



Arbitration Guide
IBA Arbitration Committee

SWEDEN

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I. Background

- (i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?**

Arbitration is by far the most common mean of solving commercial disputes in Sweden. This is true both for domestic as well as international disputes. Besides being one of the most popular seats in the world for commercial arbitration, Sweden and Stockholm is also the second most common seat for investor-state arbitrations after ICSID.

The principal advantages seen with arbitration are speed, privacy, choice of language, rules and arbitrators and international recognition and enforcement.

- (ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?**

Although there are no clear statistics covering ad hoc arbitrations, it is commonly assumed that institutional arbitrations prevail. The Arbitration Institute of the Stockholm Chamber of Commerce (the 'SCC') is the leading institute for arbitrations in Sweden. Although technically a part of the Stockholm Chamber of Commerce, the SCC is autonomous within the Chamber, having its own Board and its own Secretariat under the direction of a Secretary-General. Statistics from recent years show a steady caseload of around 200 new cases being filed each year at the SCC. Around half of the caseload is international in that one or all of the parties are non-Swedish.

For a large number of years, the SCC has maintained its position as one of the major arbitration institutions in the world and has been particularly used for commercial disputes between, on the one hand, Western businesses and, on the other hand, entities of Eastern Europe and China.

- (iii) What types of disputes are typically arbitrated?**

All types of commercial disputes are arbitrated in Sweden.

- (iv) How long do arbitral proceedings usually last in your country?**

Swedish procedural culture, the Arbitration Act and the SCC Rules all favour efficiency as to time and cost, with a typical arbitration with a three-member tribunal lasting around a year from start to finish. An arbitration under the SCC Expedited Rules will typically only take half of that time, i.e. around six months.

- (v) **Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?**

No. The Swedish Arbitration Act gives the parties substantial freedom when it comes to the choice of arbitrators. The parties can appoint any person as an arbitrator provided that he or she (i) has full legal capacity to act as an arbitrator (the person must be over 18 years of age and not bankrupt or under any form of guardianship) and (ii) is independent and impartial.

II. Arbitration Laws

- (i) **What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?**

Arbitrations seated in Sweden are governed by the Arbitration Act of 1999 (the 'Arbitration Act'). The Arbitration Act deals with all arbitrations having their seat in Sweden and applies equally to domestic and international arbitrations. Although the Arbitration Act does not in all aspects correspond to the UNCITRAL Model Law in form, it is very close to it in substance. There are in fact very few material differences between the Arbitration Act and the Model Law.

- (ii) **Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?**

The legal rules governing arbitrations in Sweden are the same irrespective of whether it is a national or international arbitration. There are, however, some rules paying particular regard to the international character of an arbitration. One important such rule states that the law governing the arbitration agreement shall be Swedish law, unless the parties have clearly and specifically agreed on some other law to govern that agreement. Another important rule gives the parties in a commercial relationship, without domicile or place of business in Sweden, the right to exclude or limit the applicability of the grounds for setting aside an award.

- (iii) **What international treaties relating to arbitration have been adopted (e.g. New York Convention, Geneva Convention, Washington Convention, Panama Convention)?**

Sweden is a party to and has ratified the New York Convention without any declarations or reservations. Sweden is also a party to the Washington Convention, Geneva Protocol of 1923 and the Geneva Convention of 1927.

- (iv) **Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?**

Swedish arbitration law is based on the principle of party autonomy. As a result, if the parties have made a choice as to substantive law, it will be upheld. Absent such an agreement, it will be for the arbitrators to decide. In so doing, they will typically look at the conflicts of law rules applicable in Sweden. If the proceedings are governed by the SCC Rules, the arbitrators need not look to the conflicts of law rules, but can make a direct decision to use the law which they find most appropriate.

III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

The Arbitration Act does not prescribe any particular form for the arbitration agreement. It is, thus, theoretically possible to conclude a binding arbitration agreements orally or through conduct. Nevertheless, in practice most – if not all – arbitration agreements are in writing.

An arbitration agreement may concern future disputes as well as an existing dispute. When future disputes are referred to in an arbitration agreement, the agreement to arbitrate must pertain to a defined legal relationship. That legal relationship will typically be the commercial contract to which the arbitration agreement refers and forms part of, commonly as one of the last clauses in the contract.

- (ii) **What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?**

Swedish courts are generally very arbitration-friendly. Hence, they tend to be rather reluctant not to enforce an agreement to arbitrate. When deciding whether a specific dispute is covered by a certain arbitration agreement, the court will construe the arbitration agreement. Such constructions of an arbitration agreement follows ordinary rules applicable to contract interpretation, considering, amongst other, an assessment of the parties' intentions when entering into the agreement, the literal meaning of the arbitration agreement and other related circumstances. Arbitration agreements are generally given a wide interpretation. This is based on the assumption that the parties, having agreed to arbitration, will have intended

for all of their disputes reasonably connected to the legal relation specified in the arbitration agreement to be settled by the same mechanism.

