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DISPUTE RESOLUTION
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Use of commercial arbitration

Arbitration has been the preferred method of settling commercial disputes for a long time. The vast majority of large commercial contracts in Sweden provide for arbitration. This applies both to disputes involving only Swedish parties and, even more so, disputes where the parties are foreign. In some business sectors, for example, banking, it is still common to settle disputes in court, although a move towards arbitration can be seen. Mediation and other types of ADR are less frequently used.

Sweden remains an important venue for international arbitration. The Arbitration Institute of the Stockholm Chamber of Commerce (SCC Institute) registered 199 new cases in 2011. In addition, a large number of arbitrations are conducted in Sweden each year under other rules, in particular under the ICC and UNCITRAL Rules, and as ad hoc proceedings under the Arbitration Act 1999 (Arbitration Act).

Recent trends

A trend can be seen towards an increased use of arbitration in the financial sector. The number of fast-track arbitrations under the SCC Arbitration Institute’s Rules for Expedited Arbitrations has been increasing considerably in recent years.

Advantages/disadvantages

A major advantage of arbitration is the possibility to keep the proceedings private. Furthermore, the usual timeframe for an arbitration under the rules of the SCC Institute is six to 18 months, which is considerably faster than what can be expected for a complex case in the general courts. A final and binding arbitral award is thus obtained considerably faster than a final court judgment. Arbitration also offers the parties considerably more control over the process compared to litigation, as well as a possibility to appoint arbitrators with expert knowledge from the relevant sector.

In terms of disadvantages, it is often said that arbitration is more expensive than litigation. Although true in the sense that fees must be paid to the arbitrators and the arbitral institution (if one is used), it is arguable whether the total cost for settling a dispute through arbitration is higher, compared to litigation. The fact that the proceedings are faster in arbitration often saves costs.

Legal Framework


The Arbitration Act, which by and large follows the UNCITRAL Model Law and incorporates its main principles, is the main law governing arbitration in Sweden. It applies to domestic and international arbitrations. An English translation of the Arbitration Act can be found at www.sccinstitute.com/?id=23746.

The Code of Judicial Procedure, although not applicable to arbitration, is of relevance mainly for two reasons:

- It has influenced, and continues to influence, Swedish lawyers’ approach to procedural issues generally.
- It applies to court proceedings concerning certain issues relating to arbitration, for example, when the courts are requested to assist in arbitration, in the taking of evidence, in the event of challenge, appointment and substitution of arbitrators, and applications to set aside an arbitral award.

Arbitration Organisations

2. Which arbitration organisations are commonly used to resolve large commercial disputes in your jurisdiction?

The principal arbitral institution in Sweden is the SCC Institute. The SCC Institute, established in 1917, is widely used in both domestic and international arbitrations. The SCC Institute administers arbitrations under its own rules (Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC Rules)). In addition, the SCC Institute has adopted Rules for Expedited Arbitrations, Insurance Arbitration Rules, and Mediation Rules. The SCC Institute also acts as appointing authority under the UNCITRAL Rules. Annually, around 200 new cases are filed with the SCC Institute. Information about the SCC Institute, the SCC Rules and recommended model arbitration clauses are available on the SCC Institute’s website (www.sccinstitute.com).

The International Chamber of Commerce also administers arbitration services under the ICC Rules of Arbitration.

For more information on arbitration organisations, see box, Main arbitration organisations.

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Sweden has also ratified:


Unless provided otherwise, all legislative references are to the Arbitration Act in this article.

**Mandatory legislative provisions**

4. Are there any mandatory legislative provisions? What is their effect?

The following mandatory provisions apply under the Arbitration Act:

- Only matters “in the nature of a civil matter which may be compromised by agreement” can be settled through arbitration (**section 1**). Other matters, such as issues pertaining to criminal law, are non-arbitrable. An award rendered over a non-arbitrable dispute is invalid (**section 33**).
- The parties cannot restrict or exclude the applicability of the rules regarding the invalidity of awards in section 33. In addition, the award must be in writing and signed, irrespective of an agreement to the contrary between the parties.
- The arbitrators cannot deviate from certain rules which aim to guarantee the basic procedural safeguards of the parties, such as the parties’ right to be afforded reasonable opportunity to present their respective cases and to receive all evidence and submissions of the counterparty (**section 24**).
- The parties must be treated equally. They must have the same procedural rights and duties (**section 21**). An agreement between the parties which gives only one party a procedural benefit or which deprives one party of a procedural right it has under the Arbitration Act may be held invalid.
- The arbitrators must handle a dispute in an impartial, practical and speedy manner.

