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Quick Answers on Arbitral Institutions – Arbitration Institute of the Stockholm Chamber of Commerce (SCC)

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Introduction

Arbitral Institution

What is the full name and abbreviation of the Arbitral Institution?

The Arbitration Institute of the Stockholm Chamber of Commerce (the 'SCC Arbitration Institute', the 'SCC Institute' or, often, only as the 'SCC').

When was it founded?

1917

What is its organizational structure?

The SCC is organized as an independent part of the Stockholm Chamber of Commerce. The SCC is composed of a Board of Directors and a Secretariat. The function of the SCC's Board is to make decisions as required under the 2017 Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the 'SCC Rules'). This includes decisions regarding prima facie jurisdiction, appointment of arbitrators, challenge to arbitrators and the arbitration costs. The SCC Secretariat handles the daily case management, organization of events, production of publications etc.

Is there a limitation on the application of this Arbitral Institution's Rules to a specific industry? If so, what?

No. Disputes under the SCC Rules include all aspects of international commerce, including telecommunications, insurance, oil and gas, construction, shipping, aviation, pharmaceuticals, shareholders agreements, IT, finance and banking. The SCC is also an option for arbitrations under the Energy Charter Treaty, as well as numerous Bilateral Investment Treaties. As a result, the SCC administers a large number of investor-state disputes.

Is there a limitation on the application of this Arbitral Institution's Rules to a specific kind of dispute? If so, what?

No. The subject matter of the contracts in dispute is wide and varied.

Commencing Arbitration

Written Communications and Timing

What is the address of the Arbitral Institution?

The Arbitration Institute of the Stockholm Chamber of Commerce

P.O. Box 16050

103 21 Stockholm

Sweden

Visiting address:

Brunnsgatan 2, Stockholm

Phone: +46 8 555 100 00

Fax: +46 8 566 316 50

E-mail: arbitration@chamber.se

How many copies of written communications must the Parties provide?

The number of copies has not been specified in the SCC Rules. The Request for Arbitration, the answer and any annexes, should, to the extent possible, be sent by email to the SCC. If the scope of the Request for Arbitration and/or annexes is extensive, making it unsuitable for electronic submission, the documentation should be provided to the SCC in as many copies as necessary to make it possible to send a copy each to the respondent(s), the SCC and the arbitrator(s).

With respect to communications before the Arbitral Tribunal, once appointed, it is for the

Arbitral Tribunal to decide how many copies it requires.

As from September 2019, all new SCC arbitrations are administered on the SCC Platform, a digital platform for communication and file sharing between the SCC, the parties and the tribunal.

Where are written communications from the Parties sent?

The Request for Arbitration and the Answer to the Request for Arbitration are filed with the SCC. If possible, via e-mail to arbitration@chamber.se.

As from September 2019, all new SCC arbitrations are administered on the SCC Platform, a digital platform for communication and file sharing between the SCC, the parties and the tribunal.

Where are written communications from the Arbitral Tribunal sent?

Any notice or other communication from the Arbitral Tribunal shall be delivered to the last known address of the addressee (Articles 5(1) and (4)). The Arbitral Tribunal shall deliver copies of the timetable and the Award to the SCC (in addition to copies being sent to the Parties).

As from September 2019, all new SCC arbitrations are administered on the SCC Platform, a digital platform for communication and file sharing between the SCC, the parties and the tribunal.

In 2015, the Swedish Supreme Court decided to enforce an Award rendered by the International Centre for Dispute Resolution in New York, despite the Respondent's objection that it had not been aware of the proceedings (NJA 2015 s. 315). The Supreme Court found that the Claimant had tried to reach the Respondent in several customary ways and, failing that, had sent numerous emails to the email address of the Respondent. According to the Supreme Court, the Respondent must have or ought to have known about the proceedings because of the notifications sent to the Respondent's email address.

What methods of communication may be used?

A notice or other communication shall be delivered by courier or registered mail, e-mail or any other means of communication that provides a record of the sending thereof (Article 5(2)). Once the file has been transferred to the Arbitral Tribunal, it may decide which means of communications that may be used.

As from September 2019, all new SCC arbitrations are administered on the SCC Platform, a digital platform for communication and file sharing between the SCC, the parties and the tribunal.

When are communications deemed to have been filed?

The SCC Rules contain no provisions regarding when communications from the Parties are deemed to have been filed. A notice or communication sent to the Parties by the SCC or the Arbitral Tribunal shall be deemed to have been received by the addressee on the date it would normally have been received given the chosen means of communication (Article 5(3)).

How are time periods calculated?

The SCC Rules contain no provisions regarding the calculation of time periods.

Request for and Notice of Arbitration

When do the arbitral proceedings commence?

An arbitration is deemed to commence on the date when the SCC receives the Request for Arbitration (Article 8).

To whom is the Request for or Notification of Arbitration sent?

Any Party wishing to commence an arbitration under the SCC Rules shall send a written Request for Arbitration to the SCC (Articles 6 and 8).

What information must the Request for or Notification of Arbitration contain?

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 6).

How many copies of the Request for or Notification of Arbitration must be provided?

The number of copies has not been specified in the SCC Rules. The request for arbitration and annexes should, to the extent possible, be sent by email to the SCC. If the scope of the Request of Arbitration and /or annexes is extensive, making it unsuitable for electronic submission, the documentation should be provided to the SCC in as many copies as necessary to make it possible to send a copy each to the respondent(s), the SCC and the arbitrator(s).

What payments must be made with Request for or Notice of Arbitration?

Upon filing the Request for Arbitration, the Claimant shall pay a Registration Fee. The amount of the Registration Fee is determined in accordance with the Schedule of Costs in force on the date when the Request for Arbitration is filed (Article 7(1)). Currently, the Registration Fee is EUR 3,000 (Article 1(1) of Appendix IV to the SCC Rules).

What is the consequence of non-payment of any advance payments required?

If the Registration Fee is not paid upon filing the Request for Arbitration, the SCC 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 7(2)).