Instances where an arbitration agreement may not be enforced includes where the dispute, even on a generous interpretation, falls outside of the agreement or if it relates to a matter than is non-arbitrable. Arbitration agreements are also subject to the ordinary principles of contract law regarding invalidity due e.g. to duress or incapacity to contract.

- (iii) Are multi-tier clauses (e.g. arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

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

However, pre-arbitration procedural provisions have produced numerous disputes before national courts and arbitral tribunals, and the outcomes have been far from consistent. Generally, the more specific and precise the parties' pre-arbitral obligations are, the more likely the clause is to be upheld and enforced. For instance, a mere duty to negotiate in good faith, without a definite time limit set forth, might be regarded as too vague to constitute a valid bar to arbitration. Even when the arbitration agreement does contain a specified cooling-off period, it is often argued (sometimes successfully) that observance of the period is not required if, by way of example, it can be shown that negotiations would anyway have been futile.

- (iv) What are the requirements for a valid multi-party arbitration agreement?**

There are no provisions under the Arbitration Act dealing with multiparty arbitration, including how the issues which typically arise in such situations are to be handled. The solutions must, thus, be sought in conformity with the basic principle of arbitration, i.e. the freedom of the parties to agree on how to have their dispute settled. Consequently, the initiative rests with the parties. In the absence of an agreement, a party generally cannot be forced into proceedings having more than two parties.

If the SCC Rules apply, they contain a number of provisions catering for multi-party situations.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

Yes, unilaterally issued documents and undertakings are also regarded as ‘agreements’ under the Act and are enforceable.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

Arbitration is a process based on contract and, as a starting point, the arbitration agreement will only bind the parties thereto. In certain cases, however, an arbitration agreement may also extend to and become binding on third parties. The following provides examples of some typical such cases.

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

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

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

IV. Arbitrability and Jurisdiction

- (i) **Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

Section 1 of the Arbitration Act defines arbitrability by stating that only ‘matters in respect of which the parties may reach a settlement’ may be the subject of arbitration. A matter which may be comprised by an arbitration agreement is thus one that can be decided by the parties through an agreement. Pursuant to Swedish law a wide interpretation of arbitrability applies and matters excluded from arbitrability are very few and of little practical importance in commercial dealings. By way of example, questions regarding forfeiture and other penal consequences (except damages) of a criminal case cannot be referred to arbitration. Most questions of family law are also excluded from arbitration.

As regards patent and trade mark litigation, it is quite clear that cases involving licensing are arbitrable. Arbitration is further permissible for questions concerning the infringement of industrial property rights. By contrast, other issues in this field, such as the validity of patents are generally not regarded as arbitrable, since they have an effect on third parties.

Pursuant to section 1, para 3 of the Arbitration Act the arbitrators may rule on the effects of competition law as between the parties, e.g. on the validity of contracts.

With regard to disputes between business enterprises on the one hand and consumers on the other concerning products or services supplied principally for private use, an arrangement to the effect that future disputes are to be referred to arbitration without a right for the parties to appeal against the award, may not be invoked.

Moreover, pursuant to section 36 of the Swedish Contracts Act an arbitration agreement may be disregarded if its enforcement would be unreasonable under the particular circumstances, especially in case of consumer contracts.

Whether a dispute is arbitrable or not is considered to be a matter of jurisdiction. An arbitral tribunal may rule on challenges in relation to arbitrability. However, such a ruling is not final. Consequently, a party may institute court proceedings during or after an arbitration to have this issue finally decided.

- (ii) **What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

If a party initiates court proceedings despite a valid arbitration agreement, the other party can move for a stay or dismissal of the court proceedings. A jurisdictional objection must be raised at the latest when the objecting party should submit its statement of defence in the court proceedings. Thus, if the party in its statement of defence does not invoke the arbitration agreement or submits its statement of defence after the time stipulated by the court (without lawful excuse for delay), the party is deemed to have waived or forfeited its right to arbitrate.

- (iii) **Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

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

Although the arbitral tribunal has the power to rule on its own jurisdiction, a party may request that a competent Swedish court rules on whether the arbitral tribunal has authority to decide the dispute. Such an action may be brought both before and after the initiation of arbitral proceedings. If the arbitration is on-going at the time of the court action, the arbitral tribunal may choose to continue or to stay the arbitration pending the final outcome of the court proceedings.