**The law of limitation**

5. Does the law of limitation apply to arbitration proceedings?

There are no specific limitation rules with respect to arbitration. The law of limitation is considered an issue of substantive law, rather than a procedural issue.
Any person with full legal capacity is qualified to act as an arbitrator. There are no requirements as to domicile, nationality or formal education.

**Independence/impartiality**

10. Are there any requirements relating to independence and/or impartiality of arbitrators?

 Arbitrators must be impartial and independent. An arbitrator will be discharged if any circumstance exists that may diminish confidence in the arbitrator’s impartiality. Such a circumstance is deemed to exist if, among others:

- The arbitrator or a person closely associated to him is a party, or otherwise may expect material benefit or detriment, as a result of the outcome of the dispute.
- The arbitrator or a person closely associated to him is a director of a legal entity which is a party, or otherwise represents a party or any other person who may expect material benefit or detriment as a result of the outcome of the dispute.
- The arbitrator has taken a position in the dispute, as an expert or otherwise, or has assisted a party in the preparation or conduct of its case in the dispute.
- The arbitrator has received or demanded compensation under an agreement not made with all parties.

On his appointment, each arbitrator must immediately disclose any reasons or circumstances that may compromise his impartiality or independence, both to the parties and to the other arbitrators. The disclosure obligation is continuous and an arbitrator must disclose any new circumstances that arise throughout his appointment.

**Appointment/removal**

11. Does the applicable legislation contain default provisions relating to the appointment and/or removal of arbitrators?

**Appointment of arbitrators**

By default, each party appoints one arbitrator and the appointed arbitrators appoint a third arbitrator, who will act as chairman (section 13). If a party fails to appoint an arbitrator within 30 days, the other party can request that the district court appoint the arbitrator (section 14).

The parties can freely agree on other methods for appointment of arbitrators, for example, by including a reference to institutional arbitration rules.

**Removal of arbitrators**

At the request of a party an arbitrator should be discharged if any circumstance exists that may diminish confidence in the arbitrator’s impartiality (see Question 10). Such a request must be made within 15 days from when the party became aware of both the appointment of the arbitrator and the existence of the circumstance. Unless otherwise decided by the parties, the arbitral tribunal is required to decide on the request. If the challenge is successful, the decision is not subject to appeal. If the challenge is unsuccessful, a party can file an application with a district court requesting that the arbitrator be removed. The application must be submitted within 30 days from service of the decision. The arbitrators can continue the arbitral proceedings pending determination of the issue by the court.

The parties are free to agree that challenges of arbitrators be conclusively determined by an arbitral institution.

**PROCEDURE**

**Commencement of arbitral proceedings**

12. Does the applicable legislation provide default rules governing the commencement of arbitral proceedings?

The arbitral proceedings are formally commenced when the claimant files a request for arbitration. A request for arbitration must fulfil the formal requirements of the Arbitration Act, that is, it must contain:

- An express and unconditional request for arbitration.
- A description of the issue which is covered by the arbitration agreement and which is to be resolved by the arbitrators.
- A statement of the party’s choice of arbitrator, where the party is required to appoint one.

The parties, however, can freely agree that other requirements are to apply.

The request for arbitration becomes effective when a party receives a written communication from the other party that meets the above requirements (Arbitration Act). This rule is non-mandatory and the parties can agree that arbitration is to be initiated in other ways.

**Applicable rules**

13. What procedural rules are arbitrators likely to follow? Can the parties determine the procedural rules that apply? Does the legislation provide any default rules governing procedure?