What happens if arbitration proceedings between the same Parties are already pending (e.g., consolidation)?

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 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 agreement to be compatible (Article 15(1)).

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.

Where the Board decides to consolidate, the Board may release any arbitrator already appointed (Article 15(2)–(3)).

Answer to Request or Response and Counterclaims

What is expected of Respondent(s)?

Respondent is expected to submit an Answer to the Request for Arbitration within the time period set out by the SCC Secretariat (Article 9(1)).

To whom is the Answer to the Request or Response sent?

The Answer to the Request for Arbitration is filed with the SCC (Article 9(1)).

What information must the Answer to the Request or Response contain?

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 (Article 9(1)).

How many copies of the Answer to the Request or Response must be provided?

The number of copies has not been specified in the SCC Rules. This means that one copy is sufficient.

How long does the Respondent have to file the Answer to the Request or Response?

The SCC Secretariat shall set a time period within which the Respondent shall submit an answer to the SCC and may give an opportunity for the Claimant to submit comments on the Answer, having regard to the circumstances of the case (Article 9(1)–(2)). The time period is usually set to a few weeks.

Can an extension of time for filing the Answer to the Request or Response be granted?

The Board may, on application by either Party or on its own motion, extend any time period which has been set for a Party (Article 4).

What happens if the Respondent does not file an Answer to the Request or Response?

Failure by the Respondent to submit an Answer shall not prevent the arbitration from proceeding, and shall not preclude the Respondent from raising objections at any time up to and including the submission of the Statement of Defence (Article 9(1)(i) and (3)).

Must the Respondent provide any specific information about the Counterclaims being raised? If so, what?

A preliminary statement of any counterclaims or set-offs, including an estimate of the monetary value thereof should be included in the Respondent's Answer. 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 should be included in the Respondent's Answer (Article 9(1)(iii)–(iv)).

If Counterclaims are raised, how long does the Claimant have to respond?

Under the SCC Rules, the Claimant may be given an opportunity to submit comments on the Answer, having regard to the circumstances of the case (Article 9(2)). The time period for this is determined by the SCC Secretariat.

If no response to the counterclaim(s) is provided in the comments, the Claimant may still supplement its response at any time prior to the closure of the proceedings, unless the Arbitral Tribunal considers it inappropriate to allow such supplement having regard to the delay in making it, the prejudice to the other Party or any other circumstances (Article 30).

Can a Respondent join additional Parties?

A Party to the arbitration may request that the Board join one or more additional Parties to the arbitration. 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 (Article 13(1)–(2)).

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 (Article 13(5)).

Further Details

Does the Arbitral Institution have the ability to request further details from the Parties?

The Board may request further details from either Party regarding any of their written submissions to the SCC (Article 10(1)).

What happens if the further details requested by the Arbitral Institution are not provided?

If the Claimant fails to comply with a request for further details, the Board may dismiss the case. If the Respondent fails to comply with a request for further details regarding a counterclaim or set-off, the Board may dismiss the counterclaim or set-off. Failure by the Respondent to otherwise comply with a request for further details shall not prevent the arbitration from proceeding (Article 10(2)–(4)).

The Arbitral Tribunal

Effect of the Arbitration Agreement

What happens if one of the Parties raises arguments concerning the existence, validity or scope of the arbitration agreement?

The Board shall, if necessary, decide whether the SCC manifestly lacks jurisdiction over

the dispute (Articles 11(i) and 12(i)). If it does not manifestly lack jurisdiction, the dispute will be referred to the Arbitral Tribunal for determination in accordance with the applicable arbitration law.

Is there a time limit by when jurisdictional objections must be raised? If so, what?

It is stated in the SCC Rules that the Answer to the Request for Arbitration shall include 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 (Article 9(1)(i)).

Who decides if the Arbitral Tribunal has jurisdiction?

A jurisdictional challenge made in the initial exchange of pleadings, involving the SCC, is subject to a prima facie jurisdictional decision by the SCC Board.

The SCC Rules contain no provision regarding the Arbitral Tribunal's power to rule in jurisdictional matters. This means that the matter will be decided in accordance with the applicable arbitration law.

If the seat of arbitration is Sweden, the principle of kompetenz-kompetenz applies (section 2 of the Swedish Arbitration Act (the 'Arbitration Act')).

Under section 4a of the Arbitration Act, the court is prevented from ruling upon the jurisdiction of the tribunal where an arbitration has been initiated and where one of the parties objects, except in consumer disputes. However, if the arbitral tribunal during the procedure holds that it has jurisdiction, a party has the right to request that the question of jurisdiction be tried in court. Such a request must be submitted within thirty days following the day on which the party received the decision (section 2 of the Arbitration Act).

Prior to the initiation of the arbitration, a party may rely on Chapter 13, section 2 of the Swedish Code of Judicial Procedure for a declaratory judgment on the validity and applicability of an arbitration agreement. The general requirements under Swedish law for a declaratory judgment are that there exists uncertainty regarding the legal circumstances and that the uncertainty exposes the claimant to a detriment.

What happens if one of the Parties fails to take part in proceedings?

Article 35 of the SCC Rules sets out three types of default:

(i) If the Claimant, without good cause, fails to submit a Statement of Claim or other written statement in accordance with Article 29, the Arbitral Tribunal shall terminate the proceedings, provided that the Respondent has not filed a counterclaim.

(ii) 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.

(iii) If a party, without good cause, fails to comply with any provision of, or requirement under, the SCC Rules or any procedural order given by the Arbitral Tribunal, the Arbitral Tribunal may draw such inferences as it considers appropriate.

General Provisions

Who makes decisions as to the arbitrators' appointment, confirmation, challenge or replacement?

The default rule, which may be deviated from by the Parties' agreement, is that each Party appoints one arbitrator and the SCC Board appoints the Chairperson. If there is to be only one arbitrator, the default rule is that the Parties jointly appoint the arbitrator within ten days. If the Parties fail to make the appointment, the arbitrator is appointed by the SCC Board (Article 17).