If the arbitral tribunal finds that it lacks jurisdiction, it should dismiss the dispute by way of an award. If the arbitral tribunal instead affirms jurisdiction, such a finding should take the form of a decision. A decision by which the arbitral tribunal affirms jurisdiction may be challenged before a competent court as mentioned above. In the event the arbitral tribunal issues an award dismissing the entire case for lack of jurisdiction, such an award may be appealed to the court of appeal. Swedish courts are generally restrictive when it comes to overruling decisions by arbitral tribunals. An arbitral tribunal's finding with respect to jurisdiction is, thus, likely to be upheld in the majority of cases.

V. Selection of Arbitrators

- (i) **How are arbitrators selected? Do courts play a role?**

Provided that the parties are treated equally, the parties enjoy considerable freedom with respect to the procedure for appointment of arbitrators.

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

If a party obstructs the proceedings by refusing to appoint an arbitrator, the competent district court is available to assist in appointing arbitrators. Under the SCC Rules, such appointments will instead be made by the SCC Institute.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

An arbitrator must be independent and impartial. Although the Arbitration Act only specifies impartiality, it is generally understood to also include a requirement of independence.

A person who is asked to accept appointment as an arbitrator must immediately disclose all circumstances that might prevent him or her from serving as arbitrator. An arbitrator must also inform the parties and the other arbitrators of any such circumstance as soon as all arbitrators have been appointed and thereafter in the course of the proceedings as soon as he or she learns of any new circumstance.

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

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

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

An arbitrator must be of full age, i.e. more than 18 years old, and not have a trustee appointed due to mental disturbance, impaired health or similar circumstances. The arbitrator also has to be independent and impartial.

The test for impartiality is to be made solely on objective grounds. The decisive test is, thus, whether the arbitrator may appear partial in the eyes of a reasonable person having full knowledge of the facts; not whether the arbitrator is in fact partial. The Arbitration Act lists certain circumstances which may diminish the confidence in the arbitrator's impartiality, for example where the arbitrator or a person closely related to the arbitrator is a party, or otherwise may expect significant benefit or detriment from the outcome of the dispute. However, this list is by no means exhaustive. The assessment is made on a case-by-case basis and circumstances, other than those listed in the Arbitration Act, may be deemed to create apparent partiality.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

There are no such specific rules other than the non-exhaustive examples listed in the Arbitration Act mentioned above. The Swedish Supreme Court has, amongst other, made non-binding references to the IBA Guidelines for Conflict of Interest in International Arbitration when assessing challenges to arbitrators' impartiality, thereby confirming Swedish arbitration law to be in line with best practices of international arbitration.

VI. Interim Measures

(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

Unless the parties have agreed otherwise, the arbitral tribunal may, at the request of a party, order the other party to undertake a certain interim measure to secure the claim which is to be adjudicated in the dispute. The arbitrators may decide that the party making such a request shall provide security for any loss the other party may suffer due to the order being made (if later it turns out that it ought not have been made).

In Sweden, as in many other jurisdictions, an arbitral tribunal's order for interim measures is not enforceable. However, the parties are bound by such decisions as amongst themselves and a party's failure to comply may be ascribed importance by the arbitral tribunal in other respects, for example when it comes to determining liability for loss or when calculating damages. In practice, parties generally comply with interim relief ordered by arbitral tribunals, regardless of whether it is formally enforceable or not.

If the SCC Rules apply the arbitral tribunal is entitled to decide about interim measures at the request of a party either in the form of an order or of an award. The tribunal may order the requesting party to provide appropriate security in connection with the interim measure sought. By empowering the tribunal to issue an award on interim measures the requesting party obtains the possibility, at least in some jurisdictions outside Sweden, to enforce the interim decision.

Since 2010, the SCC Rules also provides for so called Emergency Arbitration. In essence, this entails that the SCC Institute, upon request by a party, may make a separate appointment of an emergency arbitrator to deal with a request for urgent interim relief pending the constitution of the arbitral tribunal.

(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?

Interim measures, such as orders freezing assets to satisfy later enforcement, are generally granted by the courts. This is so for two main reasons, one being that the arbitral tribunal will not be constituted at the outset of an arbitration and thus be unable to rule on any requests for interim relief. The other reason is that, as mentioned above and as a matter of current Swedish law, orders by arbitral tribunal's granting interim relief are not enforceable.