**Applicable procedural rules**

Subject to the mandatory rules under the Arbitration Act and the parties’ agreement, the arbitral tribunal is free to decide on the most appropriate way of conducting the arbitration, subject to the overriding procedural principles of party autonomy and due process.

The principle of party autonomy is one of the cornerstones of Swedish arbitration. The arbitral tribunal must, in its handling of the dispute, act in accordance with the decisions of the parties insofar as there is no impediment to do so (section 21, Arbitration Act). Therefore, the parties’ joint instructions regarding procedure must be complied with unless they violate Swedish public policy or mandatory rules, or if they cannot reasonably be carried out.
Default rules
The Arbitration Act does provide some default procedural rules, some of which are mandatory (see Question 4).

Arbitrator’s powers

14. What procedural powers does the arbitrator have? If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

In the absence of binding instructions from the parties, arbitrators have broad discretion to decide the most appropriate way of conducting the proceedings (see Question 13, Applicable procedural rules). Before deciding on the applicable procedure the arbitrators must allow the parties to present their views on procedural matters.

Arbitrators can order disclosure of documents by the parties. However, arbitrators cannot order third parties to produce documents, or to appear as witnesses.

EVIDENCE

15. What documents must the parties disclose to the other parties and/or the arbitrator(s)? How, in practice, does the scope of disclosure compare with disclosure in litigation? Can the parties determine the rules on disclosure?

Scope of disclosure
Unless the parties have agreed otherwise, the parties are free to present any and all evidence they wish to rely on and in whatever form. The arbitrators can, however, refuse to admit evidence if it is manifestly irrelevant or if such refusal is justified having regard to the time at which the evidence is submitted.

The general rule is that the parties, not the arbitrators, are to invoke and present the evidence they wish to rely on. The approach is thus adversarial rather than inquisitorial.

At the request of one party, an arbitral tribunal can order the opposing party to produce documents that may be of evidentiary value and which the requesting party therefore wishes to rely on. Swedish arbitrators, as well as Swedish courts, take a relatively restrictive approach to production orders. A request for production may be dismissed on grounds of lack of specificity, lack of relevance, or privilege. Moreover, the purpose of the request must be to prove the existence or non-existence of a specific fact rather than to assist the party in formulating the legal basis of the claim. There is thus no room for “fishing expeditions”.

A production order issued by an arbitral tribunal is not enforceable in Sweden. However, with the consent of the tribunal the court can assist in ordering a party or another person to produce evidence (see Question 17). Production orders by a court are enforceable and may be sanctioned by a penalty.

Arbitrators in Sweden often apply the same rules for disclosure and document production as Swedish courts, whose rules are fairly close in scope to the IBA Rules on the Taking of Evidence in International Arbitration. The parties are free to agree that other rules are to apply.

Parties’ choice
The principle of party autonomy extends to the rules on disclosure.

CONFIDENTIALITY

16. Is arbitration confidential?

The Arbitration Act does not contain any provisions regarding the parties’ duty of confidentiality in arbitration. Nonetheless, arbitral proceedings are private in the sense that arbitral proceedings take place in camera (that is, in private), unless the parties have agreed otherwise. Thus, no third parties can attend hearings in arbitral proceedings without the consent of the parties to the arbitration.

There is no universal duty of confidentiality applicable to the parties that follows from the very nature of arbitration. Accordingly, parties that consider confidentiality of arbitral proceedings to be of importance are well advised to expressly provide for confidentiality.

Arbitrators are understood to be under a duty of confidentiality by virtue of their assignment.

An award which is challenged in court becomes public under the general rules of court publicity. To avoid that, a party can request the court to seal the award on the grounds of, for example, the protection of trade secrets.

COURTS AND ARBITRATION

17. Will the local courts intervene to assist arbitration proceedings?

A district court can assist with witness attendance and the production of documents. Having obtained the tribunal’s consent, a party should submit an application to the court. The court can summon the witness to appear before the court or order the production of documents, under penalty of a fine. However, the court cannot order a witness to appear in the arbitral proceedings.

