that it has jurisdiction, another scheduling meeting is normally arranged, setting out the timetable for the remainder of the arbitration. The parties then exchange written submissions on the merits of the case, followed by a pre-hearing conference and, finally, the hearing on the merits.

A decision to bifurcate the proceedings into a separate jurisdictional phase inevitably leads to delays if the arbitral tribunal finds that it has jurisdiction. The procedural steps set out above then need to be taken twice. It may, therefore, often be more economical in terms of time and costs to hear the jurisdictional objections together with the case on the merits, at the merits hearing. This is particularly so if the jurisdictional issue and the case on the merits have substantial facts and evidence in common, which otherwise might need to be presented twice if the proceedings are bifurcated.

4.IO.4 MERITS HEARING

In most arbitrations conducted under Swedish arbitration law the proceedings before the arbitral tribunal are concluded by a merits hearing. During the merits hearing, the parties are given the opportunity to present their respective cases by giving an oral account of their request for relief, factual and legal arguments, as well as presenting written and oral evidence. Unless the parties agree otherwise, the arbitral tribunal may give directions limiting the scope of the merits hearing. However, it is important for the arbitral tribunal to allow each party sufficient opportunity to elaborate on those parts of its case that the party views as impor-

tant and to highlight certain content in the written evidence. Although a party's right to argue its case orally is absolute, there is no right for a party to do so indefinitely. Within the limits set by the principles of procedural equality and the parties' right to a reasonable opportunity to present their cases, the arbitral tribunal may, for example, impose time limits for oral arguments.

There is no provision in the Arbitration Act or the SCC Rules that regulates the conduct of a hearing. This provides great leeway for the arbitral tribunal and the parties to put together a tailor-made schedule for the merits hearing. Nevertheless there is a distinct pattern or structure for merits hearings which is generally followed in most arbitrations seated in Sweden.

The merits hearing usually begins with the parties' opening statements. At this first stage of the hearing, each party – usually starting with the claimant – gives an account of its request for relief as well as the facts and legal arguments relied upon in support of those requests. The key written evidence relied upon by the party is also presented and commented upon. However, there is no requirement that a document be presented or referred to at the hearing in order for it to be relied upon as evidence. It is sufficient that the document has been filed with the written submissions and that its relevance as evidence has been explained there.

In presenting their opening statements, the parties' counsel should try to summarise the most important parts of the written material already submitted to the arbitral tribunal. Counsel frequently use technical aids, display sketches, photographs, films and the like to explain the relevant circumstances to the arbitral tribunal. Importantly, however, in order to allow the other party to prepare its case without the risk of surprises, no new evidence and no new factual allegations are expected to be made or presented at the hearing. If, for example, a picture is used during the opening statement to describe a company structure, the information contained in that picture should already be in the case file, albeit perhaps in writing and not previously depicted in that way.

The parties' opening statements are followed by examination of witnesses and experts. In virtually all international arbitrations, the parties submit written witness statements prior to the merits hearing. In these cases, the international trend is not to allow substantial examinations-in-chief of the witnesses. Instead, the written statements stand in lieu of direct examination and the time allowed for oral testimonies are essen-

tially devoted to cross-examination and, possibly, re-direct examination and questions from the arbitral tribunal. With respect to party-appointed experts who have submitted expert opinions on legal, technical, financial and other issues, the trend also seems to be to limit direct examination and focus on cross-examination. However, this trend is not as pronounced and experts are usually afforded an opportunity to explain their often complex expert reports.

When hearing witnesses, the usual order is to start with the claimant's fact witnesses and proceed with the respondent's fact witnesses, but alterations to this order are often seen if the case is better presented in other ways. In most cases, the arbitral tribunal will endeavour to have the parties agree on the order of witnesses and experts to be examined.

The final stage of the merits hearing generally consists of the parties' oral closing arguments. In delivering their closing arguments, the parties are expected to argue their cases from a legal as well as a factual perspective. The parties are also expected to give their view on how the arbitral tribunal is to assess the written and oral evidence presented during the merits hearing or earlier in the proceedings, as well as on issues such as the burden and standard of proof.

Unless post-hearing briefs are to be exchanged or for some other reason the proceedings are set to continue after the merits hearing, it is preferable that the arbitral tribunal ends the merits hearing by declaring the arbitral proceedings closed and explaining that it will not consider further submissions from the parties. This declaration – which must be made before the award is rendered under the SCC Rules, but which is not a requirement under the Arbitration Act – makes clear that the arbitral tribunal wishes no further input. It also reinforces the arbitral tribunal's ability to stave off belated and unsolicited submissions from the parties.

4.10.5 POST-HEARING BRIEFS

In complex arbitrations where the merits hearing has lasted for many days or weeks, it may sometimes be difficult for the parties to present their respective cases orally at the end of the merits hearing. In these cases, it is not uncommon – at least from an international perspective – for the closing arguments to be presented after the merits hearing in the form of post-hearing briefs. Although this approach will usually add to the overall time of the proceedings, it enables the parties to devote more time to a review of the transcript from the hearing and carefully analyse and refer

to all relevant evidence. It also enables the arbitral tribunal to ask the parties to comment on particular legal or factual issues. In cases where the merits hearing is concluded with oral closing arguments, post-hearing briefs may sometimes be used as a supplement for particular topics chosen by the arbitral tribunal.

There are no provisions in the Arbitration Act or in the SCC Rules specifically dealing with post-hearing briefs. It is, therefore, up to the parties and the arbitral tribunal to determine the approach they see fit. If post-hearing briefs are to be submitted, the most common approach is that both parties submit their briefs simultaneously on a date either agreed between them or as ordered by the arbitral tribunal. These first post-hearing briefs are sometimes followed, after a short period, by rebuttal post-hearing briefs, also filed simultaneously. The rebuttal briefs are usually limited to comments on errors and new arguments in the other party's first brief. It is common for arbitral tribunals to limit the number of pages allowed for each round of post-hearing briefs.

4.II CONFIDENTIALITY

Arbitral proceedings in Sweden are private, i.e. third parties do not have access to pleadings, hearings or the award. There is also no statutory requirement for a Swedish award to be registered or filed with any party external to the dispute. Arbitrators must adhere to the principle of confidentiality when performing their duties. This also applies when an arbitrator is appointed by the district court. Furthermore, counsel for the parties are restricted by professional rules concerning confidentiality (although this can be waived by the client). As a general rule, witnesses and experts testifying in arbitral proceedings are not bound by a duty of confidentiality in the absence of a separate agreement to that effect.

Overall, the above factors facilitate keeping arbitrations private and away from the public eye. However, it is important to make a distinction between arbitrations being private and being confidential, i.e. including an obligation on the parties not to disclose circumstances relating to the arbitration to any third party. The Arbitration Act contains no provisions regarding the confidentiality of arbitral proceedings as such. The same is true for the SCC Rules (which, however, do have a rule on confidentiality as regards the SCC, the arbitral tribunal and any administrative secretary of the arbitral tribunal). Following the Supreme Court judgment in what is commonly referred to as the *Bulbank* case (*Bulgarian Foreign Trade*

Bank Ltd (Bulbank) v. A.I. Trade Finance Inc (AIT); the Swedish Supreme Court, T 1881-99, 27 October 2000), it has also been established that an arbitration agreement as such does not include any implied duty of confidentiality between the parties. Although the case was determined under the 1929 Arbitration Act, the Supreme Court made clear that the conclusions were also applicable to the 1999 Act which had entered into force at the time of the case. The *Bulbank* case establishes that a duty of confidentiality for parties is neither a legal obligation that follows from the very nature of arbitration, nor an implied condition that can be inferred implicitly from all arbitration agreements.

Accordingly, parties who consider confidentiality of arbitral proceedings to be of particular importance should expressly agree to confidentiality. This should preferably be done by way of a specific sub-clause in the parties' arbitration agreement (or a separate agreement that explicitly refers to the arbitration agreement), which clearly sets out the scope and duration of the parties' confidentiality undertakings and the sanctions for breaching them. Before adopting such a clause, however, parties are advised to consider whether they really want to be bound by strict confidentiality or whether the private nature of the proceedings is sufficient for their purposes. For example, it might be that a party wishes to be able to inform the market or other stake-holders of the existence and progress of an arbitration. In such case, any confidentiality clause should not be drafted too narrowly.

4.12 GDPR AND ITS EFFECTS ON THE ARBITRATION PROCEEDINGS

As of 25 May 2018, the General Data Protection Regulation ('GDPR') is in force as directly applicable law in the European Union, including in Sweden. The regulation provides more stringent requirements for the storing of personal data and strengthens the data protection for individuals within the European Union. According to the Regulation, processing of personal data is generally prohibited unless the concerned individual has given his or her consent to the processing or, inter alia, if the processing is necessary to comply with a legal obligation or for the purposes of safeguarding a legitimate interest.

In the field of dispute resolution the privacy legislation affects, among other things, the possibility to store evidence containing personal data. The data controller must ensure that the processing complies with all

requirements of the privacy legislation. It is generally prohibited to transfer any personal data, such as evidence that contains personal data, to any country outside the EU or EEA. However, when the transfer of personal data is necessary to establish, exercise or defend a legal claim, the transfer may be allowed. In such case it is generally required that the transfer be made in close connection with the relevant legal proceedings and that the amount of transferred data is limited to necessary information. As of the time of printing of this guide, the SCC was working on a new technical solution in the form of a secure electronic platform (see Chapter 4.6 above). This platform may facilitate for foreign arbitrators sitting in arbitrations seated in Sweden, or administered under the SCC Rules, by providing tools that help them navigate their responsibilities under the GDPR and other privacy regulations.

4.13 FAST TRACK ARBITRATION

In arbitration, many tools are available to ensure a quick and cost-efficient procedure. Arbitration rules are also continuously updated to meet the need for a time and cost-efficient procedure.

As an alternative to traditional arbitration, the SCC has adopted a specific set of rules for fast track arbitration, primarily intended for use in less complex cases. The Rules for Expedited Arbitration of the Arbitration Institute of the Stockholm Chamber of Commerce (hereinafter referred to as the ‘Expedited Rules’) have gained increased popularity and are now frequently used, primarily in domestic Swedish arbitrations, but also in less complex international cases.

The first Expedited Rules were adopted by the SCC in 1995. The rules were intended to satisfy the demand for a simplified and more cost-effective means of arbitration in cases of less complexity and monetary value. The Expedited Rules were revised in 2010, 2012 and in 2017. Fast-track arbitration under the 2017 Expedited Rules represent about a third of all new cases at the SCC.

In order for the Expedited Rules to apply, the parties’ arbitration agreement must refer to them. Hence, the ordinary SCC Rules contains no rule based, for example, on monetary value under which the fast-track rules become automatically applicable. There is, however, a possibility to agree that the SCC Board shall decide which set of rules shall apply. Model forms of such combination clauses (where the decision whether to use the SCC Rules or the Expedited Rules is based either on the SCC

Board's overall assessment or on the monetary value of the dispute) are available on the SCC's website, as well as in the appendices to this book (Appendices 2, 3 and 7). Our recommendation is to use the combination clause in which the SCC Board determines which set of rules shall apply. A mere reference to the value of the claim entails certain risks, since cases of a smaller value may occasionally have unforeseen complexities that make them less suitable for fast-track resolution under the Expedited Rules. A monetary threshold may also encourage tactical manoeuvring by a party, e.g. by submitting an inflated claim in order to avoid the Expedited Rules from becoming applicable.

There is also a possibility for the parties to reconsider their choice of the Expedited Rules and decide to swap to the ordinary SCC Rules if that seems more appropriate. Accordingly, it is stated in Article 11 of the Expedited Rules that, after receiving the answer, and prior to the appointment of an arbitrator, the SCC may invite the parties to agree to apply the SCC Rules with either a sole or three arbitrator(s), having regard to the complexity of the case, the amount in dispute and any other relevant circumstances.

The types of disputes most commonly referred to SCC fast-track arbitration are disputes related to relatively simple service and supply agreements. Complex technical cases or multiparty cases are generally not suited to fast-track arbitration. The same applies to disputes involving a substantial monetary value, as this will often in and of itself drive the case towards increased complexity.

The main feature of fast-track arbitration is, of course, speed. The set time limit for rendering an award under the SCC rules on expedited arbitration is three months from the time the case is referred to the arbitrator. However, the Board of the SCC can grant extensions of time at the arbitrator's request. Such extensions are not uncommon. Nonetheless, the average time for an SCC fast-track arbitration is impressively short. In 2018, the average time for an SCC fast-track arbitration was only about four months from the filing of the request for arbitration until the rendering of the award.

Following a revision of the Expedited Rules in 2017 the procedure has become more 'front-loaded' through Articles 6 and 9, which provide that the request for arbitration and the answer will also constitute the statement of claim and the statement of defence respectively. Time is hereby optimized and the main submissions will already be in place when the

arbitrator receives the case file from the SCC. This will facilitate the arbitrator's management of the case early in the proceedings.

In addition to expedited arbitrations under separate rules, Article 39 of the ordinary SCC Rules provides for the possibility of summary procedures. A party may apply for summary procedures to resolve an issue of jurisdiction, admissibility or the merits. In essence, the idea is to use simplified procedures for a certain issue, the determination of which may be expected to contribute to an overall more efficient and expeditious resolution of the dispute (see Chapter 4.9 above).

5. EVIDENCE

5.1 GENERAL PRINCIPLES

Arbitration in Sweden is an adversarial procedure. Arbitrators will very rarely embark on any fact finding on their own initiative or appoint their own experts. It is for the parties to present the facts and the evidence that they deem necessary for their case (section 25 of the Arbitration Act).

The adversarial principle is also inherent in the SCC Rules. If so requested, the parties must state the evidence on which they wish to rely and which may be relevant to the outcome of the case, specifying what they wish to prove with each piece of evidence (SCC Rules, Article 31, paragraphs 2 and 3). At the request of a party, or exceptionally on its own motion, the Arbitral Tribunal may order a party to produce any documents or other evidence that may be relevant to the case and material to its outcome.

The parties are, in principle, free to present almost any kind of document, witness statement, expert report or other evidence in order to prove their case. Swedish arbitrations are largely guided by the dual procedural principles of freedom for the parties to rely on whatever evidence they see fit and freedom for the arbitral tribunal to attribute whatever evidentiary value to that evidence it finds appropriate. Accordingly, a party may even submit evidence obtained illegally or wrongfully, as well as hearsay evidence. Such evidence will, in most cases, be admitted by the arbitral tribunal. However, the arbitral tribunal will consider the circumstances surrounding the evidence when deciding what weight it should be given. In the case of unlawfully obtained evidence, the illegal act as such will be

assumed to be dealt with separately as a criminal matter, outside the proceedings. Lawyers from common-law jurisdictions who participate in arbitrations in Sweden should thus be aware that reliance cannot usually successfully be placed on formal rules concerning the admissibility of evidence.

Section 25(2) of the Arbitration Act identifies two instances in which the arbitral tribunal may refuse to admit evidence. First, evidence may be rejected if it is ‘manifestly irrelevant to the dispute’. Since it may be difficult for the arbitral tribunal to fully assess the relevance of evidence at the time when it is submitted, this option is rarely exercised in practice. Second, the arbitral tribunal may refuse to admit evidence where ‘such refusal is justified having regard to the time at which the evidence is invoked’. This rule may be applied if, for instance, the arbitral tribunal has issued a procedural order, pursuant to which the parties are to submit their evidence by a certain date or within certain submissions identified in the timetable for the proceedings. The parties must adhere to the timetable and the arbitral tribunal may dismiss late submissions, unless the late party can point to circumstances outside of its control that it could not reasonably have foreseen and which have rendered timely submissions impossible (the *Belgor* case, *Joint Stock Company Belgorkhimprom v. Koca Inaat Sanayi Ibracat Anonim irketi*; *Supreme Court case T 5437-17*, 20 March 2019; see also Chapters 6.5.1, 8.3.2 and 8.3.8 below).

The rule that the arbitral tribunal may refuse to admit evidence where ‘such refusal is justified having regard to the time at which the evidence is offered’ also applies more generally when a party wishes to introduce new evidence at a late stage of the proceedings. The arbitral tribunal will have to consider whether there is a risk that the proceedings will be delayed if the new evidence be admitted and whether the new evidence was presented at an advanced stage in order to catch the other party off guard. If a late request to submit additional evidence is prompted by evidence introduced by the other party, it may be reasonable to admit the new evidence.

The IBA Rules on the Taking of Evidence in International Commercial Arbitration (the ‘IBA Rules’) contain provisions on the presentation of documents, factual and expert witnesses and the conduct of evidentiary hearings. The IBA Rules are not directly applicable to arbitrations in Sweden unless the parties so agree. However, they may serve as guidelines for the parties and the arbitral tribunal as an expression of ‘best practice’

in international arbitration. Accordingly, a party's objection to the applicability of the IBA Rules does not prohibit the arbitral tribunal from turning to them for guidance on certain issues, in the same way as the arbitral tribunal, in its discretion, may seek guidance from other sources when the parties cannot agree on how to resolve a particular procedural issue which is not covered by a mandatory rule.

In our experience, the IBA Rules provide a valuable toolbox for an efficient procedure, and international arbitrations seated in Sweden are commonly guided by those rules.

5.2 BURDEN AND STANDARD OF PROOF

Unless specifically agreed by the parties, it is for the arbitral tribunal to determine which party bears the burden of proof for a particular assertion. However, in Swedish arbitral proceedings the burden of proof is generally found to rest with the party alleging a certain fact (e.g. the existence of an agreement) as a basis for its claims. This general rule is not without exceptions. There may well be situations where the burden of proof should be reversed, for instance if only one party has access to the relevant evidence or because substantive law so requires.

As a matter of principle, the arbitral tribunal should not simply take the claimant's factual allegations as proven if the respondent does not participate in the arbitral proceedings. That said, the arbitral tribunal may give evidentiary weight to the respondent's lack of participation in the proceedings. If a party fails without valid excuse to avail itself of the opportunity to present its case orally or in writing, the arbitral tribunal may decide the case on the existing materials (section 24 (3) of the Arbitration Act). Thus, the arbitral tribunal is entitled, if deemed appropriate given the burden of proof and the evidence presented, to base its decision on the claimant's factual allegations.

In the absence of an admission, an arbitral tribunal will generally consider an allegation to be disputed unless the circumstances of the case cause it to consider otherwise. In order to avoid any misunderstanding, most arbitrators will consider it as part of their duty to clarify whether a factual allegation which appears to be material to the outcome of the case is indeed disputed or accepted as correct by the parties.

There is no general standard of proof applied by arbitral tribunals in determining whether a certain fact has been established. However, most Swedish arbitrators, having been trained in domestic court proceedings,

will require disputed facts to be ‘shown’ (in Swedish ‘*styrkt*’). This is a standard of proof somewhat above ‘the balance of probability’, but below the standard ‘beyond reasonable doubt’. The latter standard of proof is generally only used in criminal proceedings. Ultimately, it is incumbent on the arbitral tribunal to determine how to assess the value of evidence and what evidentiary standard to apply.

5.3 ORAL EVIDENCE

5.3.1 WITNESSES

Written witness statements are commonplace in international arbitrations in Sweden. When a written witness statement has been submitted, the party relying on the statement must, as a rule, produce the witness for cross-examination at the hearing if so requested by the other party. Since the idea is often (but not always) that the written witness statement will replace oral direct examination, it will thus generally be incumbent on the party not relying on the witness to decide whether or not the witness shall appear at the hearing for cross-examination. If the witness is not requested to appear, the written witness statement will be the only evidence available concerning the testimony of the witness in question.

If a witness whose presence has been requested at the hearing fails to appear, the consequences of that failure have to be assessed on a case-by-case basis. The non-appearance of a witness will normally not be a sufficient reason to postpone the hearing, although this may be an option if the witness is crucial for one of the parties and that party is able to demonstrate that the witness has a valid reason for not appearing. If possible, the arbitral tribunal should seek to have the witness testify by means of video or telephone conferencing or, alternatively, schedule a separate session for the examination of that witness.

In Swedish arbitrations, it is generally accepted that legal counsel and other party representatives may meet with witnesses to interview and prepare them before they give oral testimony at a hearing. The same view is taken in the IBA Rules, which provide that ‘[i]t shall not be improper for a Party, its officers, employees, legal advisors or other representatives to interview its witnesses or potential witnesses and to discuss their prospective testimony with them’. Indeed, it is often necessary for counsel to meet with witnesses during the preparatory stage, in particular to assess the relevance and credibility of their testimony and to prepare the witness statement.

Arbitrators are not empowered to administer formal and legally sanctioned oaths. An arbitral tribunal may nevertheless, if it so wishes, ask a witness to confirm that he or she will e.g. 'speak the truth, the whole truth and nothing but the truth', although a violation of such a confirmation will not subject the witness to any criminal sanctions. Under section 26(1) of the Arbitration Act, an arbitral tribunal may consent to a request by a party that a witness be heard under oath before a competent district court. Such a request may be made when a party believes that the formal administration of a criminally sanctioned oath may persuade a witness to tell the truth. It may also be employed to force a reluctant witness to appear to testify, as the district court has means of coercion if a witness fails to follow the court's order. Finally, it may be used to overcome contractual confidentiality undertakings, as the civil duty to testify when called to a court of law will generally override such undertakings.

If direct examination is allowed, the party which has called a witness usually starts the examination. However, in international arbitrations, which invariably involve the filing of written witness statements, direct examination will generally be limited to a few introductory questions before the witness is handed over for cross-examination (which may then be followed by re-direct examination and questions from the arbitral tribunal, as explained above). As a matter of principle, leading questions may not be asked during direct examination. In reality, the arbitral tribunal will often be hesitant to intervene against leading questions, in particular if they are used only occasionally by counsel. Be that as it may, it is likely that the arbitral tribunal will give less evidentiary weight to testimony during direct examination when such testimony has largely been induced by leading questions.

Leading questions are generally allowed, and even expected, during cross-examination. Once the cross-examination is over, the other party will be afforded the opportunity to conduct re-direct examination with respect to issues addressed during the cross-examination. In essence, the purpose of re-direct examination is to remedy or limit potential damage caused during cross-examination. Leading questions are usually not permitted in re-direct examination.

The arbitral tribunal may at any time ask the witness questions related to matters which the arbitrators deem relevant to the issues in dispute. That said, procedural orders often provide that the arbitral tribunal should wait with its questions until the parties have concluded their own

examinations of the witness. In Swedish arbitrations, the arbitral tribunal's mandate to examine witnesses is often exercised with caution. The arbitrators tend to focus on clarifying issues which they perceive as genuinely unclear and will otherwise largely leave questioning to counsel. There are sound reasons for this approach. First, the arbitral tribunal should not 'invent' or 'prompt' new allegations by either side, but should determine the case on the basis of what the parties have argued and presented. Second, the arbitrators should avoid creating an appearance of bias, which may happen if questions are not chosen and phrased with care.

As mentioned above, if a party wishes to compel a witness to testify and to do so under formal oath, that party may, after obtaining the consent of the arbitral tribunal, make such a request to the competent district court (section 26, paragraph 1 of the Arbitration Act). If the arbitral tribunal considers the action justified, it shall approve the request. The arbitral tribunal may, however, withhold its consent if it believes that sufficient evidence has already been produced on the issue, that the issue is irrelevant, that the time and cost involved would be exorbitant or that the application has been made solely for extraneous reasons, such as a desire to make the matter public.

Depositions are rarely used in Sweden and are generally not accepted by the Swedish courts. However, to the extent that depositions have been taken in Sweden or another country, there are generally no restrictions on a party relying on them in arbitral proceedings, unless the parties have agreed otherwise.

5.3.2 EXPERTS

The rules and procedure usually applied to expert evidence are in most respects similar to those applicable to witness testimony.

Expert evidence is generally admissible in arbitral proceedings. As with any other evidence, the arbitral tribunal may, however, refuse a party's request to adduce expert testimony if it considers the evidence to be manifestly irrelevant to the case or where such refusal may be justified having regard to the time at which the expert evidence is offered. Similarly to a witness, an expert is expected to speak the truth despite the absence of a formal and legally sanctioned oath. There are no particular procedural rules governing the role of an expert. An arbitral tribunal will,

as with any other evidence offered by a party, freely assess the evidentiary value of expert testimony.

There are no specific requirements as to an expert's independence and impartiality. However, if the independence and/or impartiality of an expert is called into question, this may of course influence the arbitral tribunal's assessment of the evidentiary value of the expert's testimony.

As with witnesses, there are no restrictions, either before or after commencement of the proceedings on a party's right to approach and interview an expert on whose testimony it has relied or may rely.

Experts are usually invited to present their views in a written report. The report will then be communicated to the other party, which is given the opportunity to comment on the report and, if deemed appropriate, to adduce expert evidence of its own. In many instances, experts will also be subjected to examination at the hearing. In order to afford an expert a chance to properly explain his or her position on what may often be complex technical or other issues, there is a greater acceptance of direct examination of experts as compared to witnesses of fact. Indeed, it is not uncommon that experts are allowed to give an uninterrupted presentation of their expert testimony during direct examinations. As with witnesses, direction examination of witnesses will usually be followed by cross-examination and, possibly, re-direct examination and questions from the arbitral tribunal.

Under section 25 (1) of the Arbitration Act, the arbitral tribunal may appoint its own experts, unless both parties object. This is an exception to the general principle under the Act that the parties shall provide the evidence on which they rely. The arbitral tribunal must first raise the issue of a possible expert appointment with the parties and offer the parties the opportunity to comment on the proposal. In practice, it is unusual for arbitral tribunals in Sweden to utilise this possibility.

If an expert is appointed by the arbitral tribunal it is important that the expert's assignment be clearly described. In order to guarantee that each party is afforded a possibility to present its case and to respond to adverse testimony, we would recommend that the expert present his or her findings in a written expert report to be filed well in advance of the hearing. Each party should be entitled to examine the expert at the hearing, usually after the chairperson of the arbitral tribunal has conducted the direct examination, if any.

The cost for an expert appointed by the arbitral tribunal is paid by the arbitral tribunal and is therefore included in the expenses of the arbitral tribunal.

5.4 DOCUMENTARY EVIDENCE AND PRODUCTION OF DOCUMENTS

5.4.1 USE OF DOCUMENTS IN ARBITRATION

Any kind of document, be it physical or electronic, may be relied on as evidence in arbitral proceedings in Sweden. The parties and the arbitral tribunal normally agree at an early stage how and when documents are to be presented. The common practice is for the parties to submit the documentary evidence they rely on together with their respective submissions. Usually, the arbitral tribunal, after having consulted with the parties, will decide on a ‘cut-off date’ after which no new documents may be introduced.

Under Article 31(2) of the SCC Rules, the arbitral tribunal may require a party to identify separately – in a ‘statement of evidence’ – the documentary evidence it intends to rely on and specify the circumstances intended to be proved by that evidence. This rule has its roots in practices in Swedish court proceedings. In our experience, arbitral tribunals rarely exercise this option in international arbitrations seated in Sweden. Rather, the practice is that the parties refer directly to the written evidence in connection with the relevant factual allegations in the submissions. It will then be clear at the outset what evidence a party relies on with respect to each allegation, and there will be no need to specify this separately at a later stage.

There are no legal restrictions on the form of documents that may be submitted in arbitral proceedings. In practice, documents will be filed by way of copies and accepted as true copies of the original documents unless the other party disputes their authenticity.

Equally, there are no restrictions on how to present and prove the authenticity of electronic documents. It is thus open to the parties and the arbitral tribunal to work out an appropriate and efficient method to deal with such documents.

5.4.2 PRODUCTION OF DOCUMENTS

There is no general duty of ‘disclosure’ or ‘discovery’ under Swedish law, but the arbitral tribunal may – at the request of a party – order a party to produce documents. In the absence of specific rules, the arbitral tribunal has broad discretion to determine the requirements for document production, subject to the confines of the general procedural principles of the Arbitration Act. In international arbitrations seated in Sweden, the IBA Rules commonly serve as a guideline for the arbitral tribunal and the parties with respect to matters concerning document production.

If the parties have not agreed on specific rules to be applied with respect to document production and if the IBA Rules for some reason are not considered as an appropriate source of guidance, arbitral tribunals will occasionally turn to the Swedish Code of Judicial Procedure (which is not otherwise applicable to arbitrations). This may particularly be the case if both parties are represented by Swedish counsel appearing before an all-Swedish arbitral tribunal, i.e. where everyone involved can be expected to be familiar with Swedish court procedure. The Code of Judicial Procedure takes the approach that production requires that a requested document be of potential relevance in relation to a contested issue in the dispute, and that the issue is relevant to the case argued by the requesting party. The request must also concern a specific document or category of documents. In other words, although some differences exist (e.g. as regards the threshold of materiality for a requested document and the potential grounds for objecting to production), the IBA Rules and the Code of Judicial Procedure largely impose similar requirements.

A party who wishes to obtain a document which is in the possession of the other party should submit a request for production, including an explanation as to why the document is material and relevant to the case. In order for the arbitral tribunal to be able to assess whether or not a document is material and relevant, the document must be sufficiently identified. If several documents are requested, it may be acceptable that the party refers to specific categories, such as e-mails or letters between certain individuals, covering a certain period of time and relating to a certain subject matter.

Since fishing expeditions are not generally allowed, and as each request must be tied to a contentious factual allegation being relevant and material to the case, it is often advisable to postpone filing document requests until after the first round of substantive submissions. At that point, the

arbitral tribunal is usually better informed of the contentious issues of the case and thus in a better position to determine whether a requested document is relevant to the case and material to its outcome. Documents produced can then be relied on as evidence and submitted by the parties as part of the second (and usually final) round of substantive submissions.

As in international arbitrations in general, it is often agreed to use Redfern Schedules for document requests. A Redfern Schedule is a table which usually contains the following four columns: (1) identification of document(s) or categories of documents requested; (2) short presentation of the reasons for each request; (3) summary of objections by the other party to production of the document(s) requested; and (4) the arbitral tribunal's decision on each request.

The parties will discuss the requests between themselves by exchanging updated versions of the Redfern Schedule, which is then submitted to the arbitral tribunal for a decision insofar as the parties are unable to agree on which documents should be produced. This procedure helps the arbitral tribunal make an informed decision and to communicate it promptly and efficiently.

In Swedish arbitrations, no immediate, hard sanctions are available to the arbitral tribunal should a party fail to voluntarily comply with an order for production of documents. However, within the scope of its discretion to freely assess the evidence, the arbitral tribunal may draw adverse inferences from a party's failure to comply with an order for the production of a document. In addition, under section 26 of the Arbitration Act a party may seek the arbitral tribunal's consent to apply to a competent district court for an enforceable document-production order. The arbitral tribunal should generally grant such an application if it finds that the document(s) requested may be relevant as evidence. If approved by the arbitral tribunal, the district court will only review the 'lawfulness' of the request before granting the application.

If a party fails to voluntarily comply with an order for the production of documents, the arbitral tribunal may, as mentioned above, be entitled to draw adverse inferences. Furthermore, the arbitral tribunal may, upon a party's specific request, remind the party subject to the order that the district court may issue sanctioned orders should it fail to voluntarily comply with the arbitral tribunal's order.

If a party wishes to compel the production of certain documents in the possession of a third party, it may, after obtaining the consent of the arbitral

tral tribunal, submit an application to such effect to the district court. If the court approves the application and the document in question can be assumed to be of importance as evidence, anyone falling within the jurisdiction of the court and possessing such a document may be directed to produce it. The obligation to produce documents does not extend to personal memoranda, or to any other similar notes prepared exclusively for private use, unless compelling reasons exist.

6. THE AWARD

6.1 TIME LIMITS FOR MAKING THE AWARD

Unless the parties have agreed otherwise, there are no time limits with respect to the rendering of an award under the Arbitration Act. However, if the SCC Rules apply, the award must be given no later than six months after the case has been referred to the arbitral tribunal. The SCC may grant an extension of this period upon a reasoned request from the arbitral tribunal. In practice, such extensions are commonly sought and granted by the SCC and the average time from referral of the case by the SCC to the arbitral tribunal until an award is rendered is approximately 10 months.

6.2 RULES AND PRINCIPLES GOVERNING THE DECISION-MAKING PROCESS

The Arbitration Act contains very few formal requirements for the arbitral tribunal's decision-making process. The purpose of the few provisions that do exist is merely to set out certain minimum requirements necessary to ensure the enforceability of the award.

Firstly, unless the parties have agreed otherwise, the arbitral tribunal is under a duty to base its award on the applicable substantive law. The practical importance of this rule is limited by the fact that the award cannot be challenged on the basis of an incorrect determination on the merits. Accordingly, an incorrect application of the applicable substantive law is not a ground for challenge (see Chapter 8.1 below).

Secondly, the arbitral tribunal must limit its determination to the issues referred to it by the parties for determination. The arbitral tribunal may not, therefore, go beyond the parties' respective requests for relief.

Should the arbitral tribunal act in breach of this limitation, the award may be challenged (see Chapter 8.3.4(iii) below).

Thirdly, the arbitral tribunal cannot base its award on facts other than those referred to by the parties as a basis for their respective claims. A deviation from this rule may amount to a procedural error that may form the basis for a challenge of the award (see Chapter 8.3.4(ii) below).

Fourthly, the arbitral tribunal is under an obligation to consider all requests for relief submitted to it. Should the arbitral tribunal fail to address a particular request in the final award, the arbitral tribunal can supplement the award under section 32 of the Arbitration Act within a certain period of time (see Chapter 8.6 below). If the award is not supplemented in due time, the ruling *infra petita* may constitute a procedural error of such nature that the award can be successfully challenged under section 34 or appealed under section 36 of the Arbitration Act.

6.3 THE DELIBERATIONS

After the closing of the proceedings, the arbitral tribunal shall deliberate, decide upon and draft the award on the basis of its findings. The Arbitration Act contains no formal requirements on deliberations and the arbitral tribunal is free to organise them as it sees fit.

All the arbitrators have a right to take part in the resolution of a dispute and be given an equal opportunity to influence the award. The right of an arbitrator to participate in the decision-making is, however, not unlimited. In the *CME* case (*The Czech Republic v. CME Czech Republic B.V.*; *Svea Court of Appeal*, T 8735-01, 15 May 2003), the court of appeal concluded that when all three arbitrators have been given a reasonable opportunity to state their views and two of the arbitrators are in agreement on the outcome, the third arbitrator cannot prolong the deliberations by demanding continued discussions in an attempt to persuade the others to adopt his or her opinion.

Section 30(1) of the Arbitration Act provides that if an arbitrator fails to participate in the deliberations of a particular issue without a valid excuse, this will not prevent the other arbitrators from deciding such issue. The meaning of ‘valid excuse’ has not been defined in the Arbitration Act. Circumstances beyond an arbitrator’s control, such as illness or failures in transportation or communication, may potentially constitute a valid excuse.

With respect to decisions on the merits of the case, a majority of the arbitrators is necessary and sufficient unless the parties have agreed otherwise. If no majority can be obtained, the opinion of the chairperson prevails. The majority needs to agree only on the vote itself, not the reasons therefor. Consequently, a valid decision may be reached on an issue even if the arbitrators have widely differing opinions on the reasons for their vote.

If the SCC Rules apply, any award or other decision of the arbitral tribunal 'shall be made by a majority of the arbitrators or, failing a majority, by the Chairperson' (SCC Rules, Article 41 paragraph 1).

The general practice is for the arbitrators to deliberate and try to decide on the resolution and the content of the award by unanimity. Only if the chairperson finds that the arbitrators are unable to achieve unanimity will he or she resort to majority decision and other rules. The chairperson usually drafts the award and then proceeds to invite comments from his or her co-arbitrators.

6.4 DISSENTING OPINIONS

The Arbitration Act and the SCC Rules do not address dissenting opinions of arbitrators. However, it is generally held that under Swedish arbitration law arbitrators are entitled to declare their view on matters adjudicated by attaching a dissenting opinion to the award.

In providing the dissenting opinion, the arbitrator should take into account the confidentiality of deliberations and be wary of disclosing statements made under discussions not covered by the reasons provided by the majority. The dissenting arbitrator should usually focus on explaining the basis of his/her own opinion, rather than criticizing and thereby undermining the majority reasoning. It has also been submitted that a dissenting arbitrator may have a duty to limit the scope of his/her reasons in order to avoid unnecessary costs being incurred by the parties to the arbitration.

In practice, it is common for the dissenting arbitrator to sign the award along with the majority, but to make a written note next to the signature that informs the parties that a dissenting opinion is set out in an appendix to the award.

6.5 AWARDS AND DECISIONS

6.5.1 DISTINGUISHING BETWEEN AN ‘AWARD’ AND A ‘DECISION’

The Arbitration Act distinguishes between ‘awards’ and ‘decisions’. Under section 27(1) of the Arbitration Act, a determination of the substantive issues in an arbitration – i.e. the merits of the case – is to be made in an ‘award’. This applies irrespective of whether the entire matter in dispute or only a part of it is decided. By contrast, a determination of a procedural issue is thus to be considered a decision.

An award is final and binding. Decisions, by contrast, do not acquire legal force and are thus not enforceable. Moreover, decisions may – at least as a general rule – be amended by the arbitral tribunal at any stage of the proceedings.

Section 27(1) of the Arbitration Act further provides that a decision by which the arbitral tribunal terminates the proceedings in their entirety, without ruling on the issues that have been referred to it, is also to be made in the form an award. An example of such an award would be if the arbitral tribunal dismisses (in Swedish ‘*avvisar*’) the case because it lacks jurisdiction. If the tribunal terminates the proceedings (in Swedish ‘*avskriver*’) following a withdrawal of all claims by the parties, e.g. as a result of a settlement, it should instead take the form of a decision.

It does not matter how the arbitral tribunal designates its ruling. If what is termed a decision is, in fact, an award because (i) it includes a determination on the merits or (ii) it terminates the proceedings in their entirety due to lack of jurisdiction, it will be treated as an award by the Swedish courts. Similarly, it does not matter if a positive finding that the arbitral tribunal has jurisdiction is designated, for example, ‘partial award on jurisdiction’. Such a jurisdictional ‘award’ does not dispose of the merits of the case and, since it does not result in a termination of the proceedings, it is, as a matter of Swedish law, a decision.

Under section 2(2) of the Arbitration Act, a party dissatisfied with a decision whereby the arbitral tribunal has found in favour of jurisdiction may request that the decision be reviewed by the relevant court of appeal. Such an action must be brought within 30 days from the party’s receipt of the decision. The arbitration may proceed in parallel. In the *Belgor* case of 20 March 2019 (see Chapter 5.1 above), the Supreme Court clarified that, when a court reviews an arbitral tribunal’s positive jurisdictional decision, there is a presumption that the arbitral tribunal’s assessment is correct. It is, thus, for the party contesting jurisdiction to show that the

decision is incorrect, rather than for the court to make a full assessment independent from the arbitral tribunal's decision. The *Belgor* case concerned a challenge of an award, but is arguably applicable also with respect to an action under section 2(2) of the Arbitration Act.

6.5.2 FINAL AWARD

The final award – which may be preceded by one or several separate awards – either determines the substantive issues referred to the arbitral tribunal, i.e. the merits of the case, or terminates the arbitration without a ruling on the merits. The latter scenario may occur in a number of different circumstances, such as when the parties have settled and request that the terms of the settlement be entered into a consent award; where the arbitral tribunal concludes that it lacks jurisdiction; or that the dispute should be dismissed on the basis of *lis pendens* or *res judicata*. However, when the claimant simply withdraws all of its claims or where the proceedings are terminated because the parties have failed to provide security for costs pursuant to section 38(1) of the Arbitration Act, no final award will be rendered. Instead, the proceedings are terminated through a decision of the tribunal.

Pursuant to section 36 of the Arbitration Act, awards whereby the arbitral tribunal concludes the proceedings without ruling on the issues submitted to it may be appealed to the relevant court of appeal and amended, in whole or in part, by the court. Such an appeal is usually made when a party is dissatisfied with a finding by the arbitral tribunal that it lacks jurisdiction to hear the case (see Chapter 8.4 below).

Final awards that contain a ruling on the merits may not be appealed under section 36 of the Arbitration Act. The only recourse available against awards rendered on the merits is to rely on the limited grounds available for setting aside the award pursuant to sections 33 and 34 of the Arbitration Act.

If a party withdraws a prayer for relief, the arbitral tribunal shall dismiss that part of the dispute, unless the opposing party requests the arbitral tribunal to rule on the merits of the claim (section 28 of the Arbitration Act).