In order for a Swedish Court to grant interim relief, three conditions must typically be satisfied: (i) the applicant must demonstrate a *prima facie* claim, i.e. that it is likely to prevail on the ultimate, substantive claim that the interim measure is supposed to secure; (ii) the right or property in dispute must be in jeopardy of being removed, destroyed or substantially diminished in value by the respondent; and (iii) the applicant must furnish security for any damage which the respondent may incur in case the applicant's claim is ultimately found to be without merit. In addition, the applicant will have to demonstrate that the interim relief sought is proportional, i.e. that the damage it is supposed to protect from outweighs the detriment caused to the respondent. These same criteria are also often used in domestic arbitrations. For international arbitrations, it is more common to refer to the criteria set out in the UNCITRAL Rules of Arbitration, including in essence a showing of a *prima facie* case, that urgent relief is needed to avoid irreparable harm and that the requested relief is appropriate and proportional. These criteria are also commonly referred to in emergency arbitrations under the SCC Rules.

A party may apply to the district court for interim measures before, as well as anytime during, the arbitral proceedings. If the application is granted, the interim measure will remain in force for as long as the court has decided, and often for the duration of the arbitral proceedings, *i.e.* until there is a final arbitral award.

(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?

Arbitral tribunals do not have coercive powers and derive their mandate from the parties. Courts may therefore use their coercive powers to assist in arbitrations with, amongst other, the examination of reluctant witnesses and the production of documents from third parties.

Persons testifying before an arbitral tribunal cannot be forced to appear, do not testify under oath and do not risk perjury in case of false testimony. If a party in an arbitration wishes to compel a witness to testify and to do so under oath that party may, after obtaining the consent of the arbitrators, submit an application to such effect to the competent district court. If the arbitrators consider that the action is justified, they shall approve such a request. The district court must, in turn, grant the application unless the action requested is prohibited by law. Thus, the court shall not assess whether the action is appropriate or not; merely whether it is lawful.

An arbitral tribunal draws its mandate from the parties and may only request a party to produce documents. If a party wishes to compel the production of certain documents being in the possession of a third party, it may, after obtaining the consent of the arbitrators, submit an application to such effect to the competent district court. If the court approves the application and the document in question can be assumed to be of some importance as proof, anyone possessing such a document may be directed to produce it.

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

There is no duty of 'disclosure' or 'discovery' in Swedish law, but the arbitral tribunal may – at the request of a party – order the other party to produce documents. The arbitral tribunal has broad discretion within the confines of the general procedural principles of the Arbitration Act to determine the conditions for document production. In international arbitrations taking place in Sweden, the IBA Rules on the Taking of Evidence in International Arbitration commonly serve as a non-binding guideline for the arbitral tribunal and the parties.

If the parties have not agreed on any specific rules to be applied with respect to document production and if the IBA Rules for some reason are not considered as a sufficient source of guidance, arbitral tribunals may sometimes turn to the Swedish Code of Judicial Procedure (which is not otherwise applicable to arbitrations). This may particularly be the case if both parties are represented by

Swedish counsel appearing before an all-Swedish tribunal, i.e. where everyone involved can be expected to be familiar with Swedish court procedure. The Code of Judicial Procedure takes the approach that a requested document must be of potential relevance in relation to a contested issue in the dispute, which issue is relevant to the case argued by the requesting party. The request must also concern a specific document or category of documents. In other words, although some differences exist (e.g. in relation to the potential grounds for objecting to a request for production), the IBA Rules and the Code of Judicial Procedure largely provide for similar requirements.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

Before a Swedish court, privileges in respect of a document may be relied on, amongst other, with respect to client-attorney relationship or other relationship of trust and for trade secrets. However, when it comes to arbitration, without the involvement of a court to compel production, no such privilege is relevant as the tribunal lacks coercive powers, thus making it up to each party to decide which documents are to be produced and which documents are to be withheld. However, if a party wishes to exclude a particular document from production in an arbitration, it will typically wish to state a valid reason in order not to provoke the arbitral tribunal and potentially have the arbitrators draw adverse inferences from its failure to produce. In international arbitrations conducted in Sweden parties will in such cases often refer to the exceptions to produce provided for in the IBA Rules on the Taking of Evidence in International Commercial Arbitration.

(iii) Are there special rules for handling electronically stored information?

There are no specific rules or restrictions on how to present, prove or produce electronic documents. It is, thus, up to the parties to agree or for the arbitrators to decide on an appropriate and efficient method to handle such documents.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

There is no general or inherent duty of confidentiality covering the parties to an arbitration under Swedish law. Consequently, unless the parties have agreed otherwise, each party may unilaterally choose to make disclosures about the arbitration in relation to third parties. Parties, who consider confidentiality to be of particular importance, should therefore enter into a specific confidentiality agreement.