A challenge to an arbitrator shall be finally decided by the Board (Articles 19 and 20). 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 arbitrator being replaced was appointed by a Party, that Party shall appoint the new arbitrator, unless the Board otherwise deems it appropriate (Article 21(1)).

Number of Arbitrators

How many arbitrators may be appointed?

The Parties are free to agree on the number of arbitrators (Article 16(1)).

What happens if the Parties have not agreed on the number of arbitrators?

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 16(2)).

What factors will the Arbitral Institution consider in deciding upon the number of arbitrators?

Upon deciding the number of arbitrators the Board shall have regard to the complexity of the case, the amount in dispute and other relevant circumstances (Article 16(2)).

What is the procedure if the Parties have agreed upon a sole arbitrator?

Where the Arbitral Tribunal is to consist of a sole arbitrator, but the Parties have not agreed on a procedure for the appointment of the arbitrator, the Parties shall be given 10 days within which to jointly appoint the arbitrator (Article 17(1)–(3)).

What happens if the Parties fail to nominate a sole arbitrator?

If the Parties fail to make the appointment within ten days, the arbitrator shall be appointed by the Board (Article 17(3)).

What is the procedure if the Parties have agreed upon three arbitrators?

Where the Arbitral Tribunal is to consist of more than one arbitrator, but the Parties have not agreed on a procedure for the appointment of the arbitrators, each Party shall appoint an equal number of arbitrators and the Chairperson shall be appointed by the Board. Where a Party fails to appoint arbitrator(s) the Board shall make the appointment (Article 17(1), (2) and (4)).

What happens if a Party fails to nominate an arbitrator?

Where a Party fails to appoint an arbitrator the Board shall make the appointment (Article 17(3) and (4)).

If the Parties have agreed upon three arbitrators, which arbitrator is appointed Chairman?

Where the Parties have not agreed on the procedure for appointment of the Chairperson, the Board shall make the appointment (Article 17(1), (2) and (4)).

What happens if the appointment of a Chairman cannot be agreed?

If the Parties have not agreed on the procedure for appointment of the Chairperson, the Board shall make the appointment (Article 17(1), (2) and (4)).

Appointment and Confirmation of Arbitrators

What factors does the Arbitral Institution consider in confirming or appointing arbitrators?

In deciding whether the Arbitral Tribunal shall consist of a sole arbitrator or three arbitrators, the Board shall have regard to the complexity of the case, the amount in dispute and other relevant circumstances (Article 16(2)).

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 17(7)). It has been reported that in practice, the decisions by the Board on whom to appoint are prepared by the SCC Secretariat, which presents several proposals to the Board. The Board, which consists of fifteen experienced arbitration practitioners from a number of jurisdictions and backgrounds, discusses possible names fit for the case in question. The names are not chosen from any list, and it has been reported that the Board regularly chooses a name which is not included in the Secretariat's original proposal.

The SCC also takes into account experience, profession, tribunal balance, qualifications, availability and diversity when appointing arbitrators (SCC Policy 'Appointment of Arbitrators').

Who within the Arbitral Institution confirms or appoints arbitrators?

The Board of the SCC, which consists of fifteen experienced arbitration practitioners from a number of jurisdictions and backgrounds, is responsible for appointing arbitrators (Article 11(vi)). The SCC does not confirm party-appointed arbitrators, but acts on challenges by either of the Parties.

Is there a set list of arbitrators from which the Arbitral Institution will choose an arbitrator? If so, what list is used?

No list system is used. It has been reported that in practice, the decisions by the Board on whom to appoint are prepared by the SCC Secretariat, which presents several proposals to the Board. The Board, which consists of fifteen experienced arbitration practitioners from a number of jurisdictions and backgrounds, then discusses possible names fit for the case in question. The names are not chosen from any list, and it has

been reported that the Board regularly chooses a name which is not included in the Secretariat's original proposal.

Are there restrictions on the nationality of an arbitrator? If so, what are the restrictions?

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 Article 17(6)).

Are there any other requirements? If so, what?

Every arbitrator must be impartial and independent (Article 18(1)).

How does an arbitrator demonstrate his impartiality and/or independent from the Parties prior to his appointment?

Before being appointed as arbitrator, a prospective arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to the prospective arbitrator's impartiality or independence. Once appointed, an arbitrator shall submit to the SCC Secretariat a signed statement of acceptance, availability, impartiality and independence, disclosing any circumstances that may give rise to justifiable doubts as to that arbitrator's impartiality or independence (Article 18(2)–(3)).

Are the arbitrators subject to an ongoing duty of disclosure as regards their impartiality and/or independence?

Yes. 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 18(4)).

Expedited Formation

Does the Arbitral Institution's Rules provide for the expedited formation of the Arbitral Tribunal? If so, how? In what circumstances?

Under Appendix II of the SCC Rules a Party may apply for the appointment of an Emergency Arbitrator in order to acquire an emergency decision on interim measures (Articles 1 and 2 of Appendix II to the SCC Rules). The Board shall seek to appoint an Emergency Arbitrator within 24 hours of receipt of the application (Article 4(1) of Appendix II to the SCC Rules).

Any emergency decision on interim measures shall be made within 5 days from the date upon which the application was referred to the Emergency Arbitrator. The Board may extend this time limit upon a reasoned request from the Emergency Arbitrator, or if otherwise deemed necessary (Article 8(1) of Appendix II to the SCC Rules). However, even when an extension is granted, experience shows that a decision is normally rendered within a couple of days.

The objective of the provisions regarding Emergency Arbitrators is to provide a Party with an urgent claim to secure interim relief before the proper Arbitral Tribunal has been constituted and without turning to a state court for interim measures. The mandate of the Emergency Arbitrator expires once an interim decision is rendered.

Once appointed, the Arbitral Tribunal is not bound by the decision(s) and reasons of the Emergency Arbitrator and may, thus, change or replace such decisions (Article 9(5) of Appendix II to the SCC Rules).

Multiple Parties

Do the Arbitral Institution's Rules provide for the appointment of the Arbitral Tribunal in multi-party arbitration? If so, how?

