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## Quick Answers on Privacy and Confidentiality – Sweden

Kristoffer Löf, Åsa Waller, Erik Hedström & Lisa Hyder, Mannheimer Swartling

### Are the rules relating to privacy / confidentiality found in the applicable arbitration legislation?

No. The Swedish Arbitration Act (SFS 1999:116) (the 'Arbitration Act') does not contain any rules relating to privacy/confidentiality of arbitration proceedings.

### If the rules relating to privacy / confidentiality can be found in the applicable arbitration legislation, what are the relevant provisions of the applicable arbitration legislation?

The Arbitration Act does not contain any rules relating to privacy/confidentiality of arbitration proceedings.

### If the rules relating to privacy / confidentiality cannot be found in the applicable arbitration legislation, what is the basis for rules on privacy / confidentiality of arbitral proceedings?

Case law and the parties' agreements form the basis for rules on privacy/confidentiality in arbitral proceedings.

### Does the arbitration law include rules relating to the privacy / confidentiality of arbitration proceedings?

There are no rules in the Arbitration Act relating to privacy or confidentiality. There are, however, principles regarding privacy/confidentiality established in Swedish case law.

The 2017 Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the 'SCC Rules') include provisions relating to privacy and confidentiality.

### What is the extent of such rules on privacy / confidentiality of arbitral proceedings in respect of the mere fact that an arbitration is taking place?

Under Swedish law, confidentiality is not deemed to constitute an implied term of an agreement to arbitrate. Thus, unless the parties have agreed otherwise, a party to an arbitration is not bound by confidentiality and is therefore not obliged to keep the fact that an arbitration is taking place confidential (*Swedish Supreme Court in Bulgarian Foreign Trade Bank Ltd (Bulbank) v. A.I. Trade Finance Inc.*, NJA 2000, p. 538).

Arbitrators should, according to general consensus, observe discretion with regard to the arbitral proceedings (*Swedish Supreme Court in Bulgarian Foreign Trade Bank Ltd (Bulbank) v. A.I. Trade Finance Inc.*, NJA 2000, p. 538). It is, however, uncertain whether an arbitrator could be held liable to pay damages if confidentiality is not respected. There is no case law on this question.

Under Article 3 of the SCC Rules, the arbitrators, the Arbitration Institute of the Stockholm Chamber of Commerce (the 'SCC') and any administrative secretary of the Arbitral Tribunal have a duty of confidentiality with regard to the arbitration and the award unless the parties have agreed otherwise.

### What is the extent of such rules on privacy / confidentiality of arbitral proceedings in respect of the hearing?

Unless the parties have expressly agreed otherwise, the hearing is private and third parties are not permitted to attend hearings.

Under Article 32(3) of the SCC Rules, the hearing is private, unless the parties have agreed otherwise.

### What is the extent of such rules on privacy / confidentiality of arbitral proceedings in respect of submissions and documents?

Unless the parties have expressly agreed otherwise, third parties do not have access to submissions and other documents produced or created in the course of arbitral proceedings.

However, as the parties are not bound by confidentiality unless they have expressly agreed on this, the parties are not prevented from disclosing information about the

arbitral proceedings to third parties. That being said, the parties, as well as all other participants in the arbitral proceedings, must at all times respect the protection of trade secrets set out in the Swedish Trade Secrets Act (SFS 1990:409), as well as any contractual duty of confidentiality that applies between the parties with respect to the subject matter discussed in the submissions.

Under Article 3 of the SCC Rules, the arbitrators, the SCC and any administrative secretary of the Arbitral Tribunal have a duty of confidentiality with regard to the arbitration and the award unless the parties have agreed otherwise.

### **What is the extent of such rules on privacy / confidentiality of arbitral proceedings in respect of an award?**

A party to an arbitration is not bound by confidentiality, unless the parties have expressly agreed on this. A party is therefore free to make an award public. The Supreme Court has held that the fact that a respondent in a case shared the award with a magazine for publishing did not make the respondent liable to pay damages (*Swedish Supreme Court in Bulgarian Foreign Trade Bank Ltd (Bulbank) v. A.I. Trade Finance Inc.*, NJA 2000, p. 538).

That being said, a party must uphold the protection of trade secrets set out in the Swedish Trade Secrets Act (SFS 1990:409), as well as any contractual duty of confidentiality that applies between the parties with respect to the subject matter discussed in the award.

Under Article 3 of the SCC Rules, the arbitrators, the SCC and any administrative secretary of the Arbitral Tribunal have a duty of confidentiality with regard to the arbitration and the award unless the parties have otherwise agreed. The SCC Rules do not impose any duty of confidentiality on the parties.