Arbitrators are under a duty of confidentiality and may, thus, not make any disclosures in relation to the arbitral proceedings or the award. The same applies to the SCC Institute, if the arbitration is conducted under the SCC Rules.

- (ii) **Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?**

No, there are no specific provisions to this effect in the Arbitration Act.

- (iii) **Are there any provisions in your arbitration law as to rules of privilege?**

No, there are no specific provisions to this effect in the Arbitration Act.

IX. Evidence and Hearings

- (i) **Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

The IBA Rules are not directly applicable to arbitrations in Sweden unless the parties so agree. However, even in the absence of agreement, they may serve as guidelines for the arbitral tribunal as an expression of 'best practice' in international arbitration. Accordingly, a party's objection to the applicability of the IBA Rules does not prohibit an arbitral tribunal from turning to them for guidance on certain issues, in the same way as the arbitral tribunal, in its discretion, may seek guidance from other sources when the parties cannot agree on how to resolve a certain procedural issue and where no mandatory rules apply.

In international arbitrations taking place in Sweden, parties and arbitrators commonly agree to be guided, but not to be bound, by the IBA Rules.

- (ii) **Are there any limits to arbitral tribunals' discretion to govern the hearings?**

The Arbitration Act contains very few mandatory provisions concerning the procedure, including the hearing. The arbitrators are generally required to handle the dispute 'in an impartial, practical and speedy manner' and afford each party a reasonable opportunity to present its case. In addition, the arbitrators must, as a general rule, follow the joint instructions of the parties, including the provisions of any arbitration rules agreed to by them.

Arbitral proceedings conducted solely on the basis of written documents are permitted according to Swedish law, but unusual in practice. If a party so requests, an oral hearing shall be arranged before a decision is made on any substantive issue referred to the arbitrators.

There are no provisions in the Arbitration Act that regulates the conduct of a hearing. This provides leeway for the arbitral tribunal and the parties to tailor the hearing to fit the particular circumstances of the case. However, although there is no formal regulation, in practice a relatively distinct pattern or structure exists for the conduct of hearings, which is followed in most international arbitrations conducted under Swedish law.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

Written witness statements are commonplace in international arbitrations in Sweden. When a written witness statement has been submitted, the general rule is that the party relying on the statement is obliged to produce the witness at the hearing for cross-examination. Since the idea is often that the written witness statement will be in lieu of any direct examination (except for a few introductory questions), it will thus generally be for the party not relying on the witness to decide whether the witness is to appear at the hearing or not. If the witness is not called to appear for cross-examination, the written witness statement will often be the only evidence concerning the testimony of the witness in question.

Arbitrators will typically retain formal control over the testimony of witnesses and may intervene and ask questions whenever they feel it to be appropriate. However, in practice, the examination of witnesses is most often left to counsel for the parties and the tribunal will rarely have many – if any – questions. If questions are put by the tribunal, it is typically towards the end of the testimony, so as not to upset the examination by counsel, and done in a neutral fashion.

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

Persons testifying before an arbitral tribunal are, from a formal legal point of view, not witnesses because they do not testify under oath and do not risk perjury in case of false testimony. Arbitrators are not empowered to administer criminally sanctioned oaths. A tribunal may nevertheless, if it so wishes, ask a witness to confirm that it will e.g. ‘speak the truth, the whole truth and nothing but the truth’, although such a confirmation will not come with any criminal sanction.

There are no restrictions on which persons may appear as witnesses.

- (v) **Are there any differences between the testimony of a witness specially connected with one of the parties (e.g. a legal representative) and the testimony of unrelated witnesses?**

No, there is no legal difference.

- (vi) **How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

The parties may rely on expert evidence before an arbitral tribunal. Experts are usually invited to present their views in a written report. The report will then be communicated to the other party which is given the opportunity to comment on the report and, if he or she finds it appropriate, to adduce rebuttal expert evidence. In most cases, experts will also be given an opportunity to present their findings through direct examination and be subjected to cross-examination at a hearing.

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

- (vii) **Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

Although it is highly uncommon for arbitral tribunals sitting in Sweden to appoint experts at their own initiative, it is clear that the arbitrators do have the power to do so, unless both parties are opposed to such appointment. In practice, arbitrators would rarely do so without the prior approval of both parties. The arbitrators would normally also listen to the parties' suggestions with respect to the selection of any such experts. There are no requirements that experts be selected from any particular list or otherwise.

There are no formal differences regarding how evidence provided by an expert appointed by the tribunal may be considered compared to evidence by a party-appointed expert. Any such differences would be of a non-formal nature and ultimately depend on personal perspectives and preferences of the arbitrators.

