SWEDEN

NOTE

General Editor

The author of the National Report Sweden, Caroline Falconer, confirms that the National Report as published in Supplement 132 of May 2024 ***reflects current arbitral practice*** in Sweden.

The author also confirms that the status of the legislation annexed is as follows:

– **Annex I**: The Swedish Arbitration Act (SFS 1999:116), updated as per SFS 2018:1954 (published in Supplement 107 of October 2019) ***remains in effect***.

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*Caroline Falconer**

including

ANNEX I: The Swedish Arbitration Act (SFS 1999:116) (updated as per SFS 2018:1954, in force as from 1 March 2019)

Chapter I. Introduction

1. LAW ON ARBITRATION

a. Legislation

The Swedish law on arbitration is mainly contained in the Arbitration Act of 1999 as amended in 2019 (the "Act" or the "Arbitration Act"; see **Annex I** hereto). The revised Act came into force on 1 March 2019 with several changes related to, *inter alia*, applicable substantive law, consolidation of arbitrations, judicial review of jurisdiction, challenge grounds and procedure. Revisions were adopted with the aim at modernizing the Act to further facilitate effective and attractive international and domestic arbitration in Sweden and at making Swedish arbitration law more easily accessible, especially for non-Swedish parties.

The scope of the Act is defined in Sect. 46, which provides that the Act shall apply to arbitrations seated in Sweden irrespective of whether the dispute has an international connection. The Act deals with arbitration proceedings in Sweden generally and also regulates the enforcement of foreign arbitral awards in Sweden.

The Act applies equally to domestic and international arbitration. Although it is not identical to the 1985 UNCITRAL Model Law on International Commercial Arbitration (the "Model Law"), the utmost attention was given to each provision of the Model Law when drafting the Arbitration Act, and as can be seen there are few differences in substance between the Act and the Model Law. The 2006 amendments of the Model Law, however, have not resulted in any amendments to the Act.

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* The author is the current Secretary General of the SCC Arbitration Institute. The Report is based on an earlier National Report by Ulf Franke, past SCC Secretary General; as well as past Secretary General of ICCA, and amended by past SCC Secretary General Annette Magnusson, past SCC Secretary General Kristin Campbell-Wilson, and past SCC Deputy Secretary General Natalia Petrik.

Some of the principal differences are as follows:

- The Act specifies the domain of arbitration and specifically refers to the determination on the existence of a particular fact, decisions ruling on the civil law effects of competition law as between parties, and filling of gaps (Sect. 1).
- Arbitration agreements relating to consumer transactions are only valid if entered into after the dispute has arisen (Sect. 6).
- Unlike the Model Law, the Act does not require the arbitration agreement to be in writing.
- The District Court, when requested to appoint an arbitrator, may reject the request only if it is manifestly obvious that the arbitration is not legally permissible, e.g., because of the invalidity of the arbitration agreement or the non-arbitrability of the subject matter (Sect. 18).
- Should the arbitral tribunal find that it does not have jurisdiction, this decision shall take the form of an award (Sect. 27).
- The Act contains a provision determining the law applicable to the arbitration agreement which has an international connection (Sect. 48), namely the law chosen by the parties or the law of the seat of arbitration.
- Awards made in Sweden are directly enforceable subject to a prima facie determination by the execution authority. This procedure is regulated in the Enforcement Procedure Code, not in the Act.
- The Act includes provisions on costs, a feature not found in the Model Law (Sects. 37-42).
- An award may be challenged due to absolute or relative invalidity (Sects. 33-34).

These grounds vary from the grounds for setting aside in the Model Law, which repeat the grounds for refusal of enforcement found both in the Model Law and the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention").

b. Mandatory provisions

Most provisions in the Act are non-mandatory, and to that extent parties may allow the procedure to be governed by other rules, such as the Rules of the SCC Arbitration Institute (the "SCC Arbitration Rules") or the UNCITRAL Arbitration Rules.