Yes. Where the Parties have not agreed on a procedure for the appointment of arbitrators and 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 (Article 17(1), (2) and (5)).

What happens if multiple Claimants or Respondents cannot agree on a joint nomination?

Where the Parties have not agreed on a procedure for the appointment of arbitrators and 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 (Article 17(1), (2) and (5)).

Who can the Arbitral Institution appoint in such circumstances?

Anyone who can otherwise be appointed as an arbitrator.

Challenge of Arbitrators

Can the Parties challenge an arbitrator?

Yes (Article 19).

How is a challenge communicated?

A Party wishing to challenge an arbitrator shall submit a written statement to the SCC Secretariat stating the reasons for the challenge (Article 19(3)).

When may a challenge be made?

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 qualifications agreed by the Parties. A Party may challenge an arbitrator it has appointed or in whose appointment it has participated, only for reasons of which it became aware after the appointment was made. A Party wishing to challenge an arbitrator shall submit a written statement to the SCC 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 (Article 19(1)–(3)).

Who decides on the challenge?

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 19(5)).

The Arbitral Proceedings

Replacement of Arbitrators

In what circumstances may an arbitrator be replaced?

The Board shall release an arbitrator from appointment where:

- (i) the Board accepts the resignation of an arbitrator;
- (ii) a challenge to the arbitrator is sustained; or
- (iii) the arbitrator is otherwise unable or fails to perform the arbitrator's functions (Article 20(1)).

The Board shall appoint a new arbitrator where an arbitrator has been released from appointment, 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 (Article 21(1)).

Can the Arbitral Institution replace an arbitrator of its own accord? If so, how?

Only a Party can challenge an arbitrator (Article 19(1)). The SCC Rules do however provide that the Board shall release an arbitrator from appointment where the arbitrator is unable or fails to perform the arbitrator's functions. Before the Board releases an arbitrator, the Secretariat may give the parties and the arbitrators an opportunity to submit comments (Article 20(1)(iii) and (2)). The Board must be understood to have the mandate to initiate such replacement itself. In practice, however, any replacement procedure will be initiated upon a complaint by a dissatisfied Party.

If the Arbitral Institution replaces arbitrators of its own accord, what factors will it consider?

The Board shall release an arbitrator from appointment where the arbitrator is unable or fails to perform the arbitrator's functions (Article 21(1)(iii)).

What is the position if an arbitrator is replaced after the close of proceedings?

Where an arbitrator has been replaced, the newly composed Arbitral Tribunal shall decide whether and to what extent the proceedings are to be repeated (Article 21(3)).

By what process is a replacement arbitrator selected?

If the released arbitrator was appointed by a Party, that Party shall appoint the new arbitrator, unless the Board otherwise deems it appropriate. In all other cases, the default rule is that the Board shall appoint the new arbitrator (Article 21(1)).

To what extent can/will proceedings be repeated if a replacement arbitrator is appointed?

Where an arbitrator has been replaced, the newly composed Arbitral Tribunal shall decide whether and to what extent the proceedings are to be repeated (Article 21(3)).

What happens if a member of the Arbitral Tribunal refuses or fails to participate in proceedings?

The Board shall release an arbitrator from appointment where the arbitrator is unable or fails to perform the arbitrator's functions (Article 20(1)(iii)).

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 42(5)).

Transmission of File to the Arbitral Tribunal

When is the file transferred to the Arbitral Tribunal?

When the Arbitral Tribunal has been appointed and the Advance on Costs has been paid, the SCC Secretariat shall refer the case to the Arbitral Tribunal (Article 22).

Place or Seat of Arbitration

Who decides the place or seat of arbitration?

Unless agreed upon by the Parties, the Board shall decide the seat of arbitration (Articles 11(viii) and 25(1)).

Can hearings be conducted at locations other than the place or seat of arbitration?

The Arbitral Tribunal may, after consulting the Parties, conduct hearings at any place which it considers appropriate. The arbitration shall be deemed to have taken place at the seat of arbitration regardless of any hearing held elsewhere (Article 25(2)).

Can the Arbitral Tribunal hold its meetings at locations other than the place or seat of arbitration?

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 meeting or deliberation held elsewhere (Article 25(2)).

Rules Governing the Proceedings

What is the position if the Arbitral Institution's Rules are silent as to an aspect of proceedings?

Unless otherwise agreed by the Parties, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate (Article 23(1)).

In all matters not expressly provided for in the SCC Rules, the SCC, the Arbitral Tribunal and the Parties shall act in the spirit of the SCC Rules and shall make every reasonable effort to ensure that any Award is legally enforceable (Article 2(2)).

Can the Chairman of the Arbitral Tribunal make procedural rulings on his own?

Yes. The Arbitral Tribunal may decide that the Chairperson alone may make procedural rulings (Article 41(2)).

Language of the Arbitration

May the Parties agree the language of the arbitration?

Yes (Article 26(1)).

What happens if the Parties have not determined the language of the arbitration?

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 (Article 26(1)).

What happens if documents are submitted in a language other than the language of the arbitration?

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 26(2)).

Applicable Rules of Law

Which substantive rules of law are applied by the Arbitral Tribunal?

The Arbitral Tribunal shall decide the merits of the dispute on the basis of the law 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 which it considers most appropriate (Article 27(1)).

If the Arbitral Tribunal is to determine the substantive rules of law to be applied, what will it take into consideration?

The SCC Rules contain no provision for this, other than that the Arbitral Tribunal shall apply the law or rules of law that it considers 'most appropriate' (Article 27(1)).

Under the Swedish Arbitration Act, in the absence of an agreement between the Parties, the arbitrators shall decide the applicable substantive law.

Is the Arbitral Tribunal entitled to assume the powers of an amiable compositeur? If so, under what circumstances?

The Arbitral Tribunal shall decide the dispute as amiable compositeur only if the Parties have expressly authorized it to do so (Article 27(3)).

Is the Arbitral Tribunal entitled to decide ex aequo et bono? If so, under what circumstances?