- (viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?**

Witness conferencing is not common, but may sometimes be arranged at the discretion of the tribunal. If so, such conferencing would typically be used for experts rather than fact witnesses.

- (ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

The Arbitration Act does not include any rules or requirements regarding arbitral secretaries. Arbitral secretaries, with acceptance by the parties, are fairly common at least in larger cases. Typically, they are tasked solely with providing logistic and administrative support to the tribunal.

X. Awards

- (i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?**

The award must be made in writing and must be signed by the arbitrators. It suffices that the award is signed by a majority of the arbitrators, provided that the reason why not all of the arbitrators have signed is noted in the award. The parties may also agree that only the chairman shall sign the award.

The award shall specify the seat of arbitration and the date on which the award is made. Further, the award should identify the parties and the dispute and include a clear and definitive decision.

The only limits on the powers of arbitrators to render appropriate remedies are that (i) the remedy must have been requested by one of the parties and (ii) may not be contrary to public policy in Sweden. Typical remedies will include orders for the payment of money or the taking/non-taking of a specific action as well as declarations e.g. as to liability.

- (ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?**

Remedies that are immoral, illegal or manifestly unreasonable, including excessive punitive or exemplary damages, may be considered in breach of public policy. However, the public policy exception in Swedish law is very limited. Although it remains to be settled, it is this author's view that it is unlikely that the courts would hold reasonably applied punitive damages, which result from the law applicable to the substance of the dispute, to be in contravention of public policy.

(iii) Are interim or partial awards enforceable?

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

Issues which have been referred to the arbitrators shall be finally decided by an award. Other determinations, which are not embodied in an award, are designated as ‘decisions’. Unless authorized by the parties, e.g. through agreement on the SCC Rules, the arbitrators may not make awards for issues concerning interim measures.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Neither the Arbitration Act nor the SCC Rules address dissenting opinions of arbitrators and there are no formal requirements as to form or content. However, it is generally held that arbitrators are entitled to declare their dissenting view on matters being adjudicated and this is typically done by attaching a dissenting opinion to the award.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

The parties can request that the arbitral tribunal record their agreement in a consent award at any time until the arbitral tribunal renders its final award. Such a consent award on agreed terms is subject to the same formal requirements and has the same legal effects as other types of awards. The parties’ rationale for seeking confirmation of a settlement reached in a consent award is typically that an award – by contrast to a settlement agreement – is enforceable and recognizable under the New York Convention. It also renders the dispute *res judicata*.

Proceedings cannot be finally terminated in any other way than through an award.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

The arbitrators may within 30 days of the delivery of the award decide to correct or supplement the award. If the arbitrators decide to supplement the award, it must be done within 60 days.

The arbitrators may also correct, supplement or interpret an award if any of the parties should so request within 30 days from receiving the award. If the arbitrators at a party's request decide to correct, supplement or interpret the award, such correction, supplementation or interpretation shall be made within 30 days from the arbitrators' receipt of the party's request. Before any decision to correct, supplement or interpret the award is made, both parties must be afforded an opportunity to express their views on the matter.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

Unless the parties have provided otherwise, the arbitrators may, at the request of either party, make an order for the distribution of costs between the parties. With respect to the allocation of costs, the arbitrators will follow any agreement of the parties. If no such agreement exists, by non-binding analogy from the Code of Judicial Procedure, the general rule is that the losing party is liable for its own expenses as well as those of the winning party. Exceptions to this general rule may apply in certain situations, e.g. when the winning party has negligently brought an unnecessary action or if a party has otherwise negligently caused the other party to incur unnecessary costs or expenses.

(ii) What are the elements of costs that are typically awarded?

Elements of costs will typically include a party's share of the compensation payable to the arbitrators, cost of evidence, reasonable fees and expenses of a party's counsel and compensation to a party for its own work and time spent, including loss of salary and other remuneration.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

The arbitral tribunal is to receive 'reasonable compensation' for its work and expenses. The fees of the arbitrators are set by the arbitral tribunal itself, subject to any agreement entered into with the parties.

In arbitrations under the SCC Rules, the fees to the arbitral tribunal are to be set in relation to the amount in dispute, in accordance with a fixed schedule of fees. The application of this schedule of fees and the decision on the fees to the arbitrators is taken by the SCC Institute.

- (iv) **Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?**

See section XII (i) above.

- (v) **Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?**

Courts are empowered to review the tribunal's decision on its own costs. A party may, thus, bring an action in the district court against the award regarding the compensation to the arbitrators within three months from the date upon which the party received the award. Any ensuing judgment according to which the compensation to an arbitrator is reduced applies also to a party who did not itself bring any action.