2. PRACTICE OF ARBITRATION

a. General

Arbitration is widely used in Sweden, particularly in the commercial field. Although no figures are available because of the confidential character of arbitration, it is considered that a great number of business disputes are solved

by arbitration. Most written contracts include an arbitration clause, and such clauses are common in standard form contracts.

Over the past few decades there has been an ever-growing trend to designate Sweden as the location of choice in arbitration clauses in international commercial contracts, and many international arbitrations are seated in Stockholm, Sweden and their hearings take place in Stockholm.

b. Arbitral institutions

Institutional arbitration is of long standing in Sweden. The SCC Arbitration Institute (previously known as the Arbitration Institute of the Stockholm Chamber of Commerce, the SCC) is the centre for institutional arbitration in Sweden and was established in 1917. The SCC operates entirely without commercial or political interests as a non-profit and independent entity within the Stockholm Chamber of Commerce.

The SCC consists of a Secretariat headed by a Secretary General, together with an operational board comprised of experienced dispute resolution experts.

The SCC administers both domestic and international arbitrations and has over the past decades emerged as one of the leading international arbitration institutions in the world. The SCC generally administers around 175 to 200 cases per year, half of which are international disputes. The parties come from between forty to fifty different nations. The total value of the disputes often yearly amounts to more than two billion euros.

The current SCC Arbitration Rules entered into force on 1 January 2023. They are available in English, Swedish, Russian, Chinese, Farsi/Persian, German, Turkish, Bulgarian and Polish. The Rules are currently also being translated into French, Spanish, Italian, Finnish, Ukrainian, Portuguese, and Serbian. Most arbitrations handled by the SCC are conducted under the SCC Arbitration Rules.

Apart from the SCC Arbitration Rules, the SCC has adopted Rules for Expedited Arbitrations, in force in their present version from 1 January 2023. The SCC has also adopted Mediation Rules, in force in their present version from 1 January 2023, and SCC Express Rules, in force in their present version from 1 January 2023.

The SCC acts as appointing authority and administering agency under other sets of arbitration rules, notably the UNCITRAL Arbitration Rules. Further, the SCC has adopted Procedures for the Administration of Cases and Procedures as Appointing Authority under the 2010 UNCITRAL Arbitration Rules.

The SCC Rules and further information about the activities of the SCC can be obtained at <www.sccarbitrationinstitute.com> or by reaching out to the SCC Secretariat at <arbitration@sccarbitrationinstitute.com>.

3. BIBLIOGRAPHY

a. Reports

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b. Books

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Stockholm Arbitration Yearbook, Vols. 1-4 (Kluwer Law International 2019, 2020, 2021, and 2022)

Franke, Ulf; Magnusson, Annette et al., eds.
International Arbitration in Sweden: A Practitioner's Guide (Kluwer Law International 2013) 405 pages

Heuman, Lars
Arbitration Law of Sweden: Practice and Procedure (Juris Publishing, New York 2003) 746 pages + appendices

Hobér, Kaj
Selected Writings on Investment Treaty Arbitration (Utbildningshuset/ Studentlitteratur, 2013) 558 pages

International Commercial Arbitration in Sweden, (Oxford University Press 2011) 354 pages + appendices

Madsen, Finn
Commercial Arbitration in Sweden, 4th ed. (Jure AB, 2016) 600 pages

Oldenstam, Robin; Löf, Kristoffer et al.
Mannheimer Swartling's Concise Guide to Arbitration in Sweden. Second ed. (Mannheimer Swartling Advokatbyrå 2019) 276 pages

Ragnwaldh, Jakob; Andersson, Fredrik and Salinas Quero, Celeste E.
A Guide to the SCC Arbitration Rules (Kluwer Law International 2019) 258 pages

Savola, Mika; Dautaj, Ylli; Gustafsson, Bruno; Åbjörnsson, Rolf
Digital Hearings – Civil Procedure and Arbitration (Norstedts Juridik 2022) 275 pages + appendices

Books in Swedish

Heuman, Lars
Skiljemannarätt [Law of Arbitration] (Stockholm 1999) 754 pages + appendices