The Arbitral Tribunal may decide the dispute ex aequo et bono only if the Parties have expressly authorized it to do so (Article 27(3)).

Is the Arbitral Tribunal entitled to decide according to the principle of 'honourable agreement'? If so, under what circumstances?

The principle is not acknowledged in the SCC Rules.

Applicable Procedural Rules

What version of the Arbitral Institution's Rules apply?

The Arbitration 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 current Arbitration Rules of the SCC (the SCC Rules) entered into force on 1 January 2017 and will be applied to any arbitration commenced on or after 1 January 2017, unless otherwise agreed by the Parties. The Schedule of Costs of Appendix IV to the SCC Rules has been revised as of 1 January 2020 and will be applied to any arbitration commenced on or after 1 January 2020, unless otherwise agreed by the Parties.

Are any procedural rules applicable in addition to the Arbitral Institution's rules of procedure?

Procedural rules of the lex arbitri, the applicable arbitration law, will apply.

Terms of Reference

Do the procedural rules provide for Terms of Reference?

No.

If the procedural rules provide for Terms of Reference, what do they contain?

The SCC Rules do not make provision for this.

If the procedural rules provide for Terms of Reference, how long does the Arbitral Tribunal have to compile them?

The SCC Rules do not make provision for this.

Procedural Timetable

How is the procedural timetable determined?

After the referral of the case to the Arbitral Tribunal, the Arbitral Tribunal shall promptly hold a case management conference with the Parties to organize, schedule and establish procedures for the conduct of the arbitration. 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 (Article 28(1) and (4)).

The Arbitral Tribunal may, after consulting the Parties, hold further case management conferences and issue revised timetables as it deems appropriate (Article 28(5)).

New Claims

Are the Parties entitled to make new claims once proceedings have commenced?

Yes. At any time prior to the closure of the proceedings a Party may amend and 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 30).

Are the Parties entitled to amend their pleadings once proceedings have commenced?

Yes. At any time prior to the closure of the proceedings a Party may amend its claim, counterclaim, defence or set-off provided its case, as amended, is still comprised by the arbitration agreement, unless the Arbitral Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it, the prejudice to the other Party or any other relevant circumstances (Article 30).

Are the Parties entitled to supplement their pleadings once proceedings have commenced?

Yes. At any time prior to the closure of the proceedings a Party may supplement its claim, counterclaim, defence or set-off provided its case, as 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 30).

If claims are deemed to be withdrawn, is a Party prohibited from filing the same claims in fresh proceedings?

The SCC Rules do not make provision for this and it will be a matter for the applicable arbitration law.

Written Submissions

Are the Parties required to file written submissions?

Yes. The Claimant shall submit a written Statement of Claim and the Respondent shall submit a written Statement of Defence (Article 29(1)–(2)).

How long do the Parties have to submit their written submissions?

The Arbitral Tribunal determines the time period for the submitting of each written submission (Article 29(1)–(2)).

What information or facts must the written submissions contain?

The Statement of Claim shall include, unless previously submitted:

- (i) the specific relief sought;
- (ii) the factual and legal basis the Claimant relies on; and
- (iii) the evidence the Claimant relies on (Article 29(1)).

The Statement of Defence 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 off-set and the grounds on which it is based; and
- (v) any evidence the Respondent relies on (Article 29(2)).

What documents must be provided with the written submissions?

Written submissions shall be accompanied by the evidence relied upon in the submission (Article 29(1)–(2)).

What happens if one of the Parties fails to submit a written submission?

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.

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 (Article 35(1)–(2)).

Is there a procedure set out for Document Production?

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 or material to its outcome (Article 31(3)).

Establishing the Facts

How is the Arbitral Tribunal entitled to establish the facts of the case?

The admissibility, relevance, materiality and weight of evidence shall be for the Arbitral Tribunal to determine. 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. The Arbitral Tribunal may, after consulting the Parties, appoint one or more experts to report to it on specific issues set out by the Arbitral Tribunal in writing. The Arbitral Tribunal may, exceptionally, on its own motion order a Party to produce any documents or other evidence that may be relevant to the case and material to its outcome (Articles 31(1)–(3) and 34(1)).

Is the Arbitral Tribunal entitled to direct specific questions to the Parties in advance of a hearing?

Yes. The SCC Rules also provide that, 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 (Article 33(1)).

Is the Arbitral Tribunal entitled to hear witnesses appointed by the Parties?

Yes. Subject to the applicable arbitration law, and although the SCC procedure is strictly adversarial in nature, the Arbitral Tribunal is free to ask witnesses that a Party relies on to appear at the hearing and to ask questions to such witnesses.

Is the Arbitral Tribunal entitled to hear experts appointed by the Parties?

Yes. Subject to the applicable arbitration law, and although the SCC procedure is strictly adversarial in nature, the Arbitral Tribunal is free to ask experts that a Party relies on to appear at the hearing and to ask questions to such experts.

In what form is witness and expert testimony to be provided?

The testimony of witnesses or party-appointed experts may be submitted in the form of signed statements. 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 33(2)–(3)).

Is the Arbitral Tribunal entitled to appoint its own experts?

After consulting the Parties, the Arbitral Tribunal may appoint one or more experts to report on specific issues set out by the Arbitral Tribunal in writing (Article 34(1)).

If the Arbitral Tribunal is entitled to appoint its own experts, are the Parties entitled to a copy of such experts' reports?

Yes. Upon receipt of a report from an expert 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 (Article 34(2)).

If the Arbitral Tribunal is entitled to appoint its own experts, are the Parties entitled to question such experts?

Yes. 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 34(3)).

Can the Arbitral Tribunal decide proceedings only on the basis of documentation filed by the Parties only?

Yes. Hearings shall be held if requested by a Party, or if the Arbitral Tribunal deems it appropriate (Article 32(1)).

Does the Tribunal have any other express powers regarding establishing the facts?

Yes. In advance of every hearing, the Arbitral Tribunal may request the Parties to identify each witness or expert they intend to call and specify the circumstances intended to be proved by each testimony (Article 33(1)). The Arbitral Tribunal may also order interim measures (Article 37), the production of documents (Article 31(3)) and order the parties to submit additional written submissions (Article 29 (3)).