The arbitral tribunal may not render a default award, i.e. it may not base its award solely on the respondent's failure to take part in the proceedings. Rather, the arbitral tribunal must base its award on the available materials and the applicable law, unless otherwise agreed by the parties.

However, if a party fails to participate in the arbitration, the arbitral tribunal may decide the case on the existing materials (section 24(3) of the Arbitration Act). Such an award has the same validity as any other award and may also be challenged on the same grounds as any other award.

6.5.3 SEPARATE AWARDS

The arbitral tribunal may decide part of the dispute or a certain issue that is relevant for final resolution of the dispute in a separate award, unless both parties object. Separate awards – which are subject to the same formal requirements as other types of awards – are final and acquire the same legal effect as final awards. In practice, separate awards are sometimes referred to as ‘partial awards’, ‘interim awards’, or ‘interlocutory awards’.

In principle, separate awards may be divided into two categories: (1) separate awards that finally dispose of one of several claims in a case (dispositive separate awards), and (2) separate awards on issues that are determinative of, but do not dispose of, the main claim(s) in the case (determinative separate awards).

A *dispositive separate award* is usually enforceable. A practical example of a situation in which such a separate award may be rendered is where a party, in whole or in part, has admitted one of several requests for relief. A dispositive separate award may also be an appropriate tool to adjudicate a relatively uncomplicated claim that is not interconnected with other claims in the dispute and which can be assessed relatively easily on the basis of a limited amount of immediately available evidence.

As a limitation on the arbitral tribunal’s freedom to render separate awards, the Arbitration Act provides that a claim invoked as a defence by way of set-off must be adjudicated in the same award as the main claim against which set-off is sought.

A *determinative separate award* does not usually adjudicate any of the requests for relief but, rather, serves to determine an issue which is preliminary to the main issue, so as to make the remainder of the arbitration less complex. This kind of separate award is only declaratory and thus is generally not enforceable.

The most common situation in which a determinative separate award is rendered is probably where the arbitral tribunal has ordered that the arbitration be bifurcated into a liability phase and a quantum phase. A determinative separate award may, as a further example, be appropriate if there is an objection that a particular claim is time-barred. In large and

highly complex cases, the proceedings may sometimes be divided into several phases, each concluded by a separate award.

A determinative separate award acquires legal force and is binding. Accordingly, it binds the arbitral tribunal or any subsequent arbitral tribunal adjudicating issues pertaining to the same legal relationship between the same parties.

6.5.4 CONSENT AWARDS

The parties can request that the arbitral tribunal record their agreement in a consent award at any time until the arbitral tribunal renders its final award. Such a consent award on agreed terms is subject to the same formal requirements and has the same legal effects as other types of award. The parties' rationale for seeking confirmation of a settlement reached in a consent award is usually that an award – in contrast to a mere settlement agreement, which will result in the case being dismissed through a decision – is enforceable under the New York Convention. It also renders the dispute *res judicata*.

In practice, a settlement is often recorded in a consent award whereby the arbitral tribunal notes in the award that the parties have agreed to settle the dispute, and then refers to an appendix to the award in which the settlement agreement is set out. In some instances, the parties may not want the entire settlement agreement to be appended. They will then instruct the arbitral tribunal as to what specific terms of the settlement are to be included in the consent award, e.g. that the respondent is to pay a certain amount to the claimant by a certain date, failing which certain interest will start to accrue.

6.5.5 SEPARATE AWARDS ON COSTS

Respondents sometimes refuse to pay their share of the advance on costs of the arbitration as requested by the arbitral tribunal or the arbitral institution. If the claimant wants to continue with the arbitration, it must then also pay the respondent's part of the advance on costs. It is generally not possible under the Arbitration Act for the claimant to obtain an award ordering repayment by the respondent during the course of the proceedings. The Supreme Court has held that a separate award on the other party's portion of the advance on costs may not be obtained in the absence of a specific agreement between the parties allowing such an

award to be issued. In the absence of such an agreement, the paying party will thus have to wait until the final award to recover its costs.

Pursuant to Article 51(5) of the SCC Rules, a separate award on costs may be rendered in SCC arbitrations at the request of a party who has been forced to pay also the other party's share of the advance on costs. The same principle applies if the SCC has requested additional advance payment as a consequence of a counter-claim presented by the respondent and the claimant refuses to pay its part of the additional advance.

6.6 FORM OF THE AWARD

In accordance with the principle of party autonomy, the parties to an arbitration are in essence at liberty to agree on the formal requirements of the award to be rendered by the arbitral tribunal. This freedom is limited only by the statutory minimum requirements set out in section 31 of the Arbitration Act, which are as follows:

- a) The award must be made in writing.
- b) The award must be signed by the arbitrators. It is sufficient, however, that a majority of the arbitrators sign the award, provided that the award states the reason why all of the arbitrators have not signed it. Moreover, the parties may agree that the chairperson alone shall sign the award.
- c) The award must state the seat of arbitration.
- d) The award must state the date on which the award is made.
- e) If an award does not fulfil the statutory requirements with regard to written form and signature, i.e. items (a)–(b), the award will be invalid. However, these flaws may be rectified by an amendment of the award (see Chapter 8.6 below). The requirements concerning the seat of arbitration and the date when the award was made, i.e. items (c)–(d), do not involve sanctions; failure to observe these requirements will thus not lead to the invalidity of the award.
- f) The award must contain a dispositive ruling on each prayer for relief, clearly indicating whether the arbitral tribunal has granted or denied the prayer for relief or granted it in part.

In addition to the above requirements, some types of awards must contain instructions with respect to how to seek recourse against them, as follows:

- (i) An award whereby the arbitral tribunal has concluded the proceedings without ruling on the issues submitted to it – i.e. a final award without a ruling on the merits – must contain clear instructions to the parties on how to appeal the award as per section 36 of the Arbitration Act. For an award rendered in Stockholm, such an instruction may e.g. be worded as follows: ‘A party wishing to appeal this award may do so before the Svea Court of Appeal. The appeal must be filed with the court of appeal no later than two months from receipt of the award.’
- (ii) An award that includes an order to the parties to pay compensation to the arbitrators must instruct the parties how to bring an action against the award in this respect, i.e. how to challenge costs separately before the competent district court. For an award rendered in Stockholm, such an instruction may e.g. be worded as follows: ‘A party wishing to challenge this award with regard to the compensation to the arbitrators may do so before the Stockholm District Court. The challenge must be filed with the district court no later than two months from receipt of the award.’

In every arbitration under the SCC Rules, the SCC supplies the arbitrators with a copy of the ‘Arbitrator’s Guidelines to the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce’. These guidelines include an SCC Model Award.

6.7 AMENDMENT, CORRECTION AND INTERPRETATION OF THE AWARD

In order to avoid unnecessary and costly involvement of courts, the arbitral tribunal may under certain circumstances correct, amend and/or interpret the award after it has been rendered. (This is further addressed under Chapters 8.6 and 8.7 below.)

7. THE COSTS

7.1 INTRODUCTION

Costs arising from an arbitration can be divided into three main categories: (i) fees and expenses of the arbitral tribunal; (ii) registration and administration fees of the arbitral institution (if applicable) including the institution's expenses; and (iii) the costs incurred by each party (including fees for legal representation). Questions regarding the scope, allocation and determination of costs are addressed below.

7.2 FEES OF THE ARBITRAL TRIBUNAL

7.2.1 AD HOC PROCEEDINGS

Section 37 of the Arbitration Act provides that the arbitral tribunal is to receive 'reasonable compensation' for its work and expenses. The fees of the arbitral tribunal are set by the arbitral tribunal itself, subject to any agreement entered into with the parties. The provision is non-mandatory and may be altered or waived by the parties' agreement. If a party is dissatisfied with the fees fixed by the arbitral tribunal, it may bring an action before the competent district court to have the fees reviewed (without challenging the award as such) and, if found to be unreasonable, reduced (see Chapter 8.8 below).

The expression 'reasonable compensation' is not further elucidated in the Arbitration Act. However, the question of reasonable compensation was considered in the Supreme Court case *NEMU Mitt i Sverige AB in liquidation (NEMU) v. Jan H, Gunnar B and Bo N (the arbitrators) (the Swedish Supreme Court, T 105-98, 22 October 1998)*. In that case the claimant, NEMU, took the position that the compensation to the arbitral tribunal, which had been set by the arbitral tribunal itself, should be reduced. The arbitrators contested this claim on the basis that their compensation was reasonable. The Supreme Court did not reduce the compensation payable to the arbitrators. The Supreme Court concluded that the primary basis for the arbitrators' compensation should be the time spent and, consequently, the arbitrators should keep notes regarding time spent on various measures. With respect to the applicable hourly rates, the Supreme Court took into consideration that the arbitrators were highly qualified and had special expertise in the field in question. The Supreme Court also made it clear that when the parties appoint distin-

guished business lawyers or highly qualified specialists as arbitrators, they have to expect remuneration at a level normally charged by such lawyers (unless otherwise agreed).

7.2.2 INSTITUTIONAL PROCEEDINGS

In arbitrations under the SCC Rules, the fees to the arbitral tribunal are based on the amount in dispute, in accordance with a fixed schedule of fees (attached to the SCC Rules). Within each bracket of amounts in dispute, the schedule of fees sets out two fee amounts – a minimum fee and a maximum fee. Fees are normally decided at the median level. The fee due to the co-arbitrators are usually fixed per person at 60 per cent of the total fee paid to the chairman, unless the SCC decides otherwise in view of any special circumstances of the case. The level of fees is also ultimately decided by the specific circumstances of the case. These circumstances may include, for example, the complexity of the subject matter of the dispute, the number of parties involved and other procedural aspects of the case, such as length of the proceedings. In exceptional circumstances, the Board of the SCC may, under Article 2(4) in Appendix IV of the SCC Rules, deviate from the amounts set in the schedule of fees. Where the amount in dispute cannot be ascertained (which is sometimes the case when declaratory relief is sought, the value of which may be difficult to assess), the Board of the SCC will use its discretion to set the fees of the arbitral tribunal, taking all relevant circumstances into account.

An agreement that institutional rules apply constitutes, in effect, an agreement that the provision in section 37 of the Arbitration Act regarding fees to arbitrators does not apply. Instead, the parties agree to be bound by the decision on fees made by the arbitral institution. However, it should be noted that an agreement between the parties to which the arbitrators are not parties is only binding in relation to the arbitrators if the agreement was known to and understood by them when they accepted the assignment. This is normally the case when an arbitrator accepts an assignment to act under the SCC Rules.

In the case of *W.M. et al. v. Soyak International Construction & Investment Inc.* (the Swedish Supreme Court, Ö 4227-06, 3 December 2008), the Supreme Court found that the right to appeal also applied to fees that had been set by an arbitral institution. The practical implication of this case is, however, probably limited, as the reviewing court will likely find that the parties are bound by the schedule of fees of the arbitral institu-

tion which is incorporated, by reference to the SCC Rules in the parties' agreement to arbitrate (see Chapter 8.8 below).

7.2.3 TAX ISSUES

Arbitrators' fees are either regarded as income from a trade or business or as income from employment. For arbitrators who are not Swedish tax residents the following applies.

If the fees are to be treated as income from a trade or business, the arbitrator's fees are generally not subject to Swedish income tax, unless they are attributable to a permanent establishment in Sweden.

If the fees are instead to be treated as employment income, the arbitrator will generally be subject to 25% income tax in Sweden on fees attributable to work in Sweden. However, such tax will normally be creditable against the arbitrator's tax in her or his country of residence. Moreover, the 25% tax will generally not be imposed if the arbitrator's stay in Sweden does not exceed 183 days during a 12-month period and the fee is not paid by, or on behalf of, a Swedish resident. The above is subject to certain compliance and registration requirements. In addition, Sweden's taxing rights may also be limited by tax treaties.

Consequently, in the majority of cases an arbitrator who is not a Swedish tax resident will not be subject to Swedish income tax on fees earned in an arbitration seated in Sweden.

Arbitrators' fees that are regarded as income from a trade or business may be subject to 25% VAT in Sweden. However, this does not apply to fees charged to taxable persons (for VAT purposes) who are resident outside Sweden. Such persons may instead potentially be subject to VAT in their home countries (reverse charge). Foreign arbitrators will generally not be subject to VAT in Sweden on fees earned in an arbitration seated in Sweden.

7.2.4 EXPENSES

Under the Arbitration Act, the parties shall reimburse the arbitral tribunal's reasonable expenses. The same applies under the SCC Rules, pursuant to which expenses of the SCC are also to be reimbursed. According to SCC practice, reimbursable expenses of the arbitral tribunal comprise compensation for travel and accommodation, as well as costs of premises and technical equipment which the arbitral tribunal has arranged for in

connection with the arbitral proceedings. When staying at a place other than their place of practice, the arbitrators are also entitled to a *per diem* allowance set by the SCC.

It is generally advisable for the arbitral tribunal to obtain the consent of the parties before taking measures that could lead to considerable costs, such as hiring an interpreter or renting hearing premises.

7.3 COSTS OF THE INSTITUTION

If the dispute is to be settled in accordance with the SCC Rules, an administrative fee is also payable to the SCC, which is set in accordance with a certain schedule based on the amount in dispute. The administrative fee includes a registration fee payable by the claimant upon filing the request for arbitration. If the registration fee is not paid at that time, the secretariat of the SCC will set a period within which the claimant must, at the risk of dismissal of the case, pay the fee. The registration fee is non-refundable.

The cost calculator on the SCC's website gives good guidance as to what the parties may expect to pay for the services of the institution and the arbitrators. However, it should be noted that the calculated amount may have to be supplemented with VAT and expenses, which are otherwise not included. The advance on cost required by the SCC may, thus, turn out to be somewhat higher than indicated on the website.

7.4 COSTS OF THE PARTIES

In addition to the fees and expenses of the arbitral tribunal and, when applicable, the arbitral institution, the parties will usually have costs of their own. The most significant cost item is usually the parties' costs for legal representation. The cost of retaining experts to present their opinions on various issues is often also significant. The remuneration of counsel is usually part of the agreement between counsel and the client and an attorney has to comply with the ethical rules of his or her bar. Swedish attorneys, being members of the Swedish Bar (*Sveriges Advokatsamfund*), must always charge a 'reasonable fee'. In determining what constitutes a reasonable fee for a mandate, regard may be had to what has been agreed with the client, the extent of the mandate, its nature, complexity and importance as well as the lawyer's expertise, the result of the work and other such circumstances. Bearing this guideline in mind, fees based on

hourly rates are widely accepted in Sweden. A certain risk/reward element may also be agreed between a Swedish attorney and its client, but a full contingency fee arrangement is, as a general rule, forbidden.

In addition to fees, Swedish counsel is usually compensated for expenses for, among other things, travel, communication and translation. Counsel may also be compensated for office costs, such as secretarial services and copying costs.

Upon the request of a party, the arbitral tribunal may order one party to compensate the other party for costs incurred, including its costs for legal representation. Neither the Arbitration Act nor the SCC Rules provide guidance as to what kind of costs of the parties are reimbursable. However, under Swedish case law and in accordance with what may be perceived as general arbitral practice, an arbitral tribunal may seek guidance in the provisions of the Code of Judicial Procedure unless the parties have agreed on another way of determining costs. The rules on costs in the Code of Judicial Procedure are relatively straightforward and essentially follow what would be the expected principles applicable in most international arbitrations.

Under the Code of Judicial Procedure, compensation for costs shall cover all reasonable costs of preparation and presentation of the case, including fees for legal representation. Further, compensation may also be payable for the time and effort expended by the party itself by reason of the proceedings, e.g. the in-house legal department's costs for managing the case, cost of travel for its personal appearing as witnesses, etc. Under Swedish case law, compensable costs for legal representation should not primarily be determined based on the time spent. Instead, such determination is to take into account the nature and scope of the case, as well as the care and expertise with which the work has been carried out by counsel. When assessing the nature of the case, consideration should be given to the complexity of the substantive and legal circumstances as well as the degree of specialist knowledge required by counsel. As regards the magnitude of the case, the length of the case in terms of time and the work required by counsel may be considered. Further, the amount in dispute and the importance of the outcome of the case for the party should be taken into account.

7.5 ADVANCE ON COSTS

The arbitral tribunal's right to compensation normally does not arise until the arbitration is concluded and the final award is rendered. In order for the arbitral tribunal to secure payment from the parties, the Arbitration Act and the SCC Rules contain provisions enabling the arbitral tribunal and the SCC, as applicable, to request advance payments for costs. In ad hoc arbitrations, the parties may agree, with binding effect on the arbitrators, that the provisions on advances for costs shall not apply. However, such agreements are most unusual as they may dissuade potential arbitrators from accepting an appointment.

Under the SCC Rules, the Board of the SCC sets the amount to be paid by the parties as an advance on costs. This amount should correspond to the estimated amount of the costs of the entire arbitration. The advance on costs is set by adding together the preliminary fees to the arbitral tribunal according to the schedule of fees, the administrative fee to the SCC (as preliminarily decided), a predefined amount to cover expenses and an amount to cover value added tax (if applicable). When deciding the advance on costs, the principle is that no additional deposits should be needed. However, if the amount in dispute changes materially or if other circumstances arise, which significantly change the size or nature of the case, the fees may be re-calculated. In that case, the advance on costs should also be re-calculated.

Under section 38 of the Arbitration Act, the arbitral tribunal may request security for its compensation (including arbitrator fees and expenses). The Arbitration Act contains no provisions on how the advance on costs should be calculated. The arbitral tribunal may therefore set the amount more freely than the SCC. The provision on advance on costs is non-mandatory for the arbitral tribunal. The arbitral tribunal is thus free to decide not to request an advance on costs from the parties.

Where proceedings concern different individual claims, counterclaims and set-offs, the arbitral tribunal may fix separate advances on costs for each individual claim. In that case, each party pays an advance on costs corresponding to its claim(s). One purpose of this rule is to prevent a party from presenting an inflated claim or counter-claim in order to force the other party to pay a higher advance on costs.

An advance on costs is usually requested at the beginning of the proceedings. If the advance on costs already furnished is later found to be insufficient, the arbitral tribunal may require an additional advance on

costs from the parties. If a party fails to provide its share of the advance on costs within the period of time stipulated by the arbitral tribunal, the opposing party may provide the entire advance. If no such advance is provided, the arbitral tribunal may terminate the proceedings. A party who fails to provide his or her share of the requested security, forfeits the right to rely on the arbitration agreement as a bar to court proceedings (see Chapter 2.12 above).

Under Article 51(5) of the SCC Rules, a party who has had to pay the other party's advance on costs in order not to have the case dismissed, may request that the arbitral tribunal make a separate award for reimbursement of the payment (see Chapter 6.5.5 above).

Article 38 of the SCC Rules also provides an opportunity for a party to request security from the other party for the first-mentioned party's own forthcoming costs, including for legal representation. However, the threshold for an arbitral tribunal granting such security for costs is high and requires 'exceptional circumstances'.

7.6 ALLOCATION OF COSTS BETWEEN THE PARTIES

In Swedish arbitration law, the costs-follow-the-event rule is generally accepted, i.e. the losing party will generally be ordered to compensate the other party's legal costs, including costs relating to the work and expenses of the arbitral tribunal and, if applicable, the fees of the arbitral institution. However, in relation to the arbitral tribunal, the parties will remain jointly and severally liable to pay reasonable compensation for the work and expenses of the arbitrators.

The above rule of joint and several liability is subject to one exception. Where the arbitral tribunal has determined in the award that it lacks jurisdiction to determine the dispute, the respondent is liable for payment only insofar as required due to special circumstances. For example, if the respondent's negligence has increased the costs, the respondent may be held liable for those added costs, notwithstanding the exception.

Upon a request from a party, the arbitral tribunal may order one party to compensate the other party for its arbitration costs, i.e. the costs borne in relation to the arbitral tribunal and, if applicable, the arbitral institution. The arbitral tribunal may also order a party to compensate the costs incurred by the other party itself, including that party's costs of legal representation. A statement of costs, reasonably specifying the various costs,

is usually submitted after the hearing, with each party being given the opportunity to comment on the other party's statement of costs.

It is not always easy to determine which of the parties 'won' a case for the purpose of allocating costs. An arbitration usually involves several contentious issues and several requests for relief, some of which may be granted and others denied. As a consequence, it has become increasingly common for arbitral tribunals to allocate costs based not simply on the final monetary outcome, but by taking into account the time and effort spent during the proceedings with respect to the various issues in contention (if that is possible to assess). If, for example, the greater part of the parties' submissions concerned the issue of liability and only little effort was spent on arguing quantum, arbitrators tend to view the claimant as the successful party if liability was established, even if the full quantum amount sought by the claimant was not awarded.

The arbitral tribunal may also use its discretionary powers to allocate costs to penalise an inefficient or even obstructing party. In such cases, for the sanction to have any effect it is advisable that the arbitral tribunal make it clear from the outset of the proceedings that inefficiency and obstruction may influence the arbitral tribunal's decision with respect to the allocation of costs. For example, this may be indicated by the arbitral tribunal in its first procedural order, which will usually set out a number of detailed rules concerning the proceedings. If the SCC Rules apply, Article 50 provides that the arbitrators shall take the efficiency and expeditiousness, with which each of the parties conducted the arbitration, into account when allocating costs.

7.7 TIME AND FORM OF THE DECISION ON COSTS

In Swedish arbitral practice, decisions on costs are generally given as a part of the final award on the merits. The decision on cost will thus form part of the final award. If the arbitration is conducted under the SCC Rules, the arbitrators will request that the SCC set the fees once the proceedings are drawing to an end, so that they may be included by the tribunal in the final award.

7.8 COST ISSUES IN CASES INVOLVING THIRD PARTY FUNDING

There are no specific legal rules or court cases dealing with third party funding in Sweden. Issues relating to such funding, including whether a

funded party may claim compensation for costs paid by a funder and whether a funder may be held liable for adverse costs, must therefore be answered applying general rules on costs applicable to arbitrations seated in Sweden.

7.8.1 CLAIM FOR COSTS BY A FUNDED PARTY

In principle, it is likely that the main rule whereby a prevailing party may be compensated for costs of the arbitration will apply even if such party has received funding from a third party to pay for its legal representation and/or the fees to the arbitral tribunal and any arbitral institution (if applicable). However, this may be subject to a requirement that the funded party is under an obligation to share the proceeds of the award with the funder, or to otherwise reimburse the funder in case of success, and thus be said to have ultimately incurred the relevant costs of the arbitration.

In an SCC case, *Quasar de Valores SICAV S.A. et al. v. The Russian Federation* (SCC, No. 24/2007, 20 July 2012), where the claimants were funded by a third party with no direct economic interests in the award (i.e. no entitlement to share the proceeds or other reimbursement), the arbitral tribunal rejected the prevailing claimants' claim for compensation for costs on the basis that the claimants were not obliged to make any payment to the funder. However, when the Stockholm District Court subsequently ruled on the arbitral tribunal's jurisdiction in the same matter (*The Russian Federation v. Quasar de Valores SICAV S.A et al.; the Stockholm District Court, T 15045 09, 11 September 2014*), the Court concluded that, under Swedish law, there is a presumption that (i) a funded party may claim compensation from the opposing party, and that (ii) the liability for costs of the third party funder's is merely subsidiary. As the Court found that the plaintiff (i.e. the respondent in the arbitration) had not presented any evidence indicating that the third party funder's pledge to cover the litigation costs of the defendants (i.e. the claimants in the arbitration) should be interpreted otherwise, the Court held that the plaintiff should compensate the defendants for their litigation costs. This implies that if the plaintiff had provided evidence showing that the defendants were not contractually obligated to reimburse the funder, the defendants may not have been awarded costs. In such case, the outcome with respect to the allocation of costs would have been the same before the District Court as in the arbitration. It should, however, be noted that the usual

funding arrangements involve a right for the funder to be reimbursed for the funding provided, and that this case thus involved unusual circumstances.

Costs relating to the funded party's financing arrangement with the funder (such as the amount payable to the funder in addition to the out-of-pocket expenses for legal fees, or costs relating to the funder's due diligence of the claim) are most likely not recoverable as costs of the arbitration. However, such recoverability may not be entirely ruled out in exceptional cases, e.g. if impecuniosity of the funded party was caused by the losing party and the funded party had no option but to seek funding to pursue its claim.

7.8.2 ADVERSE COST LIABILITY FOR A THIRD PARTY FUNDER

Since a third party funder is by definition not a party to the arbitration agreement, the arbitral tribunal does not have jurisdiction to render any adverse cost award against a third party funder, but only against the funded party as such. It is unsettled whether a third party funder may be held liable for adverse costs in a subsequent action before the Swedish courts, in case the prevailing non-funded party is unable to collect on the cost award against an impecunious funded party.

Under Swedish law, there is no general requirement that a disputing party – funded by a third party or not – must have the financial resources to compensate the opposing party in case of an adverse cost award. It may, however, be noted that the Swedish Supreme Court has held shareholders of an empty 'litigation company' (a thinly capitalized, special purpose vehicle which had acquired and pursued a claim) liable for adverse costs (*M.H. and J.L. v. Deloitte AB*; the Swedish Supreme Court, *NJA* 2014 p. 877, 11 December 2014). The Supreme Court held that the corporate arrangement had been set up for the sole purpose of avoiding liability for adverse costs and thus to circumvent and disrupt the underlying balance of the Swedish rules on costs.

There is usually no legal basis to seek recourse against a parent company, a shareholder or other third party in cases where a party is unable to pay an adverse cost award, if there has been no assignment of the claim to a party, which is in poor financial circumstances, or any other apparent circumvention of the rules on allocation of costs.

Since third party funding generally does not involve any assignment of the claim to an otherwise empty company for the purpose of circumvent-

ing the rules on allocation of costs, but rather involves funding of the original claim holder, it seems unlikely that a party prevailing against a funded party in financial distress would succeed if it sought compensation for its costs from the third party funder.

7.8.3 SECURITY FOR COSTS IN CASES INVOLVING THIRD PARTY FUNDING

It is not clear whether third party funding may have any impact on the test for ordering security for costs (see Chapter 7.5 above) when applied by an arbitral tribunal seated in Sweden. Such an arbitral tribunal may potentially seek guidance in the ICCA-Queen Mary Task Force Principles on Third-Party Funding, which state that an application for security for costs should, in the first instance, be determined on the basis of the applicable test, without regard to the existence of any funding arrangement. However, as set out in the foregoing principles, the terms of any funding arrangement, including any after the event insurance, may be relevant if relied upon to establish that the claimant (or counterclaimant) can meet any adverse costs award.

8. CHALLENGE OF AWARDS

8.1 GENERAL PRINCIPLES

A Swedish arbitral award is final and binding as of the day it is rendered and cannot be challenged on the merits. An award thus cannot be challenged due to an incorrect assessment of the evidence or due to an incorrect application of substantive law. However, in common with most jurisdictions, a Swedish arbitral award may be challenged on certain, narrowly defined formal and procedural grounds.

As mentioned in Chapter 6.5.1 above, the Arbitration Act makes a distinction between ‘awards’ and ‘decisions’. In general, only awards constitute final and binding rulings by an arbitral tribunal and may be challenged by the parties before the courts. Decisions are usually not final and binding and cannot be challenged separately by the parties.

Unlike the Model Law, the Arbitration Act makes a further distinction between an action to declare an award invalid *ab initio* pursuant to section 33, and an action to set aside an award under section 34.

The grounds for invalidity under section 33 of the Arbitration Act are designed to protect the public interest and the rights of third parties. As a consequence, section 33 of the Act does not require that an action against an award be initiated within a certain time period.

The grounds for challenge set forth in section 34 of the Arbitration Act are designed to protect the interests and individual rights of the parties participating in the arbitration. A challenge under this provision must be commenced within two months from the date on which the party received the award, failing which the right to challenge is forfeited. However, even where a challenge is filed within the two-month period, the right to challenge on a specific ground may be deemed forfeited due to a previous waiver by the challenging party in the course of the arbitral proceedings. For non-Swedish commercial parties, section 51 of the Act provides the opportunity to enter into an agreement pursuant to which the parties waive, in advance, the right to challenge an award under section 34 of the Act. In order to be effective, such an agreement must be made in writing and state the waiver in clear and specific language (see Chapter 2.4 above).

In addition to actions brought under sections 33 and 34, certain awards can be subject to appeal under section 36 of the Arbitration Act. However, section 36 is only applicable to awards through which the arbitral tribunal has terminated the proceedings without rendering any ruling on the merits. Section 36 will thus apply, among other things, to an award terminating the arbitration due to a negative finding by the arbitral tribunal as regards jurisdiction. As an exception to the general rule that only awards may be the subject of appeal, section 36 will also apply to a decision by the arbitrators to terminate the proceedings as a result of the parties having withdrawn their claims, e.g. following a settlement. According to section 27 of the Act, a decision to terminate the proceedings will, in such circumstances, be subject to the same provisions as would otherwise apply to awards. As previously mentioned, in the case *The Boeing Company et al. v. Space Corporation Energia et al.* (see Chapter 2.4 above), the Swedish Supreme Court ruled that, at least insofar as negative jurisdictional decisions are concerned, parties are free to exclude, in advance, the right to appeal under section 36 of the Arbitration Act without adhering to the specific requirements set forth in section 51 of the Arbitration Act.

8.2 INVALID AWARDS – SECTION 33 OF THE ACT

Section 33 of the Arbitration Act sets forth an exhaustive list of the grounds rendering an award wholly or partially invalid. If there are grounds for invalidity, the award is considered invalid *ab initio* and (at least as a matter of theory) there is no need to take legal action to annul or invalidate the award. Consequently, there is also no time limit for initiating an action for invalidity under section 33. Actions for declaring an award invalid pursuant to section 33 are generally subject to a high threshold and there are very few, if any, examples in Swedish case law of such actions being successful.

8.2.1 NON-ARBITRABILITY – SECTION 33(1) OF THE ACT

Under section 33(1) of the Arbitration Act, an award is invalid if it includes a determination of an issue that, under Swedish law, may not be decided by arbitrators, i.e. is non-arbitrable. Under section 1 of the Arbitration Act, all disputes concerning matters in respect of which the parties may enter into a settlement agreement are arbitrable. Consequently, it is only matters which the parties would not have been able to validly regulate through contract that fall outside the scope of arbitrability.

Under Swedish law, the main rule is that the law applicable to the disputed issue determines whether a dispute may be settled by way of an agreement, and accordingly, whether the dispute is arbitrable. However, if the restriction on settling a particular dispute by way of agreement under the applicable foreign law is contrary to Swedish public policy, the dispute will still be arbitrable under Swedish law.

Generally, disputes that affect third-party interests are not arbitrable under Swedish law. It follows that disputes regarding tax matters, declarations of bankruptcy, the personal status of individuals and companies, and the validity of patents (except as between the parties) are not arbitrable. As to competition law issues, section 1 of the Arbitration Act expressly provides that the civil law effects of competition law, i.e. the effects as between the parties, may be determined by arbitration.

Swedish case law in which an award has been declared invalid due to lack of arbitrability is very scarce. The parties are generally entitled to settle all types of commercial disputes by way of agreement. Arbitrability is, therefore, rarely an issue in commercial arbitration in Sweden.

8.2.2 PUBLIC POLICY – SECTION 33(2) OF THE ACT

Under section 33(2) of the Arbitration Act, an award is invalid if it, or the manner in which it arose, is manifestly incompatible with fundamental principles of Swedish law, i.e. Swedish public policy. This ground for invalidity is intended to be applied restrictively by the courts. Examples where it could come into play are where awards have been rendered as a result of threats or bribes, or where claims have been based upon criminal acts.

It may seem superfluous for a party to assert that the manner in which the award was rendered contravenes public policy, given that the party may in such case instead invoke failure to observe due process under section 34(7) of the Arbitration Act. However, it should be noted that the public policy ground is not subject to waiver and, moreover, can invalidate the award even if the aggrieved party cannot prove that the specific failure affected the outcome, which is a requirement under section 34(7).

8.2.3 FORMAL DEFICIENCIES – SECTION 33(3) OF THE ACT

Under section 33(3) of the Arbitration Act, an award is invalid if it does not fulfil the mandatory requirements with regard to written form and signature, as required by section 31. Consequently, the award must be made in writing and be signed by all or at least by a majority of the arbitrators provided, in the latter case, that the award states why all the arbitrators have not signed it. The parties may also agree that the award shall only be signed by the chairperson.

If these requirements are not met and the deficiencies are not remedied pursuant to section 35 of the Arbitration Act (see Chapter 8.7 below), the award is invalid.

8.3 CHALLENGEABLE AWARDS – SECTION 34 OF THE ACT

8.3.1 GENERAL

Section 34 of the Arbitration Act contains exhaustive grounds for having an award wholly or partially set aside after challenge.

Whereas the provisions in section 33 of the Act concern invalidity *ab initio* and are therefore not subject to any time limits, section 34 includes both a waiver rule and a time limit.

As will be described in further detail below, an award will be set aside if the party bringing the challenge can establish that:

- the award is not covered by a valid arbitration agreement between the parties;
- the arbitral tribunal has rendered the award after the expiry of an agreed time limit set by the parties;
- the arbitral tribunal has exceeded its mandate and this is likely to have affected the outcome of the case;
- the arbitration should not have been conducted in Sweden;
- the arbitral tribunal was improperly appointed;
- an arbitrator was biased or lacked agreed qualification; or
- a procedural error has occurred which is likely to have affected the outcome of the case.

The Arbitration Act aims to protect the finality of the award as far as possible. As a consequence, where grounds for challenge have been established, the award will only be set aside to the extent affected by the error. However, if it is not possible to isolate the effect of an error to a particular part of the award, the court will usually set aside the entire award. A court may not replace an erroneous part of an award with a new decision, as that would exceed the mandate of the court.

Section 34 of the Arbitration Act applies to all awards except awards pursuant to which the proceedings are terminated without a ruling on the merits, such as awards where the arbitral tribunal has found that it lacks jurisdiction. Such awards may instead be appealed under section 36 (see Chapter 8.4 below). However, it should be pointed out that section 36 of the Act requires that the proceedings in their entirety are terminated by the award. This means that an appeal of a partial award cannot be brought under section 36. Instead, such an award will have to be challenged under section 34 of the Act.

8.3.2 NO VALID AGREEMENT TO ARBITRATE – SECTION 34(1) OF THE ACT

Under section 34(1) of the Arbitration Act, an award may be set aside if it is not covered by a valid arbitration agreement between the parties. Actions under section 34(1) may include claims to the effect that:

- the parties never entered into an arbitration agreement in the first place;

- the subject matter of the dispute was not covered by the arbitration agreement;
- the arbitration agreement was tainted by invalidity from the outset or subsequently became invalid; or
- the arbitration agreement has expired or been terminated.

The issue of whether there is a valid arbitration agreement covering the dispute is decided in accordance with the law applicable to the arbitration agreement. In accordance with section 48 of the Act, the main rule is that the parties' agreement in this respect will govern. However, a general provision designating the substantive law to be applied to the parties' contract will usually not be deemed to also cover the arbitration agreement (which, under the doctrine of separability, is considered an agreement separate from the substantive contract – see Chapter 2.5 above).

If the parties have not specifically designated any applicable law as regards the arbitration agreement, section 48 of the Act provides that the law of the seat of the arbitration shall apply. Accordingly, in the absence of any specific choice of law by the parties, and provided that the seat of the arbitration is located in Sweden, Swedish courts will rely on Swedish contract and arbitration law to assess whether a dispute is covered by a valid arbitration agreement. The conflict rules of Swedish international private law might nevertheless designate a foreign law as applicable to determine a certain issue regarding the validity of an arbitration agreement, e.g. whether a company representative had the authority to bind the company to the arbitration agreement. In such a case, Swedish courts will apply the applicable foreign law to decide that particular issue.

In the *Belgor* case of 20 March 2019 (see Chapter 5.1 above), the Supreme Court gave arbitration agreements a wide applicability. An arbitration agreement in one contract may also apply to subsequent, related contracts although they are not explicitly covered by the arbitration agreement. What determines the scope of the arbitration agreement, is that all claims under it must be deemed part of the same 'defined legal relationship' covered by the arbitration agreement in accordance with Article II.1 of the New York Convention. According to the Supreme Court, the basis for the analysis is the assumption that parties in a commercial relationship strive for disputes relating to their relationship to be settled in one and the same forum.

The Supreme Court has also allowed extra-contractual claims, not strictly based on the contract covered by the arbitration agreement, where the facts underlying such claim have a sufficiently close connection to the contract and its interpretation (*B.P. v. Gatu och Väg AB; the Swedish Supreme Court, case Ö2416-04, 14 June 2007*).

8.3.3 AWARDS MADE AFTER AN AGREED TIME LIMIT – SECTION 34(2) OF THE ACT

In order to succeed with a challenge on this basis, the challenging party will have to demonstrate that there was an agreed time limit for rendering the award, with which the arbitral tribunal failed to comply and thereby exceeded its mandate. Section 34 (2) of the Arbitration Act does not contain any requirement of a causal link between the failure to adhere to such a time limit and the outcome of the dispute, as is the case under section 34(3) and (7) (requiring that the excess of mandate or procedural error has ‘probably influenced the outcome of the case’).

8.3.4 EXCESS OF MANDATE – SECTION 34(3) OF THE ACT

In order to succeed with a challenge of an award on the ground that the arbitral tribunal has exceeded its mandate, a party will have to prove that the arbitral tribunal somehow went beyond its procedural mandate as formulated by the parties through submissions and instructions in the course of the proceedings. Section 34(3) of the Arbitration Act also requires that the excess of mandate ‘probably influenced the outcome of the case’.

Examples of situations where an award can be set aside due to excess of mandate are:

(i) Failure to apply the substantive law designated by the parties

The distinction between a failure to apply a certain law, on the one hand, and wrongful application of the correct law, on the other hand, is important as only the former can constitute a valid ground for setting aside the award. Consequently, it takes more than mere absence of legal references in the award to demonstrate that the arbitral tribunal has failed to apply the chosen substantive law. In the *CME* case of 15 May 2003 (see Chapter 6.3 above), the Svea Court of Appeal thus stated that an arbitral tribunal will be deemed to have exceeded its mandate only if it can be demonstrated that its actions ‘constituted a deliberate disregard of the designated applicable law’.

- (ii) Awards based on facts which have not been duly invoked by a party as a basis for its claim

Arbitral tribunals are bound by the facts explicitly relied upon by the parties in support of their respective request for relief. If an arbitral tribunal bases its decision on a fact which has not been referred to by any of the parties as being relevant for the relief sought, this may potentially constitute a challengeable error. However, it is important to note that it is only facts that are material to the application of the specific legal rule to be applied which need to be duly invoked, commonly referred to as material facts. Facts of a mere subsidiary nature may thus be referred to by an arbitral tribunal, even though they have not been duly invoked, without constituting an excess of mandate.

A material fact will usually not be considered to have been duly invoked if it has merely been mentioned in passing as part of a background description in a submission, in documentary evidence or in witness testimony. It needs to be reasonably highlighted by a party so as to be understood as a fact material to the application of a legal rule which, in turn, is relied upon in support of a specified prayer for relief.

Although it is common in challenge proceedings for parties to allege that the arbitral tribunal has based the award on material facts which have not been duly invoked, the facts referred to will most often not be of a truly material nature. As a consequence, challenges brought on this basis usually fail. Moreover, it is less likely that an international arbitral award would be assessed as strictly on the basis of the above as a domestic award.

- (iii) Awards in excess of the parties' request for relief

An arbitral tribunal may not grant any relief beyond the relief(s) specifically requested by the parties. By way of example, if a party merely requests a declaratory award on the amount of damages, but the arbitral tribunal goes beyond this request and also orders the respondent to pay the damages, this would constitute a challengeable error under section 34(3) of the Act. It is less clear whether failure by an arbitral tribunal to rule on a prayer for relief which a party has duly submitted also amounts to an excess of mandate. Such a failure would, however, clearly be susceptible to challenge as a procedural error under section 34(7) of the Act.

(iv) Unauthorised filling of gaps in contracts

Arbitral tribunals may only fill in gaps in contracts if authorised to do so by the parties as per section 1 of the Arbitration Act. If it can be demonstrated that an arbitral tribunal has engaged in gap-filling without authorization from the parties, this may constitute an excess of mandate under section 34(3). However, an important distinction needs to be made between gap-filling and interpretation of a contract. If the arbitral tribunal's actions are to be characterised as mere interpretation of the contract, there will be no ground for a challenge. The arbitral tribunal's own characterisation of its activity may be of importance in this regard.