Lindskog, Stefan
Skiljeförfarande [Arbitration] (Stockholm 2005) 1,278 pages + appendices

c. Articles

Forward! Bnepëð! Framåt! Essays in Honour of Prof Dr Kaj Hobér, Bylander, Eric; Jonsson Cornell, Anna and Ragnwaldh, Jakob, eds. (Iustus förlag 2019) includes the following articles on arbitration in Sweden:

Dahlquist Cullborg, Joel
"Challenges of Treaty-Based Arbitral Awards in Swedish Courts"

Franke, Ulf and Magnusson, Annette
"The Emergence of an International Arbitral Institution for the 21st century"

Storskrubb, Eva
"Navigating EU Law and the Law of Arbitration. From the Horizon of Commercial Arbitration in Sweden"

Worth reading are also:

Blomkvist, Christina
"Production of Documents – Swedish Supreme Court Confirms a Continuing Arbitration-Friendly Application in Swedish Courts", 18 The Columbia Journal of European Law Online (2012) p. 25

Foester, Alexander
"The Stockholm Rules (SCC)" in Schütze, R., *Institutional Arbitration - Article-by-Article Commentary*, 2nd ed. (Beck C.H., in association with Hart Publishing, Oxford and Nomos Verlagsgesellschaft, Baden-Baden, 2020)

Hope, James
"Investor-State Arbitration Before the SCC" in *Investor-State Arbitration 2020*, Second Edition (Global Legal Group 2019) p. 14

Ipp, Anja Havedal
"International Arbitration in Stockholm: Modern, Efficient ADR with Century-Old Roots", 11 New York Dispute Resolution Lawyer (2018, No. 2) p. 79

Magnusson, Annette and Petrik, Natalia
"East Meets West in Stockholm" in *Arbitration and Regulation of International Trade: Russian, Foreign and Cross-Border Approaches. Liber Amicorum in Honor of the 70th Anniversary of A. S. Komarov* (2019) p. 338

d. Journals and other sources

The Swedish Arbitration Portal provides free access to English translations of Swedish court decisions on arbitration issues, such as challenges of awards brought before the Svea Court of Appeal in Stockholm. The database is regularly updated at <www.arbitration.sccinstitute.com>.

The ICCA Awards Series, a cooperation between ICCA, Kluwer Arbitration, SCC Arbitration Institute, and other institutes, features international arbitration in Sweden in its section "Focus on Sweden".

The SCC Arbitration Institute regularly publishes reports, articles, and practice notes of interest to arbitration in Sweden. They are found at the SCC website: <www.sccarbitrationinstitute.com>.

The Stockholm Arbitration Report, later called the Stockholm International Arbitration Review, was published by Juris Publishing in cooperation with the SCC between 1999 and 2010 two or three times per year. Each copy included material on international arbitration in Sweden.

Chapter II. Arbitration Agreement

1. FORM AND CONTENTS OF THE AGREEMENT

a. Arbitration clause and submission agreement; form

Under Sect. 1 of the Arbitration Act (see **Annex I** hereto) an arbitration agreement may concern a future dispute (arbitration clause) as well as an existing dispute (submission). It should be noted, however, that arbitration agreements relating to consumer transactions are only valid if entered into after the dispute has arisen (Sect. 6).

No particular form is prescribed for the arbitration agreement. Oral and written agreements are equally binding. In practice, however, arbitration agreements are almost always in writing. Oral agreements may be of importance, however, in regard to extensions or restrictions of existing agreements made in the course of arbitral proceedings.

Rules applicable to the formation of the arbitration agreement are those derived from Swedish contract law. They are mainly based on the acceptance of the offer, which could be done in different ways, including the parties' previous conduct. Agreement to apply one party's general terms and conditions containing an arbitration clause is usually enough to constitute a valid arbitration agreement between the parties.

b. Model arbitration clause

The SCC Arbitration Institute recommends the following model clause to parties who wish to have disputes referred to arbitration under the SCC Arbitration Rules:

> "Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the SCC Arbitration Institute.
>
> *Recommended additions:*
> The seat of arbitration shall be […].
> The language to be used in the arbitral proceedings shall be […].
> This contract shall be governed by the substantive law of […]."