Hearings

Must a hearing be held?

No. A hearing shall be held if requested by a Party, or if the Arbitral Tribunal deems it appropriate (Article 32(1)).

Who decides the time and location of hearings?

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 (Article 32(2)).

If one of the Parties does not attend, does the Arbitral Tribunal have the power to continue with the hearing?

If a Party, without good cause, 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 (Article 35(2)).

Privacy and Confidentiality

Are people other than the Parties and their advisors, witnesses and experts entitled to be present at hearings?

No. All hearings will be held in private unless otherwise agreed by the Parties (Article 32(3)).

Are the Parties under an obligation to keep proceedings confidential?

The SCC Rules do not make express provision for this. The confidentiality provision contained in Article 3 merely establishes that the SCC, the Arbitral Tribunal and any administrative secretary of the Arbitral Tribunal shall maintain the confidentiality of the arbitration and the Award.

Closure of Proceedings

When are the proceedings deemed closed?

The Arbitral Tribunal shall declare the proceedings closed when it is satisfied that the Parties have had a reasonable opportunity to present their cases (Article 40).

Are further submissions permitted without the Arbitral Tribunal's permission once proceedings have been closed? If so, under what conditions?

No. However, 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 (Article 40).

Is the Arbitral Tribunal able to re-open proceedings? If so, under what conditions?

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 (Article 40).

Awards

Conservatory and Interim Measures

Is the Arbitral Tribunal entitled to grant conservatory and/or interim measures?

Yes (Article 37).

Are the Parties entitled to apply to a competent judicial authority (i.e. a body other than the Arbitral Tribunal) for conservatory and/or interim measures?

Yes (Article 37(5)). When and how this is made is not determined by the SCC Rules, but by the applicable rules of civil procedure where the application is made.

If the Parties are entitled to apply to a competent judicial authority for conservatory and/or interim measures, when are they entitled to do so?

When and how this is made is not determined by the SCC Rules, but by the applicable rules of civil procedure where the application is made.

If the Parties are entitled to apply to a competent judicial authority for conservatory and/or interim measures, how can they do so?

When and how this is made is not determined by the SCC Rules, but by the applicable rules of civil procedure where the application is made.

How are the costs associated with any such conservatory and/or interim measures dealt with?

This is not determined by the SCC Rules, but by the applicable rules of civil procedure where the application is made. If the court reserves costs for determination of the Arbitral Tribunal, the Arbitral Tribunal is free, but not obliged, to take that into account in its cost order upon a request from either of the Parties.

Do the Arbitral Institution's Rules make provision for emergency measures of protection prior to the constitution of the Arbitral Tribunal?

Yes. Under Appendix II of the SCC Rules a Party may apply for the appointment of an Emergency Arbitrator in order to acquire an emergency decision on interim measures. The Board shall seek to appoint an Emergency Arbitrator within 24 hours of receipt of the application and the decision on interim measures is to be rendered within 5 days (Articles 4(1) and 8(1) of Appendix II to the SCC Rules).

If the Arbitral Institution's Rules make provision for emergency measures of protection prior to the constitution of the Arbitral Tribunal, what must an application for the

emergency measures of protection contain?

The Party requiring emergency measures may apply for the appointment of an Emergency Arbitrator by the SCC. 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 therefore;
- (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 Appendix II to the SCC Rules (Articles 1 and 2 of Appendix II to the SCC Rules).

Once an Emergency Arbitrator has been appointed, the SCC Secretariat shall promptly refer the application to the Emergency Arbitrator (Article 6 of Appendix II to the SCC Rules).

How is an application for emergency measures of protection made?

By applying to the SCC for the appointment of an Emergency Arbitrator and by paying the fee for an Emergency Arbitrator.

As the Arbitral Tribunal has not yet been appointed, who determines such an application for emergency measures of protection?

The Board appoints an Emergency Arbitrator, who in turn makes any emergency decision on interim measures (Articles 4, 6, 7 and 8 of Appendix II to the SCC Rules).

What relief may be granted by way of emergency measures of protection?

The Emergency Arbitrator may, at the request of a Party, grant any interim measures he deems appropriate (Article 1(2) of Appendix II of the SCC Rules referring to Articles 37(1)-(3) of the SCC Rules).

Time Limit for the Award

Is there a time limit for publication of the Award? If so, what?

Yes. The final Award shall be made no later than 6 months from the date the case was referred to the Arbitral Tribunal. The Board may extend this time limit upon a reasoned request from the Arbitral Tribunal, or if otherwise deemed necessary (Article 43).

Can the limit be extended? If so, under what conditions?

Yes. The Board may extend the time limit upon a reasoned request from the Arbitral Tribunal, or if otherwise deemed necessary (Article 43).

Making the Award

If the Arbitral Tribunal comprises more than one arbitrator, is the Award given by a majority decision?

Yes. 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 (Article 41(1)).

Can the Arbitral Tribunal render more than one Award on the issues before it?

Yes. The Arbitral Tribunal may decide a separate issue or part of the dispute in a separate Award (Article 44).

Can the Arbitral Tribunal render an additional Award on issues not dealt with in the first Award rendered?

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 (Article 48).

Must the Arbitral Tribunal give reasons for the Award?

Yes, unless otherwise agreed by the Parties (Article 42(1)).

Where is the Award deemed to be made?

The Award shall be deemed to have been made at the seat of arbitration (Article 25(3)).

Who signs the Award?

An Award shall be signed by the arbitrators (Article 42(3)).

Must the Award be signed?

Yes. An Award shall be signed by the arbitrators (Article 42(3)).

Must the Award be signed by all arbitrations or just a majority?

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 (Article 42(3)).

How can a dissenting arbitrator express his disagreement?

The SCC Rules do not make express provision for this and hence, the Arbitral Tribunal has flexibility in this respect. The normal practice, however, is that a dissenting opinion is attached to the Award.