XII. Challenges to Awards

- (i) **How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?**

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

Section 33 of the Arbitration Act exhaustively describes the situations in which an award may be void as distinct from challengeable. The provisions in section 33 concern invalidity *ab initio* and are, thus, not subject to any time limits. The circumstances rendering an award void are the following:

- (i) the award includes determination of an issue, which under Swedish law, is not arbitrable;
- (ii) the award or the manner in which the award arose is patently incompatible with fundamental principles of the Swedish legal system; and
- (iii) the award does not fulfil the requirements with regard to written form and signing.

An award is challengeable and may be set aside by the court in the following cases according to Section 34 of the Arbitration Act:

- (i) the award is not covered by a valid arbitration agreement between the parties;
- (ii) the arbitrators have made the award after the expiration of a period of time stipulated by the parties or have otherwise exceeded their mandate;
- (iii) the arbitral proceedings, according to section 47 of the Arbitration Act, should not have taken place in Sweden;
- (iv) an arbitrator has been appointed in a manner contrary to the agreement between the parties or the provisions of the Arbitration Act;
- (v) an arbitrator was unauthorized owing to any circumstance set forth in sections 7 or 8 of the Arbitration Act; or
- (vi) through no fault of the party, any other irregularity has occurred in the course of the proceedings which probably influenced the outcome of the case.

A challenge under this provision must be commenced within three months from the date the party received the award.

Challenge proceedings before the court of appeal typically takes about a year. However, the time is very much case dependant.

Challenge proceedings will not generally stay enforcement. However, a challenging party may request that enforcement in Sweden is stayed pending resolution of the challenge. Such requests are rarely granted, not least because the court of appeal needs to be persuaded that the challenge is at least “likely” to succeed. This is generally a difficult test to satisfy save in cases where the merits of the challenge are reasonably apparent to the court already on a *prima facie* basis.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

For non-Swedish commercial parties, the Arbitration Act provides the opportunity to enter into an agreement pursuant to which the parties waive, in advance, the right to challenge an award as per section 34 of the Arbitration Act. In order to be effective, such an agreement must be made in writing and be sufficiently specific and clear.

- (iii) **Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?**

As a rule awards cannot be appealed. However, an award can be subject to appeal if the arbitral tribunal has terminated the proceedings without rendering any ruling on the merits. For example, an award terminating the arbitration due to a negative finding by the arbitral tribunal as regards jurisdiction may be appealed to the court of appeal.

- (iv) **May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?**

A court may, under certain circumstances, stay proceedings concerning the invalidity or setting aside of an award for a certain period of time in order to provide the arbitrators with an opportunity to resume the arbitral proceedings or to take some other measure which, in the opinion of the arbitrators, will eliminate the ground for the invalidity or setting aside. Another instance amounting to remission is where the court reverses a negative decision on jurisdiction by the tribunal.

XIII. Recognition and Enforcement of Awards

- (i) **What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

An award made in Sweden is enforceable in Sweden without a court order or other exequatur when given, unless the award is purely of a declaratory nature. If the losing party does not perform voluntarily, the award may, thus, simply be brought to the relevant execution authority (*Kronofogdemyndigheten*) if the winning party desires execution of the award in Sweden.

An application for the enforcement of a foreign arbitral award in Sweden shall be submitted to the Svea Court of Appeal in Stockholm.

A foreign arbitral award will not be valid and enforceable in Sweden if the respondent can prove any of the following circumstances:

- (i) one of the parties to the arbitration agreement did not have authority to enter into it, or the agreement is invalid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;

- (ii) respondent was not given proper notice of the appointment of the arbitrator(s) or of the arbitration proceedings or was otherwise unable to present its case;
- (iii) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the arbitration agreement;
- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;
- (v) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made;
- (vi) the award includes the resolution of an issue which is not arbitrable under Swedish law; or
- (vii) the recognition or enforcement of the award would be patently incompatible with the fundamental principles of the Swedish legal system (*ordre public*).

The Svea Court of Appeal may decide to temporarily postpone its decision on enforcement if the opposing party contends that it has challenged the award at the seat and requests a stay of enforcement. In such a case and upon request of the applicant, the opposing party may be required by the court to provide security. Regardless of whether security is provided, a parallel challenge procedure will, as a general rule, not persuade the court to postpone the enforcement of an arbitral award unless it is shown that the challenge is likely to succeed.

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

A Swedish award needs no exequatur and can be enforced directly provided that it is (a) in written form and duly signed and (b) the arbitration agreement does not provide that the award can be appealed or the time limit for any such appeal has expired. The application should be made to the Swedish execution authority and the opposing party will be heard before the enforcement is carried out. The execution authority conducts a cursory review of the judgment of its own motion to ascertain that it fulfils basic formalities and is not suffering from any apparent invalidity.