8.3.5 THE ARBITRATION IS INCORRECTLY CONDUCTED IN SWEDEN – SECTION 34(4) OF THE ACT

An award may be set aside if it can be demonstrated that it is the result of an arbitration that should not have been conducted in Sweden. Such a situation might arise as the result of an erroneous decision by the arbitral tribunal or by an arbitral institution regarding the seat of the arbitration.

Under section 47 of the Arbitration Act, an arbitration may be conducted in Sweden if the parties' agreement so provides or where the arbitral tribunal or arbitral institution has so decided pursuant to the arbitration agreement. An arbitration may also be conducted in Sweden where the claimant initiates arbitration in Sweden without any objection from the respondent. Finally, an arbitration may take place in Sweden if a party is domiciled in Sweden or is otherwise subject to the jurisdiction of the Swedish courts regarding the matter in dispute, provided that the parties' arbitration agreement does not stipulate otherwise.

8.3.6 ARBITRATOR IMPROPERLY APPOINTED – SECTION 34(5) OF THE ACT

An award may be set aside where an arbitrator has not been appointed in accordance with the parties' agreement or the Arbitration Act. If the arbitrator lacks qualifications required by the arbitration agreement or if he or she has been appointed after the end of a stipulated time limit, this may constitute a ground for challenge.

8.3.7 ARBITRATOR LACKING IN AUTHORITY OR IMPARTIALITY – SECTION 34(6) OF THE ACT

The ground for setting aside an award under section 34(6) corresponds to the standard for removal of an arbitrator under sections 7 or 8 of the Arbitration Act. An award can thus be set aside if an arbitrator was unauthorised due to lack of legal capacity pursuant to section 7 or was not impartial and independent as required by section 8 of the Act (see Chapters 3.2 and 3.5.1 above).

Under section 8 of the Act it is sufficient that there exist circumstances that objectively might diminish confidence in the impartiality or independence of an arbitrator. Whether an arbitrator was actually biased towards one of the parties is irrelevant. In assessing allegations of independence and impartiality, the Supreme Court has, among other sources, referred to the IBA Guidelines on Conflicts of Interest in International Arbitration.

If a party is aware of a circumstance that it considers diminishes confidence in an arbitrator's impartiality or independence, the arbitrator will usually be challenged in the course of the arbitral proceedings. This is so not least since participating in the arbitral proceedings without raising such an objection may be deemed to constitute a waiver. There is thus no room for a party to quietly await the outcome of an arbitration before deciding whether to challenge the award on this ground.

8.3.8 PROCEDURAL ERRORS LIKELY INFLUENCING THE OUTCOME – SECTION 34(7) OF THE ACT

In addition to the grounds just described, an award can be set aside if, without fault imputable to a party, an irregularity has occurred in the course of the proceedings that has probably influenced the outcome of the case. The purpose of this provision is essentially to provide a remedy in the event that the arbitral tribunal fails to uphold due process.

It may sometimes be difficult to distinguish between decisions on procedure and decisions on substance. However, this distinction is decisive as only the former may constitute a ground for challenge.

Examples of measures which may amount to challengeable procedural errors are:

- failure to afford a party a reasonable opportunity to present its case;
- failure to observe joint procedural instructions from the parties;

- wrongful rejection of submissions or evidence; and
- failure to consider a claim or objection made by a party.

Due to the freedom afforded to arbitral tribunals under the Arbitration Act to determine the conduct of the procedure and the balancing duty of the arbitral tribunal to, for example, conduct the arbitration in an efficient manner, the threshold for establishing procedural irregularities is high.

For example, according to the Supreme Court (the *Belgor* case of 20 March 2019; see Chapters 5.1, 6.5.1 and 8.3.2 above), the arbitral tribunal is in a better position than a court to decide whether a request for extension of time to file submissions should be denied or granted during the arbitration. The starting point for a court is therefore that the arbitral tribunal's decision should be accepted, unless it comes across as unjustifiable. In this assessment (as to whether a decision is unjustifiable), the Supreme Court points to its case law on Article V 1 (b) of the New York Convention, concerning enforcement of arbitral awards where the Supreme Court has refused enforcement of foreign awards on due process grounds. In those cases, the respondent has either not been aware of the arbitration at all (*Lenmorniiproekt OAO v. A.L. & Partner Leasing AB; the Swedish Supreme Court, case Ö 13-09, 16 April 2010*), or has been denied its due process right to present its case by finding itself at a hearing on the merits, although respondent thought that it was merely to be a meeting to discuss settlement (*Belaya Ptitsa – Kursk v. Robot Grader AB; the Swedish Supreme Court, case Ö 3 626-17, 4 May 2018*). Thus, the respondent in that case was not afforded reasonable time to prepare.

According to the Supreme Court in the *Belgor* case, another precondition for annulment of an award on the basis that a party has not been afforded a reasonable opportunity to present its case is that the challenging party has not itself caused the situation. The party must point to circumstances outside its control that have prevented it from presenting its case, which circumstances the party ought not have foreseen. In addition, the challenging party must show that there were no clear and acceptable alternative ways of presenting the case.

Similarly, an arbitral tribunal's refusal to convene a further hearing to afford the parties an opportunity to comment on new expert evidence submitted after the main hearing, has not been deemed a procedural irregularity. In the case in question, the arbitral tribunal had afforded the parties repeated opportunities to comment on the expert evidence in

writing. The challenging party had thus not been denied an opportunity to present its case. (*The Republic of Poland v. PL Holdings S.á.r.l.*; *Svea Court of Appeal cases T 8538-17 and T 12033-17*, 22 February 2019, appealed to the Swedish Supreme Court at the time of print.)

The absence of a detailed account of every claim and objection in the award has not been accepted by Swedish courts as conclusive proof that a certain objection or claim was not duly considered by the arbitral tribunal (*Soyak International Construction & Investment Inc. v. Hochtief AG*; the *Swedish Supreme Court*, *NJA* 2009 p. 128, 31 March 2009).

In addition and most importantly, section 34 requires that, in order for an award to be set aside, the challenging party must demonstrate that it is likely that the procedural irregularity influenced the outcome of the case, i.e. that the operative part of the award would otherwise have been different. It is not sufficient that part of the arbitral tribunal's reasoning may have been influenced. It is the challenging party who bears the burden of proof. This generally makes it very difficult to succeed with a challenge on grounds of procedural irregularity. However, if the irregularity is obvious and serious, this may create a presumption that the outcome is likely to have been affected.

8.3.9 WAIVER OF THE RIGHT TO INVOKE A CHALLENGEABLE ERROR

Under section 34 of the Arbitration Act, a party may not, as basis for a challenge of an award, invoke a circumstance which the party may be deemed have waived by participating in the proceedings without objection or otherwise. This prevents parties from speculating in the outcome of the arbitration by withholding objections, in order to retain them for use in a possible future challenge of an unfavourable award.

A waiver can occur through explicit actions as well as through inaction. However, a party can only be deemed to have made a waiver by way of inaction if it had actual knowledge of the relevant circumstance and thus had a real opportunity to react. As a general rule, it is thus not sufficient that a party 'ought to have been aware of' the relevant circumstance.

By way of example, a waiver can be deemed to have occurred if, during the course of the proceedings, a party fails to object to a decision made by the arbitral tribunal. As a general rule, a party will also be deemed to have accepted the arbitral tribunal's jurisdiction if it participates in the arbitration without raising any objection. However, a party will not be regarded

as having accepted the arbitral tribunal's jurisdiction solely due to having appointed an arbitrator. Whether or not a waiver, in fact, has been made must be assessed on a case-by-case basis.

To preserve the right to invoke a challengeable circumstance, a party must make its protest clear to the arbitral tribunal. A party is thus generally well advised to request that its protest be formally noted on the record. Although no specific time limits are stipulated in the Arbitration Act, the objection should be raised promptly.

8.4 APPEALS AGAINST AWARDS DISMISSING THE CASE – SECTION 36 OF THE ACT

In addition to actions brought under sections 33 and 34, certain awards can be subject to appeal under section 36 of the Arbitration Act. Section 36 is applicable to awards through which the arbitral tribunal has terminated the proceedings without rendering any ruling on the merits. By way of example, section 36 will thus apply to an award terminating the arbitration due to a negative finding by the arbitral tribunal as regards jurisdiction.

If the arbitral tribunal makes an award whereby the case is dismissed without having been tried on its merits, it must insert clear instructions in the award as to what must be done by a party who wishes to appeal the award under section 36 of the Act (see Chapter 6.6 above).

Upon appeal, the court may not only review the procedural issue, which has been answered by the arbitral tribunal's decision to dismiss, but also the actual handling of that issue by the arbitral tribunal. The court may also, upon the application of a party, review the allocation of costs between the parties as decided by the arbitral tribunal. If the court sets aside an award whereby the arbitral tribunal has declined jurisdiction on the grounds that there is no valid arbitration agreement, this is tantamount to a binding determination by the court that there is indeed a valid arbitration agreement which is applicable to the dispute.

If an award is set aside following an appeal pursuant to section 36 of the Act, the issue will not automatically be referred back to the arbitral tribunal for a renewed assessment. Instead, one of the parties must make a new request for arbitration. Furthermore, the arbitrators who made the award which has been set aside are not automatically competent to try the dispute anew, as they have completed their prior engagement. Depending

on the circumstances, they may even be deemed to have become biased and thus be precluded from serving in the new proceedings.

8.5 PROCEDURE AND DEADLINES FOR CHALLENGING OR APPEALING AN AWARD

Challenges under sections 33 and 34, or appeals under section 36, of a Swedish arbitral award are heard by the court of appeal that has jurisdiction over the place where the seat of arbitration is located. If the seat of arbitration is Stockholm, the award must thus be challenged or appealed before the Svea Court of Appeal. The Svea Court of Appeal also has jurisdiction to hear challenges or appeals of Swedish awards which do not state the seat of arbitration.

There are no limits for challenges brought under section 33 of the Act.

A challenge under section 34 or an appeal under section 36, must be initiated within two months from the date on which the party received the award. If correction, supplementation or interpretation of the award has taken place pursuant to section 32 of the Act (see Chapter 8.6 below), the two-month period will start running from the date when the party received the award as finally worded. If a request made under section 32 has been rejected by the arbitral tribunal, then the date when the party originally received the award will apply for the purpose of the two-month period.

The Arbitration Act does not specify when a party shall be deemed to have received the award. However, case law indicates that a party will be considered to have received the award when the party, or its authorised counsel, has been notified of the award and has had the opportunity to read the complete award. Hence, there is no requirement that the party has actually read the award in whole or part. There is also no requirement that the award has been received in the original. A complete copy sent and received by e-mail will generally suffice for the two-month period to start running.

A challenge or appeal of an arbitral award is deemed initiated on the day on which the summons application is filed with the court. Pursuant to Chapter 10, section 20 of the Code of Judicial Procedure, if a party mistakenly sends an application to the wrong Swedish court, the application is to be transferred to the competent court and will be deemed received by the competent court on the same day as it was received by the court which first received the application.

Even if a challenge under section 34 of the Act as such is brought on time, once the two-month period has expired, a party is prevented from amending its claim by invoking any new material facts. A belated claim or material fact will be precluded even if the party, due to no fault of its own, did not learn of it until after the two-month period. Consequently, it is very important for a party who is about to challenge an arbitral award that the summons application be as complete as possible. Preclusion will not be applied by the court of appeal on its own motion, but must be invoked by the respondent in the proceedings.

There are no formal restrictions as to who may represent a party in the proceedings before the court of appeal for setting aside or appealing an award. Thus, at least in theory, a foreign lawyer may represent a party in such an action. However, as proceedings before the courts in Sweden are conducted in Swedish, language may pose a practical barrier to the assumption of such representation by anyone who is not Swedish. In addition, it may be difficult for a foreign lawyer, unfamiliar with the specific procedure and culture before the Swedish courts, to conduct the proceedings efficiently.

Very few challenges to arbitral awards are successful. Although there are no official statistics, it is generally assumed that some 90 per cent of all challenges brought before the courts of appeal are dismissed. The Svea Court of Appeal has a special division dealing with challenges and other actions relating to arbitral awards. The average time for the Svea Court of Appeal to decide on a challenge action is between 6–18 months depending on size and complexity of the case. The court strives to deal with challenge proceedings as efficiently as reasonably possible.

The Swedish courts only charge a registration fee of approximately EUR 300 (as from July 2014), irrespective of the nature or the size of the dispute. The main cost to a party in challenge proceedings is thus the cost of legal counsel. Following the main principle in the Code of Judicial Procedure, the losing party will usually be ordered to compensate the winning party's legal costs (see Chapter 7.6 above). The compensation for legal costs may cover all reasonable costs and expenses, including counsel fees, incurred by a party in preparing and conducting the proceedings before the court.

The decision by the court of appeal to set aside or not set aside an award may not be appealed. However, the court of appeal may grant leave to appeal if it considers it to be of importance, as a matter of precedent,

that the matter be considered by the Supreme Court. It is relatively rare for leave to appeal to be granted by the court of appeal. Even if leave is granted by the court of appeal, a party must also seek leave from the Supreme Court itself. The Supreme Court may grant such leave in whole or part or not at all.

8.6 CORRECTION/INTERPRETATION OF AN AWARD – SECTION 32 OF THE ACT

If, subsequent to having rendered an award, the arbitral tribunal finds that the award contains an obvious typographical error, error in computation or other similar error, or if the arbitral tribunal by oversight has failed to decide an issue which should have been addressed in the award, it may decide to correct or supplement the award. If the arbitral tribunal decides to do so on its own initiative, such a decision must be made no later than thirty days from the rendering of the award.

The arbitral tribunal may also correct or supplement, or interpret the operative part of the award, if any of the parties so request within thirty days from receipt of the award by that party. If the arbitral tribunal decides to thus correct or interpret an award at the request of one of the parties, it must do so no later than thirty days from having received the relevant request. If the arbitral tribunal decides to supplement the award, it may do so within an additional thirty days, i.e. sixty days, from having received the relevant request from one of the parties.

No decision to correct, supplement or interpret an award may be made by the arbitral tribunal pursuant to section 32 of the Act without the parties first having been afforded an opportunity to comment on the intended measure.

If the SCC Rules apply, similar possibilities for correcting, interpreting or supplementing an award are found in Articles 47 and 48.

8.7 REMEDY OF DEFECTS IN AWARDS – SECTION 35 OF THE ACT

In proceedings brought under sections 33 and 34 of the Arbitration Act, the court can only set aside an award in whole or in part or declare that it is invalid. The court has no authority to amend an award, thereby remedying a defect. As a pragmatic solution, section 35 of the Arbitration Act provides a possibility for the court to stay the proceedings for a certain

period of time in order to provide the arbitral tribunal with an opportunity to resume the arbitration and cure the defect. Section 35 may only be applied if the court is *prima facie* satisfied that a claim brought under section 33 or 34 will be successful, that it is possible for the arbitral tribunal to cure the defect and provided that at least one of the parties requests a stay.

The purpose of the stay is only to give the arbitral tribunal an opportunity to cure the specific defect in question. It is not the intention that the entire case be retried. It is important to note that the arbitral tribunal is under no obligation to take any measure under section 35. It may thus decide not to resume the arbitration and amend the award. If the arbitral tribunal does render a revised award, a party may challenge that revised award without the need to file a new summons application, within a time period set by the court.

8.8 CHALLENGE TO THE ARBITRATORS' COMPENSATION – SECTION 41 OF THE ACT

If a party finds the compensation awarded to the arbitrators to be unreasonable, it may initiate an action under section 41 of the Arbitration Act. Challenges to the arbitrators' compensation are heard by the district court with jurisdiction over the place of the seat of arbitration. If the seat of arbitration is Stockholm, the compensation awarded must thus be challenged before the Stockholm District Court. As with challenges before courts of appeal (see Chapter 8.5 above), an action under section 41 must be initiated within two months from receipt by the party of the award in its final form.

The right to initiate an action regarding the arbitrators' compensation applies not only when the compensation has been decided upon by the arbitrators themselves, but also when it has been determined by an arbitral institution, like the SCC or ICC, following a schedule of fees, and included in the final award. However, the fact that there is a formal right to appeal, does not imply that there is a substantive right to have the fees reviewed. In cases where the fees have been determined by an arbitral institution, it is unlikely that the district court, when assessing the merits of the challenge, will find in favour of the claimant. The district court will most likely conclude that the parties and the arbitrators are bound by the fee structure laid down in the applicable institutional rules, as incorporated by reference into the parties' arbitration agreement, and that the

decision by the arbitral institution on the level of compensation is therefore binding.

9. ENFORCEMENT OF ARBITRAL AWARDS IN SWEDEN

9.1 GENERAL PRINCIPLES

Any arbitral award containing an order directed against one of the parties for payment of money or for specific performance may be enforced in Sweden. The same applies to rulings included in an award by which a party is ordered to compensate the opposing party for its legal costs or, as between the parties, to bear the ultimate responsibility for payment of the arbitrators' fees.

By contrast, a mere declaratory ruling is not enforceable *per se*. However, as the ruling may have legal effect (*res judicata*), it may be relied upon in subsequent proceedings to obtain an enforceable award or may be invoked to defend against a claim.

An award made by an arbitral tribunal with its seat in Sweden is considered a Swedish award and is enforceable in Sweden as of the day on which it is rendered. This is so even if, for example, none of the parties are Swedish, the underlying contract has no relation to Sweden and Swedish law does not govern the substance of the case. A Swedish arbitral award may in principle be enforced in Sweden in the same manner as a domestic court judgment under the Swedish Enforcement Act, without being preceded by any exequatur procedure.

An award made by an arbitral tribunal with its seat outside of Sweden is considered a foreign award and cannot be enforced until it has passed an exequatur procedure. The exequatur proceeding is meant to ensure that there are no obstacles to recognition and enforcement of the award pursuant to sections 54 and 55 of the Arbitration Act.

9.2 RECOGNITION AND ENFORCEMENT OF FOREIGN AWARDS

Sweden ratified the New York Convention as early as 1972 without any reservations. The provisions of the New York Convention have subsequently been incorporated into the Arbitration Act. The Swedish Supreme Court has also repeatedly stressed the importance of respecting

the intentions underlying the New York Convention to facilitate enforcement of foreign arbitral awards.

Section 54 of the Arbitration Act is modelled on Article V(I) of the New York Convention and sets forth five exceptions for when a foreign arbitral award will not be recognised and enforced in Sweden. In summary, section 54 provides that an award will not be enforced;

- if the signatory of the arbitration agreement was unauthorised or the arbitration agreement is invalid;
- if due process has been violated;
- if the arbitral tribunal has exceeded its mandate;
- if the arbitrators were not properly appointed; or
- if the award is not binding and enforceable in the country where it was made.

The court will examine whether an exception applies only if the respondent has made a specific objection to that effect. The respondent will also bear the burden of proving that the exception in question should be applied. However, if the respondent denies that it has even entered into an arbitration agreement, the burden of proof is reversed and it will be for the claimant to prove that the award falls within the scope of a binding arbitration agreement pursuant to section 58(1) of the Arbitration Act.

As a consequence of the limited grounds for refusal, the respondent's burden of proof and the general pro-enforcement attitude of the Swedish courts, there are very few Swedish cases where enforcement has been refused citing, for example, due process reasons or an alleged excess of mandate by the arbitral tribunal (see Chapter 8.3.8 above for references).

Section 55 of the Arbitration Act is modelled on Article V(II) of the New York Convention. In contrast to section 54, section 55 sets out exceptions which are to be considered by the court on its own initiative. In summary, section 55 of the Act provides that an award must not be recognised and enforced if the court finds:

- that the award includes determination of issues which are not arbitrable under Swedish law; or
- that it would be contrary to Swedish public policy to enforce it.

As stated above (see Chapter 8.2.1), Swedish law affords a broad scope for arbitrability of commercial disputes. It also applies a restrictive view on the public-policy exception under the New York Convention. As a consequence, it is very rare for the courts to find against recognition and enforcement on any of these grounds. In fact, Swedish case law contains only one example where the Supreme Court has refused to recognise and enforce a foreign arbitral award for reasons of public policy. In that particular case, the award constituted a wholly fictitious document, apparently created as part of a fraud (*R.G. v. J.L.; the Swedish Supreme Court, NJA 2002 C 45, 23 October 2002*).

9.3 PROCEDURE FOR ENFORCEMENT OF FOREIGN AWARDS

An application for the enforcement of a foreign arbitral award must be submitted to the Svea Court of Appeal in Stockholm. A certified copy of the award should be filed together with the application. Unless otherwise decided by the Court, a Swedish translation of the award must also be filed.

The Court of Appeal will notify the party against whom enforcement is sought and give such party an opportunity to raise any objection it might have.

If the opposing party denies that an arbitration agreement has been entered into, the applicant is required to file a certified, or an original, copy of the arbitration agreement.

Unless the Court of Appeal finds the non-arbitrability or public policy exceptions in section 55 of the Arbitration Act to be manifestly applicable, it will limit its review of the award to such specific circumstances (if any) alleged by the party against whom enforcement is sought. The list of circumstances in sections 54 and 55 of the Act, which may render an award unenforceable, is exhaustive and the Court will not review any other aspects of the award.

The application shall be handled swiftly by the Court of Appeal and in most cases the Court's decision can be based on documents alone. However, if the Court of Appeal finds it desirable, it may request an extended exchange of written statements and may also arrange a hearing.

Under section 58 of the Arbitration Act, the Court may decide to temporarily postpone its decision on enforcement if the opposing party contends that it has challenged the award and requests a stay of enforcement. In such a case and upon request by the applicant, the Court may require

the opposing party to provide security. Regardless of whether security is provided, a parallel challenge procedure will, as a general rule, not persuade the Court to postpone the enforcement of an arbitral award unless it is shown that the challenge is likely to succeed.

A party is entitled to obtain a decision on costs in a matter concerning the enforcement of a foreign award.

If the Svea Court of Appeal grants the application for enforcement, the arbitral award will become enforceable in Sweden in the same manner as a final and binding judgment of a competent Swedish court.

The Svea Court of Appeal's decision on enforcement may be appealed to the Supreme Court (subject to leave to appeal being granted). However, such an appeal will not suspend a decision to grant execution.

10. FURTHER READING ABOUT ARBITRATION IN SWEDEN

English language books authored or co-authored by lawyers at Mannheimer Swartling:

Andersson, F., Isaksson, T., Johansson, M., Nilsson, O. & Herre, J. (eds.), *Arbitration in Sweden* (Jure, 2011)

Franke, U., Magnusson, A., Ragnwaldh, J. & Wallin, M. (eds.), *International Arbitration in Sweden: A Practitioner's Guide* (Wolters Kluwer, 2013)

Andersson, F. & Löf, K., *Stockholm*. In: Ostrove, M., Salomon, C. & Shifman, B. (eds.), *Choice of Venue in International Arbitration* (Oxford University Press, 2014), pp. 393-414

Oldenstam, R. & von Pachelbel, J., *Sweden*. In: Weigand, F-R. & Baumann, A. (eds.), *Practitioner's Handbook on International Commercial Arbitration* (3 ed.) (Oxford University Press, 2019), chapter 13

Foerster, A., *The Stockholm Rules (SCC)*. In: Schütze, R., *Institutional Arbitration* (2 ed.) (Beck C. H. (In association with Hart Publishing, Oxford and Nomos Verlagsgesellschaft, Baden-Baden), 2019)

Other books in English:

Heuman, L., *Arbitration Law of Sweden: Practice and Procedure* (Juris Publishing, 2003)

Hobér, K., *International Commercial Arbitration in Sweden* (Oxford University Press, 2011)

Madsen, F., *Commercial Arbitration in Sweden: A Commentary on the Arbitration Act (1999:116) and the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce* (4 ed.) (Jure, 2016)

Other sources of information:

The Swedish Arbitration Portal provides free access to English translations of Swedish court decisions on arbitration issues, such as challenges of awards brought before the Svea Court of Appeal in Stockholm. The case database is updated regularly as new translations of court decisions become available. The Portal can be accessed through the SCC's website, www.sccinstitute.com

III. Investment Arbitration in Sweden

II. INTRODUCTION

Building on its reputation as a neutral seat for East-West arbitration, Stockholm has established itself as one of the preferred seats of arbitration for investment treaty cases. The SCC is the second most frequently chosen arbitral institution in investment treaty cases. Only the International Centre for Settlement of Investment Disputes (ICSID) handles more investment arbitrations. Moreover, Stockholm is a frequently chosen seat of arbitration in investment arbitrations under the UNCITRAL Arbitration Rules.

The purpose of this part of the guide is to provide a broad overview of issues relating to Stockholm and the SCC as a forum for investment arbitration. The focus will be on issues related to the choice of Stockholm as the seat and the SCC as institution in investment treaty cases. Procedural issues that may arise when Stockholm is chosen as the seat – e.g. applicable law, challenge of investment treaty awards and enforcement – will also be addressed.

12. INVESTMENT TREATIES AND INVESTMENT ARBITRATION

Provisions on investment protection, including investor-state arbitration, are most commonly found in bilateral investment treaties (BITs). Currently, approximately 3,000 BITs are in force between different states. Investment protection standards and investor-state arbitration are also provided for by certain free trade agreements (FTAs), such as the North

American Free Trade Agreement (NAFTA). There are also industry-specific multilateral investment treaties (MITs), such as the Energy Charter Treaty (ECT), which protects foreign investments in the energy sector. The ECT is of particular importance for Stockholm since the treaty designates arbitration under the SCC Rules as one of the dispute resolution methods available to foreign investors protected by the treaty.

Most investment treaties allow investors to settle disputes against the host state through international arbitration. Such dispute resolution provisions provide an effective remedy for violations of the treaty protection standards, independent of the support of the investor's home state. Arguably, the absence of dispute resolution provisions would render the substantive protection standards in investment treaties meaningless since effectively no legal consequences would arise for states violating the standards.

13. INVESTMENT ARBITRATION BEFORE THE SCC

As a general rule, states concluding investment treaties may agree on any form of dispute resolution mechanism for investor-state disputes. Investment treaties demonstrate some diversity in this respect. There are treaties providing for ICSID arbitration, ad hoc arbitration under the UNCITRAL Arbitration Rules, pure ad hoc arbitration, SCC arbitration and ICC arbitration. Some treaties offer investors the right to choose between different dispute resolution mechanisms.

ICSID arbitration is the most frequently used dispute-settlement mechanism in investment arbitration. As of 31 December 2018, 594 arbitration cases had been registered by ICSID. By comparison, 295 known cases had been filed under the UNCITRAL Rules and 78 cases had been filed under the SCC Rules. Only 17 investment arbitrations had been filed under the ICC Rules. Unlike ICSID cases, some of the UNCITRAL cases and other non-ICSID cases are not in the public domain. Available statistics may, therefore, understate the number of ad hoc investment arbitration cases.

In 2017, the SCC introduced a specific set of rules applicable to investor-state disputes (SCC Rules, Appendix III). Under these rules, third parties and non-disputing treaty parties may seek leave, or be invited, to

make written submissions in investor-state disputes. Unlike the corresponding provision in ICSID Rule 37(2), the SCC Rules provide a relatively detailed set of requirements for third party interventions. For instance, the SCC Rules (Appendix III, Article 3) provide detailed requirements concerning the content and scope of an application for leave submitted by a third party as well as any subsequent submission authorized by the arbitral tribunal. Additionally, the SCC Rules stipulate that the arbitral tribunal may, 'as a condition for allowing a [t]hird [p]erson to make a submission, require that the [t]hird [p]erson provide security for reasonable legal or other costs expected to be incurred by the disputing parties as a result of the submission'.

14. HOW IS STOCKHOLM CHOSEN AS THE SEAT OF ARBITRATION?

There are several ways in which Stockholm may become the seat of arbitration in an investment dispute (the relevance of the seat of arbitration is dealt with above in Part II, Chapter 4.3). The most common reason is that the applicable investment treaty provides that disputes between investors and states under the treaty are to be resolved by arbitration under the auspices of the SCC.

The ECT provides for 'arbitral proceedings under the Arbitration Institute of the Stockholm Chamber of Commerce' as one of the four options for investor-state arbitration (the other options being the ICSID, the ICSID Additional Facility and the UNCITRAL Rules). As of 31 December 2018, around 25% of all known investment arbitrations under the ECT had been commenced under the SCC Rules. The fact that the SCC was chosen in one out of four ECT cases where the investor could have chosen the ICSID, the ICSID Additional Facility or the UNCITRAL Rules confirms that the SCC is regarded as an attractive option for investment arbitrations.

Around 140 BITs provide for arbitration under the SCC Rules, arbitration with the seat in Sweden, or the SCC as appointing authority. Notably, several BITs concluded by the Russian Federation, other former Soviet Republics as well as Chinese first-generation BITs provide for SCC arbitration.

Other BITs provide for ad hoc arbitration using the SCC Rules as reference, e.g. the BITs China has concluded with several former Soviet Republics, including Armenia, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan and Ukraine. By way of example, Article 9 of the China-Belarus BIT states that the tribunal shall decide on the appropriate procedure for the arbitration and that, in doing so, ‘the tribunal may [...] take as reference the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.’ The above-mentioned BITs are important from the perspective of Chinese investors, since large-scale infrastructure projects in these countries (among others) are identified as priority projects within the so-called Belt and Road Initiative, which aims to foster economic cooperation and other ties with partners stretching from Central Asia to Europe, including almost all the former Soviet Republics.

BITs providing for investor-state arbitration under the UNCITRAL Rules generally do not specify the seat of arbitration. In such cases, the seat of arbitration will be designated either by agreement between the parties to the arbitration (after the dispute has arisen) or by decision of the arbitral tribunal. Some BITs providing for UNCITRAL arbitration designate the SCC or the Secretary-General of the SCC as appointing authority. The SCC has so far handled around 15 applications to act as appointing authority under the UNCITRAL Rules in investment treaty cases. Where the BIT designates the SCC as appointing authority, it can also often be appropriate to choose Stockholm as the seat of arbitration. This was done, for instance, in the case *CME Czech Republic B.V. v. the Czech Republic (Final Arbitral Award, 14 March 2003)*.

15. THE STATUTORY FRAMEWORK APPLICABLE TO AN INVESTMENT ARBITRATION SEATED IN STOCKHOLM

A question that will arise in connection with any discussion of Stockholm as the seat of arbitration is whether the Swedish Arbitration Act applies to an investment arbitration seated in Sweden. That is indeed the case. Pursuant to section 46 of the Arbitration Act, the legislation applies to all arbitral proceedings seated in Sweden, regardless of whether the dis-

pute has an international connection. The applicability of the Arbitration Act is not affected by the fact that the arbitration agreement – or, rather, the host state’s ‘offer to arbitrate’ and the terms for such offer – is enshrined in an international treaty instead of in a commercial contract.

16. APPLICABLE LAW IN INVESTMENT ARBITRATIONS

It is well established within the Swedish legal system that the principle of party autonomy applies to the choice of law (see also Part II, Chapter 6.2 above). Moreover, the SCC Rules expressly recognise the freedom of the parties to agree on the ‘rules of law’ applicable to the substance of the dispute. Article 27(1) of the SCC Rules provides that ‘[t]he Arbitral Tribunal shall decide the merits of the dispute on the basis of the law(s) or rules of law agreed upon by the parties’ and that, in the absence of such agreement, ‘the Arbitral Tribunal shall apply the law or rules of law that it considers most appropriate.’ Other arbitration rules and regulations that are frequently applied in investment disputes also recognise this fundamental principle (e.g. the ICSID Convention, the ICSID Additional Facility Arbitration Rules and the UNCITRAL Rules).

Governing law-clauses in BITs often refer to the BIT itself, customary international law and the law of the respondent state to the arbitration. The interplay between international and domestic law in investment disputes may sometimes raise difficult questions. As a rule of thumb, however, questions such as the jurisdiction of the arbitral tribunal, the liability of the host state for alleged treaty violations, as well as remedies available to the investor as a result of such violations, are governed by the provisions of the BIT and customary international law. As expressed by the arbitral tribunal in *RosInvestCo UK Ltd v. the Russian Federation (SCC, V (079/2005), 12 September 2010)* in its final award under the SCC Rules:

‘[T]he law applicable to the claim under the [treaty] is the [treaty] itself and international law. Russian law comes into play only in so far as it is relevant in determining whether the Respondent acted in breach of an international obligation.’

Notably, respondent states in several treaty cases between EU state investors and EU host states (commonly referred to as ‘intra-EU cases’) have argued that EU law must be applied with respect to the assessment of jurisdiction as well as liability for treaty violations. With regard to the merits, investment treaty tribunals have consistently found that EU law – much like domestic legislation – may form a part of the ‘factual matrix’ to be taken into consideration when assessing liability under the provisions of the BIT and customary international law. In other words, domestic or regional law (such as EU law) is not *applicable* to the merits in the sense that such legislation determines the contents of the treaty protection standards, but may nevertheless play a role in the assessment as such. As expressed by the arbitral tribunal in *Ioan Micula et al. v. Romania* (ICSID Case No. ARB/05/20, *Final Award*, 11 December 2013):

‘EU law [...] may be relevant to the determination of whether, *inter alia*, Romania’s actions were reasonable in light of all the circumstances, or whether Claimants’ expectations were legitimate.’

Several respondent states in intra-EU cases have also raised jurisdictional objections, arguing that arbitration clauses in intra-EU BITs are incompatible with the EU Treaties and that the EU Treaties should be given priority. As a result of the CJEU’s ruling in *Achmea* (*Slovak Republic v. Achmea BV; the Grand Chamber of the European Court of Justice, Case C 284/16, ECLI:EU:C:2018:158*, 6 March 2018), in which the CJEU found that certain arbitration provisions in intra-EU BITs are incompatible with EU law (applying EU law itself to the conflict issue, rather than the Vienna Convention on the Law of Treaties), this argument has become more frequently invoked in support of jurisdictional objections. In several intra-EU cases – before as well as after *Achmea* – the European Commission (EC) has sought and been granted leave to intervene as a non-disputing party to further this argument. As far as the authors are aware, however, no investment treaty tribunal has so far declined jurisdiction on the basis of the ‘*Achmea* argument’ (see further Part III, Chapter 18 below).

17. THE PROCEEDINGS IN INVESTMENT ARBITRATIONS

Investment arbitrations are generally conducted in a manner similar to that for commercial arbitrations. What has been said about the proceedings in Part II above, therefore, largely applies also to investment arbitrations.

Although drafted primarily for commercial arbitration, the Arbitration Act and the SCC Rules have proven to provide a reliable and well-functioning framework for investment treaty arbitration. Notably, neither the Arbitration Act nor the SCC Rules contain a comprehensive set of procedural rules (see Part II, Chapter 4.1 above). Investment treaty arbitrations seated in Sweden can therefore, if required, easily be tailored to fit any particular requirements. There are, however, certain aspects regarding the proceedings in investment arbitrations which are worthy of note.

Challenges of arbitrators are more frequent in investment arbitration than in commercial arbitration. There is nothing to indicate that the test under the SCC Rules (i.e. whether there exist circumstances that give rise to ‘justifiable doubts as to the arbitrator’s impartiality or independence’) or the procedure (decision by the SCC Board) (see Part II, Chapter 3.5 above) would not be suitable for investment arbitrations. As a comparison, it can be mentioned that under the ICSID Convention, a challenge is to be decided by the co-arbitrators and the threshold for disqualifying arbitrators (‘manifest lack of the qualities required’) is higher. Concerns have been raised by some commentators that it may be too difficult to pursue a successful challenge of an arbitrator under the ICSID Convention because of the exacting standard required for a challenge and because the other tribunal members may be reluctant to disqualify a co-arbitrator.

Objections to the jurisdiction of an arbitral tribunal are also more frequent in investment treaty arbitrations than in commercial arbitrations. This is not surprising given the relative complexity of arbitration clauses in investment treaties compared to standard arbitration clauses in commercial contracts (see further Part III, Chapter 18 below).

Consequently, bifurcation of the proceedings to resolve jurisdictional objections separately before proceeding to the merits of the case is chosen

more frequently by arbitral tribunals in investment arbitrations than arbitral tribunals in commercial cases (see Part II, Chapter 4.10.3 above).

Different forms of interim relief, in particular to preserve and/or ensure fair access to evidence, may play an important role in investment arbitration. The rules concerning interim relief, including the Emergency Rules described above in Part II, Chapter 4.8.3, are, therefore, of relevance also for investment arbitrations. The Emergency Rules have been applied in a handful of investment arbitrations thus far. By way of example, in *Puma Energy Holdings SARL v. the Republic of Benin* (SCC, EA 2017/092, 8 June 2017), the sole arbitrator appointed under the Emergency Rules found that the claimant had established a prima facie case on the merits for denial of justice and directed Benin to prevent the enforcement of a US\$15 million domestic judgment against a local subsidiary of the claimant. Notably, the Emergency Rules have also been applied in a contract based arbitration involving a state-party, viz. *OAO Gazprom v. Ministry of Energy of the Republic of Lithuania* (SCC, V(125/2011), 31 July 2012). In that case, Gazprom unsuccessfully sought an order (by means of the SCC's emergency arbitrator procedure) to stay court proceedings, which in Gazprom's view had been brought in violation of an arbitration agreement between the parties.

Investment arbitrations generally take longer time than commercial arbitrations. Arbitrations under the SCC Rules takes on average 10 months from referral of the case to the arbitrators until rendering of the award (see Part II, Chapter 6.1 above). By comparison, investment arbitrations administered by the SCC take on average 36 months in cases decided by three-member tribunals and 13 months in cases decided by a sole arbitrator.

18. CHALLENGE OF INVESTMENT TREATY AWARDS

In investment arbitration, just as in commercial arbitration between two private parties, the final award of the arbitral tribunal is not always the end of the matter. It is not uncommon that the final award is merely the starting signal for challenge and/or enforcement proceedings that may take as long as, or even longer than, the arbitral proceedings leading up to the final award. Challenge proceedings have been relatively common

in investor-state arbitrations and have increased in the wake of the CJEU's *Achmea* ruling (see Chapter 16 above) on intra-EU BITs.

In non-ICSID Convention investment arbitrations seated in Sweden, be it under the SCC, the UNCITRAL or the ICSID Additional Facility rules, the arbitral procedure is ultimately subject to the law at the seat of the arbitration. This means that in all such investment arbitrations, the normal way to challenge an investment treaty award is through the Swedish courts. To date, around ten challenge proceedings concerning investment treaty awards issued in Sweden have been initiated before Swedish courts.

The rules and procedure for challenges under the Arbitration Act have been described in Part II, Chapter 8, above. The following paragraphs will, therefore, only address certain issues that relate specifically to challenges of investment treaty awards.

The most frequently invoked ground in actions to set aside investment treaty awards before the Swedish courts is *lack of jurisdiction*. The same applies to challenges to investment treaty awards issued in other jurisdictions. This is not surprising given the relative complexity of arbitration clauses in investment treaties compared to standard arbitration clauses in commercial contracts.

Rulings on jurisdiction in international commercial arbitration are often limited to determining whether the dispute 'arose out of or in connection with' the contract containing the arbitration clause. Arbitral tribunals in investment treaty arbitration, on the other hand, frequently rule on issues of public international law, including treaty interpretation, such as whether the claimant qualifies as an 'investor' as defined in the treaty, whether the claimant has made an 'investment' as defined in the treaty, and whether the dispute is covered by the dispute resolution clause of the treaty. Ruling conclusively on these issues often requires the arbitral tribunal to determine complex issues of fact and law. In addition, such issues are often closely connected to the merits of the case.

As noted above, in recent years respondent states in intra-EU cases have regularly raised objections to the jurisdiction of arbitral tribunals based on EU law. More precisely, in several cases respondent states have argued that dispute resolution clauses in intra-EU BITs are invalid or inoperative due to incompatibility with the EU Treaties (in particular Articles 267 and 344 of the Treaty on the Functioning of the European

Union (TFEU)). Arbitral tribunals in intra-EU treaty cases have so far consistently rejected such jurisdictional objections.