### **What is the extent of such rules on privacy / confidentiality of arbitral proceedings in respect of court applications?**

Swedish court proceedings are public and information and documents relating to an arbitration that are submitted in any court proceeding will generally become public.

Information submitted in court proceedings can, however, be classified as confidential under the Swedish Access to Public Information and Secrecy Act (SFS 2009:400) (the 'Secrecy Act') if the requirements for such a classification are met. For example, under the Secrecy Act, information about business relations can be classified as confidential if disclosure of the information could cause substantial harm to individuals to whom the information relates.

### **Are there exceptions to the confidentiality of arbitral proceedings? If yes, what are they?**

The Arbitration Act does not contain any rules relating to privacy/confidentiality of arbitration proceedings.

### **What are the sanctions for breach of confidentiality?**

Parties to arbitral proceedings are not subject to a duty of confidentiality.

The prevailing view is that discretion should be observed by the arbitrators. It is, however, uncertain whether or not arbitrators could be held liable to pay damages if confidentiality is not respected. There is no case law on this question.

There are no specific sanctions in the SCC Rules for breach of confidentiality. However, under Article 52 of the SCC Rules, the SCC, the arbitrators or the administrative secretary of the Arbitral Tribunal can be held liable to pay damages if they have caused financial loss by a deliberate or grossly negligent act.

### **What rules apply to arbitrations where the arbitration agreement is not governed by this jurisdiction's law but the place of arbitration is within this jurisdiction?**

A choice of law provision specific to the arbitration agreement relates only to the arbitration agreement (i.e. to issues regarding its formation, validity, voidability etc.), not to the proceedings. When Sweden is the seat of arbitration, Swedish law applies to the proceedings irrespective of the law applicable to the arbitration agreement. It is therefore of no relevance if the arbitration law of the jurisdiction chosen as the law applicable to the arbitration agreement provides that arbitral proceedings be confidential. It may be different where the law chosen to govern the arbitration agreement provides that the confidentiality of the arbitral proceedings is an implied term of the arbitration agreement. However, this question has not yet been raised before the Swedish courts.

In arbitrations conducted pursuant to the SCC Rules, the provisions on confidentiality in

the SCC Rules apply.

### **What confidentiality rules apply to court applications relating to arbitration?**

There are no special rules governing the confidentiality of court applications relating to arbitrations. Thus, any confidentiality rules normally applicable in court proceedings also apply to court applications relating to arbitration. Information submitted in court proceedings is generally public. Information submitted in a court proceeding can, however, be classified as confidential under the Secrecy Act if the general requirements for such a classification are met. For example, under the Secrecy Act, information about business relations can be classified as confidential if the disclosure of such information could cause substantial harm to individuals to whom the relevant information relates.

### **What rules apply to court applications to enforce an award?**

There are no special rules governing the confidentiality of court applications relating to arbitrations. Thus, any confidentiality rules normally applicable in court proceedings also apply to applications to enforce an arbitral award. This was confirmed in a judgment issued in 2011 by the Administrative Court of Appeal (Administrative Court of Appeal in Stockholm, case no. 1054-11, 12 May 2011).

### **Do the applicable arbitration rules of the major arbitral institution(s) sited in this jurisdiction contain rules relating to privacy / confidentiality?**

Yes. The SCC Rules include provisions relating to privacy and confidentiality. Under Article 3 of the SCC Rules, the arbitrators, the SCC and the administrative secretary of the Arbitral Tribunal have a duty of confidentiality as regards the arbitration and the award unless the parties have otherwise agreed. Furthermore, there is a specific provision (Article 32(3) of the SCC Rules) stating that the hearing is private, unless the parties have otherwise agreed. The SCC Rules, however, do not impose any duty of confidentiality on the parties.

There is no specific sanction in the SCC Rules for breach of confidentiality. However, under Article 52 of the SCC Rules, the SCC, the arbitrators or the administrative secretary of the Arbitral Tribunal can be held liable to pay damages if they have caused financial loss by a deliberate or grossly negligent act.

### **Can parties to arbitral proceedings sited in this jurisdiction take any further practical steps to preserve such duty of confidentiality or limit the scope of the exceptions to it?**

The parties may include a duty of confidentiality for everyone involved in the arbitration in the arbitration agreement. A party, a party representative or an arbitrator that does not respect such an agreement could be held liable to pay damages.

Witnesses and experts in an arbitration are not subject to a duty of confidentiality unless they expressly agree to such a duty.

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