The SCC recommends that parties who wish to have their disputes referred to arbitration under the SCC Expedited Arbitration Rules use this model clause:

> "Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules for Expedited Arbitrations of the SCC Arbitration Institute.
>
> *Recommended additions:*
> The seat of arbitration shall be […].
> The language to be used in the arbitral proceedings shall be […].
> This contract shall be governed by the substantive law of […]."

The SCC Arbitration Institute also offers a number of combined model clauses, including referral of disputes to the SCC Rules for Expedited Arbitrations, the SCC Express Rules or the SCC Mediation Rules and the SCC Arbitration Rules. The model clauses can be found at <www.sccarbitrationinstitute.com>.

2. PARTIES TO THE AGREEMENT

a. Capacity

Any legal or physical person may resort to arbitration. There are no restrictions on foreign nationals being parties to arbitration proceedings in Sweden.

b. Bankruptcy

Arbitration is possible in the course of bankruptcy proceedings. If the debtor has concluded an arbitration agreement before the bankruptcy, both the administrator and the other party to the agreement can insist that any dispute be

solved by arbitration. However, the bankrupt estate may choose not to enter the arbitral proceedings as respondent, if it affects the rights of other creditors.

The administrator may also agree to arbitration concerning doubtful assets when the bankruptcy is already in progress.

c. State or State agencies

There are no provisions restricting the capacity of the State or of State agencies from resorting to arbitration with either nationals or foreigners.

d. Multi-party arbitration

The Arbitration Act includes several provisions on multi-party arbitration. Sect. 14 contains the rules regarding appointment of arbitrators, namely if several parties against whom the arbitration has been requested are unable to jointly appoint an arbitrator, the District Court shall upon the request of a respondent party appoint arbitrators on behalf of all parties. A similar rule is contained in Art. 17(5) of the SCC Arbitration Rules.

In practice there are many multi-party disputes arbitrated in Sweden. However, they are based on the parties' agreement.

According to the Arbitration Act, arbitrations could be consolidated only if the parties agreed to such consolidation, if it benefits the administration of the arbitration, and if the same arbitrators have been appointed in both cases (Sect. 23a). The SCC Arbitration Rules contain rules on consolidation in Art. 15.

The Act is silent regarding joinder of additional parties. However, the SCC Arbitration Rules provide a detailed procedure for joinder in Art. 13.

3. DOMAIN OF ARBITRATION

a. Arbitrability

The scope of arbitration is wide. The Arbitration Act stipulates in Sect. 1 that disputes concerning matters that may be resolved by settlement are arbitrable. It further stipulates that a dispute may concern the mere existence of a particular fact. Arbitrators are entitled not only to rule on the existence of a fact but may also decide on the proper legal characterization of it by determining, for instance, that a fact constitutes force majeure.

Admitted claims (which are not in a technical sense in dispute) may also be the subject of arbitral proceedings and awards.

Moreover, the Act includes a statutory provision in Sect. 1 which is probably unique. It expressly provides that arbitrators are entitled to rule on the effects as between the parties of *competition laws*. Although it is not expressly laid down in the Act, the same goes for disputes in connection with *patents* and *trademarks*.

It is possible to refer a dispute concerning the alleged nullity of a *partnership or a company* to arbitration.

Generally, disputes that affect third-party interests are non-arbitrable under Swedish law, e.g., disputes regarding declaration of bankruptcy, tax matters, personal status of individuals and legal entities.

b. Filling gaps

The Arbitration Act provides in Sect. 1 that arbitrators may fill gaps in contracts. Filling of gaps may, for instance, take the form of determining the price or other contractual conditions in a long-term agreement.

4. SEPARABILITY OF ARBITRATION CLAUSE

The Arbitration Act accepts the separability doctrine by stipulating in Sect. 3 of the Act that where the validity of an arbitration agreement that constitutes part of another agreement must be determined in conjunction with a determination of the jurisdiction of the arbitrators, the arbitration agreement shall be deemed to constitute a separate agreement.