The question of whether certain dispute resolution clauses in intra-EU BITs are incompatible with EU law was addressed in the CJEU's ruling in *Achmea* (see Chapter 16 above). The judgment was prompted by a request from the German *Bundesgerichtshof* for a preliminary ruling in a challenge proceeding concerning an arbitral award rendered in a dispute under the Slovakia-Netherlands BIT. The CJEU concluded that dispute settlement clauses such as that in the Slovakia-Netherlands BIT are incompatible (as a matter of EU law) with Articles 267 and 344 TFEU. A key consideration was the fact that, while commercial arbitration originates from the joint intention of the parties to the arbitration agreement themselves, investment arbitration derives from a mechanism established in treaties between member states, which systematically defers disputes away from the jurisdiction of the courts of the EU member states and, as a result, the jurisdiction of the CJEU.

Although there has been intense debate over the implications of the *Achmea* ruling, only a few decisions have been rendered by courts and arbitral tribunals since the judgment was handed down in March 2018. As noted above, and as far as the authors are aware, no tribunal has so far declined jurisdiction with reference to *Achmea*. As for courts within the EU, it is noteworthy that, following the CJEU's ruling, the *Bundesgerichtshof* set aside the arbitral award rendered in the *Achmea v. Slovakia* arbitration.

In the first *Achmea*-related judgment handed down by a Swedish court, however, the Svea Court of Appeal upheld an arbitral award rendered in an intra-EU treaty arbitration (*The Republic of Poland v. PL Holding S.á.r.l.*, see Chapter 8.3.8 above). The Court of Appeal found that neither EU law in general nor the *Achmea* ruling in particular can be interpreted to mean that arbitration between EU member states and EU investors are prohibited as such, or that EU member states and EU investors are prevented from entering into arbitration agreements. The Court of Appeal ultimately concluded that Poland had failed to raise a timely objection under the applicable arbitration rules (SCC) and the Arbitration Act, and that it was therefore precluded from challenging the award with reference to the alleged invalidity of the arbitration agreement. In its judgment, the Court of Appeal referred to the EU law principle of national procedural autonomy, pursuant to which courts of the EU member states are to apply

national procedural rules when assessing the implications of EU law. The Court of Appeal's judgment has been appealed to the Swedish Supreme Court.

19. ENFORCEMENT OF INVESTMENT ARBITRATION AWARDS

Sweden is a signatory to the New York Convention and the ICSID Convention. Consequently, as a matter of principle, both ICSID awards and non-ICSID awards are enforceable in Sweden. Similarly, investment arbitration awards resulting from investment arbitration with its seat in Sweden are enforceable in countries that have ratified the New York Convention. ICSID awards are enforced pursuant to the special enforcement regime of the ICSID Convention in countries that have ratified it.

Article 54 of the ICSID Convention governs the enforcement of ICSID awards. Article 54 provides that ICSID awards are to be recognised as binding and that pecuniary obligations therein are to be enforced. The competent court or other authority charged with applications for recognition and enforcement is not entitled to review an ICSID award in any respect (including on grounds of *ordre public*). Enforcement of investment treaty awards under the ICSID Convention is, therefore, often deemed to offer advantages compared to enforcement under the New York Convention. An application to enforce an ICSID award in Sweden shall be submitted to the Swedish Ministry of Foreign Affairs, which will forward the application to the Swedish Enforcement Authority for processing.

As regards enforcement in Sweden of non-ICSID awards, the provisions regulating recognition and enforcement of foreign awards are found in sections 52–60 of the Arbitration Act (see Part II, Chapter 9 above). Non-ICSID awards in arbitrations seated in Sweden will, for the purposes of enforcement in Sweden, be treated as domestic Swedish awards. This means that such awards are immediately enforceable in Sweden through a simple application to the Enforcement Authority.

Even before *Achmea* (see Chapter 16 and 18 above), the enforcement of investment treaty awards, whether ICSID or non-ICSID awards, has proved to be far more difficult than enforcement of arbitral awards made

in regular commercial disputes involving private parties. This is due to the participation of a sovereign state as the respondent party, which raises issues relating to sovereign immunity. Sweden has adopted the restrictive approach on state immunity and has ratified the UN Convention on Jurisdictional Immunities of States and Their Properties on 23 December 2009 (the Immunities Convention). The Immunities Convention has yet to come into force due to an insufficient number of ratifications. Sweden's ratification of the Convention is, nevertheless, a confirmation of Sweden's adherence to the principle of restrictive immunity.

Sweden's adherence to the doctrine of restrictive state immunity has also been confirmed in court practice. On 1 July 2011, the Swedish Supreme Court rendered a decision relating to one of the enforcement proceedings initiated by the claimant in the *Sedelmayer* case (*The Russian Federation v. Franz J. Sedelmayer; the Swedish Supreme Court*, Ö 170-10, 1 July 2011). The question before the Supreme Court was whether certain real estate and rental income from offices and apartments located in the building in question, which was owned by the Russian Trade Delegation in Stockholm, were protected from enforcement due to immunity from execution.

In its decision, the Supreme Court first noted that an increasingly restrictive approach had evolved towards the principle of state immunity. The Court confirmed that, with respect to immunity from suit, the state's immunity only extended to sovereign acts and did not extend to commercial acts. With respect to immunity from execution, on the other hand, the Court noted that subjecting a state's property to execution has been viewed as a greater intrusion on a state's sovereignty than subjecting a state to the jurisdiction of foreign courts. That being said, relying on the Immunities Convention as an expression of the standard currently accepted by many states, the Court found that enforcement may be granted even in the absence of any waiver of immunity against enforcement and execution, at least with respect to property not used for governmental non-commercial purposes.

With respect to the question of what should be considered 'property used for governmental non-commercial purposes', the Court found that this generally covers property used for a state's sovereign or official functions. The assessment must be carried out on a case-by-case basis with reference to the actual use of the property. The building in the case in question had forty-eight apartments. Diplomatic staff used fifteen of

these apartments, but the remaining apartments were used for other non-official purposes. The Court concluded that the property was not, to a substantial extent, used for the official purposes of the Russian Federation. The Supreme Court further held that the nature of the use had otherwise not been of such specific nature as to grant the property immunity from enforcement. The enforcement application was therefore granted.

It remains to be seen how Swedish authorities and courts will deal with the enforcement of intra-EU treaty awards following the CJEU's ruling in the *Achmea* case (see further Chapters 16 and 18 above). Notably, the application to enforce the arbitral award rendered in the ICSID case *Ioan Micula et al. v. Romania* (ICSID Case No. ARB/05/20, *Final Award*, 11 December 2013) (which, in addition to *Achmea*, involves issues concerning (alleged) illegal state aid under EU law) is currently pending before the Svea Court of Appeal. As far as the authors are aware, only one investment treaty award issued in a non-ICSID arbitration seated in Sweden has previously given rise to enforcement proceedings, *viz.*, the award rendered in the above-mentioned *Sedelmayer* case.

20. FURTHER READING ABOUT INVESTMENT ARBITRATION IN SWEDEN

Eliasson, N., *Stockholm as a Forum for Investment Arbitration*. In: Franke, U., Magnusson, A., Ragnwaldh, J. & Wallin, M. (eds.), *International Arbitration in Sweden: A Practitioner's Guide* (Wolters Kluwer, 2013)

Salinas Quero, C.E., *Investor-state disputes at the SCC* (SCC report available at <https://sccinstitute.com/about-the-scc/news/2017/new-report-on-investment-arbitration-at-the-scc/>, 2017)

IV. Swedish Contract Law

21. INTRODUCTION

Scandinavian law, meaning the legal systems in the Nordic countries (Sweden, Denmark, Norway, Finland and Iceland), is often described as a unity and a separate legal family which possesses features both from civil and common law traditions. However, although it indeed includes common law features, it is important to emphasize that the connection to civil law is much closer. The close connection to the civil law tradition is particularly evident when examining Scandinavian contract law.

The uniform approach in the Scandinavian countries to several areas of law is aided by the similarity of the Scandinavian languages, which facilitates the understanding and persuasive authority of legislative material and court decisions throughout the region. There has also been close legislative cooperation between the Scandinavian countries, amongst other in the field of contract law.

Before addressing the key features of Swedish contract law, it is important to note that Sweden, being a neutral and export-dependent country, has traditionally been a strong proponent of international cooperation and free trade. Thus, Sweden has ratified and implemented a large number of international conventions and treaties, a factor which also influences Swedish contract law. In addition, being a member of the EU, a substantial part of Swedish legislation derives either directly or indirectly from European regulations and directives.

22. LEGAL SOURCES

As stated above, Swedish contract law is predominantly comprised of features deriving from the civil law tradition. However, it differs from Con-

tinental European legal systems in certain ways. One such difference is that there is no unified code for contractual rights and obligations. Instead, provisions relating to contract law may be found in a number of different statutes. First among these is the Contracts Act (see Chapter 25.1 below). An English translation of the Contracts Act is set forth in Appendix 4 to this guide. However, the Contracts Act does not exhaustively regulate Swedish contract law. Other statutes that are relevant as sources of Swedish contract law include the International Sale of Goods Act (incorporating the CISG into Swedish law), the Sale of Goods Act (largely based on CISG, although with some significant differences), the Commission Agency Act and the Commercial Agency Act.

Swedish law derives its content from primarily four sources. These are (i) statutes; (ii) preparatory works (government bills and white papers); (iii) court decisions; and (iv) legal literature. In particular, the significance of legislative preparatory works as a source of law sets Sweden apart from many other jurisdictions. Swedish courts will often seek to establish the legislator's 'intention' behind a statute, and the preparatory works, which in many instances are detailed and well-reasoned, may provide useful guidance in this respect. Legal literature is also recognised as a potential source of law in Sweden. Consequently, in the absence of clear guidance from other sources a well-reasoned opinion of a distinguished scholar may sometimes serve as a basis for the solution of a legal problem. Recent rulings of the Swedish Supreme Court also indicate that the provisions of the Draft Frame of Common Reference (DFCR), the Unidroit Principles of International Commercial Contracts (UNIDROIT) and the Principles of European Contract Law (PECL) may be regarded as a source of Swedish law by virtue of reflecting general principles also applicable to Swedish contract law.

23. FUNDAMENTAL PRINCIPLES OF SWEDISH CONTRACT LAW

Although Swedish contract law is formed by various sources, the fundamental principles on which it is ultimately based are:

- Party autonomy; and
- *Pacta sunt servanda* (i.e. promises should be kept).

The solution to legal problems in contractual relationships will thus either entail a strict application of one or both of these principles or, under certain circumstances, allow for particular exemptions to be made. As will be elaborated further below, a common feature of instances where the legislature has intervened and not allowed full party autonomy is that such regulation is required in order to safeguard the rights of an otherwise weaker party.

Another key element of Swedish contract law is the overall lack of formal requirements. In essence, it is only in very specific cases (the purchase of real estate being the primary example) that a written document containing specific information is required in order for a contract to be binding. In the overwhelming majority of cases, there are no requirements of written form or otherwise. As a consequence, Sweden has no requirement of notarisation as in many other civil law countries. Although the function of *notarius publicus* exists, it is mostly used when non-Swedish parties so require.

From a practical point of view, written agreements nevertheless represent the standard in commercial activity. Even if oral agreements theoretically enjoy the same legal protection as written agreements, it is often of vital importance (not least for evidentiary purposes) to agree on terms and conditions in writing.

24. CONTRACTUAL CAPACITY

All legal or natural persons have capacity under Swedish law to acquire rights and incur obligations under a contract. However, Swedish law makes a distinction between the capacity to acquire such rights and incur obligations, on the one hand, and the ability to act in order to enter into a contract, on the other. For example, although a natural person always has capacity under Swedish law, as a rule he or she must be of age (18 years) to be entitled to enter into agreements with binding effect. As a further example, a natural person who has been declared bankrupt still has the capacity to own things, but may not enter into agreements concerning his or her possessions.

Rules on contractual capacity are, of course, also extremely important in a commercial context. Thus, statutes and principles applicable to

Swedish legal entities lay down rules as to how they may be bound to a contract. Irrespective of legal background, it is likely that Swedish law on contractual capacity will not be surprising to a non-Swedish observer. By way of example, the main rule under Swedish company law provides that the board of directors of a limited liability company has the capacity to bind the company to a contract. The board of directors can also grant other natural persons the power to act on behalf of the company. Another basic rule derived from Swedish company law is that a CEO or managing director has the right to represent the company in its day-to-day business, which may include entering into agreements to assume contractual rights and obligations. The delineation between a company's day-to-day business and actions requiring the board's approval must be decided on a case-by-case basis. Swedish courts tend to resolve such matters in a commercially sensible manner. Under certain circumstances, a contracting party, having relied in 'good faith' on the capacity of a company's representative, may be entitled to the benefit of a contract even if the contracting party was not formally correctly represented.

25. FORMATION OF CONTRACTS

25.1 THE CONTRACTS ACT – THE MODEL OF 'OFFER AND ACCEPTANCE'

The Swedish Contracts Act originates from 1915 and is comprised of four chapters:

- (i) Formation of contract;
- (ii) Agency;
- (iii) The invalidity of certain legal acts; and
- (iv) General Provisions.

Although the Contracts Act does not represent the totality of Swedish contract law, it still contains a number of important provisions and principles that have real practical implications for contracts governed by Swedish law.

The first part of the Contracts Act, in particular sections 2–9, set out the circumstances by which an agreement is formed under the model of

‘offer and acceptance’. In essence, the ‘offer and acceptance’ model provides that an offer, which is not explicitly limited to a certain time or by other prerequisites, is binding for the party making the offer should it be accepted by the counterparty and this acceptance is communicated in a timely manner. The offering party is thus unilaterally bound by its offer for a certain time and, if the offer is accepted within that time, a binding contract has been concluded. Although constituting the default rule under Swedish contract law, this model is only one of several ways to conclude a binding agreement. In Chapters 25.2–25.6 below, further ways of entering into a contract under Swedish law will be described.

The first chapter of the Contracts Act also addresses how certain problems that may occur in an ‘offer-acceptance’ situation are to be resolved. If, for example, the acceptance entails modifications or added requirements to the offer, it is not considered as an acceptance. Instead it will be classified as a new offer, which the original offeror can accept or reject. Another situation regulated in the Contracts Act deals with timing issues. The offer will have to be accepted within a certain, reasonable time in order to bind the offeror. In today’s modern society, where communication is becoming increasingly fast, the reasonable time frame for accepting an offer can be quite short. If the acceptance is untimely, it may be treated as a new offer, which the original offeror can accept or reject.

25.2 FORMATION OF CONTRACTS BEYOND THE CONTRACTS ACT

The ‘offer and acceptance’ model described above is not mandatory law and, over time, has become less relevant. Instead, party autonomy and the parties’ true intentions, which are other cornerstones of Swedish contract law, will most often be key in establishing whether a binding agreement has been concluded.

In essence, if it is possible to establish that the true intention of two or more parties at a particular time was to enter into an agreement on specific terms and conditions, then an agreement has been formed. As the parties may freely decide that an agreement may be concluded in a manner that differs from the ‘offer and acceptance’ model, such an agreement is consequently valid under Swedish law. For example, if the parties have agreed (explicitly, impliedly or otherwise) to negotiate without being bound by their offers until a final and signed contract has been concluded, that agreement will be respected. As a consequence of the principle of

party autonomy, a number of other mechanisms for entering into contracts under Swedish law have emerged.

The challenge for a party claiming that a contract has been established is proving the assertion. As a general rule, the party claiming that a contract has been concluded bears the burden of proving that the parties' joint intention, at a particular time, was to enter into an agreement. As most commercial contracts of any significance are made in writing, that burden of proof may be difficult to satisfy in the absence of written evidence.

25.3 IMPLIED CONTRACTS

It is well-established under Swedish contract law that party conduct can result in the conclusion of a binding agreement and/or in modifications to an existing agreement. If, for example, one party has manufactured goods for the benefit of another party, delivered the goods and perhaps even received part payment from the other party, it will be difficult for the other party to claim that no agreement has been concluded between them. The specific terms and conditions of the agreement may, of course, be difficult to establish, but there is little doubt that some kind of binding contract has been formed between the parties through their conduct.

The concept that a contract can be established through conduct is not set forth in the Contracts Act or any other Swedish statute. Instead, it is a good example of a general principle of Swedish contract law developed by the courts through their case law. It is also a good example of the importance afforded to party autonomy under Swedish contract law. As no formal requirements need generally to be met, the parties' true intentions at a specific time (if and to the extent those intentions can be proven), will be decisive in determining whether an agreement has been concluded and, if so, on what terms.

To summarise, a binding agreement may be concluded if the parties acted in such a manner that it can be established that their joint intention and understanding was to enter into a contractual relationship. In other words, when there is a 'meeting of minds' between the parties with respect to the existence of rights and obligations, there is an agreement. As previously mentioned, the party claiming that a contract has been reached at a certain point bears the burden of proving such assertion.

25.4 PASSIVITY

As a general rule, and also by applying the classic ‘offer and acceptance’ model, a contract will not be established through of a party’s mere passivity. Again, with party autonomy and the true intention of the parties being amongst the most important factors of Swedish contract law, conduct which is deliberate and active will generally be required in order to enter into an agreement.

Under certain circumstances, however, a party may be under an obligation to act, in order to avoid becoming bound by an agreement. By way of example, section 4 of the Contracts Act provides:

‘An offeree’s acceptance which is belatedly received by the offeror shall be deemed to constitute a new offer.

The aforementioned shall not, however, apply where the offeree assumes that it has been received in due time and this fact must have been realised by the offeror. *In such circumstances the offeror shall, should he wish to repudiate the acceptance, so inform the offeree without unreasonable delay. Should he fail to do so, a contract shall be deemed to have been concluded through acceptance.*’ (emphasis added)

The case law of the Supreme Court also addresses the question of when passivity can result in the formation of an agreement. In some instances, passivity together with other circumstances such as previous conduct has been viewed as sufficient for the conclusion of a binding agreement. Even in cases where passivity may not be sufficient to establish the existence of a binding agreement, depending on the circumstances it may result in the burden of proof being shifted to the detriment of the passive party.

To summarise, although there are examples in Swedish case law of a party being deemed to have entered into a binding agreement due to its passivity, this requires the existence of special circumstances and must be regarded as an exception to the main rule. It is thus not possible under Swedish contract law to bind a party to an agreement simply by sending a message stating that an agreement will be considered to have been concluded unless the receiving party actively objects by a particular date.

25.5 TRADE AND PARTY USAGE

Trade and party usage are recognised as relevant under Swedish contract law. Parties usually cite trade and/or party usage in order to support a par-

ticular interpretation of an existing agreement (see Chapter 27.2.2 below). However, if it can be shown that, for example, within a certain business sector agreements are reached in a specific way, such usage may also influence the assessment of whether or not a contract has been concluded in the first place.

25.6 SUMMARY ON FORMATION OF CONTRACTS

Under Swedish contract law all circumstances related to a specific situation may be considered in order to establish whether or not a contract has been formed. The lack of formal requirements, the principle of freedom of contract and the weight given to party intention are cornerstones when assessing whether or not an agreement has been concluded. If actual party intention can be proven, such intention will normally be decisive, making it very difficult to circumvent an agreement on formalistic grounds.

26. PRE-CONTRACTUAL OBLIGATIONS

26.1 GENERAL LIABILITY AT THE PRE-CONTRACTUAL STAGE

In principle, a party may enter into and end negotiations freely and at any time it chooses. As a general rule, damages for pure economic loss (i.e. a loss not occasioned by personal injury or damage to property) are also only available in contractual relations (unless caused by a criminal act). Thus, damages covering pure economic loss will not be awarded in tort or other non-contractual situations. Accordingly, as a rule each party must bear the financial risk of costs incurred during negotiations should the negotiations fail and no contract be concluded. However, under specific circumstances, when a party willfully or negligently deceives a counterparty at the pre-contractual stage, liability for damages may be incurred under Swedish law.

The concepts of *culpa in contrahendo* and/or *dolus in contrahendo* (negligent or wilful misconduct during negotiations) are not addressed in any Swedish statutes. Instead, these principles have been established through Supreme Court precedent.

Legal scholars have described the situation under Swedish law as being supportive of the possibility that a party can be held liable in damages due to negotiations carried out in bad faith. A claimant, however, does not

only have to prove the action taken in bad faith by the counterparty. Swedish tort law also requires that the claimant prove the loss resulting from such actions. Any damages will further be limited to the so called ‘negative interest’, i.e. the cost, loss and expense which could have been avoided but for the bad faith behaviour. They will not cover the potential profit that could have been derived from the contract had it been concluded in good faith. In practice, this will usually limit the scope of damages to the costs of continuing negotiations beyond the point where the party acting in bad faith had no genuine intention to actually enter into a contract.

26.2 LETTERS OF INTENT AND SIMILAR PRE-CONTRACTUAL DOCUMENTS

There is no specific statutory regulation of letters of intent and other pre-contractual documents under Swedish law. The legal consequences (if any) of such documents will depend entirely on their actual content and surrounding circumstances. If a letter of intent includes specific rights and obligations, which may be breached and result in losses for the other party, such rights and obligations may be deemed to constitute binding elements (i.e. contractual rights and obligations). Consequently, a party breaching any such binding element of a letter of intent may be held liable for the resulting loss, as if it were a ‘normal’ breach of contract. The Supreme Court has indicated that this should be the main rule even in cases involving letters of intent concerning types of contract which, by law, must be concluded in writing (e.g. purchase of real estate; see *The estate of P.A. v. Aktiebolaget Byggtredare S.J. AB*; the Swedish Supreme Court, *NJA 2012 p. 1095, 21 December 2012*).

If, on the other hand, the letter of intent does not include any specific binding rights and obligations and thus cannot be considered (in any part) as a binding contract, it will be of no value other than, perhaps, as evidence of the parties’ intentions at a certain point in time. It is also conceivable that such a letter of intent may be of some value in determining whether or not a party has acted in bad faith during the course of negotiations (see Chapter 26.1 above).

27. INTERPRETATION OF CONTRACTS

27.1 COMMON INTENTION OF THE PARTIES

The starting point for the interpretation of a contract under Swedish law is to seek the common intention of the parties at the time the contract was made. However, in practice, and particularly in commercial contracts, the burden of proof lies heavily on a party claiming that the wording of a contract does not reflect the true intention of the parties, particularly when that wording is unambiguous. A position which is clearly at odds with the wording of the contract will thus rarely be successful, unless very substantial evidence is presented.

27.2 OTHER FEATURES OF CONTRACT INTERPRETATION

Once a dispute has arisen, it will often be challenging from a practical point of view to determine the subjective, common intention of the contracting parties. Consequently, Swedish contract law includes a number of methods and principles aimed at establishing the meaning of a contract from an objective perspective. Notably, such methods and principles have not been codified in statute (other than ratification through CISG, which may be referred to analogously in situations where CISG is not formally applicable). Instead, case law and legal literature have played a crucial role in the development of the law in this area. The methods and principles, which have thus emerged over the past decades, largely reflect the views of the international legal community as set out in, for example, UNIDROIT, DCFR and PECL.

27.2.1 THE WORDING OF THE AGREEMENT

As described above, the wording of a contract will be regarded as the primary evidence of the intention of the parties and a court will only disregard the clear wording of a contract if a party can offer very substantial evidence of a different intention. In a recent case from the Swedish Supreme Court, it was once again established that the wording as it may be understood ‘in the context of a normal use of language’ is the starting point for every contract interpretation.

27.2.2 WHEN THE WORDING IS INSUFFICIENT

When the wording as such proves insufficient to determine the content of an agreement, it must be supplemented by an overall, objective assessment. In making that assessment, the Supreme Court has established a number of factors to be taken into account, including (without any order of priority):

- a) The nature, structure and overall purpose of the contract in question and, in particular, the specific clause(s) to which the dispute relates;
- b) the parties' negotiations for the conclusion of the contract. If the wording of the contract is unclear, what transpired during the negotiations may be relevant to consider as a means of interpretation;
- c) the parties' actual conduct subsequent to the conclusion of the contract. Such conduct may indicate what the parties intended by certain wording;
- d) practices which the parties may have established between themselves in prior contractual dealings;
- e) trade usages (to the extent any such sufficiently established usages exist and can be proven); and
- f) reasonableness (common business sense).

Although none of the above factors have any intrinsic priority over the others (except for the wording of a contract), the particular circumstances of the case and the available evidence may dictate that certain factors be given greater weight than others.

27.2.3 INCORPORATION OF STANDARD TERMS OR SUPPLEMENTARY DOCUMENTS

It is not unusual for a contract to refer to standard terms or various types of supplementary documents. Swedish contract law has a fairly liberal view on incorporating standard terms or supplementary documents into a contract. As a rule, it is generally deemed sufficient to attach the documents to the contract, or to distinctly refer to them and make sure that the other party has reasonable access to the documents.

28. INVALIDITY OF CONTRACTS

In the third part of the Contracts Act, certain principles are established under which an otherwise binding agreement or other legal act can be altered or declared void.

28.1 RULES ON INVALIDITY OF CONTRACTS

Sections 28–33 of the Contracts Act addresses circumstances under which a contract may be deemed invalid.

28.1.1 SECTIONS 28 TO 31 – DURESS, FRAUD, DECEPTION AND USURY

Sections 28 and 29 of the Contracts Act describe circumstances under which a person performing a legal act (such as entering into a contract) under duress, will not be bound by that act.

Section 30 of the Contracts Act addresses legal acts and their invalidity if the actions taken have been induced by fraud or otherwise through deception. In essence, section 30 provides that a party who acts in bad faith in relation to an agreement entered into as the result of fraud or deception will not be able to rely on and enforce that agreement.

Section 31 of the Contracts Act constitutes a general provision against usury and is an example of how Swedish legislation tries to protect a weak party from being exploited. The clause is often invoked in cases where a lender has demanded excessive rates of interest on a loan.

28.1.2 SECTION 33 – ‘HONOUR AND GOOD FAITH’

Section 33 of the Contracts Act is a broadly worded provision, which has not been much used by the Swedish Supreme Court in modern times. If translated literally, it deals with the situation where the enforcement of an agreement, which would otherwise be binding, would go against ‘honour and good faith’ (Sw: *tro och heder*, based on the German law principle of *Treu und Glauben*). Section 33 aims to cover situations where other, more narrow rules, such as sections 28 through 31 of the Contracts Act, cannot be applied, but where it would nevertheless ‘be inequitable to enforce the legal act’. It is not uncommon that this clause is cited by respondents

arguing to avoid an otherwise binding agreement; however, only rarely with any success.

28.2 THE GENERAL CLAUSE – SECTION 36 OF THE CONTRACTS ACT

Section 36 of the Contracts Act provides for the modification or setting aside of one or more individual terms in a contract if such term(s) are unconscionable considering the content of the contract, any relevant circumstances at the time the contract was entered into or arising thereafter. If the whole contract can be considered ‘unconscionable’, it may be set aside in its entirety under section 36.

From a theoretical perspective, section 36 of the Contracts Act may be given very broad application and parties cannot agree to exclude it. It is, therefore, not uncommon for it to be argued by parties who wish to modify or set aside parts of an otherwise binding contract. However, as it is primarily aimed at consumer protection and other relations in which one party is inherently weaker than the other, it has rarely been applied to commercial contracts. In practice, the scope for applying section 36 of the Contracts Act is thus relatively limited and, in the majority of commercial cases, it has been rejected in favour of the principle *pacta sunt servanda*.

29. TERMINATION OF CONTRACTS

A contract may be terminated either for cause or without cause. Swedish contract law, being founded on party autonomy, will generally uphold clauses providing for the termination of a contract at a certain time or under certain circumstances. If the contract is silent in this respect, the following will generally apply.

All contracts may be terminated for cause by a party if the other party commits a material breach of the contract. What may be considered ‘material’ in terms of a breach will have to be determined on a case-by-case basis. A breach of a party’s primary obligations under a contract, such as the obligation of a buyer to pay for goods or a service, will usually be considered material.

Unless otherwise agreed between the parties, open-ended contracts may be terminated without cause upon either party giving the other party reasonable, advance notice. By contrast, contracts concluded for a specific term, or for a specific transaction (such as a share purchase agreement or other one-off sale of goods), may only be terminated for cause, unless otherwise agreed between the parties.

As an exception to the principle of party autonomy, the termination of certain types of contracts is covered by mandatory law. Such statutes have usually been adopted to protect an otherwise weaker party. Two examples of such statutes are the Commercial Agency Act and the Commission Agency Act. The termination of agency agreements takes into consideration, amongst other, the duration of the relationship between the parties. It thereby resembles mandatory regulations otherwise found in, for example, employment law.

A termination that is unlawful will usually be considered as a material breach of contract and may, in turn, entitle the other party to terminate the contract for cause and/or to claim damages. However, this right has to be exercised within a reasonable time (see *Falköpings Mejeri v. Anders Fagersson and Bernt Fagersson; the Swedish Supreme Court, NJA 2017 p. 203, 29 December 2017*).

30. CONSEQUENCES OF BREACH OF CONTRACT

In line with the fundamental principle of *pacta sunt servanda*, Swedish contract law provides that parties are required to act in accordance with agreements made. If a party does not, it will find itself in breach of contract. Remedies for breach of contract are provided for in, among other statutes, the Sale of Goods Act. Although that act is only directly applicable to the sale of tangible goods, it is recognised as being reflective of general principles of Swedish contract law and may thus, at least in part, be applied by analogy also to other types of contracts.

A party wishing to hold the other party liable for breach of contract must generally notify the breaching party. Such notice should be provided within a reasonable time from when the non-breaching party became aware, or ought to have become aware, of the breach (see *Stiftelsen Skogssällskapet v. Våge Svensson; the Swedish Supreme Court, NJA 2017*

p. 1195, 29 December 2017). Absent timely notice, the non-breaching party may be precluded from relying on the breach.

Many contracts contain clauses that lay down the consequences of a breach of contract. By virtue of the principle of party autonomy, Swedish contract law gives parties considerable leeway to limit, or in some cases add to, the consequences of breach of contract. Clauses of this character will be discussed in Chapter 30.3 below.

30.1 SPECIFIC PERFORMANCE AND PRICE REDUCTION

The primary remedy for contractual breach under the Sale of Goods Act is specific performance. This remedy is of, course, only useful if it is practically possible for the breaching party to perform. If, for example, defective goods are delivered to a buyer, the seller may be required to provide a remedy by replacing or repairing the goods in question.

In addition to being the primary remedy for the non-breaching party, specific performance also applies for the benefit of the breaching party. Thus, if practically possible, the party in breach should be given an opportunity to remedy its breach. If such a remedy is provided without delay, the non-breaching party will not be entitled to certain other remedies such as termination of the contract.

However, if the breaching party does not or cannot remedy its breach without undue delay, termination of the agreement becomes a possible action, provided that the breach can be classified as material.

As an alternative to termination, the non-breaching party may be entitled to a price reduction corresponding to the difference in value of the goods with and without the defect. That difference is then to be subtracted from the price agreed for the goods. This remedy is often used when termination is not a viable option.

In addition to any other remedy available, the non-breaching party may also claim damages for costs, losses and expenses incurred as a result of the breach. Damages are available irrespective of whether the contract has been terminated.

30.2 DAMAGES FOR BREACH OF CONTRACT

As a general rule, Swedish contract law provides that a breaching party is obligated to compensate the non-breaching party for the ‘positive contractual interest’. This means that compensation should be paid so as to

put the non-breaching party in the same economic position as it would have found itself had it not been for the breach, i.e. as if the contract had instead been duly performed. The positive contractual interest may include both direct and indirect losses, such as loss of profit. The amount of damages is usually established by comparing two economic scenarios: on the one hand, a hypothetical scenario where no breach is committed and the economic result of that scenario and, on the other hand, the actual scenario including the breach and its actual economic result.

In addition, there must be an established causal link between the breach of contract and the loss, cost or expense for which damages are sought. The damage incurred also needs to be a reasonably foreseeable consequence of the breach, i.e. it cannot be too remote.

The burden of proving the breach, the damage and the causal relationship between the two falls on the party claiming damages.

Swedish law generally provides for damages to be compensatory only. Except for certain, specific areas of law (such as employment law), where legislation exists providing otherwise, there will thus be no room for punitive or exemplary damages. Unless otherwise agreed, the non-breaching party should also not be compensated so as to end up in a better situation than if the breach had not occurred (*compensatio lucri cum damno*). Finally, the non-breaching party is under a duty to mitigate its costs and losses due to the breach. To fulfil this duty, the non-breaching party should generally take such measures that could reasonably be expected in the circumstances.

Where it is difficult to calculate and prove the extent of a loss incurred (e.g. with regard to a future loss depending on several uncertain circumstances), a party may in certain circumstances request that the tribunal assess the amount of damages. This is commonly done with reference, by analogy, to Chapter 35, section 5 of the Swedish Code of Judicial Procedure. It should be noted that the application of this rule, effectively easing the claimant's burden of proof, is dependent on the claimant first having taken reasonable measures to calculate and prove the loss, but found itself unable to do so (in whole or part). It is not to be used simply for the convenience of the claimant.

30.3 CLAUSES LIMITING OR EXCLUDING LIABILITY

Clauses that limit liability for breach of contract can be divided into two main categories: clauses stipulating that certain remedies are excluded and clauses setting forth a limitation on a party's liability.

30.3.1 CLAUSES EXCLUDING REMEDIES

As mentioned above, the general principle is that parties are free to decide on the consequences of breach of contract. The parties may thus agree to exclude certain remedies which would otherwise have been available. However, a party cannot completely exclude liability for its main obligation under a contract by excluding all remedies for breach. A party may, however, limit its liability to a single remedy, such as liquidated damages in case of delayed performance.

30.3.2 CLAUSES LIMITING LIABILITY FOR DAMAGES

In addition to excluding remedies, parties to contracts governed by Swedish law have considerable freedom to limit liability for damages. Such limitations can, for example, concern the prerequisites for liability and/or caps on the quantum of the damages payable. Limitations of this kind are generally upheld, although in certain cases they may be set aside or modified under section 36 of the Contracts Act.

Until recently, the general (or at least perceived) position under Swedish law was that limitations of liability were invalid per se in situations where the breach had occurred as a result of wilful misconduct or gross negligence on the part of the breaching party. This position has been slightly modified by a recent ruling of the Supreme Court (*Dunja and Truls Råmunddal v. I Besiktning AB; the Swedish Supreme Court, NJA 2017 p. 113, 24 February 2017*). In short, the Supreme Court held that the degree of culpability of the breaching party (wilful misconduct, gross negligence, negligence, etc.) is but one of several factors that courts should consider in assessing whether a particular limitation of liability was valid or should be set aside or modified under section 36 of the Contracts Act. Courts should make an overall assessment considering all circumstances of the case, including issues such as whether the aggrieved party could have covered its loss through insurance. This means that a limitation of liability clause, which otherwise would be regarded as invalid, may potentially (depending on other circumstances) be upheld in

a case where the aggrieved party could have obtained insurance to protect itself from the consequence of the clause.

31. FURTHER READING ON SWEDISH CONTRACT LAW

Bogdan, M. (ed.), *Swedish legal system* (Norstedts juridik, 2010)

Bogdan, M., *Swedish law in the new millennium* (Norstedts juridik, 2010)

Carlson, L., *The fundamentals of Swedish law: a guide for foreign lawyers and students* (2 ed.) (Studentlitteratur, 2012)

Strömholm, S., *An introduction to Swedish Law* (Springer, 2013)

Flodgren, B. & Runesson, E.M., *Contract law in Sweden* (Kluwer Law International, 2015)

Lando, O. & Holle, M-L. et al., *Restatement of Nordic contract law* (Djøf Publishing, 2016)

Persson, A.H., *Commercial and Economic Law in Sweden* (2 ed.) (Kluwer Law International, 2016)

Bjøranger Tørum, A., *Interpretation of Commercial Contracts* (Universitetsforlaget, 2019)

Swedish commercial legislation is also often available in English on the website of the Swedish government: <https://www.government.se/legal-documents/>

V. Practicalities

32. ENTRY INTO SWEDEN

Sweden has been party to the Schengen Agreement since 2001. Citizens of the signatory countries of the Schengen Agreement do not require any visa to enter Sweden.

A list of countries or regions whose citizens must have a visa to enter Sweden can be found on the Swedish Government website at: <https://www.government.se/government-policy/migration-and-asylum/list-of-foreign-citizens-who-require-visa-for-entry-into-sweden/>

Exceptions to the above list of countries requiring visas can be found on the same website, including for holders of diplomatic passports.

32.1 HOW TO APPLY FOR A VISA

Applications for visas to Sweden are made at a Swedish embassy. Relevant addresses to all Swedish embassies and consulates can be found on www.swedenabroad.com. In places where Sweden does not have an embassy, another Schengen country can represent Sweden, process an application and issue visas on Sweden's behalf.

Normally the embassy will make a decision within two weeks, but processing times at embassies and consulates vary and it may take longer. You can appeal the rejection of a visa application.

The visa is valid for a maximum stay of three months in a six-month period. The number of days depends on the duration of, and reason for, the stay in Sweden and the Schengen area.

Detailed information on visas and application forms can be found on Swedish embassy websites. The Swedish Migration Agency's website also contains detailed information on visas, work and residence permits and other matters. The website also contains application forms and information in different languages. You can access it at www.migrationsverket.se.

32.2 REQUIREMENTS FOR A BUSINESS VISA/CONFERENCE VISA

The following is required in order to obtain a visa:

- (a) application for Schengen Visa (Form 119031),
- (b) questionnaire for Visa Applicants (Form 210021),
- (c) a passport not older than 10 years, valid for three months after departure from the territory of the Schengen countries and containing at least two blank visa pages,
- (d) two passport photographs which are not more than six months old, in which you are looking straight ahead,
- (e) proof of purpose of the visit, i.e. a letter of invitation from the Swedish entity you are to visit, e.g. a Swedish company, explaining the nature and duration of the stay applied for (the Swedish company's registration certificate should also be submitted). Invitation letters are usually issued by the secretariat of the ICC or the SCC for participants in hearings (counsel and witnesses) taking place in Sweden,
- (f) evidence of occupational status,
- (g) evidence that you have sufficient funds to support yourself during your stay and for the journey home, e.g. an original recent bank statement,
- (h) a valid personal travel medical insurance, which must cover costs of at least EUR 30,000 and be valid in all Schengen countries, and
- (i) payment of the visa fee.

33. IN EMERGENCIES

33.1 EMERGENCY PHONE NUMBER

Dial 112 for emergency assistance from police, fire brigade, ambulance, etc. Emergency calls from pay phones are free of charge. The non-emergency number is 114 14.

33.2 MEDICAL TREATMENT

The general-practitioner system does not apply in Sweden. Instead, you visit the nearest hospital clinic (*akutmottagning* or *vårdcentral*). Some

hotels also maintain contact with a nearby doctor who can be summoned in case of illness. If not, hotel staff ought to be able to direct you to the nearest local emergency centre or hospital.

If you are a citizen of an EU/EEA country, you should take your passport and European Health Insurance Card (EHIC) with you or you will be charged the full cost of the treatment. With an EHIC, you will still have to pay part of the cost, which is not refundable. You will also have to pay the full cost of any dental treatment up to a fixed limit, and most of the cost above this limit. Any reductions will be made before you get your bill.

Citizens from North America and other countries from outside the EU/EEA countries must pay for the full cost of medical treatment. Make sure that you are covered by your health insurance and bring necessary documents on your trip.

34. VISITING STOCKHOLM

Stockholm is the capital of Sweden and prides itself as also being the ‘Capital of Scandinavia’. There are a number of first-class hotels and trend-setting restaurants in this beautiful city on the water. The city’s official tourist information site is: www.visitstockholm.com.

34.I TRAVEL TO AND AROUND STOCKHOLM

34.I.I AIRPORTS

Stockholm–Arlanda Airport (ARN)

Arlanda is Stockholm’s largest and busiest international airport, just 40 km (25 miles) outside of Stockholm city. Once at Arlanda, there are several methods of transportation into the city.

Arlanda Express is an eco-friendly express train that takes you from the airport directly to Stockholm’s Central Station. The train takes only 20 minutes and has wireless Internet and electrical outlets, making it suitable for business travel. It costs about SEK 300 (EUR 30) one-way.

Airport coaches (‘Flygbussarna’) are buses that also take you from the airport to the main downtown bus terminal, ‘City Terminalen’, next to the Central Station in Stockholm, in about 45 minutes. Some buses make

a few stops in the northern suburbs along the way. It costs about SEK 100 (EUR 10) one-way.