Award by Consent**If the Parties reach settlement, how can this be recorded by the Arbitral Tribunal?**

If the Parties reach a settlement the Arbitral Tribunal may, at the request of both Parties, make a consent Award recording the settlement (Article 45(1)).

Is the Arbitral Tribunal obliged to record reasons for an Award by consent?

The general requirement that Awards be reasoned applies also to consent Awards. However, since this requirement may be waived by the Parties, they may decide themselves the level of reasons to be provided in the consent Award. Normally, the reason is simply that the Parties have settled and asked the Arbitral Tribunal to issue a consent Award on agreed terms.

Scrutiny of the Award**Is the Arbitral Tribunal's Award reviewed prior to being published? If so, how?**

No, not in the sense that it is scrutinized. The SCC Secretariat is understood to make a very brief review in particular with respect to the costs orders.

Notification, Deposit, and Enforcement of the Award**Who sends the Award to the Parties?**

The Arbitral Tribunal shall deliver a copy of the Award to each of the Parties and to the SCC without delay (Article 42(4)).

Are there any pre-conditions for sending the Award (e.g., payment of fees)?

Before making the final Award, the arbitration fees are to be determined by the Board and included in the final Award (Article 49(2) and (5)). With respect to payment of fees, an Advance on Costs is to be paid at the outset of the arbitration and, if necessary, additional advances on costs must be paid (Article 22 and 51(4)). Where an additional Party is joined to the arbitration, 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 (Article 51(3)). If payment of the Advance on Costs is not made by one of the Parties, the SCC Secretariat shall give the other Party an opportunity to do so within a specified period of time. If payment is not made within that time, the Board shall dismiss the case in whole or in part (Article 51(5)).

Are original Award documents stored with the Arbitral Institution?

An original copy of the Award is sent to the SCC, for its archive (Article 42(4)).

Are copies of the Award documents stored with the Arbitral Institution?

An original copy of the Award is sent to the SCC, for its archive (Article 42(4)).

Do the rules require the Parties to comply with the Award?

Yes, by agreeing to arbitration under the SCC Rules, the Parties undertake to carry out any Award without delay (Article 46).

Do this Arbitral Institution's Rules contain any special provisions concerning the enforcement of an Award? If so, what?

No. However, Article 46 of the SCC Rules provides that an award is final and binding on the parties when rendered and that, by agreeing to arbitration under the SCC Rules, the Parties undertake to carry out any Award without delay.

Is the Arbitral Tribunal entitled to make the Award public?

No. Unless otherwise agreed by the Parties the Arbitral Tribunal shall maintain the confidentiality of the Award (Article 3).

Are the Parties entitled to make the Award public?

Yes, subject to any confidentiality undertakings between the Parties and to applicable trade secrets legislation as well as the applicable arbitration law (which depends on the seat of arbitration). Swedish arbitration law, if Sweden is the place of arbitration, imposes no obligation of confidentiality on the Parties, beyond what follows from the Parties' agreement and statutory provisions on the protection of trade secrets.

Correction and Interpretation of the Award

Is the Arbitral Tribunal able to correct mistakes in the Award? If so, how?

The Arbitral Tribunal may correct any clerical, typographical or computational errors in the Award on its own motion within 30 days of the date of the Award (Article 47(1)–(2)).

Are the Parties entitled to apply for a correction to an Award? If so, how?

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 (Article 47(1)).

If a Party applies for a correction to an Award, is the other Party entitled to comment on the proposed correction? If so, how?

Yes. The requesting Party shall notify the other Party of the request. After giving the other Party an opportunity to comment on the request, and if the Arbitral Tribunal considers the request justified, the Arbitral Tribunal shall make the correction (Article 47(1)).

If a correction to an Award is made, is this made in a revised Award or a separate Award?

Any correction of an Award shall be in writing and shall comply with the requirements for publishing an Award (Articles 42 and 47(3)). It is made as, and styled, a 'correction of the Award' although, technically, it is an Award, subject to the same formal requirements.

Costs

Appeal or Challenge of the Award

Do this Arbitral Institution's Rules provide a procedure for appealing an Award? If so, what is the procedure?

No.

Do this Arbitral Institution's Rules provide a procedure for challenging an Award? If so, what is the procedure?

No.

The Arbitration Act contains provisions regarding this procedure.

Fees

How are the fees and expenses of the arbitrators and the Arbitral Institution determined?

The Board shall determine an amount to be paid by the Parties as an Advance on Costs. The Advance on Costs shall correspond to the estimated amount of the Costs of the Arbitration (Article 51).

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 (provided in Appendix IV to the SCC Rules) in force on the date of commencement of the arbitration. 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 other relevant circumstances (Article 49).

Is there a published schedule of fees?

Yes (Appendix IV to the SCC Rules). The amount can also be easily calculated on www.sccinstitute.com.

Can fees be negotiated?

In exceptional circumstances, the Board may deviate from the amounts set out in the table (Article 2(4) of Appendix IV to the SCC Rules).

Are fees based on hourly rate or another basis?

Fees are based on the amount in dispute in accordance with schedule of fees (Article 2 of Appendix IV to the SCC Rules).

Does the Arbitral Institution charge a fee?

Yes. Depending on the amount in dispute the administrative fee range from EUR 3,000 to 60,000 (Article 3 of Appendix IV to the SCC Rules).

How are fees collected?

The registration fee (currently EUR 3,000) as well as the Advance on Costs are paid directly to the bank account of the SCC.

Is a deposit or advance requested?

Yes. An Advance on Costs is requested (Articles 22 and 51).

When must an advance on costs or deposit be paid?

The Advance on Costs shall be paid before the case is referred to the Arbitral Tribunal. At the request of the Arbitral Tribunal, or if otherwise deemed necessary, the Board may order the Parties to pay additional advances during the course of the arbitration (Articles 22 and 51(4)).

How is the advance on costs or deposit split between the Parties?

Each Party shall pay half of the Advance on Costs, unless separate advances are determined by the Board (Article 51(3)).