A corollary to the separability doctrine is the doctrine of competence-competence. Under the latter, which is laid down in Sect. 2 of the Act, the fact that the arbitration agreement is allegedly invalid – implying lack of jurisdiction of the arbitrators – does not prevent the arbitrators from deciding the validity issue (see Chapter V.4 below). The *travaux préparatoires* make it clear that the arbitral tribunal can also decide on the validity of the arbitration agreement if it is alleged that the main contract is non-existent.

5. EFFECT OF THE AGREEMENT (SEE ALSO CHAPTER V.4 – JURISDICTION)

A valid arbitration agreement constitutes a bar to court proceedings. However, as a court will not take judicial notice of the agreement on its own motion, the respondent must invoke the agreement and must do so on the first occasion that it pleads its case on the merits, unless the party had a legal excuse and invoked the arbitration agreement as soon as the excuse ceased to exist (Sect. 4).

A party shall, however, according to Sect. 5 forfeit its right to invoke the arbitration agreement as a bar to court proceedings where the party:

(1) has opposed a request for arbitration;
(2) has failed to appoint an arbitrator in due time; or
(3) fails, within due time, to provide its share of the requested security for compensation to the arbitrators.

If the arbitration agreement has been invoked in compliance with the terms of the Arbitration Act, it constitutes an absolute bar, and the court thus has no

discretion but to refer the parties to arbitration. This is irrespective of whether the parties have agreed to arbitrate in Sweden or elsewhere.

Apart from constituting a bar to court proceedings, the arbitration agreement has certain other effects. If the seat is in Sweden, the most important effect is that it entitles the parties to the assistance of the courts and authorities to effectuate the agreement if such assistance proves to be necessary.

Chapter III. Arbitrators

1. QUALIFICATIONS

An arbitrator must under Sect. 7 of the Arbitration Act (see **Annex I** hereto) be of full legal capacity. Apart from this, there are no specific qualifications for arbitrators. An arbitrator may be of any nationality and profession.

Judges may act as arbitrators, and a few are in practice doing so.

All arbitrators, even those chosen by the parties, are required to be impartial and independent. The Act contains in Sect. 9 a provision on disclosure requiring a person who is asked to accept an appointment as arbitrator immediately to disclose all circumstances that might be considered as preventing him from serving as arbitrator:

> "An arbitrator shall inform the parties and the other arbitrators of such circumstances as soon as all arbitrators have been appointed and thereafter in the course of the arbitral proceedings as soon as he has learned of any new circumstance."

There are detailed provisions on the arbitrator(s), their appointment and challenges to them under the SCC Arbitration Rules (see Sects. 16-21).

2. APPOINTMENT OF ARBITRATORS

Sect. 12 of the Arbitration Act specifically provides that the parties may determine the manner in which the arbitrators should be appointed. Failing such determination, Sects. 13 through 16 apply.

If the tribunal shall consist of three arbitrators, each party shall under Sect. 13 of the Act appoint one arbitrator, and the two arbitrators so appointed shall appoint the third arbitrator, who shall act as chairman. If a party fails to appoint an arbitrator or if the two arbitrators fail to agree on the third arbitrator, such appointment shall be made by the District Court unless otherwise agreed between the parties.

Where each party is required to appoint an arbitrator and one party has notified the opposing party of its choice of arbitrator in a request of arbitration,

the opposing party must, within thirty days of receipt of the notice, notify the first party in writing of its choice of arbitrator. This provision, which is contained in Sect. 14 of the Act, is designed to expedite the proceedings and to prevent obstruction. On the other hand, a party who has given the other party notice of its choice of an arbitrator may not revoke that choice without the consent of the other party.

If an arbitrator resigns or is discharged, the District Court shall, under Sect. 16, appoint a new arbitrator in his or her place upon request by a party. If the arbitrator was appointed by a party, the District Court shall appoint the person suggested by that party, unless there are particular reasons for not doing so. Special reasons are at the discretion of the court.