Major taxi companies operate on a fixed-price basis between Arlanda and central Stockholm. Prices at the taxi stands currently range from about SEK 400 to SEK 550. We would primarily recommend using Taxi Stockholm. If no Taxi Stockholm is available, we would recommend using Taxi Kurir or Sverigetaxi, also being large and reliable companies. Taxi pricing is not regulated, so beware of the smaller, often considerably more expensive, taxi companies. A taxi ride to the centre of Stockholm usually takes about 40 minutes, but may take longer in rush-hour.

Bromma Airport (BMA)

Bromma is a smaller airport, located inside the city about 8 km west of the city centre. It is mainly used for domestic flights, but also has flights to and from, amongst other places, Helsinki in Finland and Brussels in Belgium.

Bromma is served by Airport coaches ('Flygbussarna'), which will take you to the 'City Terminalen' bus terminal, next to the Central Station, in about 20 minutes for about SEK 85 (EUR 9). Bromma is also served by taxi companies.

Stockholm Skavsta and Stockholm Västerås

The low-cost carrier Ryan Air flies to Stockholm Skavsta (located outside the city of Nyköping, some 70 km south-west of Stockholm). Ryan Air also flies to Stockholm Västerås (located outside the city of Västerås, some 100 km west of Stockholm). These airports are both quite small and not really located within the Stockholm metropolitan area. As a result, they are more difficult to access than Arlanda and Bromma. However, they are both served by airport coaches and taxis and may be viable options for some flight connections.

34.1.2 TRANSPORTATION AROUND STOCKHOLM CITY

Taxi pricing is not regulated, so beware of the smaller, often considerably more expensive, taxi companies. For taxi travel, we primarily recommend using Taxi Stockholm or, secondarily, any of the other two companies listed below. Taxis can be hailed on the street or ordered on the following telephone numbers:

Taxi Stockholm: +46 (0)8 15 00 00
Taxi Kurir: +46 (0)8 30 00 00
Sverigetaxi: +46 (0)20 20 20 20

All taxis in Stockholm will accept credit cards.

In addition to several taxi companies, Stockholm has an extensive network of underground trains (T-bana), commuter trains and buses. Underground station entrances are marked with a blue ‘T’ on a white background.

You *cannot* purchase a ticket on board buses or trains. Tickets and travel cards are sold via agents, at the SL Center and at commuter railway stations. Some tickets can also be bought at the Metro barriers. There are also ticket machines at most Metro and commuter railway stations, as well as in a number of other locations.

For further information on transportation within the city, see: www.sl.se/en/.

34.2 HEARING VENUES

Arbitration hearings in Stockholm take place at a variety of venues. Smaller arbitrations are often conducted in the conference rooms of one of the local law firms involved. For larger proceedings, the preferred choice is the Stockholm International Hearing Centre (SIHC). SIHC did very well in the GAR Hearing Survey published in 2019 and garnered commendations for having more hearing space than almost every other European city, making Stockholm arguably ‘the most hearing-friendly city in Europe – possibly the world.’

SIHC offers modern hearing facilities at three locations in Stockholm, together containing a total of fifteen hearing rooms and twenty-two breakout rooms. The staff provide excellent service and arrange for lunch, dinner and snacks upon request. The centre will also be happy to assist with hotel reservations close to the chosen venue. For each case, a project manager is assigned who is available to assist you throughout the entire hearing process, from booking transportation to arranging the hearing room to suit the particular needs of the case, to arranging court reporting, technical assistance and interpretation services. The SIHC cooperates with the SCC, but they are not affiliated.

The contact details of the centre and of some alternative conference facilities and hotels are listed below.

34.2.1 STOCKHOLM INTERNATIONAL HEARING CENTRE
(WITH THREE VENUES BELOW)

Telephone: +46 (0)8 586 107 40

Email: info@sihc.com

<http://sihc.se/> or <http://www.7a.se/>

(a) Strandvägen
Strandvägen 7A
SE-114 56 Stockholm

(b) Odenplan
Norrtullsgatan 6
SE-113 29 Stockholm

(c) Centralen
Vasagatan 7
SE-111 20 Stockholm

34.2.2 IVA – INGENJÖRSVETENSKAPSAKADEMIEN

Grev Turegatan 16

P.O. Box 5073

SE-102 42 Stockholm

Email: konferens@iva.se

<http://www.ivakonferens.se/>

34.2.3 RADISSON COLLECTION HOTEL, STRAND STOCKHOLM

Nybrokajen 9

P.O. Box 16396

SE-103 27 Stockholm

Telephone reservations: +46 (0)2000 336 792

Telephone conference: +46 (0)8 506 640 36

Email: reservations.stockholm@radissoncollection.com or
meetings.stockholm@radissoncollection.com

<http://www.radissonblu.com/strandhotel-stockholm>

34.2.4 SHERATON HOTEL

Tegelbacken 6

P.O. Box 195

SE-101 23 Stockholm

Telephone: +46 (0)8 412 34 00
Email: groups-events.stockholm@sheraton.com
<http://www.sheratonstockholm.se/>

34.2.5 HELIOWORKS (WITH THREE OF ITS EIGHT VENUES BELOW)

Telephone: +46 (0)8 522 232 00
Email: info@helio.se
<https://helio.se/en/>

- (a) GT30 Grev Ture
Grev Turegatan 30
SE-114 38 Stockholm
- (b) Hötorget
Hightechbuilding
Sveavägen 9, floor no. 2, 17 and 18
SE-111 57 Stockholm
- (c) T-House Stureplan
Engelbrektsplan 1
SE-114 34 Stockholm

34.2.6 GRAND HÔTEL

Södra Blasieholmshamnen 8
P.O. Box 16424
SE-10327 Stockholm
Telephone: +46 (0)8 679 35 00
Email: info@grandhotel.se
<http://www.grandhotel.se>

34.3 HOTELS

34.3.1 FIVE-STAR HOTELS

Grand Hôtel

This is the benchmark for all Stockholm luxury hotels. With a fantastic view of the Royal Palace across the water, the majestic Grand Hôtel offers excellent – and pricey – rooms and conference facilities. Even if you do

not stay there, it is worthwhile dropping by for afternoon tea, or for a drink in the Cadier Bar, one of the best bars in Stockholm.

Södra Blasieholmshamnen 8
 P.O. Box 16424
 SE-10327 Stockholm
 Telephone: +46 (0)8 679 35 00
<http://www.grandhotel.se>
info@grandhotel.se

Nobis Hotel

The old offices of Mannheimer Swartling, which housed banks and residential apartments before us, now transformed into a modern luxury hotel. Very conveniently located on Norrmalmstorg (the most expensive address in the Swedish version of the board game, Monopoly) and with friendly and attentive service (but many of the rooms are fairly small). Also several bars offering excellent cocktails.

Norrmalmstorg 2-4
 P.O. Box 1616
 SE-111 86 Stockholm
 Telephone: +46 (0)8 614 10 00
<http://www.nobishotel.se>
info@nobishotel.com

Hotel Diplomat

In a beautiful Art Nouveau building on Strandvägen, this upscale and personal family-run institution offers elegant and comfortable rooms, many with views over the water in Nybroviken. Conveniently located right next to one of Stockholm International Hearing Centre's facilities.

Strandvägen 7C
 P.O. Box 14059
 SE-104 40 Stockholm
 Telephone: +46 (0)8 459 68 00
<http://www.diplomathotel.com>
info@diplomathotel.com

Lydmar Hotel

Luxury boutique hotel with a homey atmosphere situated on the waterfront with views of the Old Town and the Royal Palace. Rooms are spacious and personal with an understated elegance. The excellent hotel restaurant serves classic bistro dishes.

Södra Blasieholmshamnen 2
SE-111 48 Stockholm
Telephone: +46 (0)8-22 31 60
<https://lydmar.com/>
reservations@lydmar.com

34.3.2 FOUR-STAR HOTELS

Elite Hotel Stockholm Plaza

Birger Jarlsgatan 29
P.O. Box 7707
SE-103 95 Stockholm
Telephone: +46 (0)8 517 616 42
<http://www.elite.se/sv/hotell/stockholm/plaza>
info.stoplaza@elite.se

Scandic Hotel Anglais

Humlegårdsgatan 23
SE-102 44 Stockholm
Telephone: +46 (0)8 517 340 00
<http://scandichotels.se>
anglais@scandichotels.com

Hotel Kungsträdgården

Västra Trädgårdsgatan 11B
SE-111 53 Stockholm
Telephone: +46 (0)8 440 66 50
[https://www.hotelkungstradgarden.se/en/](https://www.hotelkungstradgarden.se/en/reservation@hotelkungstradgarden.se)
reservation@hotelkungstradgarden.se

34.4 DINING

Stockholm has a thriving restaurant scene with a focus on Nordic cuisine: clean, simple yet sophisticated creative cooking and sometimes notably novel approaches to service. Below, we have listed a few local favourites, ranging from world class Michelin-starred restaurants to genuine Swedish classics.

34.4.1 GOURMET

Frantzén

This celebrated three-star Michelin establishment serves modern haute cuisine with Scandinavian, French and Asian influences. The fixed tasting menu is served in an intimate setting and the service is impeccable. If you are looking for a memorable and unique world class dining experience, look no further. Reservations are required (way) in advance.

Klara Norra kyrkogata 26

Telephone: +46 (0)8 20 85 80

<http://www.restaurantfrantzen.com/>

Operakällaren

Enjoy classic international haute cuisine in this grandiose dining room from 1865, located in the same building as the Royal Swedish Opera. A magnificent setting, with views across the water to the Royal Palace from the terrace bar. The restaurant has an excellent wine list and has been awarded one Michelin star. Jacket and tie required.

The adjacent *Bakfickan* (the Back Pocket), serves reasonably priced and well-made traditional Swedish food.

Karl XII:s Torg

Telephone: +46 (0)8 676 58 00

www.operakallaren.se

Mathias Dahlgren – Matbaren & Rutabaga

Located in the magnificent Grand Hôtel, with views across to the Royal Palace, renowned chef Mathias Dahlgren serves innovative bistro food in the one Michelin starred restaurant *Matbaren*. The kitchen is open late

and on weekdays, it is usually possible to get a table for a smaller company on the same day. We warmly recommend it.

Located in the same building, in a space where Dahlgren used to run an upscale double Michelin starred restaurant, the all lacto-ovo-vegetarian restaurant *Rutabaga* now serves top-of-the-line vegetarian cuisine. White linen table cloths have been thrown out and exchanged for a relaxed and buzzing atmosphere. The two tasting menus include dishes made from fresh produce, drawing inspiration from the whole world.

Grand Hôtel Stockholm
Södra Blasieholmshamnen 6
Telephone: +46 (0)8 679 35 84
www.mdghs.se

Oaxen Krog & Slip

Beautifully situated at the waterfront on the island of Djurgården, next to a 17th century shipyard, the two Michelin starred restaurant Oaxen Krog is truly a gem, serving delicious and creative Nordic cuisine. The menu changes with the seasons and the wine list is excellent.

If you are not in the mood for fine dining, the more relaxed Nordic bistro Oaxen Slip is just next door, offering hearty dishes with focus on excellent raw materials and ingredients. The ambiance in this nautically themed restaurant is warm and rustic. Grilled whole turbot, and other whole fish, are a speciality.

Beckholmsvägen 26
Telephone: +46 (0)8 551 531 05
<https://oaxen.com/en/>

Ekstedt

TV chef Niklas Ekstedt has created a kitchen in which food is prepared using pre-electric methods: food is grilled, smoked, boiled, broiled and baked over an open flame. The superb quality and artisanal excellence are familiar from Ekstedt's other restaurants, along with awareness of the sources of the ingredients and elements of Scandinavian cuisine. The ambiance is warm, welcoming and rustic, expressed in natural materials. Ekstedt was awarded his first star in the 2013 Guide Michelin.

Humlegårdsgatan 17
www.ekstedt.nu

34.4.2 MID-RANGE

Sturehof

Classic brasserie and social setting at Stureplan in the centre of Stockholm's entertainment district. Swedish cuisine with international (mainly French) influences and a focus on sea food. Great atmosphere and opening hours in the kitchen make it a good late-night alternative, also after very long hearing days.

Stureplan 2
Telephone: +46 (0)8 440 57 30
www.sturehof.com

Prinsen

Prinsen is an excellent spot for the diner who wants to try well prepared Swedish classic dishes (*e.g.* Swedish meatballs or minced veal *Wallenbergare*) in a cosy and pleasant atmosphere.

Mäster Samuelsgatan 4
Telephone: +46 (0)8 611 13 31
www.restaurangprinsen.eu

Berns Asiatiska

Contemporary cuisine with inspiration from all of Asia is served in a well-preserved setting from 1863, with a gilded ceiling and magnificent chandeliers. Swedish novelist and playwright August Strindberg's debut, *Röda Rummet* ('The Red Room'), took its name from one of the dining halls of this establishment, which has been the living room for artists and bohemians – and now increasingly for business people and their advisors – for one and a half centuries.

Berzelii Park
Telephone: +46 (0)8 566 322 22
www.berns.se

Teatergrillen

Opened in 1945 by Swedish culinary legend Tore Wretman, this place is still an institution. Classic French and Swedish dishes cooked with superior raw materials and attention to detail are served in the iconic red velvet dining room, which has remained largely unchanged since 1968. This place has a buzzing atmosphere and an extensive wine list. Director Ingmar Bergman was a regular here.

Nybrogatan 3

Telephone: +46 (0)8 545 03 565

<https://teatergrillen.se/eng/>

Hantverket

Authentic Scandinavian flavours and excellent craftsmanship are in focus at *Hantverket*, which means craft in Swedish. Seasonal ingredients are used in creative dishes with simple yet elegant flavours, which are the hallmark of Swedish cuisine. The atmosphere is relaxed and friendly. The crispy *Hasselback* potatoes with bleak roe, sour cream and spring onion is a signature dish.

Sturegatan 15a

Telephone: +46 (0)8 121 321 60

<https://restauranghantverket.se/en/>

Sushi Sho

Boasting one Michelin star, this tiny sushi restaurant with white tile walls and counter seating serves *omakase*-style sushi in a fixed menu that varies depending on season and daily availability. Expect high quality ingredients and an intimate and friendly atmosphere. Reservations required.

Upplandsgatan 45

Telephone: +46 (0)8 30 30 30

<http://www.sushisho.se/sushisho-english>

Sparrow Wine Bar & Bistro

The French-inspired boutique hotel The Sparrow Hotel houses a wine bar and bistro run by the well-known chefs Mathias Dahlgren and

Staffan Naess. The dishes are simple, delicious and have received very nice reviews.

Birger Jarlsgatan 24

Telephone: +46 (0)8 122 173 00

<https://www.thesparrowhotel.com/bistro>

Un Poco

Italian restaurant that is traditional as well as trendy. The menu is set up according to Italian custom; going from antipasti to dolce and contains obvious classics such as truffle risotto and dry aged steak mixed with innovations such as fried Oreo biscuits for dessert.

Karlavägen 28

Telephone: +46 (0)8 611 02 69

<https://unpoco.se/>

Allegrine

This French restaurant is run by the well-reputed chef Daniel Couet who wants to offer Stockholmers his personal food memories from his French grandmother (and the restaurant therefore bears her name). It is a warm French bistro, offering tasty food and a generous wine selection.

Kammarkargatan 22

Telephone: +46 (0)8 410 059 09

<https://allegrine.se/>

34.5 IF TIME ALLOWS

34.5.1 GAMLA STAN

Gamla Stan, the Old Town, is one of the largest and best-preserved medieval city centres in Europe and one of the foremost attractions in Stockholm. This is where Stockholm was founded in 1252. Gamla Stan, located on a small island right in the middle of Stockholm, and the adjacent island of Riddarholmen, are pedestrian-friendly and full of sights, attractions, restaurants, cafés, bars and places to shop. Here you will find, for example, the Royal Palace, the Storkyrkan cathedral, the Nobel Museum and Christmas markets in December. But you need not visit

anything particular in Gamla Stan – just strolling around there is sufficient.

34.5.2 THE STOCKHOLM ARCHIPELAGO

Together with Gamla Stan, the unique archipelago is the must see of Stockholm, particularly in the non-frozen seasons.

The Stockholm archipelago consists of more than 30,000 islands, skerries and rocks whose character was formed by the glacial ice sheet. The landscape is varied, from wild, windswept outer archipelago skerries with waves breaking over the rocks to lush inner archipelago bays where stillness reigns. There are several operators which run regular boat lines as well as package tours to a wide range of destinations in the archipelago. A trip by boat to the picturesque archipelago town of Vaxholm gives a pleasant view of the Stockholm inner archipelago.

Visit Skärgården

Telephone: +46 (0)8 522 227 22

Strandvägen kajplats 18

www.visitskargarden.se

Strömma Turism & Sjöfart

Telephone: +46 (0)8 12 00 41 00

Strömkajen, Södra Blasieholmshamnen (in front of Grand Hôtel)

www.stromma.se

Waxholmsbolaget

Telephone: +46 (0)8 679 58 30

Strömkajen, Södra Blasieholmshamnen (in front of Grand Hôtel)

www.waxholmsbolaget.se

34.5.3 THE VASA MUSEUM

On 10 August 1628, the Vasa warship commenced her maiden voyage, but keeled over and sank in the middle of Stockholm harbour after sailing barely 1,300 meters. After having laid forgotten on the sea bed for centuries, a salvage project was finalised in 1961 and the ship broke the surface again after 333 years. The Vasa is the only preserved seventeenth-century ship in the world and a unique treasure which can be viewed in the museum. More than 95 per cent of the ship is preserved, and it is decorated with hundreds of carved sculptures.

According to many of our foreign guests, this is among the best museums in the world. The ship is amazing, and it is a special experience to visit a museum that focuses wholly on one item and the history around it, rather than on many thousands of items.

Galärvarvsvägen 14

Telephone: +46 (0)8 519 548 00

www.vasamuseet.se

34.5.4 THE ROYAL PALACE

One of the largest palaces in Europe with over 600 rooms. The Royal Palace is His Majesty the King's official residence and is also the setting for most of the monarchy's official receptions. The Palace is a daily place of work for the King and Queen as well as for the various departments that make up the Royal Court. In addition to the Royal Apartments there are three museums steeped in regal history: the Treasury with the regalia, the Tre Kronor Museum that portrays the palace's medieval history and Gustav III's Museum of Antiquities. Their Majesties' permanent home residence is Drottningholm Palace, a short trip outside Stockholm which, with its UNESCO's World Heritage listing, is also well worth a visit.

Gamla stan

Telephone: +46 (0)8 402 61 30

www.kungahuset.se

34.5.5 FOTOGRAFISKA

This is one of the world's largest meeting places for contemporary photography. Fotografiska presents four unique large exhibitions and about 20 smaller exhibitions annually. In the top floor bistro bar you will find one of Stockholm's very best vantage points.

Stadsgårdshamnen 22

Telephone: +46 (0)8 509 00 500

www.fotografiska.eu

34.5.6 MODERNA MUSEET

One of Europe's foremost collections of art from the 20th Century to today, featuring works by artists including Picasso, Dali, Derkert and

Matisse. The museum's large collections and temporary exhibitions present contemporary art alongside modern classics. Moderna Museet is located on Skeppsholmen island, within walking distance of the centre of Stockholm.

Exercisplan 2

Telephone: +46 (0)8 519 552 00

www.modernamuseet.se

34.5.7 NATIONALMUSEUM

After having undergone five years of renovations and modernization *Nationalmuseum* once again opened the doors to the public in 2018. Selections from the enormous collection of classical art are displayed in this beautiful 19th century building inspired by North Italian Renaissance architecture. The collection of 17th century Dutch painters, including Rembrandt, is particularly notable. Collections also include Rubens, Goya, Renoir, Degas and Gauguin, as well as Swedish artists Carl Larsson, Ernst Josephson, C F Hill and Anders Zorn.

Södra Blasieholmshamnen 2

Telephone: +46 (0)8 519 543 00

<https://www.nationalmuseum.se/en/>

34.5.8 EXERCISE

If you are looking to get some exercise, the beautiful 19th century public bath *Sturebadet* has a gym, swimming pool and yoga studio. You will also find a Turkish bath and a spa here.

There are plenty of regular gyms in central Stockholm, such as SATS and Nordic Wellness. Ask your hotel's front desk for the closest one. Most hotels will also have a small gym for guests.

Stockholm is a beautiful and convenient city for running. The island of *Djurgården* is one of the best running spots in the city, accessible by bridge at the end of Strandvägen in central Stockholm. The full way around the island is around 10 km on mainly car free gravel roads. There are also plenty of tracks and paths if you are looking for a shorter, or longer, run.

Another alternative for a good run is the island of *Kungsholmen*. The 10 km full run around the island offers a mix of roads and footpaths with

beautiful views of the city. To find your way, start at Stockholm City Hall (*Stadshuset*) and just follow the water.

34.5.9 SHOPPING

Stockholm is a fashionable city that provides great shopping of contemporary Scandinavian design alongside with high-end fashion labels. Take a stroll along *Birger Jarlsgatan* and *Biblioteksgatan* where you will find many international labels as well as local designers. You can make a stop at *Nordiska Kompaniet NK* that is a high-end mall on Hamngatan. For those interested in interior design, *Svenskt tenn* on Strandvägen is an excellent option.

The 1999 Arbitration Act (including revisions entering into force 1 March 2019)

The Arbitration Agreement

Section 1

Disputes concerning matters in respect of which the parties may reach a settlement may, by agreement, be referred to one or several arbitrators for resolution. Such an agreement may relate to future disputes pertaining to a legal relationship specified in the agreement. The dispute may concern the existence of a particular fact.

In addition to interpreting agreements, the filling of gaps in contracts can also be referred to arbitrators.

Arbitrators may rule on the civil law effects of competition law as between the parties.

Section 2

The arbitrators may rule on their own jurisdiction to decide the dispute.

If the arbitrators have rendered a decision finding that they have jurisdiction to adjudicate the dispute, any party that disagrees with the decision may request the Court of Appeal to review the decision. Such a request shall be brought within thirty days from when the party was notified of the decision. The arbitrators may continue the arbitration pending the court's determination.

The provisions of Sections 34 and 36 apply in an action to challenge an arbitration award that includes a decision on jurisdiction.

Section 3

If the validity of an arbitration agreement which constitutes part of another agreement must be determined in conjunction with a determina-

tion of the jurisdiction of the arbitrators, the arbitration agreement shall be deemed to constitute a separate agreement.

Section 4

A court may not, over an objection of a party, rule on an issue which, pursuant to an arbitration agreement, shall be decided by arbitrators.

A party must invoke an arbitration agreement on the first occasion the party pleads its case on the merits in court. Invoking an arbitration agreement on a later occasion shall have no effect unless the party had a legal excuse and invoked the arbitration agreement as soon as the excuse ceased to exist. The invocation of an arbitration agreement shall be considered notwithstanding that the party who invoked the agreement has allowed an issue which is covered by the arbitration agreement to be determined by the Swedish Enforcement Authority in a case concerning expedited collection procedures.

During the pendency of a dispute before arbitrators or prior thereto, a court may, irrespective of the arbitration agreement, issue such decisions in respect of security measures as the court has jurisdiction to issue.

Section 4 a

A court may not, over the objections of a party, try the issue of the arbitrators' jurisdiction in a certain arbitration in a way other than as provided for in Section 2, if the request is brought after the commencement of the arbitration.

The first paragraph shall not apply to a dispute between a consumer and a business entity, if the consumer maintains that an arbitration agreement is invoked against him or her contrary to Section 6.

Section 5

A party shall forfeit its right to invoke the arbitration agreement as a bar to court proceedings if the party:

1. has opposed a request for arbitration;
2. fails to appoint an arbitrator in due time; or
3. fails, within due time, to provide its share of the requested security for compensation to the arbitrators.

Section 6

If a dispute between a business entity and a consumer concerns goods, services, or any other products supplied principally for private use, an arbitration agreement may not be invoked where such was entered into prior to the dispute. However, such agreements shall apply with respect to rental or lease relationships where, through the agreement, a regional rent tribunal or a regional tenancies tribunal is appointed as an arbitral tribunal and the provisions of Chapter 8, Section 28 or Chapter 12, Section 66 of the Land Code do not prescribe otherwise.

The first paragraph shall not apply where the dispute concerns an agreement between an insurer and a policy-holder concerning insurance based on a collective agreement or group agreement and handled by representatives of the group. Nor shall the first paragraph apply where Sweden's international obligations provide to the contrary.

The Arbitrators

Section 7

Any person who possesses full legal capacity in regard to his or her actions and property may act as an arbitrator.

Section 8

An arbitrator shall be impartial and independent.

If a party so requests, an arbitrator shall be released from appointment if there exists any circumstance that may diminish confidence in the arbitrator's impartiality or independence. Such a circumstance shall always be deemed to exist:

1. if the arbitrator or a person closely associated with the arbitrator is a party, or otherwise may expect noteworthy benefit or detriment as a result of the outcome of the dispute;
2. if the arbitrator or a person closely associated with the arbitrator is the director of a company or any other association which is a party, or otherwise represents a party or any other person who may expect noteworthy benefit or detriment as a result of the outcome of the dispute;
3. if the arbitrator, in the capacity of expert or otherwise, has taken a position in the dispute, or has assisted a party in the preparation or conduct of its case in the dispute; or

4. if the arbitrator has received or demanded compensation in violation of Section 39, second paragraph.

Section 9

A person who is asked to accept an appointment as arbitrator shall immediately disclose all circumstances which, pursuant to Sections 7 or 8, might be considered to prevent the person from serving as arbitrator. An arbitrator shall inform the parties and the other arbitrators of such circumstances as soon as all arbitrators have been appointed and thereafter in the course of the arbitral proceedings as soon as the arbitrator has learned of any new circumstance.

Section 10

A challenge of an arbitrator on account of a circumstance set forth in Section 8 shall be presented within fifteen days from the date on which the party became aware both of the appointment of the arbitrator and of the existence of the circumstance. The challenge shall be adjudicated by the arbitrators, unless the parties have decided that it shall be determined by another party.

If the challenge is successful, the decision shall not be subject to appeal.

A party who is dissatisfied with a decision denying a challenge or dismissing a challenge as untimely may file an application with the District Court that the arbitrator be released from appointment. The application must be submitted within thirty days from the date on which the party was notified of the decision. The arbitrators may continue the arbitral proceedings pending the determination of the District Court.

Section 11

The parties may agree that a challenge as referred to in Section 10, first paragraph, shall be conclusively determined by an arbitration institution.

Section 12

The parties may determine the number of arbitrators and the manner in which they shall be appointed.

Sections 13–16 shall apply unless the parties have agreed otherwise.

If the parties have so agreed, and any of the parties so requests, the District Court shall appoint arbitrators also in situations other than those stated in Sections 14–17.

Section 13

There shall be three arbitrators. Each party appoints one arbitrator, and the arbitrators so appointed appoint the third.

Section 14

If each party is required to appoint an arbitrator and one party has notified the opposing party of its choice of arbitrator in a request for arbitration pursuant to Section 19, the opposing party must, within thirty days of receipt of the notice, notify the first party in writing of its choice of arbitrator. A party who has notified the opposing party of its choice of arbitrator in this manner may not revoke the choice without the consent of the opposing party.

If the opposing party fails to appoint an arbitrator within the specified time, the District Court shall appoint an arbitrator upon the request of the first party.

If arbitration has been requested against several parties and these parties are unable to jointly appoint an arbitrator, the District Court shall, upon the request of a respondent party within the time specified in the first paragraph, appoint arbitrators on behalf of all parties, and simultaneously also release any arbitrator already appointed.

Section 15

If an arbitrator shall be appointed by other arbitrators, but they fail to do so within thirty days from the date on which the last arbitrator was appointed, the District Court shall appoint the arbitrator upon the request of a party.

If an arbitrator shall be appointed by someone other than a party or arbitrators, but this is not done within thirty days of the date when the party desiring the appointment of an arbitrator requested that the person responsible for the appointment make such appointment, the District Court shall, upon the request of a party, appoint the arbitrator. The same shall apply if an arbitrator shall be appointed by the parties jointly, but they have failed to agree within thirty days from the date on which the

question was raised through receipt by one party of notice from the opposing party.

Section 16

If an arbitrator resigns or is released due to circumstances which were known at the time of appointment, the District Court shall, upon the request of a party, appoint a new arbitrator. If the arbitrator was appointed by a party, the District Court shall appoint the person suggested by that party, unless there are special reasons speaking against it.

If an arbitrator cannot complete the assignment due to circumstances which arise after his or her appointment, the person who originally was required to make the appointment shall instead appoint a new arbitrator. Section 14, first and second paragraphs, and Section 15 shall apply to such an appointment. The time-limit of thirty days for the appointment of a new arbitrator applies also to the party who requested the arbitration, and is calculated in respect to all parties from the date on which the person who shall appoint the arbitrator became aware thereof.

Section 17

If an arbitrator has delayed the proceedings, the District Court shall, upon the request of a party, release the arbitrator and appoint another arbitrator. The parties may decide that such a request shall, instead, be conclusively determined by an arbitration institution.

Section 18

If a party has requested that the District Court appoint an arbitrator pursuant to Section 12, third paragraph, or Sections 14–17, the Court may reject the request only if it is manifestly obvious that the arbitration is not legally permissible.

The Proceedings

Section 19

Unless otherwise agreed by the parties, the arbitral proceedings are initiated when a party receives a request for arbitration in accordance with the second paragraph hereof.

A request for arbitration must be in writing and include:

1. an express and unconditional request for arbitration;

2. a statement of the issue which is covered by the arbitration agreement and which is to be resolved by the arbitrators; and
3. a statement of the party's choice of arbitrator if the party is required to appoint an arbitrator.

Section 20

If there is more than one arbitrator, one of them shall be appointed chairman. Unless the parties or the arbitrators have decided otherwise, the chairman shall be the arbitrator appointed by the other arbitrators or by the District Court.

Section 21

The arbitrators shall handle the dispute in an impartial, practical, and speedy manner. They shall act in accordance with the decisions of the parties, unless they are impeded from doing so.

Section 22

The parties determine which location in Sweden shall be the seat of arbitration. If the parties have not done so, the arbitrators shall determine the seat of arbitration.

The arbitrators may hold hearings and other meetings elsewhere in Sweden or abroad, unless otherwise agreed by the parties.

Section 23

Within the period of time determined by the arbitrators, the claimant shall state its claims in respect of the issue stated in the request for arbitration, as well as the circumstances invoked by the claimant in support thereof. Thereafter, within the period of time determined by the arbitrators, the respondent shall state its position in relation to the claims, and the circumstances invoked by the respondent in support thereof.

The claimant may submit new claims, and the respondent may submit its own claims, provided that the claims fall within the scope of the arbitration agreement and, taking into consideration the time at which they are submitted or other circumstances, the arbitrators do not consider it inappropriate to adjudicate such claims. Subject to the same conditions, during the proceedings, each party may amend or supplement previously presented claims and may invoke new circumstances in support of its case.

The first and second paragraphs hereof shall not apply if the parties have decided otherwise.

Section 23 a

An arbitration may be consolidated with another arbitration, if the parties agree to such consolidation, if it benefits the administration of the arbitration, and if the same arbitrators have been appointed in both cases. The arbitrations may be separated, if there are reasons for it.

Section 24

The arbitrators shall afford the parties, to the extent necessary, an opportunity to present their respective cases in writing or orally. If a party so requests, and provided that the parties have not otherwise agreed, an oral hearing shall be held prior to the determination of an issue referred to the arbitrators for resolution.

A party shall be given an opportunity to review all documents and all other materials pertaining to the dispute which are supplied to the arbitrators by the opposing party or another person.

If one of the parties, without valid cause, fails to appear at a hearing or otherwise fails to comply with an order of the arbitrators, such failure shall not prevent a continuation of the proceedings and a resolution of the dispute on the basis of the existing materials.

Section 25

The parties shall supply the evidence. However, the arbitrators may appoint experts, unless both parties are opposed thereto.

The arbitrators may refuse to admit evidence presented if it is manifestly irrelevant to the dispute or if such refusal is justified having regard to the time at which the evidence is invoked.

The arbitrators may not administer oaths or truth affirmations. Nor may they impose conditional fines or otherwise use compulsory measures in order to obtain requested evidence.

Unless the parties have agreed otherwise, the arbitrators may, at the request of a party, decide that, during the proceedings, the opposing party must undertake a certain interim measure to secure the claim which is to be adjudicated by the arbitrators. The arbitrators may prescribe that the party requesting the interim measure must provide reasonable security for

the damage which may be incurred by the opposing party as a result of the interim measure.

Section 26

If a party wishes a witness or an expert to testify under oath, or a party to be examined under truth affirmation, the party may, after obtaining the consent of the arbitrators, submit an application to such effect to the District Court. The aforementioned shall apply if a party wishes that a party or other person be ordered to produce as evidence a document or an object. If the arbitrators consider that the measure is justified having regard to the evidence in the case, they shall approve the request. If the measure may lawfully be taken, the District Court shall grant the application.

The provisions of the Code of Judicial Procedure shall apply with respect to a measure as referred to in the first paragraph. The arbitrators shall be summoned to hear the testimony of a witness, an expert, or a party, and be afforded the opportunity to ask questions. The absence of an arbitrator from the giving of testimony shall not prevent the hearing from taking place.

The Award

Section 27

The issues referred to the arbitrators shall be decided in an award. If the arbitrators terminate the arbitral proceedings without deciding such issues, this shall also be done through an award, except for cases referred to in the third paragraph.

If the parties enter into a settlement agreement, the arbitrators may, at the request of the parties, confirm the settlement in an award.

Other determinations, which are not decided in an award, are designated as decisions. The dismissal of an arbitration is also designated as a decision. The provisions of this Act that concern arbitral awards also apply to such decisions, to the extent applicable.

The assignment of the arbitrators shall be deemed complete when they have delivered a final award, unless otherwise provided in Sections 32 or 35.

Section 27 a

The dispute shall be determined with application of the law or rules agreed to by the parties. Unless otherwise agreed by the parties, a reference to the application of a certain state's law shall be deemed to include that state's substantive law and not its rules of private international law.

If the parties have not come to an agreement in accordance with the first paragraph, the arbitrators shall determine the applicable law.

The arbitrators may base the award on *ex aequo et bono* considerations only if the parties have authorized them to do so.

Section 28

If a party withdraws a claim, the arbitrators shall dismiss that part of the dispute, unless the opposing party requests that the arbitrators rule on the claim.

Section 29

A part of the dispute, or a certain issue which is of significance to the resolution of the dispute, may be decided through a separate award, unless opposed by both parties. However, a claim invoked as a defence by way of set off shall be adjudicated in the same award as the main claim.

If a party has admitted a claim, in whole or in part, a separate award may be rendered in respect of that which has been admitted.

Section 30

If an arbitrator fails, without valid cause, to participate in the determination of an issue by the arbitral tribunal, such failure will not prevent the other arbitrators from ruling on the matter.

Unless the parties have decided otherwise, the opinion agreed upon by the majority of the arbitrators participating in the determination shall prevail. If no majority is attained for any opinion, the opinion of the chairman shall prevail.

Section 31

An award shall be made in writing and be signed by the arbitrators. It suffices that the award is signed by a majority of the arbitrators, provided that the reason why all of the arbitrators have not signed the award is noted therein. The parties may decide that the chairman of the arbitral tribunal alone shall sign the award.

The award shall state the seat of the arbitration and the date when the award is made.

The award shall be delivered or sent to the parties immediately.

Section 32

If the arbitrators find that an award contains any obvious inaccuracy as a consequence of a typographical, computational, or other similar mistake by the arbitrators or any another person, or if the arbitrators by oversight have failed to decide an issue which should have been dealt with in the award, they may, within thirty days of the date of the announcement of the award, decide to correct or supplement the award. They may also correct or supplement an award, or interpret the decision in an award, if any of the parties so requests within thirty days of receipt of the award by that party.

If, upon the request of any of the parties, the arbitrators decide to correct an award or interpret the decision in an award, such shall take place within thirty days from the date of receipt by the arbitrators of the party's request. If the arbitrators decide to supplement the award, such shall take place within sixty days.

Before any decision is made pursuant to this Section, the parties should be afforded an opportunity to express their views with respect to the measure.

Invalidity of Awards and Setting Aside Awards

Section 33

An award is invalid:

1. if it includes determination of an issue which, in accordance with Swedish law, may not be decided by arbitrators;
2. if the award, or the manner in which the award arose, is clearly incompatible with the basic principles of the Swedish legal system; or
3. if the award does not fulfil the requirements with regard to the written form and signature in accordance with Section 31, first paragraph.

The invalidity may apply to a certain part of the award.

Section 34

An award that may not be challenged under Section 36 shall, following an application, be wholly or partially set aside upon the request of a party:

1. if it is not covered by a valid arbitration agreement between the parties;
2. if the arbitrators have made the award after the expiration of the time limit set by the parties;
3. if the arbitrators have exceeded their mandate, in a manner that probably influenced the outcome;
4. if the arbitration, according to Section 47, should not have taken place in Sweden;
5. if an arbitrator was appointed in a manner that violates the parties' agreement or this Act,
6. if an arbitrator was unauthorized to adjudicate the dispute due to any circumstance set forth in Sections 7 or 8; or
7. if, without fault of the party, there otherwise occurred an irregularity in the course of the proceedings which probably influenced the outcome of the case.

A party shall not be entitled to rely upon a circumstance which, through participation in the proceedings without objection, or in any other manner, the party may be deemed to have waived. A party shall not be regarded as having accepted the arbitrators' jurisdiction to determine the issue referred to arbitration solely by having appointed an arbitrator. It follows from Sections 10 and 11 that a party may lose the right under sub-section 6, first paragraph, to rely upon a circumstance as set forth in Section 8.

An action must be brought within two months from the date upon which the party received the award or, if correction, supplementation, or interpretation has taken place pursuant to Section 32, within a period of two months from the date when the party received the award in its final wording. Following the expiration of the time limit, a party may not invoke a new ground of objection in support of its claim.

Section 35

A court may stay proceedings concerning the invalidity or setting aside of an award for a certain period of time in order to provide the arbitrators with an opportunity to resume the arbitral proceedings or to take some other measure which, in the opinion of the arbitrators, will eliminate the ground for the invalidity or setting aside:

1. provided the court holds that the claim in the case shall be accepted and either of the parties requests a stay; or
2. both parties request a stay.

If the arbitrators make a new award, a party may, within the period of time determined by the court and without issuing a writ of summons, challenge the award insofar as it was based upon the resumed arbitral proceedings or an amendment to the first award.

Section 36

An award whereby the arbitrators concluded the proceedings without ruling on the issues submitted to them for resolution may be amended, in whole or in part, upon the application of a party. An action must be brought within two months from the date upon which the party received the award or, if correction, supplementation, or interpretation has taken place in accordance with Section 32, within a period of two months from the date upon which the party received the award in its final wording. The award shall contain clear instructions as to what must be done by a party who wants to challenge the award.

An action in accordance with the first paragraph that only concerns an issue referred to in Section 42 is permissible if, in the award, the arbitrators have considered themselves to lack jurisdiction to adjudicate the dispute. If the award concerns another matter, a party who desires to challenge the award may do so in accordance with the provisions of Section 34.

Costs of Arbitration

Section 37

The parties shall be jointly and severally liable to pay reasonable compensation to the arbitrators for work and expenses. However, if the arbitrators have stated in the award that they lack jurisdiction to determine the

dispute, the party that did not request arbitration shall be liable to make payment only insofar as required due to special circumstances.

In a final award, the arbitrators may order the parties to pay compensation to them, together with interest from the date occurring one month following the date of the announcement of the award. The compensation shall be stated separately for each arbitrator.

Section 38

The arbitrators may request security for the compensation. They may fix separate security for individual claims. If a party fails to provide its share of the requested security within the period specified by the arbitrators, the opposing party may provide the entire security. If the requested security is not provided, the arbitrators may terminate the proceedings, in whole or in part.

During the proceedings, the arbitrators may decide to realize security in order to cover expenses. Following the determination of the arbitrators' compensation in a final award and if the award in that respect has become enforceable, the arbitrators may realize their payment from the security, in the event the parties fail to fulfil their payment obligations in accordance with the award. The right to security also includes income from the property.

Section 39

The provisions of Sections 37 and 38 shall apply unless otherwise jointly decided by the parties in a manner that is binding upon the arbitrators.