What is the advance on costs or deposit intended to cover?

The fees and remunerations payable to the arbitrators and to the SCC (Articles 49 and 51).

How is the amount of the advance on costs or deposit calculated?

The Advance on Costs shall correspond to the estimated amount of the Costs of Arbitration, based on the SCC's Schedule of Costs (Articles 49(1) and 51(2)). The amount can be easily calculated on www.sccinstitute.com.

Can the amount of the advance on costs or deposit be amended or recalculated?

At the request of the Arbitral Tribunal, or if otherwise deemed necessary, the Board may order the Parties to pay additional advances during the course of the arbitration (Article 51(4)).

Can separate advances on costs be set for claims and counterclaims?

Yes. Where counterclaims and set-offs are submitted, the Board may decide that each Party shall pay advances corresponding to its claims (Article 51(3)).

What if one Party claims a right to set-off in relation to certain claims or counterclaims?

The advance is calculated based on the amount in dispute. The amount in dispute shall be the aggregate value of all claims, counterclaims and set-offs (Articles 2(1), 2(3), 3(1) and 3(2) of Annex IV to the SCC Rules). Where set-offs are submitted, the Board may decide that each party shall pay advances corresponding to its claims (Article 51(3)).

Is one Party able to pay the whole of the advance on costs or deposit should the other Party fail to pay its share?

Yes. If a Party fails to make a required payment, the SCC Secretariat shall give the other Party an opportunity to do so within a specified period of time. In such case, the Arbitral Tribunal may, at the request of that Party, make a separate Award for reimbursement of the payment (Article 51(5)).

What happens if an advance on costs or deposit is not paid?

If a Party fails to make a required payment, the SCC Secretariat shall give the other Party an opportunity to do so within a specified period of time. If the required payment is not made, the Board shall dismiss the case in whole or in part (Article 51(5)).

Miscellaneous**Decisions about Costs of the Arbitration****What is understood by and included in the terms 'costs'?**

The Costs of the Arbitration consist of:

- (i) the Fees of the Arbitral Tribunal;
- (ii) the Administrative Fee of the SCC; and
- (iii) the expenses of the Arbitral Tribunal and the SCC (Article 49(1)).

Is the Arbitral Tribunal to be guided by any principle in reaching its decision on the determination of costs of the arbitration? If so, what?

The Costs of the Arbitration are determined by the Board in accordance with the Schedule of Costs (Appendix IV) of the SCC. 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. If the arbitration is terminated before the final award is made, 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 (Article 49(2), 49(3) and 49(4)).

Where is the Arbitral Tribunal's decision as to costs recorded?

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 (Article 49(5)).

Is the Arbitral Tribunal to be guided by any principle in reaching its decision on the allocation of the costs of the arbitration? If so, what?

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 other relevant circumstances (Article 50).

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 other relevant circumstances (Article 49(6)).

Modified Time Limits

Are the Parties able to alter the time limits provided for in the Arbitral Institution's Rules? If so, how?

There are no provisions about this but, as a matter of principle, party-autonomy applies.

Is the Arbitral Tribunal able to alter the time limits provided for in the Arbitral Institution's Rules? If so, how?

The Arbitral Tribunal may request the Board to extend the time limit for making the final Award (Article 43).

Waiver

Can the Parties waive their right to object to a failure to comply with the Arbitral Institution's Rules?

Yes. A Party who, during the arbitration, fails to object without delay to any failure to comply with the SCC Rules or other rules applicable to the proceedings, shall be deemed to have waived the right to object to such failure (Article 36).

Can the Parties waive their right to object to a failure to comply with a direction from the Arbitral Tribunal?

Yes. A Party who, during the arbitration, fails to object without delay to any failure to comply with a direction of the Arbitral Tribunal, shall be deemed to have waived the right to object to such failure (Article 36).

Can the Parties waive their right to object to a failure to comply with a requirement under the arbitration agreement?

Yes. A Party who, during the arbitration, fails to object without delay to any failure to comply with the arbitration agreement, shall be deemed to have waived the right to object to such failure (Article 36).

Can the Parties waive their right to object to a failure to comply with a requirement regarding the conduct of proceedings?

Yes. A Party who, during the arbitration, fails to object without delay to any failure to comply with the SCC Rules or other rules applicable to the proceedings (including requirement regarding the conduct of the proceedings), shall be deemed to have waived

the right to object to such failure (Article 36).

Exclusion of Liability

Is the Arbitral Tribunal's liability to the Parties limited by the Arbitral Institution's Rules?

Yes. 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 willful misconduct or gross negligence (Article 52).

Is the Arbitral Institution's liability to the Parties limited by the Arbitral Institution's Rules?

Yes. 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 willful misconduct or gross negligence (Article 52).

General Rule

Is the Arbitral Tribunal subject to any general obligations regarding the conduct of proceedings?

The Arbitral Tribunal shall maintain the confidentiality of the arbitration and the Award (Article 3). Throughout the proceedings, the Arbitral Tribunal shall act in an efficient and expeditious manner. In all matters regarding the conduct of the proceedings, the Arbitral Tribunal shall act in the spirit of the SCC Rules and shall make every reasonable effort to ensure that any Award is legally enforceable (Article 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 23(2)).

Is the Arbitral Tribunal subject to any other general obligations?

In all matters not expressly provided for in the SCC Rules, the Arbitral Tribunal shall act in the spirit of the SCC Rules and shall make every reasonable effort to ensure that any Award is legally enforceable (Article 2(2)).

Is the Arbitral Institution subject to any general obligations regarding the conduct of proceedings?

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 (Article 9 of Appendix I to the SCC Rules).

In all matters regarding the conduct of proceedings, the SCC shall act in the spirit of the SCC Rules and shall make every reasonable effort to ensure that any Award is legally enforceable (Article 2(2)).

Is the Arbitral Institution subject to any other general obligations?

In all matters not expressly provided for in the SCC Rules, the SCC shall act in the spirit of the SCC Rules and shall make every reasonable effort to ensure that any Award is legally enforceable (Article 2(2)).

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