A foreign award is enforced as a Swedish court judgement, provided that the Svea Court of Appeal has granted an application for enforcement of the award, i.e. an exequatur. The above procedure before the Swedish execution authority generally applies to such enforcement.

Recourse to a court to challenge the award (see Section XII above) or appeal of the enforcement order is possible even at this stage as long as any time limit or any other limitation to the ability to challenge the award does not prevent such action. However, even if possible, the appellate courts are generally reluctant to order a stay of enforcement because the award has been challenged. Such an order typically requires clear *prima facie* evidence showing that it is likely that the award will eventually be set aside.

(iii) Are conservatory measures available pending enforcement of the award?

Yes

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

The Swedish courts are very arbitration friendly and will generally enforce a foreign arbitral award. However, a foreign award cannot be recognized and enforced in Sweden if it has been set aside at the place of arbitration.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

The procedure for enforcing a domestic award typically takes about one to two weeks, provided that the opposing party does not raise any objections. The procedure for recognition of foreign awards in the Svea Court of Appeal takes some two to three months, again provided that the opposing party does not raise any objections to the enforcement. The proceedings may take a considerably longer if recognition and enforcement is disputed before the court and/or before the execution authority.

Ten years is the general time limit under Swedish law for seeking enforcement of an award.

XIV. Sovereign Immunity

- (i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?**

A sovereign state may, as a matter of principle, claim immunity in Swedish judicial and administrative proceedings, albeit that it is unclear how far such immunity goes. As far as arbitration proceedings are concerned the state immunity defence is not available, since there is nothing to be immune from. The Supreme Court recognizes the restrictive theory of state immunity, which does not accept state immunity for commercial transactions (*acta gestionis*).

- (ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?**

As mentioned above, Swedish law recognises the restrictive theory on state immunity. In a relatively recent case before the Supreme Court, a private person was, thus, considered entitled to enforce an arbitral award by levying execution on a real property owned by the Russian Federation. The property was to a certain extent used for sovereign purposes (e.g. to provide accommodation to diplomats). However, the Supreme Court stated that for immunity to apply the sovereign purpose of owning the property must be of a qualified nature. Furthermore, the court stated that the relevant point in time to assess whether immunity should apply is when a request for enforcement is filed with the execution authorities. Changes in use occurring after this point in time should not be considered. The Supreme Court concluded that the property in question was not, at the relevant time, to a considerable extent used for the Russian Federation's sovereign activities. It therefore denied the Russian Federation's assertion of immunity.

XV. Investment Treaty Arbitration

- (i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Yes, Sweden is a party to the Washington Convention since 1966 and Sweden ratified the Energy Charter Treaty in 1997.

- (ii) Has your country entered into bilateral investment treaties with other countries?**

Sweden is a party to some 66 bilateral investment treaties.

XVI. Resources

- (i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

In English there are currently the following main reference materials:

- L Heuman, Arbitration Law of Sweden: Practice and Procedure (2003);
- K Hobér, International Commercial Arbitration in Sweden (2011);
- F Andersson et al, Arbitration in Sweden (2011);
- R Oldenstam et al, Mannheimer Swartling's Concise Guide to Arbitration in Sweden (2014); and
- F Madsen, Commercial Arbitration in Sweden (2016).

- (ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

The Swedish Arbitration Association (SAA) regularly organizes seminars and events. The most important of these are the Swedish Arbitration Days, which take place in September every second year.

In addition, the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) regularly organizes various events and recently celebrated its 100 year anniversary.

There are also particular events for young arbitrators regularly organized by Young Arbitrators Sweden (YAS) and for women in arbitration organized by the Swedish Women in Arbitration Network (SWAN).

XVII. Trends and Developments

- (i) Do you think that arbitration has become a real alternative to court proceedings in your country?**

As mentioned above (see Section I (i)), arbitration is since long the preferred method of dispute resolution by commercial parties.

- (ii) What are the trends in relation to other ADR procedures, such as mediation?**

Sweden has a long tradition of using mediation in specific areas, such as in labour disputes and in certain copyright disputes. However, arbitration remains the

predominant method for resolving commercial disputes. The use of institutional or structural mediation or other forms of ADR is overall limited. No substantial change in the choice of dispute resolution methods is currently to be anticipated.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

The Arbitration Act is currently undergoing legislative revision and a Government bill may be anticipated later in 2018. Although the bill may be expected to involve certain revisions, no major overhaul is expected.