An agreement regarding compensation to the arbitrators that is not entered into jointly by the parties is void. If one of the parties has provided the entire security, such party may, however, solely consent to the realisation of the security by the arbitrators in order to cover the compensation for work expended.

Section 40

The arbitrators may not withhold the award pending the payment of compensation.

Section 41

A party or an arbitrator may file an application with the District Court concerning amendment of the award as regards the payment of compen-

sation to the arbitrators. Such application must be filed within two months from the date upon which the party received the award and, in the case of an arbitrator, within the same period from the announcement of the award. If correction, supplementation, or interpretation has taken place in accordance with Section 32, the application must be filed by a party within two months from the date upon which the party received the award in its final wording and, in the case of an arbitrator, within the same period from the date when the award was announced in its final wording. The award shall contain clear instructions as to what must be done by a party who wants to challenge the award in this respect. The procedure will be administered in accordance with the Court Matters Act (1996:242).

A decision pursuant to which the compensation to an arbitrator is reduced shall also apply to the party who did not bring the action.

Section 42

Unless otherwise agreed by the parties, the arbitrators may, upon the request of a party, order the opposing party to pay compensation for the party's costs and determine the manner in which the compensation to the arbitrators shall be finally allocated between the parties. The arbitrators' order may also include interest, if a party has so requested.

Forum and Limitation Periods etc.

Section 43

An action pursuant to Sections 2, second paragraph, or 33, 34, and 36 shall be considered by the Court of Appeal within the jurisdiction of which the arbitration had its seat. If the seat of arbitration is not determined, or not stated in the award, the action may be brought in the Svea Court of Appeal.

The determination of the Court of Appeal may not be appealed. However, the Court of Appeal may grant leave to appeal its determination if it is of importance as a matter of precedent that the appeal be considered by the Supreme Court. For the Supreme Court to review the Court of Appeal's determination, leave of appeal by the Supreme Court is required. This does not apply, however, to the appeal of a decision by which the Court of Appeal has dismissed an appeal of a determination made by the Court of Appeal.

An application pursuant to Section 41 shall be considered by the District Court at the seat of arbitration. If the seat of arbitration is not stated in the award, the action may be brought before the Stockholm District Court.

Section 44

Applications to appoint or release an arbitrator shall be considered by the District Court at the place where one of the parties is domiciled or by the District Court at the seat of arbitration. The application may also be considered by the Stockholm District Court. If possible, the opposing party shall be afforded the opportunity to express its opinion upon the application before it is granted. If the application concerns the removal of an arbitrator, the arbitrator should also be heard.

Applications concerning the taking of evidence in accordance with Section 26 shall be considered by the District Court determined by the arbitrators. In the absence of such decision, the application shall be considered by the Stockholm District Court.

If the District Court has granted an application to appoint or release an arbitrator, such decision may not be appealed. Neither may a determination of the District Court in accordance with Section 10, third paragraph, otherwise be appealed.

Section 45

If, according to law or by agreement, an action by a party must be brought within a certain period, but the action is covered by an arbitration agreement, the party must request arbitration in accordance with Section 19 within the stated period.

If arbitration has been requested in due time but the arbitral proceedings are terminated without a legal determination of the issue which was submitted to the arbitrators, and this is not due to the negligence of the party, the action shall be deemed to have been initiated in due time if a party requests arbitration or initiates court proceedings within thirty days of receipt of the award, or if the award has been set aside or declared invalid or an action against the award in accordance with Section 36 has been dismissed, from the time that this decision becomes final.

Section 45 a

In cases brought under Section 2, second paragraph, or 33, 34 or 36, the Court of Appeal may, upon the request of a party, accept oral evidence in English without interpretation into Swedish.

The first paragraph applies also to the procedure in the Supreme Court.

International Matters

Section 46

This Act shall apply to arbitral proceedings seated in Sweden even if the dispute has an international connection.

Section 47

Arbitral proceedings in accordance with this Act may be commenced in Sweden, if the arbitration agreement provides that the arbitration shall have its seat in Sweden, or if the arbitrators or an arbitration institution pursuant to the agreement have determined that the proceedings shall be seated in Sweden, or if the opposing party otherwise consents thereto.

Arbitral proceedings in accordance with this Act may also be commenced in Sweden against a party which is domiciled in Sweden or is otherwise subject to the jurisdiction of the Swedish courts with regard to the matter in dispute, unless the arbitration agreement provides that the proceedings shall be seated abroad.

In other cases, arbitral proceedings in accordance with this Act may not take place in Sweden.

Section 48

If an arbitration agreement has an international connection, the agreement shall be governed by the law agreed upon by the parties.

If the parties have not reached such an agreement, the arbitration agreement shall be governed by the law of the country where, in accordance with the parties' agreement, the arbitration had or shall have its seat.

The first paragraph shall not apply to the issue of whether a party was authorized to enter into an arbitration agreement or was duly represented.

Section 49

If foreign law is applicable to the arbitration agreement, Section 4 shall apply to issues which are covered by the agreement, except when:

1. in accordance with the applicable law, the agreement is invalid, inoperative, or incapable of being performed; or
2. in accordance with Swedish law, the dispute may not be determined by arbitrators.

The jurisdiction of a court to issue such decisions regarding security measures as the court is entitled to issue in accordance with law, notwithstanding the arbitration agreement, is set forth in Section 4, third paragraph.

Section 50

The provisions of Sections 26 and 44 regarding the taking of evidence during the arbitral proceedings in Sweden shall also apply in arbitral proceedings seated abroad, if the proceedings are based upon an arbitration agreement and, pursuant to Swedish law, the issues referred to the arbitrators may be resolved through arbitration.

Section 51

If none of the parties is domiciled or has its place of business in Sweden, such parties may in a commercial relationship through an express written agreement exclude or limit the application of the grounds for setting aside an award as are set forth in Section 34.

An award which is subject to such an agreement shall be recognized and enforced in Sweden in accordance with the rules applicable to a foreign award.

Recognition and Enforcement of Foreign Awards, etc.

Section 52

An award rendered abroad shall be deemed to be a foreign award.

In conjunction with the application of this Act, an award shall be deemed to have been rendered in the country where the arbitration had its seat.

Section 53

Unless otherwise stated in Sections 54–60, a foreign award which is based on an arbitration agreement shall be recognized and enforced in Sweden.

Section 54

A foreign award shall not be recognized and enforced in Sweden if the party against whom the award is invoked proves:

1. that the parties to the arbitration agreement, pursuant to the law applicable to them, lacked capacity to enter into the agreement or were not properly represented, or that the arbitration agreement was not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;
2. that the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present its case;
3. that the award deals with a dispute not contemplated by, or not falling within, the terms of the submission to arbitration, or contains decisions on matters which are beyond the scope of the arbitration agreement, provided that, if the decision on a matter which falls within the mandate can be separated from those which fall outside the mandate, that part of the award which contains decisions on matters falling within the mandate may be recognized and enforced;
4. that the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration was seated; or
5. that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.

Section 55

Recognition and enforcement of a foreign award shall also be refused if a court finds:

1. that the award includes determination of an issue which, in accordance with Swedish law, may not be decided by arbitrators; or

2. that it would be clearly incompatible with the basic principles of the Swedish legal system to recognize and enforce the award.

Section 56

An application for the enforcement of a foreign award shall be lodged with the Svea Court of Appeal.

The original award or a certified copy of the award must be appended to the application. Unless the Court of Appeal decides otherwise, a certified translation into the Swedish language of the entire award must also be submitted.

Section 57

An application for enforcement shall not be granted unless the opposing party has been afforded an opportunity to express its opinion upon the application.

Section 58

If the opposing party objects that an arbitration agreement was not entered into, the applicant must submit the arbitration agreement in an original or a certified copy and, unless otherwise decided by the Court of Appeal, must submit a certified translation into the Swedish language, or in some other manner prove that an arbitration agreement was entered into.

If the opposing party objects that a petition has been lodged to set aside the award or a motion for a stay of execution has been submitted to the competent authority as referred to in Section 54, sub-section 5, the Court of Appeal may postpone its decision and, upon the request of the applicant, order the opposing party to provide reasonable security in default of which enforcement might otherwise be ordered.

Section 59

If the Court of Appeal grants the application, the award shall be enforced as a final judgment of a Swedish court, unless otherwise determined by the Supreme Court following an appeal of the Court of Appeal's decision.

Section 60

If a security measure has been granted in accordance with Chapter 15 of the Code of Judicial Procedure, in conjunction with the application of

Section 7 of the same Chapter, a request for arbitration abroad which might result in an award which is recognized and may be enforced in Sweden shall be equated with the commencement of an action.

If an application for the enforcement of a foreign award has been lodged, the Court of Appeal shall examine a request for a security measure or a request to set aside such decision.

Provisional Regulations

2018:1954

1. This Act shall enter into force on 1 March 2019.
2. Older provisions still apply to arbitral proceedings which have been commenced prior to the entry into force. Despite this, the following new provisions shall still apply:
 - (a) the applicable procedural order in Section 41 and the possibility to allow for oral evidence in English in Section 45 a in procedures initiated after the entry into force, and
 - (b) the requirement of leave to appeal in Section 43, second paragraph, for appeals of Court of Appeal determinations that are rendered after the entry into force.

The SCC Rules

MODEL ARBITRATION CLAUSE

Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

Recommended additions:

The arbitral tribunal shall be composed of three arbitrators/ a sole arbitrator.

The seat of arbitration shall be [...].

The language of the arbitration shall be [...].

This contract shall be governed by the substantive law of [...].

ARBITRATION RULES OF THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE

**Adopted by the Stockholm Chamber of Commerce and
in Force as of 1 January 2017**

Under any arbitration agreement referring to the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the “Arbitration Rules”) the parties shall be deemed to have agreed that the following rules, or such amended rules, in force on the date of the commencement of the arbitration, or the filing of an application for the

appointment of an Emergency Arbitrator, shall be applied unless otherwise agreed by the parties.

The English text prevails over other language versions.

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ARBITRATION RULES OF THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE

Arbitration Institute of the Stockholm Chamber of Commerce

Article 1 About the SCC

The Arbitration Institute of the Stockholm Chamber of Commerce (the “SCC”) is the body responsible for the administration of disputes in accordance with the “SCC Rules”; the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the “Arbitration Rules”) and the Rules for Expedited Arbitrations of the Stockholm Chamber of Commerce (the “Rules for Expedited Arbitrations”), and

other procedures or rules agreed upon by the parties. The SCC is composed of a board of directors (the “Board”) and a secretariat (the “Secretariat”). Detailed provisions regarding the organisation of the SCC are set out in Appendix I.

General Rules

Article 2 General conduct of the participants to the arbitration

- (1) Throughout the proceedings, the SCC, the Arbitral Tribunal and the parties shall act in an efficient and expeditious manner.
- (2) In all matters not expressly provided for in these Rules, the SCC, the Arbitral Tribunal and the parties shall act in the spirit of these Rules and shall make every reasonable effort to ensure that any award is legally enforceable.

Article 3 Confidentiality

Unless otherwise agreed by the parties, the SCC, the Arbitral Tribunal and any administrative secretary of the Arbitral Tribunal shall maintain the confidentiality of the arbitration and the award.

Article 4 Time periods

The Board may, on application by either party or on its own motion, extend any time period set by the SCC for a party to comply with a particular direction.

Article 5 Notices

- (1) Any notice or other communication from the Secretariat or the Board shall be delivered to the last known address of the addressee.
- (2) Any notice or other communication shall be delivered by courier or registered mail, e-mail or any other means that records the sending of the communication.
- (3) A notice or communication sent in accordance with paragraph (2) shall be deemed to have been received by the addressee on the date it would normally have been received given the means of communication used.
- (4) This article shall apply equally to any communications from the Arbitral Tribunal.

Commencement of Proceedings

Article 6 Request for Arbitration

A Request for Arbitration shall include:

- (i) the names, addresses, telephone numbers and e-mail addresses of the parties and their counsel;
- (ii) a summary of the dispute;
- (iii) a preliminary statement of the relief sought by the Claimant, including an estimate of the monetary value of the claims;
- (iv) a copy or description of the arbitration agreement or clause under which the dispute is to be settled;
- (v) where claims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each claim is made;
- (vi) comments on the number of arbitrators and the seat of arbitration; and
- (vii) if applicable, the name, address, telephone number and e-mail address of the arbitrator appointed by the Claimant.

Article 7 Registration Fee

- (1) Upon filing the Request for Arbitration, the Claimant shall pay a Registration Fee. The amount of the Registration Fee shall be determined in accordance with the Schedule of Costs (Appendix IV) in force on the date the Request for Arbitration is filed.
- (2) If the Registration Fee is not paid upon filing the Request for Arbitration, the Secretariat shall set a time period within which the Claimant shall pay the Registration Fee. If the Registration Fee is not paid within this time period, the Secretariat shall dismiss the Request for Arbitration.

Article 8 Commencement of arbitration

Arbitration shall be deemed to commence on the date the SCC receives the Request for Arbitration.

Article 9 Answer

- (1) The Secretariat shall send a copy of the Request for Arbitration and any attached documents to the Respondent. The Secretariat shall set a time period within which the Respondent shall submit an Answer to the SCC. The Answer shall include:
 - (i) any objections concerning the existence, validity or applicability of the arbitration agreement; however, failure to object shall not preclude the Respondent from raising such objections at any time up to and including the submission of the Statement of Defence;
 - (ii) an admission or denial of the relief sought in the Request for Arbitration;
 - (iii) a preliminary statement of any counterclaims or set-offs, including an estimate of the monetary value thereof;
 - (iv) where counterclaims or set-offs are made under more than one arbitration agreement, an indication of the arbitration agreement under which each counterclaim or set-off is made;
 - (v) comments on the number of arbitrators and the seat of arbitration; and
 - (vi) if applicable, the name, address, telephone number and e-mail address of the arbitrator appointed by the Respondent.
- (2) The Secretariat shall send a copy of the Answer to the Claimant. The Claimant may be given an opportunity to submit comments on the Answer, having regard to the circumstances of the case.
- (3) Failure by the Respondent to submit an Answer shall not prevent the arbitration from proceeding.

Article 10 Request for further details

- (1) The Board may request further details from either party regarding any of their written submissions to the SCC.
- (2) If the Claimant fails to comply with a request for further details, the Board may dismiss the case.
- (3) If the Respondent fails to comply with a request for further details regarding its counterclaim or set-off, the Board may dismiss the counterclaim or set-off.

- (4) Failure by the Respondent to otherwise comply with a request for further details shall not prevent the arbitration from proceeding.

Article 11 Decisions by the Board

The Board takes decisions as provided under these Rules, including deciding:

- (i) whether the SCC manifestly lacks jurisdiction over the dispute pursuant to Article 12 (i);
- (ii) whether to grant a request for joinder pursuant to Article 13;
- (iii) whether claims made under multiple contracts shall proceed in a single arbitration pursuant to Article 14;
- (iv) whether to consolidate cases pursuant to Article 15;
- (v) on the number of arbitrators pursuant to Article 16;
- (vi) on any appointment of arbitrators pursuant to Article 17;
- (vii) on any challenge to an arbitrator pursuant to Article 19;
- (viii) on the seat of arbitration pursuant to Article 25; and
- (ix) on the Advance on Costs pursuant to Article 51.

Article 12 Dismissal

The Board shall dismiss a case, in whole or in part, if:

- (i) the SCC manifestly lacks jurisdiction over the dispute; or
- (ii) the Advance on Costs is not paid pursuant to Article 51.

Article 13 Joinder of additional parties

- (1) A party to the arbitration may request that the Board join one or more additional parties to the arbitration.
- (2) The Request for Joinder shall be made as early as possible. A Request for Joinder made after the submission of the Answer will not be considered, unless the Board decides otherwise. Articles 6 and 7 shall apply *mutatis mutandis* to the Request for Joinder.
- (3) Arbitration against the additional party shall be deemed to commence on the date the SCC receives the Request for Joinder.
- (4) The Secretariat shall set a time period within which the additional party shall submit an Answer to the Request for Joinder. Article 9 shall apply *mutatis mutandis* to the Answer to the Request for Joinder.

- (5) The Board may decide to join one or more additional parties provided that the SCC does not manifestly lack jurisdiction over the dispute between the parties, including any additional party requested to be joined to the arbitration, pursuant to Article 12 (i).
- (6) In deciding whether to grant the Request for Joinder where claims are made under more than one arbitration agreement, the Board shall consult with the parties and shall have regard to Article 14 (3) (i)–(iv).
- (7) In all cases where the Board decides to grant the Request for Joinder any decision as to the Arbitral Tribunal's jurisdiction over any party joined to the arbitration shall be made by the Arbitral Tribunal.
- (8) Where the Board decides to grant the Request for Joinder and the additional party does not agree to any arbitrator already appointed, the Board may release the arbitrators and appoint the entire Arbitral Tribunal, unless all parties, including the additional party, agree on a different procedure for the appointment of the Arbitral Tribunal.

Article 14 Multiple contracts in a single arbitration

- (1) Parties may make claims arising out of or in connection with more than one contract in a single arbitration.
- (2) If any party raises any objections as to whether all of the claims made against it may be determined in a single arbitration, the claims may proceed in a single arbitration provided that the SCC does not manifestly lack jurisdiction over the dispute between the parties pursuant to Article 12 (i).
- (3) In deciding whether the claims shall proceed in a single arbitration, the Board shall consult with the parties and shall have regard to:
 - (i) whether the arbitration agreements under which the claims are made are compatible;
 - (ii) whether the relief sought arises out of the same transaction or series of transactions;
 - (iii) the efficiency and expeditiousness of the proceedings; and
 - (iv) any other relevant circumstances.
- (4) In all cases where the Board decides that the claims may proceed in a single arbitration, any decision as to the Arbitral Tribunal's jurisdiction over the claims shall be made by the Arbitral Tribunal.

Article 15 Consolidation of arbitrations

- (1) At the request of a party the Board may decide to consolidate a newly commenced arbitration with a pending arbitration, if:
 - (i) the parties agree to consolidate;
 - (ii) all the claims are made under the same arbitration agreement; or
 - (iii) where the claims are made under more than one arbitration agreement, the relief sought arises out of the same transaction or series of transactions and the Board considers the arbitration agreements to be compatible.
- (2) In deciding whether to consolidate, the Board shall consult with the parties and the Arbitral Tribunal and shall have regard to:
 - (i) the stage of the pending arbitration;
 - (ii) the efficiency and expeditiousness of the proceedings; and
 - (iii) any other relevant circumstances.
- (3) Where the Board decides to consolidate, the Board may release any arbitrator already appointed.

Composition of the Arbitral Tribunal

Article 16 Number of arbitrators

- (1) The parties may agree on the number of arbitrators.
- (2) Where the parties have not agreed on the number of arbitrators, the Board shall decide whether the Arbitral Tribunal shall consist of a sole arbitrator or three arbitrators, having regard to the complexity of the case, the amount in dispute and any other relevant circumstances.

Article 17 Appointment of arbitrators

- (1) The parties may agree on a procedure for appointment of the Arbitral Tribunal.
- (2) Where the parties have not agreed on a procedure, or if the Arbitral Tribunal has not been appointed within the time period agreed by the parties or, where the parties have not agreed on a time period, within the time period set by the Board, the appointment shall be made pursuant to paragraphs (3)–(7).

- (3) Where the Arbitral Tribunal is to consist of a sole arbitrator, the parties shall be given 10 days to jointly appoint the arbitrator. If the parties fail to appoint the arbitrator within this time, the Board shall make the appointment.
- (4) Where the Arbitral Tribunal is to consist of more than one arbitrator, each party shall appoint an equal number of arbitrators and the Board shall appoint the Chairperson. Where a party fails to appoint arbitrator(s) within the stipulated time period, the Board shall make the appointment.
- (5) Where there are multiple Claimants or Respondents and the Arbitral Tribunal is to consist of more than one arbitrator, the multiple Claimants, jointly, and the multiple Respondents, jointly, shall appoint an equal number of arbitrators. If either side fails to make such joint appointment, the Board may appoint the entire Arbitral Tribunal.
- (6) If the parties are of different nationalities, the sole arbitrator or the Chairperson of the Arbitral Tribunal shall be of a different nationality than the parties, unless the parties have agreed otherwise or the Board otherwise deems it appropriate.
- (7) When appointing arbitrators, the Board shall consider the nature and circumstances of the dispute, the applicable law, the seat and language of the arbitration and the nationality of the parties.

Article 18 Impartiality, independence and availability

- (1) Every arbitrator must be impartial and independent.
- (2) Before being appointed, a prospective arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to the prospective arbitrator's impartiality or independence.
- (3) Once appointed, an arbitrator shall submit to the Secretariat a signed statement of acceptance, availability, impartiality and independence, disclosing any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence. The Secretariat shall send a copy of the statement of acceptance, availability, impartiality and independence to the parties and the other arbitrators.

- (4) An arbitrator shall immediately inform the parties and the other arbitrators in writing if any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence arise during the course of the arbitration.

Article 19 Challenge to arbitrators

- (1) A party may challenge any arbitrator if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess the qualifications agreed by the parties.
- (2) A party may challenge an arbitrator it has appointed, or in whose appointment it has participated, only for reasons it becomes aware of after the appointment was made.
- (3) A party wishing to challenge an arbitrator shall submit a written statement to the Secretariat stating the reasons for the challenge, within 15 days from the date the circumstances giving rise to the challenge became known to the party. Failure to challenge an arbitrator within the stipulated time constitutes a waiver of the party's right to make the challenge.
- (4) The Secretariat shall notify the parties and the arbitrators of the challenge and give them an opportunity to submit comments.
- (5) If the other party agrees to the challenge, the arbitrator shall resign. In all other cases, the Board shall take the final decision on the challenge.

Article 20 Release from appointment

- (1) The Board shall release an arbitrator from appointment where:
 - (i) the Board accepts the resignation of the arbitrator;
 - (ii) a challenge to the arbitrator under Article 19 is sustained; or
 - (iii) the arbitrator is otherwise unable or fails to perform the arbitrator's functions.
- (2) Before the Board releases an arbitrator, the Secretariat may give the parties and the arbitrators an opportunity to submit comments.

Article 21 Replacement of arbitrators

- (1) The Board shall appoint a new arbitrator where an arbitrator has been released from appointment pursuant to Article 20, or where an arbitrator has died. If the released arbitrator was appointed by a party, that party shall appoint the new arbitrator, unless the Board otherwise deems it appropriate.
- (2) Where the Arbitral Tribunal consists of three or more arbitrators, the Board may decide that the remaining arbitrators shall proceed with the arbitration. Before the Board takes a decision, the parties and the arbitrators shall be given an opportunity to submit comments. In taking its decision, the Board shall have regard to the stage of the arbitration and any other relevant circumstances.
- (3) Where an arbitrator has been replaced, the newly composed Arbitral Tribunal shall decide whether and to what extent the proceedings are to be repeated.

The Proceedings Before the Arbitral Tribunal

Article 22 Referral to the Arbitral Tribunal

When the Arbitral Tribunal has been appointed and the Advance on Costs has been paid, the Secretariat shall refer the case to the Arbitral Tribunal.

Article 23 Conduct of the arbitration by the Arbitral Tribunal

- (1) The Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, subject to these Rules and any agreement between the parties.
- (2) In all cases, the Arbitral Tribunal shall conduct the arbitration in an impartial, efficient and expeditious manner, giving each party an equal and reasonable opportunity to present its case.

Article 24 Administrative secretary of the Arbitral Tribunal

- (1) The Arbitral Tribunal may at any time during the arbitration submit to the SCC a proposal for the appointment of a specific candidate as administrative secretary. The appointment is subject to the approval of the parties.

- (2) The Arbitral Tribunal shall consult the parties regarding the tasks of the administrative secretary. The Arbitral Tribunal may not delegate any decision-making authority to the administrative secretary.
- (3) The administrative secretary must be impartial and independent. The Arbitral Tribunal shall ensure that the administrative secretary remains impartial and independent at all stages of the arbitration.
- (4) Before being appointed, the proposed administrative secretary shall sign a statement of availability, impartiality and independence disclosing any circumstances that may give rise to justifiable doubts as to the proposed administrative secretary's impartiality or independence.
- (5) A party may request the removal of the administrative secretary based on the procedure set out in Article 19, which shall apply *mutatis mutandis* to a challenge of an administrative secretary. If the Board removes an administrative secretary, the Arbitral Tribunal may propose the appointment of another administrative secretary in accordance with this Article. A request for removal shall not prevent the arbitration from proceeding, unless the Arbitral Tribunal decides otherwise.
- (6) Any fee payable to the administrative secretary shall be paid from the fees of the Arbitral Tribunal.

Article 25 Seat of arbitration

- (1) Unless agreed upon by the parties, the Board shall decide the seat of arbitration.
- (2) The Arbitral Tribunal may, after consulting the parties, conduct hearings at any place it considers appropriate. The Arbitral Tribunal may meet and deliberate at any place it considers appropriate. The arbitration shall be deemed to have taken place at the seat of arbitration regardless of any hearing, meeting, or deliberation held elsewhere.
- (3) The award shall be deemed to have been made at the seat of arbitration.

Article 26 Language

- (1) Unless agreed upon by the parties, the Arbitral Tribunal shall determine the language(s) of the arbitration. In so determining, the Arbitral Tribunal shall have due regard to all relevant circumstances and shall give the parties an opportunity to submit comments.
- (2) The Arbitral Tribunal may request that any documents submitted in languages other than those of the arbitration be accompanied by a translation into the language(s) of the arbitration.

Article 27 Applicable law

- (1) The Arbitral Tribunal shall decide the merits of the dispute on the basis of the law(s) or rules of law agreed upon by the parties. In the absence of such agreement, the Arbitral Tribunal shall apply the law or rules of law that it considers most appropriate.
- (2) Any designation by the parties of the law of a given state shall be deemed to refer to the substantive law of that state, not to its conflict of laws rules.
- (3) The Arbitral Tribunal shall decide the dispute *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so.

Article 28 Case management conference and timetable

- (1) After the referral of the case to the Arbitral Tribunal, the Arbitral Tribunal shall promptly hold a case management conference with the parties to organise, schedule and establish procedures for the conduct of the arbitration.
- (2) The case management conference may be conducted in person or by any other means.
- (3) Having regard to the circumstances of the case, the Arbitral Tribunal and the parties shall seek to adopt procedures enhancing the efficiency and expeditiousness of the proceedings.
- (4) During or immediately following the case management conference, the Arbitral Tribunal shall establish a timetable for the conduct of the arbitration, including the date for making the award.
- (5) The Arbitral Tribunal may, after consulting the parties, hold further case management conferences and issue revised timetables as it

deems appropriate. The Arbitral Tribunal shall send a copy of the timetable and any subsequent modifications to the parties and to the Secretariat.

Article 29 Written submissions

- (1) Within the period determined by the Arbitral Tribunal, the Claimant shall submit a Statement of Claim which shall include, unless previously submitted:
 - (i) the specific relief sought;
 - (ii) the factual and legal basis the Claimant relies on; and
 - (iii) any evidence the Claimant relies on.
- (2) Within the period determined by the Arbitral Tribunal, the Respondent shall submit a Statement of Defence which shall include, unless previously submitted:
 - (i) any objections concerning the existence, validity or applicability of the arbitration agreement;
 - (ii) a statement whether, and to what extent, the Respondent admits or denies the relief sought by the Claimant;
 - (iii) the factual and legal basis the Respondent relies on;
 - (iv) any counterclaim or set-off and the grounds on which it is based; and
 - (v) any evidence the Respondent relies on.
- (3) The Arbitral Tribunal may order the parties to submit additional written submissions.

Article 30 Amendments

At any time prior to the close of proceedings pursuant to Article 40, a party may amend or supplement its claim, counterclaim, defence or set-off provided its case, as amended or supplemented, is still comprised by the arbitration agreement, unless the Arbitral Tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it, the prejudice to the other party or any other relevant circumstances.

Article 31 Evidence

- (1) The admissibility, relevance, materiality and weight of evidence shall be for the Arbitral Tribunal to determine.
- (2) The Arbitral Tribunal may order a party to identify the documentary evidence it intends to rely on and specify the circumstances intended to be proved by such evidence.
- (3) At the request of a party, or exceptionally on its own motion, the Arbitral Tribunal may order a party to produce any documents or other evidence that may be relevant to the case and material to its outcome.

Article 32 Hearings

- (1) A hearing shall be held if requested by a party, or if the Arbitral Tribunal deems it appropriate.
- (2) The Arbitral Tribunal shall, in consultation with the parties, determine the date, time and location of any hearing and shall provide the parties with reasonable notice thereof.
- (3) Unless otherwise agreed by the parties, hearings will be held in private.

Article 33 Witnesses

- (1) In advance of any hearing, the Arbitral Tribunal may order the parties to identify each witness or expert they intend to call and specify the circumstances intended to be proved by each testimony.
- (2) The testimony of witnesses or party-appointed experts may be submitted in the form of signed statements.
- (3) Any witness or expert, on whose testimony a party seeks to rely, shall attend a hearing for examination, unless otherwise agreed by the parties.

Article 34 Experts appointed by the Arbitral Tribunal

- (1) After consulting the parties, the Arbitral Tribunal may appoint one or more experts to report to it on specific issues set out by the Arbitral Tribunal in writing.

- (2) Upon receipt of a report from an expert it has appointed, the Arbitral Tribunal shall send a copy of the report to the parties and shall give the parties an opportunity to submit written comments on the report.
- (3) Upon the request of a party, the parties shall be given an opportunity to examine any expert appointed by the Arbitral Tribunal at a hearing.

Article 35 Default

- (1) If the Claimant, without good cause, fails to submit a Statement of Claim in accordance with Article 29, the Arbitral Tribunal shall terminate the proceedings, provided the Respondent has not filed a counterclaim.
- (2) If a party, without good cause, fails to submit a Statement of Defence or other written statement in accordance with Article 29, fails to appear at a hearing, or otherwise fails to avail itself of the opportunity to present its case, the Arbitral Tribunal may proceed with the arbitration and make an award.
- (3) If a party, without good cause, fails to comply with any provision of, or requirement under, these Rules or any procedural order given by the Arbitral Tribunal, the Arbitral Tribunal may draw such inferences as it considers appropriate.

Article 36 Waiver

A party who, during the arbitration, fails to object without delay to any failure to comply with the arbitration agreement, these Rules or other rules applicable to the proceedings, shall be deemed to have waived the right to object to such failure.

Article 37 Interim measures

- (1) The Arbitral Tribunal may, at the request of a party, grant any interim measures it deems appropriate.
- (2) The Arbitral Tribunal may order the party requesting an interim measure to provide appropriate security in connection with the measure.
- (3) An interim measure shall take the form of an order or an award.

- (4) Provisions with respect to interim measures requested before arbitration has commenced, or before a case has been referred to an Arbitral Tribunal, are set out in Appendix II.
- (5) A request for interim measures made by a party to a judicial authority is not incompatible with the arbitration agreement or with these Rules.

Article 38 Security for costs

- (1) The Arbitral Tribunal may, in exceptional circumstances and at the request of a party, order any Claimant or Counterclaimant to provide security for costs in any manner the Arbitral Tribunal deems appropriate.
- (2) In determining whether to order security for costs, the Arbitral Tribunal shall have regard to:
 - (i) the prospects of success of the claims, counterclaims and defences;
 - (ii) the Claimant's or Counterclaimant's ability to comply with an adverse costs award and the availability of assets for enforcement of an adverse costs award;
 - (iii) whether it is appropriate in all the circumstances of the case to order one party to provide security; and
 - (iv) any other relevant circumstances.
- (3) If a party fails to comply with an order to provide security, the Arbitral Tribunal may stay or dismiss the party's claims in whole or in part.
- (4) Any decision to stay or to dismiss a party's claims shall take the form of an order or an award.

Article 39 Summary procedure

- (1) A party may request that the Arbitral Tribunal decide one or more issues of fact or law by way of summary procedure, without necessarily undertaking every procedural step that might otherwise be adopted for the arbitration.
- (2) A request for summary procedure may concern issues of jurisdiction, admissibility or the merits. It may include, for example, an assertion that:

- (i) an allegation of fact or law material to the outcome of the case is manifestly unsustainable;
 - (ii) even if the facts alleged by the other party are assumed to be true, no award could be rendered in favour of that party under the applicable law; or
 - (iii) any issue of fact or law material to the outcome of the case is, for any other reason, suitable to determination by way of summary procedure.
- (3) The request shall specify the grounds relied on and the form of summary procedure proposed, and demonstrate that such procedure is efficient and appropriate in all the circumstances of the case.
- (4) After providing the other party an opportunity to submit comments, the Arbitral Tribunal shall issue an order either dismissing the request or fixing the summary procedure in the form it deems appropriate.
- (5) In determining whether to grant a request for summary procedure, the Arbitral Tribunal shall have regard to all relevant circumstances, including the extent to which the summary procedure contributes to a more efficient and expeditious resolution of the dispute.
- (6) If the request for summary procedure is granted, the Arbitral Tribunal shall seek to make its order or award on the issues under consideration in an efficient and expeditious manner having regard to the circumstances of the case, while giving each party an equal and reasonable opportunity to present its case pursuant to Article 23 (2).

Article 40 Close of proceedings

The Arbitral Tribunal shall declare the proceedings closed when it is satisfied that the parties have had a reasonable opportunity to present their cases. In exceptional circumstances, prior to the making of the final award, the Arbitral Tribunal may reopen the proceedings on its own motion, or on the application of a party.

Awards and Decisions

Article 41 Awards and decisions

- (1) Where the Arbitral Tribunal consists of more than one arbitrator, any award or other decision shall be made by a majority of the arbitrators or, failing a majority, by the Chairperson.
- (2) The Arbitral Tribunal may decide that the Chairperson alone may make procedural rulings.

Article 42 Making of awards

- (1) The Arbitral Tribunal shall make its award in writing, and, unless otherwise agreed by the parties, shall state the reasons upon which the award is based.
- (2) An award shall include the date of the award and the seat of arbitration in accordance with Article 25.
- (3) An award shall be signed by the arbitrators. If an arbitrator fails to sign an award, the signatures of the majority of the arbitrators or, failing a majority, of the Chairperson shall be sufficient, provided that the reason for the omission of the signature is stated in the award.
- (4) The Arbitral Tribunal shall deliver a copy of the award to each of the parties and to the SCC without delay.
- (5) If any arbitrator fails, without good cause, to participate in the deliberations of the Arbitral Tribunal on any issue, such failure will not preclude a decision being taken by the other arbitrators.

Article 43 Time limit for final award

The final award shall be made no later than six months from the date the case was referred to the Arbitral Tribunal pursuant to Article 22. The Board may extend this time limit upon a reasoned request from the Arbitral Tribunal or if otherwise deemed necessary.

Article 44 Separate award

The Arbitral Tribunal may decide a separate issue or part of the dispute in a separate award.

Article 45 Settlement or other grounds for termination of the arbitration

- (1) If the parties reach a settlement before the final award is made, the Arbitral Tribunal may, at the request of both parties, make a consent award recording the settlement.
- (2) If the arbitration is terminated for any other reason before the final award is made, the Arbitral Tribunal shall issue an award recording the termination.

Article 46 Effect of an award

An award shall be final and binding on the parties when rendered. By agreeing to arbitration under these Rules, the parties undertake to carry out any award without delay.

Article 47 Correction and interpretation of an award

- (1) Within 30 days of receiving an award, a party may, upon notice to the other party, request that the Arbitral Tribunal correct any clerical, typographical or computational errors in the award, or provide an interpretation of a specific point or part of the award. After giving the other party an opportunity to comment on the request, and if the Arbitral Tribunal considers the request justified, it shall make the correction or provide the interpretation within 30 days of receiving the request.
- (2) The Arbitral Tribunal may correct any error of the type referred to in paragraph (1) above on its own motion within 30 days of the date of an award.
- (3) Any correction or interpretation of an award shall be in writing and shall comply with the requirements of Article 42.

Article 48 Additional award

Within 30 days of receiving an award, a party may, upon notice to the other party, request that the Arbitral Tribunal make an additional award on claims presented in the arbitration but not determined in the award. After giving the other party an opportunity to comment on the request, and if the Arbitral Tribunal considers the request justified, it shall make the additional award within 60 days of receiving the request. When deemed necessary, the Board may extend this 60 day time limit.

Costs of the Arbitration

Article 49 Costs of the Arbitration

- (1) The Costs of the Arbitration consist of:
 - (i) the Fees of the Arbitral Tribunal;
 - (ii) the Administrative Fee; and
 - (iii) the expenses of the Arbitral Tribunal and the SCC.
- (2) Before making the final award, the Arbitral Tribunal shall request that the Board finally determine the Costs of the Arbitration. The Board shall finally determine the Costs of the Arbitration in accordance with the Schedule of Costs (Appendix IV) in force on the date of commencement of the arbitration pursuant to Article 8.
- (3) In finally determining the Costs of the Arbitration, the Board shall have regard to the extent to which the Arbitral Tribunal has acted in an efficient and expeditious manner, the complexity of the dispute and any other relevant circumstances.
- (4) If the arbitration is terminated before the final award is made pursuant to Article 45, the Board shall finally determine the Costs of the Arbitration having regard to the stage of the arbitration, the work performed by the Arbitral Tribunal and any other relevant circumstances.
- (5) The Arbitral Tribunal shall include in the final award the Costs of the Arbitration as finally determined by the Board and specify the individual fees and expenses of each member of the Arbitral Tribunal and the SCC.
- (6) Unless otherwise agreed by the parties, the Arbitral Tribunal shall, at the request of a party, apportion the Costs of the Arbitration between the parties, having regard to the outcome of the case, each party's contribution to the efficiency and expeditiousness of the arbitration and any other relevant circumstances.
- (7) The parties are jointly and severally liable to the arbitrator(s) and to the SCC for the Costs of the Arbitration.

Article 50 Costs incurred by a party

Unless otherwise agreed by the parties, the Arbitral Tribunal may in the final award, at the request of a party, order one party to pay any reasonable

costs incurred by another party, including costs for legal representation, having regard to the outcome of the case, each party's contribution to the efficiency and expeditiousness of the arbitration and any other relevant circumstances.

Article 51 Advance on Costs

- (1) The Board shall determine an amount to be paid by the parties as an Advance on Costs.
- (2) The Advance on Costs shall correspond to the estimated amount of the Costs of Arbitration pursuant to Article 49 (1).
- (3) Each party shall pay half of the Advance on Costs, unless separate advances are determined. Where counterclaims or set-offs are submitted, the Board may decide that each party shall pay advances corresponding to its claims. Where an additional party is joined to the arbitration pursuant to Article 13, the Board may determine each party's share of the Advance on Costs as it deems appropriate, having regard to the circumstances of the case.
- (4) At the request of the Arbitral Tribunal, or if otherwise deemed necessary, the Board may order parties to pay additional advances during the course of the arbitration.
- (5) If a party fails to make a required payment, the Secretariat shall give the other party an opportunity to do so within a specified period of time. If the payment is not made within that time, the Board shall dismiss the case in whole or in part. If the other party makes the required payment, the Arbitral Tribunal may, at the request of that party, make a separate award for reimbursement of the payment.
- (6) At any stage during the arbitration or after the Award has been made, the Board may draw on the Advance on Costs to cover the Costs of the Arbitration.
- (7) The Board may decide that part of the Advance on Costs may be provided in the form of a bank guarantee or other form of security.

Miscellaneous

Article 52 Exclusion of liability

Neither the SCC, the arbitrator(s), the administrative secretary of the Arbitral Tribunal, nor any expert appointed by the Arbitral Tribunal, is

liable to any party for any act or omission in connection with the arbitration, unless such act or omission constitutes wilful misconduct or gross negligence.

APPENDIX I ORGANISATION

Article 1 About the SCC

The Arbitration Institute of the Stockholm Chamber of Commerce (the “SCC”) is a body providing administrative services in relation to the settlement of disputes. The SCC is part of the Stockholm Chamber of Commerce, but is independent in exercising its functions in the administration of disputes. The SCC is composed of a board of directors (the “Board”) and a secretariat (the “Secretariat”).

Article 2 Function of the SCC

The SCC does not itself decide disputes. The function of the SCC is to:

- (i) administer domestic and international disputes in accordance with the SCC Rules and other procedures or rules agreed upon by the parties; and
- (ii) provide information concerning arbitration and mediation matters.

Article 3 The Board

The Board shall be composed of one chairperson, a maximum of three vice-chairpersons and a maximum of 12 additional members. The Board shall include both Swedish and non-Swedish nationals.