A party can also request a district court to order interim measures, such as provisional attachment of property, or direct the other party to protect the interests of the claimant (for example, to perform certain activities), under the penalty of a fine. A court can grant interim measures before as well as during the arbitral proceedings. Such court orders are enforceable.

18. What is the risk of a local court intervening to frustrate the arbitration? Can a party delay proceedings by frequent court applications?

Risk of court intervention
Swedish courts are arbitration friendly. They will typically not intervene to frustrate an arbitration.
Delivering proceedings
There are very few situations, if any, where a party could substantially delay an arbitration through court applications.

19. What remedies are available where a party starts court proceedings in breach of an arbitration agreement, or initiates arbitration in breach of a valid jurisdiction clause? 

Court proceedings in breach of an arbitration agreement
If a party initiates court proceedings in breach of a valid arbitration agreement, the court must, at the request of a party, dismiss the action. An objection to the jurisdiction of the court must be raised not later than submitting first defence brief. The courts are generally in favour of arbitration and arbitration agreements are interpreted extensively rather than restrictively, although there is no presumption in favour of arbitration. The party invoking the arbitration agreement bears the burden to show the existence thereof.

Arbitration in breach of a valid jurisdiction clause
If arbitration is commenced without a valid arbitration agreement, or without the other party otherwise consenting to the arbitration, the arbitrators must dismiss the case at the request of a party. If they do not, the award will be challengeable. Alternatively, a party could initiate a court action when the arbitration is still ongoing, to secure a declaration that the arbitral tribunal lacks authority (section 2, Arbitration Act).

20. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

The courts will not grant an injunction to restrain proceedings started in another EU member state in breach of an arbitration agreement.

Possibly, an injunction restraining a party from commencing proceedings in a non-EU country in breach of an arbitration agreement governed by Swedish law, could be granted pursuant to Chapter 15, Section 3 of the Code of Judicial Procedure. To the authors' knowledge, however, no such injunction has ever been applied for before a Swedish court.

21. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction recognise the concept of kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?

The concept of kompetenz-kompetenz is recognised; an arbitral tribunal can rule on challenges to its jurisdiction. However, such ruling is not final. A party can institute court proceedings during an arbitration to have this issue decided by a court. An award whereby the arbitrators have declined jurisdiction and thus dismissed the case without ruling on the substantive issues submitted to them can be appealed to the court for a final decision on the validity of the arbitration agreement (see Question 24, Grounds and procedure).

If a party seeks to challenge the arbitrators' jurisdiction in court, the arbitral tribunal need not stay the arbitral proceedings, but may do so at its discretion. A Swedish arbitral tribunal would usually be reluctant to stay the proceedings pending the outcome of a challenge to its jurisdiction.

REMEDIES

22. What interim remedies are available from the tribunal?

Security
The arbitrators can request security for their own costs. Where the requested security is not provided, the arbitrators can terminate the proceedings, in whole or in part. Although not expressly provided for in the Arbitration Act, the tribunal probably has the authority to order a party to provide security for the other party's costs (for legal representation, for example), which the unsuccessful party subsequently may be ordered to bear in addition to its own costs (see Question 26). However, the consequences of breaching such an order are not clear.
Other interim measures

Unless the parties have agreed otherwise, the arbitrators may, at the request of a party, order an interim measure. The tribunal has wide discretion to award interim measures, for example, to prevent a party from disposing of certain property.

The arbitrators may require that the requesting party provides reasonable security to cover any damage that may occur as a result of the interim measure. However, interim measures granted by an arbitral tribunal are not enforceable. (The court can assist in this respect (see Question 17).)

23. What final remedies are available from the tribunal?

The arbitrators have broad powers to award appropriate remedies, such as damages, injunctions, declarations, costs and interest. However, such remedies must both:

- Have been specifically requested by a party.
- Not be contrary to Swedish public policy.

Remedies which are immoral, illegal or manifestly unreasonable, including excessive punitive or exemplary damages, may be deemed to contravene Swedish public policy.

APPEALS

24. Can arbitration proceedings and awards be appealed or challenged in the local courts? What are the grounds and procedure? Can the parties effectively exclude any rights of appeal?

Rights of appeal/challenge

In principle, an award can only be appealed or set aside by the courts on formal or procedural grounds, and not on the merits.

Grounds and procedure

A party can seek nullification of the award, wholly or partly, if:

- The disputed matter was unarbitrable.
- The award is clearly incompatible with public policy.
- The award is not made in writing or has not been signed by the majority of the arbitrators.

An award made in Sweden can also be challenged and set aside, wholly or partly, by the court on one of the following grounds:

- The arbitration agreement is invalid.
- The arbitrators have exceeded their mandate or have not produced an award within the time limit set by the parties.
- The arbitral proceedings should not have taken place in Sweden.
- There were irregularities in the appointment of an arbitrator.
- An arbitrator lacks capacity or impartiality.
- There are other procedural irregularities that can be presumed to have influenced the outcome of the case.

Also, on a party’s application, an award whereby the arbitrators have closed the proceedings without having ruled on the issues submitted to them (for example, due to lack of jurisdiction), may be remitted back to arbitration by the court.

An action to challenge the award must be brought within three months from service of the award (section 34(3), Arbitration Act).

Excluding rights of appeal

The right to apply for nullification of the award cannot be waived by agreement. The right to challenge an award can be excluded in advance if none of the parties is domiciled nor has its place of business in Sweden.

COSTS

25. What legal fee structures can be used? Are fees fixed by law?

Arbitrators are entitled to reasonable compensation for work and expenses. In institutional arbitrations governed by the SCC Rules, the arbitrators’ compensation is determined on the basis of the amount in dispute. A cost calculator can be found on the SCC website (see box, Main arbitration organisations).

In ad hoc arbitrations the arbitrators’ compensation is determined on the basis of what is reasonable. There are no set fee structures, but the total amount will normally depend on the amount of work. A party who considers the arbitrators’ fees to be excessive can appeal the fees separately in the District Court.

26. Does the unsuccessful party have to pay the successful party’s costs? How does the tribunal usually calculate any costs award and what factors does it consider?

Cost allocation

On a request by the successful party, the arbitrators generally order the unsuccessful party to bear its own costs as well as to pay the costs of the successful party. There are exceptions from this rule, for example, if the successful party has negligently brought an unnecessary action.

Cost calculation

There are no set procedures for calculating the parties’ costs. The tribunal can in its discretion assess the reasonableness of the costs claimed.

ENFORCEMENT OF AN AWARD

27. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts?

On a party’s application, the Swedish Enforcement Agency (Bailiff) will enforce an award rendered in Sweden directly, without prior confirmation by the courts, provided that both:

- The award is made in writing and is signed.
- The award cannot be subject to appeal under the provisions contained in the arbitration agreement.
If the award is challenged in court by the unsuccessful party, the award is still enforceable, although the enforcement procedure can be stayed by the court.

28. To what extent is an arbitration award made in your jurisdiction enforceable in other jurisdictions? Is your jurisdiction party to international treaties relating to this issue such as the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?

Sweden is party to the New York Convention and awards made in Sweden are enforceable in other contracting states, depending on the local laws in the enforcement jurisdiction.

29. To what extent is a foreign arbitration award enforceable in your jurisdiction?

To enforce a foreign award in Sweden, a party seeking enforcement must first file an application for recognition and enforcement of the award with the Svea Court of Appeal in Stockholm. The grounds for refusing recognition and enforcement under the Arbitration Act are those set out in the New York Convention. Sweden has ratified the New York Convention without any reservations or declarations.

30. How long do enforcement proceedings in the local court take? Is there any expedited procedure?

Enforcement proceedings are generally relatively swift, provided that the award is not challenged and no other complicating circumstances arise.

There is no expedited enforcement procedure.

REFORM

31. Is the legal framework in relation to the above likely to change in the next decade?

The legal framework in relation to arbitration in Sweden is not expected to change in the near future.

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