Article 4 Appointment of the Board

The Board shall be appointed by the Board of Directors of the Stockholm Chamber of Commerce (the “Board of Directors”). The members of the Board shall be appointed for a period of three years and, unless exceptional circumstances apply, are only eligible for re-appointment in their respective capacities for one further three year period.

Article 5 Removal of a member of the Board

In exceptional circumstances, the Board of Directors may remove a member of the Board. If a member resigns or is removed during a term of

office, the Board of Directors shall appoint a new member for the remainder of the term.

Article 6 Function of the Board

The function of the Board is to take the decisions required of the SCC in administering disputes under the SCC Rules and any other rules or procedures agreed upon by the parties. Such decisions include decisions on the jurisdiction of the SCC, determination of advances on costs, appointment of arbitrators, decisions upon challenges to arbitrators, removal of arbitrators and the fixing of arbitration costs.

Article 7 Decisions by the Board

Two members of the Board form a quorum. If a majority is not attained, the Chairperson has the casting vote. The Chairperson or a Vice Chairperson may take decisions on behalf of the Board in urgent matters. A committee of the Board may be appointed to take certain decisions on behalf of the Board. The Board may delegate decisions to the Secretariat, including decisions on advances on costs, extension of time for rendering an award, dismissal for non-payment of registration fee, release of arbitrators and fixing of arbitration costs. Decisions by the Board are final.

Article 8 The Secretariat

The Secretariat acts under the direction of a Secretary General. The Secretariat carries out the functions assigned to it under the SCC Rules. The Secretariat may also take decisions delegated to it by the Board.

Article 9 Procedures

The SCC shall maintain the confidentiality of the arbitration and the award and shall deal with the arbitration in an impartial, efficient and expeditious manner.

APPENDIX II EMERGENCY ARBITRATOR

Article 1 Emergency Arbitrator

- (1) A party may apply for the appointment of an Emergency Arbitrator until the case has been referred to an Arbitral Tribunal pursuant to Article 22 of the Arbitration Rules.

- (2) The powers of the Emergency Arbitrator shall be those set out in Article 37 (1)–(3) of the Arbitration Rules. Such powers terminate on referral of the case to an Arbitral Tribunal pursuant to Article 22 of the Arbitration Rules, or when an emergency decision ceases to be binding according to Article 9 (4) of this Appendix.

Article 2 Application for the appointment of an Emergency Arbitrator

An application for the appointment of an Emergency Arbitrator shall include:

- (i) the names, addresses, telephone numbers and e-mail addresses of the parties and their counsel;
- (ii) a summary of the dispute;
- (iii) a statement of the interim relief sought and the reasons therefor;
- (iv) a copy or description of the arbitration agreement or clause under which the dispute is to be settled;
- (v) comments on the seat of the emergency proceedings, the applicable law(s) and the language(s) of the proceedings; and
- (vi) proof of payment of the costs for the emergency proceedings pursuant to Article 10 (1) of this Appendix.

Article 3 Notice

As soon as an application for the appointment of an Emergency Arbitrator has been received, the Secretariat shall send the application to the other party.

Article 4 Appointment of the Emergency Arbitrator

- (1) The Board shall seek to appoint an Emergency Arbitrator within 24 hours of receipt of the application.
- (2) An Emergency Arbitrator shall not be appointed if the SCC manifestly lacks jurisdiction over the dispute.
- (3) Article 19 of the Arbitration Rules applies to the challenge of an Emergency Arbitrator, except that a challenge must be made within 24 hours from the time the circumstances giving rise to the challenge became known to the party.

- (4) An Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless otherwise agreed by the parties.

Article 5 Seat of the emergency proceedings

The seat of the emergency proceedings shall be that which has been agreed upon by the parties as the seat of the arbitration. If the seat of the arbitration has not been agreed by the parties, the Board shall determine the seat of the emergency proceedings.

Article 6 Referral to the Emergency Arbitrator

Once an Emergency Arbitrator has been appointed, the Secretariat shall promptly refer the application to the Emergency Arbitrator.

Article 7 Conduct of the emergency proceedings

Article 23 of the Arbitration Rules shall apply to the emergency proceedings, taking into account the urgency inherent in such proceedings.

Article 8 Emergency decisions on interim measures

- (1) Any emergency decision on interim measures shall be made no later than 5 days from the date the application was referred to the Emergency Arbitrator pursuant to Article 6 of this Appendix. The Board may extend this time limit upon a reasoned request from the Emergency Arbitrator, or if otherwise deemed necessary.
- (2) Any emergency decision on interim measures shall:
- (i) be made in writing;
 - (ii) state the date when it was made, the seat of the emergency proceedings and the reasons upon which the decision is based; and
 - (iii) be signed by the Emergency Arbitrator.
- (3) The Emergency Arbitrator shall promptly deliver a copy of the emergency decision to each of the parties and to the SCC.

Article 9 Binding effect of emergency decisions

- (1) An emergency decision shall be binding on the parties when rendered.

- (2) At the reasoned request of a party, the Emergency Arbitrator may amend or revoke the emergency decision.
- (3) By agreeing to arbitration under the Arbitration Rules, the parties undertake to comply with any emergency decision without delay.
- (4) The emergency decision ceases to be binding if:
 - (i) the Emergency Arbitrator or an Arbitral Tribunal so decides;
 - (ii) an Arbitral Tribunal makes a final award;
 - (iii) arbitration is not commenced within 30 days from the date of the emergency decision; or
 - (iv) the case is not referred to an Arbitral Tribunal within 90 days from the date of the emergency decision.
- (5) An Arbitral Tribunal is not bound by the decision(s) and reasons of the Emergency Arbitrator.

Article 10 Costs of the emergency proceedings

- (1) The party applying for the appointment of an Emergency Arbitrator shall pay the costs set out in paragraph (2) (i) and (ii) below upon filing the application.
- (2) The costs of the emergency proceedings include:
 - (i) the fee of the Emergency Arbitrator, which amounts to EUR 16 000;
 - (ii) the application fee of EUR 4 000; and
 - (iii) the reasonable costs incurred by the parties, including costs for legal representation.
- (3) At the request of the Emergency Arbitrator, or if otherwise deemed appropriate, the Board may decide to increase or reduce the costs set out in paragraph (2) (i) and (ii) above, having regard to the nature of the case, the work performed by the Emergency Arbitrator and the SCC and any other relevant circumstances.
- (4) If payment of the costs set out in paragraph (2) (i) and (ii) above is not made in due time, the Secretariat shall dismiss the application.
- (5) At the request of a party, the Emergency Arbitrator shall in the emergency decision apportion the costs of the emergency proceedings between the parties.

- (6) The Emergency Arbitrator shall apply the principles of Articles 49 (6) and 50 of the Arbitration Rules when apportioning the costs of the emergency proceedings.

APPENDIX III

INVESTMENT TREATY DISPUTES

Article 1 Scope of application

- (1) The articles contained in this Appendix apply to cases under the Arbitration Rules based on a treaty providing for arbitration of disputes between an investor and a state.
- (2) Articles 13, 14 and 15 of the Arbitration Rules shall apply *mutatis mutandis* to the cases indicated in paragraph (1) above.

Article 2 Number of arbitrators

- (1) The parties may agree on the number of arbitrators.
- (2) Where the parties have not agreed on the number of arbitrators, the Arbitral Tribunal shall consist of three arbitrators, unless the Board, having regard to the complexity of the case, the amount in dispute and any other relevant circumstances, decides that the dispute is to be decided by a sole arbitrator.

Article 3 Submission by a Third Person

- (1) Any person that is neither a disputing party nor a non-disputing treaty Party (“Third Person”) may apply to the Arbitral Tribunal for permission to make a written submission in the arbitration.
- (2) All such applications shall:
 - (i) be made in a language of the arbitration;
 - (ii) identify and describe the Third Person, including where relevant its membership and legal status, its general objectives, the nature of its activities and any parent or other affiliated organisation, and any other entity or person that directly or indirectly controls the Third Person;
 - (iii) disclose any direct or indirect affiliation with any party to the arbitration;

- (iv) identify any government, organisation or person that has directly or indirectly provided any financial or other assistance in preparing the submission;
 - (v) specify the nature of the interest that the Third Person has in the arbitration; and
 - (vi) identify the specific issues of fact or law in the arbitration that the Third Person wishes to address in its submission.
- (3) In determining whether to allow such a submission, and after consulting the disputing parties, the Arbitral Tribunal shall have regard to:
- (i) the nature and significance of the interest of the Third Person in the arbitration;
 - (ii) whether the submission would assist the Arbitral Tribunal in determining a material factual or legal issue in the arbitration by bringing a perspective, particular knowledge or insight that is distinct from or broader than that of the disputing parties; and
 - (iii) any other relevant circumstances.
- (4) The Arbitral Tribunal may, after consulting the disputing parties, invite a Third Person to make a written submission on a material factual or legal issue in the arbitration. The Arbitral Tribunal shall not draw any inference from the absence of any submission or response to an invitation.
- (5) If permission is granted or an invitation by the Arbitral Tribunal accepted, the submission filed by the Third Person shall:
- (i) be made in a language of the arbitration; and
 - (ii) set out a precise statement of the Third Person's position on the identified issue(s), in no case longer than as authorized by the Arbitral Tribunal.
- (6) For the purposes of preparing its written submission, a Third Person may apply to the Arbitral Tribunal for access to submissions and evidence filed in the arbitration. The Arbitral Tribunal shall consult the disputing parties before ruling on the application, and shall take into account, and where appropriate safeguard, any confidentiality of the information in question.

- (7) The Arbitral Tribunal may, at the request of a disputing party, or on its own initiative:
 - (i) request further details from the Third Person regarding the written submission;
 - (ii) require that the Third Person attend a hearing to elaborate or be examined on its submission.
- (8) The Arbitral Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by any Third Person.
- (9) The Arbitral Tribunal shall ensure that any Third Person submission does not disrupt or unduly burden the arbitral proceedings or unduly prejudice any disputing party.
- (10) The Arbitral Tribunal may, as a condition for allowing a Third Person to make a submission, require that the Third Person provide security for reasonable legal or other costs expected to be incurred by the disputing parties as a result of the submission.

Article 4 Submission by a non-disputing treaty Party

- (1) Subject to Article 3 (9) of this Appendix, as applied by Article 4 (4) below, the Arbitral Tribunal shall allow or, after consulting the disputing parties, may invite, submissions on issues of treaty interpretation that are material to the outcome of the case from a non-disputing treaty Party.
- (2) The Arbitral Tribunal, after consulting the disputing parties, may allow or invite submissions from a non-disputing treaty Party on other material issues in the arbitration. In determining whether to allow or invite such submissions, the Arbitral Tribunal shall have regard to:
 - (i) the matters referred to in Article 3 (3) of this Appendix;
 - (ii) the need to avoid submissions appearing to support the investor's claim in a manner tantamount to diplomatic protection; and
 - (iii) any other relevant circumstances.
- (3) The Arbitral Tribunal shall not draw any inference from the absence of any submission or response to any invitation pursuant to paragraphs (1) or (2) above.

- (4) Article 3 (5)–(9) of this Appendix shall apply equally to any submission by a non-disputing treaty Party.

APPENDIX IV SCHEDULE OF COSTS

Arbitration Costs

Article 1 Registration Fee

- (1) The Registration Fee referred to in Article 7 of the Arbitration Rules is EUR 3 000.
- (2) The Registration Fee is non-refundable and constitutes a part of the Administrative Fee in Article 3 below. The Registration Fee shall be credited to the Advance on Costs to be paid by the Claimant pursuant to Article 51 of the Arbitration Rules.

Article 2 Fees of the Arbitral Tribunal

- (1) The Board shall determine the fee of a Chairperson or sole arbitrator based on the amount in dispute in accordance with the table below.
- (2) Co-arbitrators shall each receive 60 per cent of the fee of the Chairperson. After consultation with the Arbitral Tribunal, the Board may decide that a different percentage shall apply.
- (3) The amount in dispute shall be the aggregate value of all claims, counterclaims and set-offs. Where the amount in dispute cannot be ascertained, the Board shall determine the Fees of the Arbitral Tribunal having regard to all relevant circumstances.
- (4) In exceptional circumstances, the Board may deviate from the amounts set out in the table.

Article 3 Administrative Fee

- (1) The Administrative Fee shall be determined in accordance with the table below.
- (2) The amount in dispute shall be the aggregate value of all claims, counterclaims and set-offs. Where the amount in dispute cannot be ascertained, the Board shall determine the Administrative Fee having regard to all relevant circumstances.

- (3) In exceptional circumstances, the Board may deviate from the amounts set out in the table.

Article 4 Expenses

In addition to the Fees of the arbitrator(s) and the Administrative Fee, the Board shall fix an amount to cover any reasonable expenses incurred by the arbitrator(s) and the SCC. The expenses of the arbitrator(s) may include the fee and expenses of any expert appointed by the Arbitral Tribunal pursuant to Article 34 of the Arbitration Rules.

Article 5 Pledge

By paying the Advance on Costs pursuant to Article 51 (1) of the Arbitration Rules, each party irrevocably and unconditionally pledges to the SCC and to the arbitrators, as represented by the SCC, any rights over any amount paid to the SCC as continuing security for any liabilities for the Costs of the Arbitration.

ARBITRATORS' FEES

Amount in dispute	Fee of the Chairperson/Sole Arbitrator	
(EUR)	Minimum (EUR)	Maximum (EUR)
to 25 000	4 000	12 000
from 25 001 to 50 000	4 000 + 2 % of the amount above 25 000	12 000 + 14 % of the amount above 25 000
from 50 001 to 100 000	4 500 + 5 % of the amount above 50 000	15 500 + 5 % of the amount above 50 000
from 100 001 to 500 000	7 000 + 2 % of the amount above 100 000	18 000 + 4 % of the amount above 100 000
from 500 001 to 1 000 000	15 000 + 1 % of the amount above 500 000	34 000 + 3 % of the amount above 500 000
from 1 000 001 to 2 000 000	20 000 + 0,8 % of the amount above 1 000 000	49 000 + 2,3 % of the amount above 1 000 000
from 2 000 001 to 5 000 000	28 000 + 0,4 % of the amount above 2 000 000	72 000 + 1,4 % of the amount above 2 000 000

Amount in dispute	Fee of the Chairperson/Sole Arbitrator	
(EUR)	Minimum (EUR)	Maximum (EUR)
from 5 000 001 to 10 000 000	40 000 + 0,2 % of the amount above 5 000 000	114 000 + 0,5 % of the amount above 5 000 000
from 10 000 001 to 50 000 000	50 000 + 0,05 % of the amount above 10 000 000	139 000 + 0,2 % of the amount above 10 000 000
from 50 000 001 to 75 000 000	70 000 + 0,05 % of the amount above 50 000 000	219 000 + 0,12 % of the amount above 50 000 000
from 75 000 001 to 100 000 000	82 500 + 0,03 % of the amount above 75 000 000	249 000 + 0,05 % of the amount above 75 000 000
from 100 000 001	To be determined by the Board	To be determined by the Board

ADMINISTRATIVE FEE

Amount in dispute (EUR)	Administrative Fee (EUR)
to 25 000	3 000
from 25 001 to 50 000	3 000 + 4 % of the amount above 25 000
from 50 001 to 100 000	4 000 + 2,4 % of the amount above 50 000
from 100 001 to 500 000	5 200 + 2 % of the amount above 100 000
from 500 001 to 1 000 000	13 200 + 0,8 % of the amount above 500 000
from 1 000 001 to 2 000 000	17 200 + 0,5 % of the amount above 1 000 000
from 2 000 001 to 5 000 000	22 200 + 0,3 % of the amount above 2 000 000
from 5 000 001 to 10 000 000	31 200 + 0,14 % of the amount above 5 000 000
from 10 000 001 to 50 000 000	38 200 + 0,04 % of the amount above 10 000 000
from 50 000 001 to 75 000 000	54 200 + 0,02 % of the amount above 50 000 000

Amount in dispute (EUR)	Administrative Fee (EUR)
from 75 000 001	59 200 + 0,02 % of the amount above 75 000 000
	Maximum 60 000

The Costs of the Arbitration may easily be calculated at www.sccinstitute.com

The SCC Expedited Rules

MODEL ARBITRATION CLAUSE

Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce.

Recommended additions:

The seat of arbitration shall be [...].

The language of the arbitration shall be [...].

This contract shall be governed by the substantive law of [...].

RULES FOR EXPEDITED ARBITRATIONS OF THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE

Adopted by The Stockholm Chamber of Commerce and in Force as of 1 January 2017

Under any arbitration agreement referring to the Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce (the “Rules for Expedited Arbitrations”) the parties shall be deemed to have agreed that the following rules, or such amended rules, in force on the date of the commencement of the arbitration, or the filing

of an application for the appointment of an Emergency Arbitrator, shall be applied unless otherwise agreed by the parties.

The English text prevails over other language versions.

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RULES FOR EXPEDITED ARBITRATIONS OF THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE

Arbitration Institute of the Stockholm Chamber of Commerce

Article 1 About the SCC

The Arbitration Institute of the Stockholm Chamber of Commerce (the “SCC”) is the body responsible for the administration of disputes in accordance with the “SCC Rules”; the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the “Arbitration Rules”) and the Rules for Expedited Arbitrations of the Stockholm Chamber of Commerce (the “Rules for Expedited Arbitrations”), and other procedures or rules agreed upon by the parties. The SCC is composed of a board of directors (the “Board”) and a secretariat (the “Secretariat”). Detailed provisions regarding the organisation of the SCC are set out in Appendix I.

General Rules

Article 2 General conduct of the participants to the arbitration

- (1) Throughout the proceedings, the SCC, the Arbitrator and the parties shall act in an efficient and expeditious manner.
- (2) In all matters not expressly provided for in these Rules, the SCC, the Arbitrator and the parties shall act in the spirit of these Rules and shall make every reasonable effort to ensure that any award is legally enforceable.

Article 3 Confidentiality

Unless otherwise agreed by the parties, the SCC, the Arbitrator and any administrative secretary of the Arbitrator shall maintain the confidentiality of the arbitration and the award.

Article 4 Time periods

The Board may, on application by either party or on its own motion, extend any time period set by the SCC for a party to comply with a particular direction.

Article 5 Notices

- (1) Any notice or other communication from the Secretariat or the Board shall be delivered to the last known address of the addressee.
- (2) Any notice or other communication shall be delivered by courier or registered mail, e-mail or any other means that records the sending of the communication.
- (3) A notice or communication sent in accordance with paragraph (2) shall be deemed to have been received by the addressee on the date it would normally have been received given the means of communication used.
- (4) This article shall apply equally to any communications from the Arbitrator.

Commencement of Proceedings

Article 6 Request for Arbitration

The Request for Arbitration, which also constitutes the Statement of Claim, shall include:

- (i) the names, addresses, telephone numbers and e-mail addresses of the parties and their counsel;
- (ii) the specific relief sought, including an estimate of the monetary value of the claims;
- (iii) the factual and legal basis the Claimant relies on;
- (iv) any evidence the Claimant relies on;
- (v) a copy or description of the arbitration agreement or clause under which the dispute is to be settled;
- (vi) where claims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each claim is made; and
- (vii) comments on the seat of arbitration.

Article 7 Registration Fee

- (1) Upon filing the Request for Arbitration, the Claimant shall pay a Registration Fee. The amount of the Registration Fee shall be determined in accordance with the Schedule of Costs (Appendix III) in force on the date the Request for Arbitration is filed.
- (2) If the Registration Fee is not paid upon filing the Request for Arbitration, the Secretariat shall set a time period within which the Claimant shall pay the Registration Fee. If the Registration Fee is not paid within this time period, the Secretariat shall dismiss the Request for Arbitration.

Article 8 Commencement of arbitration

Arbitration shall be deemed to commence on the date the SCC receives the Request for Arbitration.

Article 9 Answer

- (1) The Secretariat shall send a copy of the Request for Arbitration and any attached documents to the Respondent. The Secretariat shall set a time period within which the Respondent shall submit an Answer to the SCC. The Answer, which also constitutes the Statement of Defence, shall include:
 - (i) any objections concerning the existence, validity or applicability of the arbitration agreement; failure to object shall preclude the

Respondent from raising such objections at a later stage of the proceedings;

- (ii) a statement whether, and to what extent, the Respondent admits or denies the relief sought by the Claimant;
 - (iii) the factual and legal basis the Respondent relies on;
 - (iv) any counterclaim or set-off and the grounds on which it is based, including an estimate of the monetary value thereof;
 - (v) where counterclaims or set-offs are made under more than one arbitration agreement, an indication of the arbitration agreement under which each counterclaim or set-off is made;
 - (vi) any evidence the Respondent relies on; and
 - (vii) comments on the seat of arbitration.
- (2) The Secretariat shall send a copy of the Answer to the Claimant. The Claimant may be given an opportunity to submit comments on the Answer, having regard to the circumstances of the case.
- (3) Failure by the Respondent to submit an Answer shall not prevent the arbitration from proceeding.

Article 10 Request for further details

- (1) The Board may request further details from either party regarding any of their written submissions to the SCC.
- (2) If the Claimant fails to comply with a request for further details, the Board may dismiss the case.
- (3) If the Respondent fails to comply with a request for further details regarding its counterclaim or set-off, the Board may dismiss the counterclaim or set-off.
- (4) Failure by the Respondent to otherwise comply with a request for further details shall not prevent the arbitration from proceeding.

Article 11 Agreement on the application of the Arbitration Rules

After receiving the Answer, and prior to the appointment of the Arbitrator, the SCC may invite the parties to agree to apply the Arbitration Rules with either a sole or three arbitrator(s), having regard to the complexity of the case, the amount in dispute and any other relevant circumstances.

Article 12 Decisions by the Board

The Board takes decisions as provided under these Rules, including deciding:

- (i) whether the SCC manifestly lacks jurisdiction over the dispute pursuant to Article 13 (i);
- (ii) whether to grant a request for joinder pursuant to Article 14;
- (iii) whether claims made under multiple contracts shall proceed in a single arbitration pursuant to Article 15;
- (iv) whether to consolidate cases pursuant to Article 16;
- (v) on any appointment of arbitrator pursuant to Article 18;
- (vi) on any challenge to an arbitrator pursuant to Article 20;
- (vii) on the seat of arbitration pursuant to Article 26; and
- (viii) on the Advance on Costs pursuant to Article 51.

Article 13 Dismissal

The Board shall dismiss a case, in whole or in part, if:

- (i) the SCC manifestly lacks jurisdiction over the dispute; or
- (ii) the Advance on Costs is not paid pursuant to Article 51.

Article 14 Joinder of additional parties

- (1) A party to the arbitration may request the Board to join one or more additional parties to the arbitration.
- (2) The Request for Joinder shall be made as early as possible. A Request for Joinder made after the submission of the Answer will not be considered, unless the Board decides otherwise. Articles 6 and 7 shall apply *mutatis mutandis* to the Request for Joinder.
- (3) Arbitration against the additional party shall be deemed to commence on the date the SCC receives the Request for Joinder.
- (4) The Secretariat shall set a time period within which the additional party shall submit an Answer to the Request for Joinder. Article 9 applies *mutatis mutandis* to the Answer to the Request for Joinder.
- (5) The Board may decide to join one or more additional parties provided that the SCC does not manifestly lack jurisdiction over the dispute between the parties, including any additional party requested to be joined to the arbitration, pursuant to Article 13 (i).

- (6) In deciding whether to grant the Request for Joinder where claims are made under more than one arbitration agreement, the Board shall consult with the parties and shall have regard to Article 15 (3) (i)–(iv).
- (7) In all cases where the Board decides to grant the Request for Joinder, any decision as to the Arbitrator's jurisdiction over any party joined to the arbitration shall be made by the Arbitrator.
- (8) Where the Board decides to grant the Request for Joinder and the additional party does not agree to any Arbitrator already appointed, the Board may release the Arbitrator and make an appointment in accordance with Article 18 (2)–(4), unless all parties, including the additional party, agree on a different procedure for the appointment of the Arbitrator.

Article 15 Multiple contracts in a single arbitration

- (1) Parties may make claims arising out of or in connection with more than one contract in a single arbitration.
- (2) If any party raises any objections as to whether all of the claims made against it may be determined in a single arbitration, the claims may proceed in a single arbitration provided that the SCC does not manifestly lack jurisdiction over the dispute between the parties pursuant to Article 13 (i).
- (3) In deciding whether the claims shall proceed in a single arbitration, the Board shall consult with the parties and shall have regard to:
 - (i) whether the arbitration agreements under which the claims are made are compatible;
 - (ii) whether the relief sought arises out of the same transaction or series of transactions;
 - (iii) the efficiency and expeditiousness of the proceedings; and
 - (iv) any other relevant circumstances.
- (4) In all cases where the Board decides that the claims may proceed in a single arbitration, any decision as to the Arbitrator's jurisdiction over the claims shall be made by the Arbitrator.

Article 16 Consolidation of arbitrations

- (1) At the request of a party the Board may decide to consolidate a newly commenced arbitration with a pending arbitration, if:
 - (i) the parties agree to consolidate;
 - (ii) all the claims are made under the same arbitration agreement; or
 - (iii) where the claims are made under more than one arbitration agreement, the relief sought arises out of the same transaction or series of transactions and the Board considers the arbitration agreements to be compatible.
- (2) In deciding whether to consolidate, the Board shall consult with the parties and the Arbitrator and shall have regard to:
 - (i) the stage of the pending arbitration;
 - (ii) the efficiency and expeditiousness of the proceedings; and
 - (iii) any other relevant circumstances.
- (3) Where the Board decides to consolidate, the Board may release any Arbitrator already appointed.

The Arbitrator

Article 17 Number of Arbitrators

The arbitration shall be decided by a sole Arbitrator.

Article 18 Appointment of Arbitrator

- (1) The parties may agree on a procedure for appointment of the Arbitrator.
- (2) Where the parties have not agreed on a procedure, or if the Arbitrator has not been appointed within the time period agreed by the parties or, where the parties have not agreed on a time period, within the time period set by the Board, the appointment shall be made pursuant to paragraphs (3)–(5).
- (3) The parties shall be given 10 days to jointly appoint the Arbitrator. If the parties fail to appoint the Arbitrator within this time, the Board shall make the appointment.

- (4) If the parties are of different nationalities, the Arbitrator shall be of a different nationality than the parties, unless the parties have agreed otherwise or the Board otherwise deems it appropriate.
- (5) When appointing the Arbitrator, the Board shall consider the nature and circumstances of the dispute, the applicable law, the seat and language of the arbitration and the nationality of the parties.

Article 19 Impartiality, independence and availability

- (1) The Arbitrator must be impartial and independent.
- (2) Before being appointed, a prospective arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to the prospective arbitrator's impartiality or independence.
- (3) Once appointed, the Arbitrator shall submit to the Secretariat a signed statement of acceptance, availability, impartiality and independence disclosing any circumstances that may give rise to justifiable doubts as to the Arbitrator's impartiality or independence. The Secretariat shall send a copy of the statement of acceptance, availability, impartiality and independence to the parties.
- (4) The Arbitrator shall immediately inform the parties in writing if any circumstances that may give rise to justifiable doubts as to the Arbitrator's impartiality or independence arise during the course of the arbitration.

Article 20 Challenge to Arbitrator

- (1) A party may challenge the Arbitrator if circumstances exist that give rise to justifiable doubts as to the Arbitrator's impartiality or independence or if the Arbitrator does not possess the qualifications agreed by the parties.
- (2) A party may challenge an arbitrator it has appointed, or in whose appointment it has participated, only for reasons it becomes aware of after the appointment was made.
- (3) A party wishing to challenge the Arbitrator shall submit a written statement to the Secretariat stating the reasons for the challenge, within 15 days from the date the circumstances giving rise to the challenge became known to the party. Failure to challenge the Arbi-

trator within the stipulated time constitutes a waiver of the party's right to make the challenge.

- (4) The Secretariat shall notify the parties and the Arbitrator of the challenge and give them an opportunity to submit comments.
- (5) If the other party agrees to the challenge, the Arbitrator shall resign. In all other cases, the Board shall take the final decision on the challenge.

Article 21 Release from appointment

- (1) The Board shall release the Arbitrator from appointment where:
 - (i) the Board accepts the resignation of the Arbitrator;
 - (ii) a challenge to the Arbitrator under Article 20 is sustained; or
 - (iii) the Arbitrator is otherwise unable or fails to perform the Arbitrator's functions.
- (2) Before the Board releases an arbitrator, the Secretariat may give the parties and the Arbitrator an opportunity to submit comments.

Article 22 Replacement of Arbitrator

- (1) The Board shall appoint a new Arbitrator where the Arbitrator has been released from appointment pursuant to Article 21, or where the Arbitrator has died.
- (2) Where the Arbitrator has been replaced, the new Arbitrator shall decide whether and to what extent the proceedings are to be repeated.

The Proceedings Before the Arbitrator

Article 23 Referral to the Arbitrator

When the Arbitrator has been appointed and the Advance on Costs has been paid, the Secretariat shall refer the case to the Arbitrator.

Article 24 Conduct of the arbitration

- (1) The Arbitrator may conduct the arbitration in such manner as the Arbitrator considers appropriate, subject to these Rules and any agreement between the parties.

- (2) In all cases, the Arbitrator shall conduct the arbitration in an impartial, efficient and expeditious manner, giving each party an equal and reasonable opportunity to present its case, considering at all times the expedited nature of the proceedings.

Article 25 Administrative secretary of the Arbitrator

- (1) The Arbitrator may at any time during the arbitration submit to the SCC a proposal for the appointment of a specific candidate as administrative secretary. The appointment is subject to the approval of the parties.
- (2) The Arbitrator shall consult the parties regarding the tasks of the administrative secretary. The Arbitrator may not delegate any decision-making authority to the administrative secretary.
- (3) The administrative secretary must be impartial and independent. The Arbitrator shall ensure that the administrative secretary remains impartial and independent at all stages of the arbitration.
- (4) Before being appointed, the proposed administrative secretary shall submit to the SCC a signed statement of availability, impartiality and independence disclosing any circumstances that may give rise to justifiable doubts as to the proposed administrative secretary's impartiality or independence.
- (5) A party may request the removal of the administrative secretary based on the procedure set out in Article 20, which shall apply *mutatis mutandis* to a challenge of an administrative secretary. If the Board removes an administrative secretary, the Arbitrator may propose the appointment of another administrative secretary in accordance with this Article. A request for removal shall not prevent the arbitration from proceeding, unless the Arbitrator decides otherwise.
- (6) Any fee payable to the administrative secretary shall be paid from the fees of the Arbitrator.

Article 26 Seat of arbitration

- (1) Unless agreed upon by the parties, the Board shall decide the seat of arbitration.
- (2) The Arbitrator may, after consulting the parties, conduct hearings at any place the Arbitrator considers appropriate. The arbitration shall

be deemed to have taken place at the seat regardless of any hearing or meeting held elsewhere.

- (3) The award shall be deemed to have been made at the seat of arbitration.

Article 27 Language

- (1) Unless agreed upon by the parties, the Arbitrator shall determine the language(s) of the arbitration. In so determining, the Arbitrator shall have due regard to all relevant circumstances and shall give the parties an opportunity to submit comments.
- (2) The Arbitrator may request that any documents submitted in languages other than those of the arbitration be accompanied by a translation into the language(s) of the arbitration.

Article 28 Applicable law

- (1) The Arbitrator shall decide the merits of the dispute on the basis of the law(s) or rules of law agreed upon by the parties. In the absence of such agreement, the Arbitrator shall apply the law or rules of law that the Arbitrator considers most appropriate.
- (2) Any designation by the parties of the law of a given state shall be deemed to refer to the substantive law of that state, not to its conflict of laws rules.
- (3) The Arbitrator shall decide the dispute *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised the Arbitrator to do so.

Article 29 Case management conference and timetable

- (1) After the referral of the case to the Arbitrator, the Arbitrator shall promptly hold a case management conference with the parties to organise, schedule and establish procedures for the conduct of the arbitration.
- (2) The case management conference may be conducted in person or by any other means.
- (3) Having regard to the circumstances of the case, the Arbitrator and the parties shall seek to adopt procedures enhancing the efficiency and expeditiousness of the proceedings.

- (4) During or immediately following the case management conference, and no later than 7 days from the referral of the case to the Arbitrator, the Arbitrator shall seek to establish a timetable for the conduct of the arbitration, including the date for making the award.
- (5) The Arbitrator may, after consulting the parties, hold further case management conferences and issue revised timetables as the Arbitrator deems appropriate. The Arbitrator shall send a copy of the timetable to the parties and to the Secretariat.

Article 30 Written submissions

- (1) The parties may make one supplementary written submission in addition to the Request for Arbitration and the Answer. In circumstances the Arbitrator considers to be compelling, the Arbitrator may allow the parties to make further written submissions.
- (2) Written submissions shall be brief and the time limits for the filing of submissions may not exceed 15 working days, subject to any other time limit that the Arbitrator, for compelling reasons, may determine.
- (3) The Arbitrator may order a party to finally state its claims for relief and the facts and evidence relied on. At the expiration of the time for such statement, the party may not amend its claim for relief nor adduce additional facts or evidence, unless the Arbitrator, for compelling reasons, so permits.

Article 31 Amendments

At any time prior to the close of proceedings pursuant to Article 41, a party may amend or supplement its claim, counterclaim, defence or set-off provided its case, as amended or supplemented, is still comprised by the arbitration agreement, unless the Arbitrator considers it inappropriate to allow such amendment or supplement having regard to the delay in making it, the prejudice to the other party or any other relevant circumstances.

Article 32 Evidence

- (1) The admissibility, relevance, materiality and weight of evidence shall be for the Arbitrator to determine.

- (2) The Arbitrator may order a party to identify the documentary evidence it intends to rely on and specify the circumstances intended to be proved by such evidence.
- (3) At the request of a party, or exceptionally on its own motion, the Arbitrator may order a party to produce any documents or other evidence that may be relevant to the case and material to its outcome.

Article 33 Hearings

- (1) A hearing shall be held only at the request of a party and if the Arbitrator considers the reasons for the request to be compelling.
- (2) The Arbitrator shall, in consultation with the parties, determine the date, time and location of any hearing and shall provide the parties with reasonable notice thereof.
- (3) Unless otherwise agreed by the parties, hearings will be held in private.

Article 34 Witnesses

- (1) In advance of any hearing, the Arbitrator may order the parties to identify each witness or expert they intend to call and specify the circumstances intended to be proved by each testimony.
- (2) The testimony of witnesses or party-appointed experts may be submitted in the form of signed statements.
- (3) Any witness or expert, on whose testimony a party seeks to rely, shall attend a hearing for examination, unless otherwise agreed by the parties.

Article 35 Experts appointed by the Arbitrator

- (1) After consulting the parties, the Arbitrator may appoint one or more experts to report to the Arbitrator on specific issues set out by the Arbitrator in writing.
- (2) Upon receipt of a report from an expert the Arbitrator has appointed, the Arbitrator shall send a copy of the report to the parties and shall give the parties an opportunity to submit written comments on the report.
- (3) Upon the request of a party, the parties shall be given an opportunity to examine any expert appointed by the Arbitrator at a hearing.

Article 36 Default

- (1) If a party, without good cause, fails to make a written submission in accordance with Article 30, fails to appear at a hearing, or otherwise fails to avail itself of the opportunity to present its case, the Arbitrator may proceed with the arbitration and make an award.
- (2) If a party, without good cause, fails to comply with any provision of, or requirement under, these Rules or any procedural order given by the Arbitrator, the Arbitrator may draw such inferences as it considers appropriate.

Article 37 Waiver

A party who, during the arbitration, fails to object without delay to any failure to comply with the arbitration agreement, these Rules or other rules applicable to the proceedings, shall be deemed to have waived the right to object to such failure.

Article 38 Interim measures

- (1) The Arbitrator may, at the request of a party, grant any interim measures the Arbitrator deems appropriate.
- (2) The Arbitrator may order the party requesting an interim measure to provide appropriate security in connection with the measure.
- (3) An interim measure shall take the form of an order or an award.
- (4) Provisions with respect to interim measures requested before arbitration has commenced, or before a case has been referred to an Arbitrator, are set out in Appendix II.
- (5) A request for interim measures made by a party to a judicial authority is not incompatible with the arbitration agreement or with these Rules.

Article 39 Security for costs

- (1) The Arbitrator may, in exceptional circumstances and at the request of a party, order any Claimant or Counterclaimant to provide security for costs in any manner the Arbitrator deems appropriate.
- (2) In determining whether to order security for costs, the Arbitrator shall have regard to:

- (i) the prospects of success of the claims, counterclaims and defences;
 - (ii) the Claimant's or Counterclaimant's ability to comply with an adverse costs award and the availability of assets for enforcement of an adverse costs award;
 - (iii) whether it is appropriate in all the circumstances of the case to order one party to provide security; and
 - (iv) any other relevant circumstances.
- (3) If a party fails to comply with an order to provide security, the Arbitrator may stay or dismiss the party's claims in whole or in part.
 - (4) Any decision to stay or to dismiss the party's claims shall take the form of an order or an award.

Article 40 Summary procedure

- (1) A party may request that the Arbitrator decide one or more issues of fact or law by way of summary procedure, without necessarily undertaking every procedural step that might otherwise be adopted for the arbitration.
- (2) A request for summary procedure may concern issues of jurisdiction, admissibility or the merits. It may include, for example, an assertion that:
 - (i) an allegation of fact or law material to the outcome of the case is manifestly unsustainable;
 - (ii) even if the facts alleged by the other party are assumed to be true, no award could be rendered in favour of that party under the applicable law; or
 - (iii) any issue of fact or law material to the outcome of the case is, for any other reason, suitable to determination by way of summary procedure.
- (3) The request shall specify the grounds relied on and the form of summary procedure proposed, and demonstrate that such procedure is efficient and appropriate in all the circumstances of the case.
- (4) After providing the other party an opportunity to submit comments, the Arbitrator shall issue an order either dismissing the request or fix-

ing the summary procedure in the form the Arbitrator deems appropriate.

- (5) In determining whether to grant a request for summary procedure, the Arbitrator shall have regard to all relevant circumstances, including the extent to which the summary procedure contributes to a more efficient and expeditious resolution of the dispute.
- (6) If the request for summary procedure is granted, the Arbitrator shall seek to make an order or award on the issues under consideration in an efficient and expeditious manner having regard to the circumstances of the case, while giving each party an equal and reasonable opportunity to present its case pursuant to Article 24 (2).

Article 41 Close of proceedings

The Arbitrator shall declare the proceedings closed when the Arbitrator is satisfied that the parties have had a reasonable opportunity to present their cases. In exceptional circumstances, prior to the making of the final award, the Arbitrator may reopen the proceedings on the Arbitrator's own motion, or on the application of a party.

Awards and Decisions

Article 42 Making of awards

- (1) The Arbitrator shall make the award in writing and sign the award. A party may request a reasoned award no later than at the closing statement.
- (2) An award shall include the date of the award and the seat of arbitration in accordance with Article 26.
- (3) The Arbitrator shall deliver a copy of the award to each of the parties and to the SCC without delay.

Article 43 Time limit for final award

The final award shall be made no later than three months from the date the case was referred to the Arbitrator pursuant to Article 23. The Board may extend this time limit upon a reasoned request from the Arbitrator, or if otherwise deemed necessary, having due regard to the expedited nature of the proceedings.

Article 44 Separate award

The Arbitrator may decide a separate issue or part of the dispute in a separate award.

Article 45 Settlement or other grounds for termination of the arbitration

- (1) If the parties reach a settlement before the final award is made, the Arbitrator may, at the request of both parties, make a consent award recording the settlement
- (2) If the arbitration is terminated for any other reason before the final award is made, the Arbitrator shall issue an award recording the termination.

Article 46 Effect of an award

An award shall be final and binding on the parties when rendered. By agreeing to arbitration under these Rules, the parties undertake to carry out any award without delay.

Article 47 Correction and interpretation of an award

- (1) Within 30 days of receiving an award, a party may, upon notice to the other party, request that the Arbitrator correct any clerical, typographical or computational errors in the award, or provide an interpretation of a specific point or part of the award. After giving the other party an opportunity to comment on the request and if the Arbitrator considers the request justified, the Arbitrator shall make the correction or provide the interpretation within 30 days of receiving the request.
- (2) The Arbitrator may correct any error of the type referred to in paragraph (1) above on the Arbitrator's own motion within 30 days of the date of an award.
- (3) Any correction or interpretation of an award shall be in writing and shall comply with the requirements of Article 42.

Article 48 Additional award

Within 30 days of receiving an award, a party may, upon notice to the other party, request that the Arbitrator make an additional award on claims presented in the arbitration but not determined in the award.

After giving the other party an opportunity to comment on the request and if the Arbitrator considers the request justified, the Arbitrator shall make the additional award within 30 days of receiving the request. When deemed necessary, the Board may extend this 30 day time limit.

Costs of the Arbitration

Article 49 Costs of the Arbitration

- (1) The Costs of the Arbitration consist of:
 - (i) the Fee of the Arbitrator;
 - (ii) the Administrative Fee; and
 - (iii) the expenses of the Arbitrator and the SCC.
- (2) Before making the final award, the Arbitrator shall request that the Board finally determine the Costs of the Arbitration. The Board shall finally determine the Costs of the Arbitration in accordance with the Schedule of Costs (Appendix III) in force on the date of commencement of the arbitration pursuant to Article 8.
- (3) In finally determining the Costs of the Arbitration, the Board shall have regard to the extent to which the Arbitrator has acted in an efficient and expeditious manner, the complexity of the dispute and any other relevant circumstances.
- (4) If the arbitration is terminated before the final award is made pursuant to Article 45, the Board shall finally determine the Costs of the Arbitration having regard to the stage of the arbitration, the work performed by the Arbitrator and any other relevant circumstances.
- (5) The Arbitrator shall include in the final award the Costs of the Arbitration as finally determined by the Board and specify the fees and expenses of the Arbitrator and the SCC.
- (6) Unless otherwise agreed by the parties, the Arbitrator shall, at the request of a party, apportion the Costs of the Arbitration between the parties, having regard to the outcome of the case, each party's contribution to the efficiency and expeditiousness of the arbitration and any other relevant circumstances.
- (7) The parties are jointly and severally liable to the Arbitrator and to the SCC for the Costs of the Arbitration.

Article 50 Costs incurred by a party

Unless otherwise agreed by the parties, the Arbitrator may in the final award, at the request of a party, order one party to pay any reasonable costs incurred by another party, including costs for legal representation, having regard to the outcome of the case, each party's contribution to the efficiency and expeditiousness of the arbitration and any other relevant circumstances.

Article 51 Advance on Costs

- (1) The Board shall determine an amount to be paid by the parties as an Advance on Costs.
- (2) The Advance on Costs shall correspond to the estimated amount of the Costs of Arbitration pursuant to Article 49 (1).
- (3) Each party shall pay half of the Advance on Costs, unless separate advances are determined. Where counterclaims or set-offs are submitted, the Board may decide that each party shall pay advances corresponding to its claims. Where an additional party is joined to the arbitration pursuant to Article 14, the Board may determine each party's share of the Advance on Costs as it deems appropriate, having regard to the circumstances of the case.
- (4) At the request of the Arbitrator, or if otherwise deemed necessary, the Board may order parties to pay additional advances during the course of the arbitration.
- (5) If a party fails to make a required payment, the Secretariat shall give the other party an opportunity to do so within a specified period of time. If the payment is not made within that time, the Board shall dismiss the case in whole or in part. If the other party makes the required payment, the Arbitrator may, at the request of that party, make a separate award for reimbursement of the payment.
- (6) At any stage during the arbitration or after the Award has been made, the Board may draw on the Advance on Costs to cover the Costs of the Arbitration.
- (7) The Board may decide that part of the Advance on Costs may be provided in the form of a bank guarantee or other form of security.

Miscellaneous

Article 52 Exclusion of liability

Neither the SCC, the Arbitrator, the administrative secretary, nor any expert appointed by the Arbitrator, is liable to any party for any act or omission in connection with the arbitration unless such act or omission constitutes wilful misconduct or gross negligence.

APPENDIX I – ORGANISATION

Article 1 About the SCC

The Arbitration Institute of the Stockholm Chamber of Commerce (the “SCC”) is a body providing administrative services in relation to the settlement of disputes. The SCC is part of the Stockholm Chamber of Commerce, but is independent in exercising its functions in the administration of disputes. The SCC is composed of a board of directors (the “Board”) and a secretariat (the “Secretariat”).

Article 2 Function of the SCC

The SCC does not itself decide disputes. The function of the SCC is to:

- (i) administer domestic and international disputes in accordance with the SCC Rules and other procedures or rules agreed upon by the parties; and
- (ii) provide information concerning arbitration and mediation matters.

Article 3 The Board

The Board shall be composed of one chairperson, a maximum of three vice-chairpersons and a maximum of 12 additional members. The Board includes both Swedish and non-Swedish nationals.

Article 4 Appointment of the Board

The Board shall be appointed by the Board of Directors of the Stockholm Chamber of Commerce (the “Board of Directors”). The members of the Board shall be appointed for a period of three years and, unless exceptional circumstances apply, are only eligible for re-appointment in their respective capacities for one further three year period.

Article 5 Removal of a member of the Board

In exceptional circumstances, the Board of Directors may remove a member of the Board. If a member resigns or is removed during a term of office, the Board of Directors shall appoint a new member for the remainder of the term.

Article 6 Function of the Board

The function of the Board is to take the decisions required of the SCC in administering disputes under the SCC Rules and any other rules or procedures agreed upon by the parties. Such decisions include decisions on the jurisdiction of the SCC, determination of advances on costs, appointment of arbitrators, decisions upon challenges to arbitrators, removal of arbitrators and the fixing of arbitration costs.

Article 7 Decisions by the Board

Two members of the Board form a quorum. If a majority is not attained, the Chairperson has the casting vote. The Chairperson or a Vice Chairperson may take decisions on behalf of the Board in urgent matters. A committee of the Board may be appointed to take certain decisions on behalf of the Board. The Board may delegate decisions to the Secretariat, including decisions on advances on costs, extension of time for rendering an award, dismissal for non-payment of registration fee, release of arbitrators and fixing of arbitration costs. Decisions by the Board are final.

Article 8 The Secretariat

The Secretariat acts under the direction of a Secretary General. The Secretariat carries out the functions assigned to it under the SCC Rules. The Secretariat may also take decisions delegated to it by the Board.

Article 9 Procedures

The SCC shall maintain the confidentiality of the arbitration and the award and shall deal with the arbitration in an impartial, efficient and expeditious manner.

APPENDIX II – EMERGENCY ARBITRATOR

Article 1 Emergency Arbitrator

- (1) A party may apply for the appointment of an Emergency Arbitrator until the case has been referred to the Arbitrator pursuant to Article 23 of the Rules for Expedited Arbitrations.
- (2) The powers of the Emergency Arbitrator shall be those set out in Article 38 (1)-(3) of the Rules for Expedited Arbitrations. Such powers terminate on referral of the case to the Arbitrator pursuant to Article 23 of the Rules for Expedited Arbitrations, or when an emergency decision ceases to be binding according to Article 9 (4) of this Appendix.

Article 2 Application for the appointment of an Emergency Arbitrator

An application for the appointment of an Emergency Arbitrator shall include:

- (i) the names, addresses, telephone numbers and e-mail addresses of the parties and their counsel;
- (ii) a summary of the dispute;
- (iii) a statement of the interim relief sought and the reasons therefor;
- (iv) a copy or description of the arbitration agreement or clause under which the dispute is to be settled;
- (v) comments on the seat of the emergency proceedings, the applicable law(s) and the language(s) of the proceedings; and
- (vi) proof of payment of the costs for the emergency proceedings pursuant to Article 10 (1) of this Appendix.

Article 3 Notice

As soon as an application for the appointment of an Emergency Arbitrator has been received, the Secretariat shall send the application to the other party.

Article 4 Appointment of the Emergency Arbitrator

- (1) The Board shall seek to appoint an Emergency Arbitrator within 24 hours of receipt of the application.

- (2) An Emergency Arbitrator shall not be appointed if the SCC manifestly lacks jurisdiction over the dispute.
- (3) Article 20 of the Rules for Expedited Arbitrations applies to the challenge of an Emergency Arbitrator, except that a challenge must be made within 24 hours from the time the circumstances giving rise to the challenge became known to the party.
- (4) An Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless otherwise agreed by the parties.

Article 5 Seat of the emergency proceedings

The seat of the emergency proceedings shall be that which has been agreed upon by the parties as the seat of the arbitration. If the seat of the arbitration has not been agreed by the parties, the Board shall determine the seat of the emergency proceedings.

Article 6 Referral to the Emergency Arbitrator

Once an Emergency Arbitrator has been appointed, the Secretariat shall promptly refer the application to the Emergency Arbitrator.

Article 7 Conduct of the emergency proceedings

Article 24 of the Rules for Expedited Arbitrations shall apply to the emergency proceedings, taking into account the urgency inherent in such proceedings.

Article 8 Emergency decisions on interim measures

- (1) Any emergency decision on interim measures shall be made no later than 5 days from the date the application was referred to the Emergency Arbitrator pursuant to Article 6 of this Appendix. The Board may extend this time limit upon a reasoned request from the Emergency Arbitrator, or if otherwise deemed necessary.
- (2) Any emergency decision on interim measures shall:
 - (i) be made in writing;
 - (ii) state the date when it was made, the seat of the emergency proceedings and the reasons upon which the decision is based; and
 - (iii) be signed by the Emergency Arbitrator.

- (3) The Emergency Arbitrator shall promptly deliver a copy of the emergency decision to each of the parties and to the SCC.

Article 9 Binding effect of emergency decisions

- (1) An emergency decision shall be binding on the parties when rendered.
- (2) At the reasoned request of a party, the Emergency Arbitrator may amend or revoke the emergency decision.
- (3) By agreeing to arbitration under the Rules for Expedited Arbitrations, the parties undertake to comply with any emergency decision without delay.
- (4) The emergency decision ceases to be binding if:
 - (i) the Emergency Arbitrator or an Arbitrator so decides;
 - (ii) an Arbitrator makes a final award;
 - (iii) arbitration is not commenced within 30 days from the date of the emergency decision; or
 - (iv) the case is not referred to an Arbitrator within 90 days from the date of the emergency decision.
- (5) An Arbitrator is not bound by the decision(s) and reasons of the Emergency Arbitrator.

Article 10 Costs of the emergency proceedings

- (1) The party applying for the appointment of an Emergency Arbitrator shall pay the costs set out in paragraph (2) (i) and (ii) below upon filing the application.
- (2) The costs of the emergency proceedings include:
 - (i) the fee of the Emergency Arbitrator which amounts to EUR 16 000;
 - (ii) the application fee of EUR 4 000; and
 - (iii) the reasonable costs incurred by the parties, including costs for legal representation.
- (3) At the request of the Emergency Arbitrator, or if otherwise deemed appropriate, the Board may decide to increase or reduce the costs set out in paragraph (2) (i) and (ii) above, having regard to the nature of

the case, the work performed by the Emergency Arbitrator and the SCC and any other relevant circumstances.

- (4) If payment of the costs set out in paragraph (2) (i) and (ii) above is not made in due time, the Secretariat shall dismiss the application.
- (5) At the request of a party, the Emergency Arbitrator shall in the emergency decision apportion the costs of the emergency proceedings between the parties.
- (6) The Emergency Arbitrator shall apply the principles of Articles 49 (6) and 50 of the Rules for Expedited Arbitrations when apportioning the costs of the emergency proceedings.

APPENDIX III – SCHEDULE OF COSTS

Arbitration Costs

Article 1 Registration Fee

- (1) The Registration Fee referred to in Article 7 of the the Rules for Expedited Arbitrations is EUR 2 500.
- (2) The Registration Fee is non-refundable and constitutes a part of the Administrative Fee in Article 3 below. The Registration Fee shall be credited to the Advance on Costs to be paid by the Claimant pursuant to Article 51 of the Rules for Expedited Arbitrations.

Article 2 Fee of the Arbitrator

- (1) The Board shall determine the Fee of the Arbitrator based on the amount in dispute in accordance with the table below.
- (2) The amount in dispute shall be the aggregate value of all claims, counterclaims and set-offs. Where the amount in dispute cannot be ascertained, the Board shall determine the Fee of the Arbitrator having regard to all relevant circumstances.
- (3) In exceptional circumstances, the Board may deviate from the amounts set out in the table.

Article 3 Administrative Fee

- (1) The Administrative Fee shall be determined in accordance with the table below.

- (2) The amount in dispute shall be the aggregate value of all claims, counterclaims and set-offs. Where the amount in dispute cannot be ascertained, the Board shall determine the Administrative Fee having regard to all relevant circumstances.
- (3) In exceptional circumstances, the Board may deviate from the amounts set out in the table.

Article 4 Expenses

In addition to the Fee of the Arbitrator and the Administrative Fee, the Board shall fix an amount to cover any reasonable expenses incurred by the Arbitrator and the SCC. The expenses of the Arbitrator may include the fee and expenses of any expert appointed by the Arbitrator pursuant to Article 35 of the Rules for Expedited Arbitrations.

Article 5 Pledge

By paying the Advance on Costs pursuant to Article 51 (1) of the Rules for Expedited Arbitrations, each party irrevocably and unconditionally pledges to the SCC and to the Arbitrator, as represented by the SCC, any rights over any amount paid to the SCC as continuing security for any liabilities for the Costs of the Arbitration.

ARBITRATOR'S FEE

Amount in dispute	Arbitrator's Fee (EUR)	
(EUR)	Minimum (EUR)	Maximum (EUR)
to 25 000	4 000	7 000
from 25 001 to 50 000	4 000 + 2 % of the amount above 25 000	7 000 + 6 % of the amount above 25 000
from 50 001 to 100 000	4 500 + 0,8 % of the amount above 50 000	8 500 + 4 % of the amount above 50 000
from 100 001 to 500 000	4 900 + 1,5 % of the amount above 100 000	10 500 + 3,4 % of the amount above 100 000
from 500 001 to 1 000 000	10 900 + 1 % of the amount above 500 000	24 100 + 2,4 % of the amount above 500 000

Amount in dispute	Arbitrator's Fee (EUR)	
(EUR)	Minimum (EUR)	Maximum (EUR)
from 1 000 001 to 2 000 000	15 900 + 0,8 % of the amount above 1 000 000	36 100 + 1,6 % of the amount above 1 000 000
from 2 000 001 to 5 000 000	23 900 + 0,4 % of the amount above 2 000 000	52 100 + 1 % of the amount above 2 000 000
from 5 000 001	To be determined by the Board	To be determined by the Board

ADMINISTRATIVE FEE

Amount in dispute (EUR)	Administrative Fee (EUR)
to 25 000	2 500
from 25 001 to 50 000	2 500 + 2 % of the amount above 25 000
from 50 001 to 100 000	3 000 + 1,5 % of the amount above 50 000
from 100 001 to 500 000	3 750 + 0,75 % of the amount above 100 000
from 500 001 to 1 000 000	6 750 + 0,5 % of the amount above 500 000
from 1 000 001 to 2 000 000	9 250 + 0,25 % of the amount above 1 000 000
from 2 000 001 to 5 000 000	11 750 + 0,12 % of the amount above 2 000 000
from 5 000 001	To be determined by the Board
	Maximum 35 000

The Costs of the Arbitration may easily be calculated at www.sccinstitute.com

The Contracts Act

Chapter 1. Formation of a Contract

Section 1

An offer to enter into a contract and the reply to such offer are, in accordance with the provisions of sections 2–9 below, binding on the offeror and offeree respectively.

The provisions of the aforementioned sections shall apply unless the contrary may be inferred from the offer or the reply, from commercial practice, or from any other custom.

Specific provisions govern agreements the validity of which are, according to law, dependent upon the observance of particular formalities.

Section 2

Where the offeror stipulates a specific time for the reply, he shall be deemed to have prescribed that the reply shall be communicated to him within such time.

Where the offer is contained in a letter or telegram, and where a period of time is stated for the reply, such period shall be calculated from the day the letter is dated or from the day on which the telegram was delivered for dispatch.

Section 3

Where the offer is contained in a letter or telegram and no period of time is stipulated for the reply, the offeree's reply must be communicated to the offeror within such period of time as, at the time of the offer, the offeror could reasonably have estimated was required. In calculating such period of time, the offeror shall be entitled to presume, save where otherwise occasioned by the circumstances, that the offer will be received in due time, that the reply will be sent without delay after the offeree has been afforded a reasonable time for consideration, and that the reply will not

be delayed en route. Where the offer is conveyed by telegram, the offeror shall also be entitled to presume that the reply will be dispatched in the same manner, or will reach him as quickly by any other means.

Oral offers made in the absence of a specified time for acceptance, must be accepted immediately.

Section 4

An offeree's acceptance which is belatedly received by the offeror shall be deemed to constitute a new offer.

The aforementioned shall not, however, apply where the offeree assumes that it has been received in due time and this fact must have been realised by the offeror. In such circumstances the offeror shall, should he wish to repudiate the acceptance, so inform the offeree without unreasonable delay. Should he fail to do so, a contract shall be deemed to have been concluded through the acceptance.

Section 5

An offer shall lapse upon rejection, notwithstanding that the period of time during which it would have otherwise been valid has not expired.

Section 6

A reply which contains an acceptance but which, by reason of any addition, restriction or reservation does not conform with the offer, shall be deemed to constitute a rejection in conjunction with a new offer.

The aforementioned provisions shall not apply where the offeree believes it to correspond to the offer, and where this fact must have been realised by the offeror. In such circumstances the offeror shall, should he wish to repudiate the acceptance, so inform the offeree without unreasonable delay. Should he fail to do so, a contract shall be deemed to have been concluded through, and in accordance with, the acceptance.

Section 7

An offer or acceptance which is revoked shall be void if the revocation is communicated to the party to whom the offer or acceptance is directed prior to, or simultaneously with, receipt by that party of the offer or the acceptance.

Section 8

Where an offeror states that he does not require an express acceptance, or where the circumstances indicate that an express acceptance is not expected by the offeror, the offeree shall nevertheless be required, on request, to state whether he wishes to accept the offer. Should he fail to do so, the offer shall be deemed to have lapsed.

Separate provisions govern particular circumstances where a failure to reject an offer shall be deemed to constitute an acceptance thereof.

Section 9

Where a statement which would otherwise be deemed to constitute an offer includes the words “not binding”, “without obligation”, or suchlike expression, such statement shall be deemed to constitute an invitation to tender an offer on the basis of the contents of the statement. Where such an offer is forthcoming within a reasonable period of time thereafter from a party thus invited, and where the recipient must realise that the offer has been occasioned by his invitation, the recipient shall, should he not wish to accept the offer, so inform the offeror without unreasonable delay. Should he fail to do so, he shall be deemed to have accepted the offer.

Chapter 2. Agency

Section 10

Any person who grants authority to another to enter into contracts or to otherwise perform legal acts shall, in relation to any third party, directly acquire such rights and assume such obligations as result from the legal acts performed by the agent within the scope of his authority and in the name of the principal.

A person who, being employed in the service of another party or otherwise as a result of an agreement with another party, occupies a position which, according to law or custom, confers certain authority to act on behalf of the other party, shall be deemed to be authorised to perform such legal acts as fall within the scope of such authority.

Section 11

Where the agent performs a legal act in breach of specific restrictions prescribed by the principal, such legal act shall not be binding on the principal if the third party realised, or should have realised, that the agent had exceeded his authority.

Where the authority is of such a nature as stated in section 18, any legal act performed by the agent in excess of his authority shall not be binding on the principal, notwithstanding that the third party acted in good faith.

Section 12

Where a principal wishes to revoke a grant of agency as referred to in sections 13–16, he shall, notwithstanding that he has informed the agent that he no longer wishes the grant of agency to apply, be obliged to act in accordance with the relevant provisions of the aforementioned sections. Where a grant of agency is governed by several of the aforementioned sections, all such sections shall apply.

Where a third party is notified of the revocation of a grant of agency in the manner set forth in section 13, such third party shall not be entitled to rely on the fact that the revocation was not effected in another manner.

Section 13

Where a third party has been informed of a grant of agency by means of notice specifically addressed to that party by the principal, such grant of agency shall be deemed to be revoked upon receipt by the third party of specific notice from the principal that the grant of agency is no longer valid.

Section 14

A grant of agency which has been published by the principal in the press or otherwise publicly announced, shall be deemed to be revoked through an announcement published in a similar manner.

In the event of obstacles to such publication, the revocation may be announced in any similarly effective manner. The principal shall be entitled to obtain from the public authority stated in section 17, directions as to the manner in which such publication shall be effected.

Section 15

A grant of agency such as referred to in section 10, second paragraph, shall be revoked through the dismissal of the agent from the service or other position by virtue of which he held his authority.

Section 16

A grant of agency which is contained in a written document given to the agent to be held by him and presented to third parties, may be revoked through the principal repossessing the document or causing it to be destroyed.

The agent shall be obliged to return the document containing the grant of agency to the principal upon demand.

Section 17

Where a principal establishes that it is probable that a document as referred to in section 16 has been lost or that, for any other reason, he cannot regain possession of the document without delay, such document may be declared void, in accordance with the provisions set forth below.

Applications in such circumstances shall be submitted to the district court in the jurisdiction in which the principal resides. Where there exist grounds for granting the application, the district court shall issue, and the applicant shall cause, an announcement to be published in the *Post- och Inrikes Tidningar* stating that upon the expiry of a specified period of time, which may be not more than fourteen days after the publication of such announcement, the grant of agency shall become void. If so ordered by the district court, the announcement shall likewise be published in another newspaper, once or several times, prior to publication in the *Post och Inrikes Tidningar*. (SFS 1981:799).

Section 18

A grant of agency which is based solely on a communication by the principal to the agent, shall be deemed to have been revoked upon receipt by the agent of a communication from the principal that the grant of agency is no longer valid.

Section 19

Where a principal has specific reason to believe that, notwithstanding that a grant of agency has been revoked or declared void, the agent will, on the basis of such grant of agency, perform a legal act towards a third party who may be presumed to be unaware of the termination of the grant of agency, the principal shall, if possible, notify such third party that the grant of agency is no longer valid. Should he fail to do so, he shall be

estopped from relying on the termination of the grant of agency against a person who, in good faith, was a party to the legal act.

Section 20

Where the principal, without terminating a grant of agency in the manner prescribed above, has nevertheless enjoined the agent from exercising the grant of agency, or where such principal has otherwise informed the agent that he does not desire the grant of agency to continue, legal acts performed by the agent shall not be binding on the principal if the third party was aware, or should have been aware, of such circumstances.

Section 21

In the event of the death of the principal, the grant of agency shall remain in force unless there exist special circumstances causing it to lapse. However, notwithstanding that such circumstances exist, a legal act performed by the agent shall be binding on the estate of the deceased, provided that the third party neither knew nor should have known of the death of the principal, and of the consequences thereof with respect to the authority of the agent to perform the legal acts. Where the grant of agency is such as referred to in section 18, the legal act shall be valid only where, at the time of the legal act, the agent neither knew, nor should have known, of the death of the principal.

Where the estate of the deceased has been placed in bankruptcy, a legal act which, in accordance with the aforesaid, is binding on the estate of the deceased, is no more effective against the creditors than it would have been, had such act been performed by the heirs to the estate.

Section 22

Where the principal is placed under the care of a guardian in accordance with the provisions of the Code on Parents, Guardians and Children, and where the agent performs any legal act which is within the scope of the responsibilities of the guardian, such act shall have no greater effect than it would have had, had it been performed by the principal himself. (SFS 1988:1264).

Section 23

Where the property of the principal is in bankruptcy or insolvent liquidation, a legal act performed by the agent shall have no greater effect on

the estate in bankruptcy or insolvent liquidation than it would have had, had the act been performed by the principal himself. Where the grant of agency is such as referred to in section 18, the legal act shall not be binding on the estate if the agent knew, or should have known, of the bankruptcy or insolvent liquidation at the time he performed the legal act. (SFS 1975:246).

Section 24

Notwithstanding that the principal has been deprived of legal capacity, the agent may, pursuant to the grant of agency, engage in such legal acts as are required to protect the principal or his estate in bankruptcy or insolvent liquidation against loss, until such time as the requisite measures can be taken by the person who, according to law, is entitled to act on behalf of the principal.

Section 25

Any person who acts as the agent of another shall ensure that he obtains the requisite grant of agency, and accordingly, shall be liable, where he is not able to establish that he has acted in accordance with terms of the agency or where he fails to prove that the legal act in question has been ratified by the purported principal or is otherwise binding upon him, to compensate any third party for any damage sustained by the third party as a consequence of the fact that he cannot enforce the legal act against the principal.

However, such provision shall not apply where the third party knew or should have known that a grant of agency did not exist, or that the terms of an existing grant of agency had been exceeded. Nor shall such provision apply where the party performing the legal act has acted on the basis of a grant of agency which was not binding on the principal as a consequence of special circumstances of which the agent was not aware and of which the third party could not reasonably presume that the agent would be aware.

Section 26

The above provisions of this Chapter with regard to the authority of an agent to perform legal acts shall apply *mutatis mutandis* to the authority of agents to represent the principal in legal acts which are taken against the principal.

Section 27

The provisions of sections 13 and 19 of the Partnership Registration Act (SFS 1974:157) shall apply to the revocation of a registered power of attorney which has been entered in the trade register. Where a revocation has been entered in the trade register and published in the *Post- och Inrikes Tidningar*, the proprietor of the undertaking shall not be obliged to revoke the grant of agency in any other manner.

A grant of agency to conclude agreements for the purchase, barter, or disposition by gift of real property shall be made in writing. Where such a grant of agency has been revoked or declared null and void in accordance with the provisions of sections 16 and 17 above, the grant of agency shall be without effect.

The above provisions of this Chapter whereby legal acts of an agent will not, in certain cases, be binding on the principal, are without prejudice to the provisions of Chapter 18, section 3 of the Commercial Code relating to the consequences of such a legal act, where such consequences have been utilised to the benefit of the principal. (SFS 1977:672).

Chapter 3. The invalidity of certain legal acts

Section 28

A legal act performed under duress, where such duress has been exerted through violence to the person or threats of imminent danger to the person, shall not be binding on the party subjected to such duress.

Where the duress is exerted by a party other than one in respect of whom the legal act is performed, and the latter has acted in good faith, the party subjected to the duress shall, where he wishes to plead the duress, inform the other party thereof without unreasonable delay following the cessation of the duress. Should he fail to do so, the legal act shall be deemed to be binding.

Section 29

A legal act which a person has been coerced into performing other than as a consequence of duress as stated in section 28, shall not be binding on such person if the party in respect of whom the act was performed exerted the coercion or knew, or should have known, that the act was performed as a result of coercion exerted by another.

Section 30

Where a person in respect of whom a legal act is performed has induced the performance of the act by fraudulent deception, or where such party knew, or should have known, that the act was induced by fraudulent deception on the part of a third party, such act shall not be binding on the person fraudulently deceived.

Where a person in relation to whom a legal act is performed has fraudulently represented or withheld facts which may be presumed to be material in relation to the act, such person shall be deemed to have thereby induced the legal act, unless it is shown that such legal act was not influenced by the fraud.

Section 31

Where a person exploits the distressed circumstances, lack of mental capacity, irresponsibility, or dependence of another, in order to attain for himself or induce benefits which are manifestly disproportionate to the consideration paid or promised, or in respect of which no consideration shall be paid, such legal act shall not be binding on the person exploited.

The aforementioned provision shall also apply where the fraudulent practise referred to in the first paragraph is imputable to a person other than the one in respect of whom the legal act was performed, and where that person knew of, or should have been aware of, such circumstances. Contracts for salvage are governed by separate provisions. (SFS 1987:329).

Section 32

Where any person provides a statement of intent which, as a result of a typographical error or other mistake on his part, imparts a different meaning than the one intended, such person shall not be bound by the statement of intent if the party to whom it was addressed realised, or should have realised, the mistake.

Where a statement of intent which has been forwarded by telegram or transmitted orally through a messenger, has been distorted due to a telegraphic error or due to an inaccurate rendition by the messenger, the sender shall not be bound by the statement, notwithstanding that the recipient thereof is in good faith. However, where the sender does not wish the statement to be binding by reason of the aforesaid, he shall be obliged to inform the recipient thereof without unreasonable delay after

becoming aware of the distortion. Should he fail to do so, and where the recipient is in good faith, the statement of intent shall be binding as delivered.

Section 33

A legal act which would otherwise be deemed valid may not be relied upon where the circumstances in which it arose were such that, having knowledge of such circumstances, it would be inequitable to enforce the legal act, and where the party in respect of whom such legal act was performed must be presumed to have had such knowledge.

Section 34

Notwithstanding that a promissory note, written contract or other instrument is a sham document, any claim or right assigned by the party entitled thereto under the document shall be enforceable by a transferee who was in good faith at the time of the assignment.

Section 35

Where any person has signed a promissory note or other instrument which is valid in the hands of the bearer or is otherwise negotiable, such document shall, notwithstanding that it has been removed from the possession of the party without his consent, be enforceable against him where it is acquired by a subsequent assignee in good faith.

Where a payment order for a sum of money has been removed from the possession of a creditor without his consent, any payment effected by the debtor in good faith against presentation of the payment order when the debt is due, shall be valid against the creditor.

Section 36

A contract term or condition may be modified or set aside if such term or condition is unconscionable having regard to the contents of the agreement, the circumstances prevailing at the time the agreement was entered into, subsequent circumstances, and circumstances in general. Where a term is of such significance for the agreement that it would be unreasonable to demand the continued enforceability of the remainder of the agreement with its terms unchanged, the agreement may be modified in other respects, or may be set aside in its entirety.

Upon determination of the applicability of the provisions of the first paragraph, particular attention shall be paid to the need to protect those parties who, in their capacity as consumers or otherwise, hold an inferior bargaining position in the contractual relationship.

The provisions of the first and second paragraphs shall apply *mutatis mutandis* to questions relating to the terms of legal acts other than contracts.

The provisions of section 11 of the Consumer Contracts Act (SFS 1994:1512) shall also apply to the modification of contractual terms relating to consumers. (SFS 1994:1513).

Section 37

A condition whereby a pledge or other security interest shall be forfeited in the event of non-fulfilment of the undertaking in respect of which it was given, shall be null and void. (SFS 1976:185).

Section 38

Where, in order to prevent competition, one party has stipulated that the other party shall not engage in a certain type of business or shall not take up employment with a person conducting such a business, such an undertaking shall not binding on the person giving it to the extent that the undertaking is more extensive than may be considered reasonable. (SFS 1976:185).

Chapter 4. General Provisions

Section 39

Where, pursuant to this Act, the validity of a contract or other legal act is conditional on the fact that the party in respect of whom the act was performed neither knew nor should have known of certain circumstances, or was otherwise in good faith, account shall be taken of those circumstances of which he was aware or should have been aware at the time the act became known to him. However, where justified by the circumstances, account shall also be taken of the knowledge he acquired, or should have acquired, after such time, but before his actions were decisively affected by the legal act.

Section 40

Where, pursuant to this Act, any person is obliged to provide notice to another party on pain that an agreement shall otherwise be concluded, or that an offer shall otherwise be deemed accepted, or that a legal act performed by him or on his behalf shall become binding upon him, and where such notice has been submitted for dispatch at a post office or a telegraph office or has otherwise been dispatched in an expedient manner, any delay or non-arrival of such notice shall not be deemed to constitute non-performance of the notification obligation of the sender. The provisions of sections 7, 13 and 18 shall apply to the revocation of offers, acceptances, and grants of agency.

Section 41

This Act repeals Chapter 1, section 1, and Chapter 9, section 9 of the Commercial Code, sections 2 and 3 of the Usury Act of 14 June 1901, and all other laws or statutory provisions which are incompatible with the provisions of this Act.

Appendix 5

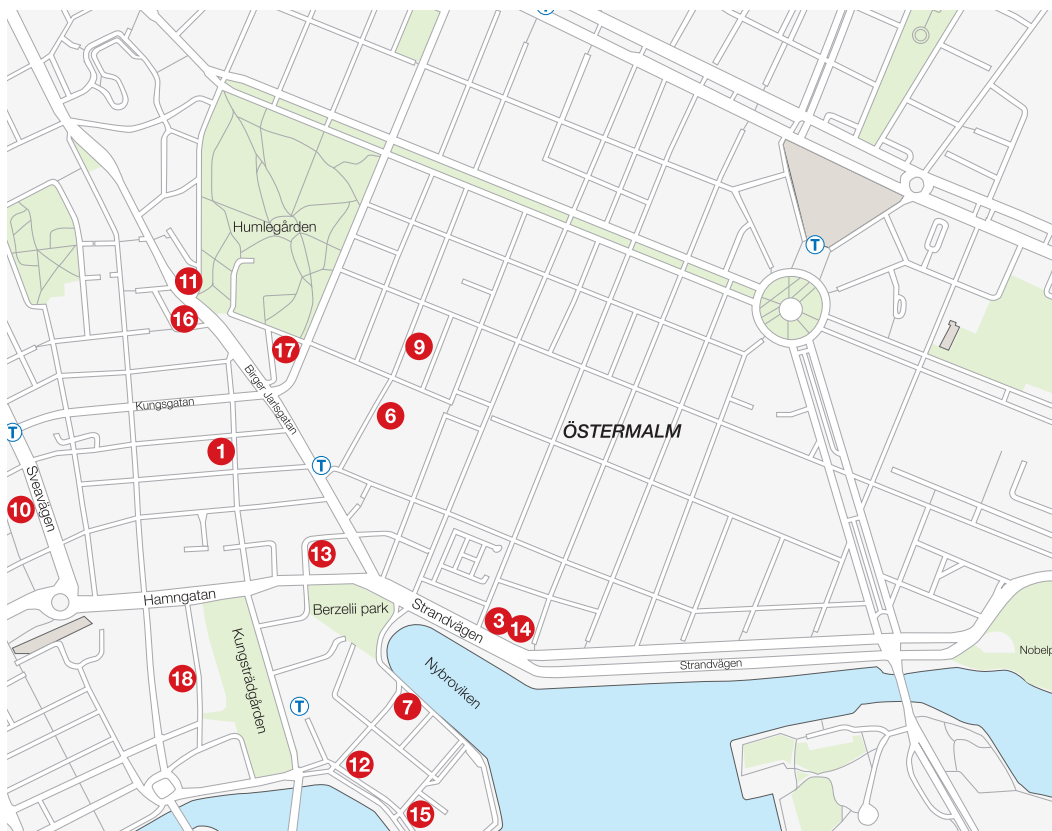
City Map Stockholm



1. Mannheimer Swartling, Norrlandsgatan 21
2. Stockholm Central Station

Hearing venues

3. Stockholm international hearing centre, Strandvägen 7A
4. Stockholm international hearing centre, Norrtullsgatan 6
5. Stockholm international hearing centre, Vasagatan 7
6. IVA – Ingenjörsvetenskapsakademien, Grev Turegatan 16
7. Radisson Collection Hotel, Strand Stockholm, Nybrokajen 9
8. Sheraton Hotel, Tegelbacken 6
9. GT30 Grev Ture, Grev Turegatan 30
10. Hitechbuilding, Sveavägen 9

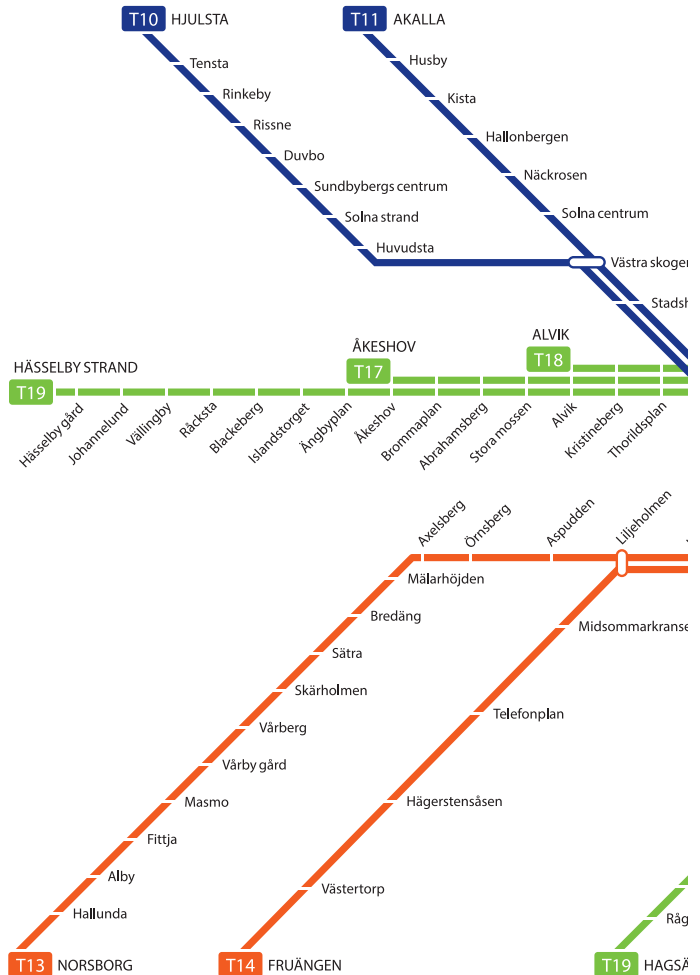


- 11. T-House Stureplan, Engelbrektsplan 1
- 12. Grand Hôtel, Södra Blasieholmshamnen 8

Hotels

- 12. Grand Hôtel, Södra Blasieholmshamnen 8
- 13. Nobis Hotel, Norrmalmstorg 2-4
- 14. Hotel Diplomat, Strandvägen 7C
- 15. Lydmar Hotel, Södra Blasieholmshamnen 2
- 16. Elite Hotel Stockholm Plaza, Birger Jarlsgatan 29
- 17. Scandic Hotel Anglais, Humlegårdsgatan 23
- 18. Hotel Kungsträdgården, Västra Trädgårdsgatan 11B

Underground Map Stockholm



Hötorget (Green line) and Östermalmstorg (Red line) are the metro stations located closest to Mannheimer Swartling's office on Norrlandsgatan 21.



Model Arbitration and Governing Law Clauses

Choice of Swedish law

This agreement shall be governed by Swedish law.

SCC model clauses

Arbitration Rules

Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The seat of arbitration shall be Stockholm. The language to be used in the arbitral proceedings shall be English.

Rules for Expedited Arbitrations

Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce. The seat of arbitration shall be Stockholm. The language to be used in the arbitral proceedings shall be English.

Combined clause – Rules for Expedited Arbitrations as first choice

Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the “SCC”).

The Rules for Expedited Arbitrations shall apply, unless the SCC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the Arbitration Rules shall apply. In the latter case, the SCC shall also decide whether the Arbitral Tribunal shall be composed of one or three arbitrators. The seat of arbitration shall be Stockholm. The language to be used in the arbitral proceedings shall be English.

ICC model clause

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be Stockholm. The language to be used in the arbitral proceedings shall be English.

Clause providing for UNCITRAL arbitration with SCC as appointing authority

Any dispute, controversy, or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules in effect on the date of this contract. The appointing authority shall be the Arbitration Institute of the Stockholm Chamber of Commerce. The seat of arbitration shall be Stockholm. The language to be used in the arbitral proceedings shall be English.

Clause providing for ad hoc arbitration

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration under the Swedish Arbitration Act. The seat of arbitration shall be Stockholm. The language to be used in the arbitral proceedings shall be English.

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This second edition of *Mannheimer Swartling's Concise Guide to Arbitration in Sweden* provides the essentials for anyone participating in arbitration in Sweden – from the basis of the arbitration agreement, through the appointment of arbitrators and the conduct of the arbitral process, to the making, challenging and enforcement of the award. It addresses commercial arbitration as well as investment arbitration. It also provides essential guidance on those aspects of contract law, which will usually be relevant in a contractual dispute governed by Swedish substantive law. Finally, it provides practical information for lawyers visiting Sweden regarding entry into the country, getting around, hearing venues, where to stay and eat, handling emergencies and, if time allows, sightseeing.

The first edition of this guide was published in 2014. Since then, the SCC has issued new arbitration rules in 2017 and the Swedish Arbitration Act of 1999 was partly revised in 2019. At the same time, the Swedish courts have continued to develop Swedish arbitration law with a number of important judgments. This second edition of the guide has been updated to reflect these developments.

The authors of this guide are all partners and members of Mannheimer Swartling's dispute resolution group, with unparalleled combined experience of arbitration in Sweden.