If the arbitrator cannot fulfil his duties due to circumstances that arise after his appointment, the person who was originally required to make the appointment shall, instead, appoint a new arbitrator.

3. NUMBER OF ARBITRATORS (SEE ALSO CHAPTER V.2 – MAKING OF THE AWARD)

The parties are free to compose the arbitral tribunal according to their own wishes, both as to the number of arbitrators and as to each arbitrator's standing and qualifications.

The Arbitration Act specifically provides in Sect. 12 that the parties may determine the number of arbitrators. Sole arbitrators are fully recognized regardless of subsequent statutory references to "arbitrators". However, three arbitrators is the most common number, and this is also the number provided for in the Act unless the parties have decided otherwise. There is no legal impediment to agreeing on an even number of arbitrators. Such agreements are, however, very rare.

4. CHALLENGE TO ARBITRATORS

a. Grounds

Under Sect. 8 of the Arbitration Act, an arbitrator shall be discharged upon request of a party if there exists any circumstance that may diminish confidence in the arbitrator's impartiality and independence. Such a circumstance shall always be deemed to exist:

> "(1) if the arbitrator or a person closely associated with the arbitrator, or otherwise may expect noteworthy benefit or detriment as a result of the outcome of the dispute;
> (2) if the arbitrator or a person closely associated with the arbitrator is the director of a company or any other association which is a party, or otherwise

> represents a party or any other person who may expect noteworthy benefit or detriment as a result of the outcome of the dispute;
> (3) if the arbitrator, in the capacity of expert or otherwise, has taken a position in the dispute, or has assisted a party in the preparation or conduct of his case in the dispute; or
> (4) if the arbitrator has received or demanded compensation in violation of section 39, second paragraph."

Sect. 39, second para., provides that an agreement regarding compensation to the arbitrators that is not entered into with the parties jointly is void.

b. Procedure

Under Sect. 10 of the Arbitration Act a challenge shall be made within fifteen days of the date on which the party became aware of the appointment of the arbitrator and the disqualifying circumstance. Such a challenge shall be decided by the tribunal unless the parties have decided otherwise.

If the challenge is successful, the decision shall be subject to no appeal.

If, however, the request for removal of the arbitrator is denied or dismissed, the decision may be challenged in a District Court within thirty days. In such an action the arbitrator should be heard. The decision of the District Court may not be appealed. The arbitrators may continue with the arbitral proceedings pending the determination of the District Court.

Under Sect. 11 of the Act the parties may agree that a challenge of an arbitrator shall be resolved finally by an arbitration institution. If the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC Arbitration Rules") are applied, the SCC Board makes a reasoned decision on arbitrator's removal.

Failure to comply with the requirements enumerated in Sect. 8 may constitute a ground for setting aside the award under Sect. 34, item 5. However, a party shall not be entitled to rely on this ground if it has not objected to these circumstances in the proceedings (Sect. 34).

5. TERMINATION OF THE ARBITRATOR'S MANDATE

An arbitrator's mandate will terminate either because of resignation or disqualification under the procedure outlined in Chapter III.4.*b* above. A decision to disqualify a person cannot be appealed.

If an arbitrator resigns or is discharged, the District Court shall, under Sect. 16, appoint a new arbitrator in his place upon request by a party. If the arbitrator was appointed by a party, the District Court shall appoint the person suggested by that party, unless there are particular reasons for not doing so. If, however, the arbitrator cannot fulfil his duties due to circumstances that arose

after his appointment, the person who was originally required to make the appointment shall instead appoint a new arbitrator.

Under Sect. 11 of the Arbitration Act, the parties may agree that a challenge of an arbitrator shall be resolved finally by an arbitral institution.

Under Sect. 17 of the Act an arbitrator may also be removed upon the request of a party if he has delayed the proceedings. Such decision is made by the District Court unless the parties have decided otherwise. Sect. 17 allows the parties to agree that an arbitral institution conclusively makes the decision.

6. LIABILITY OF ARBITRATORS

The Arbitration Act does not contain any rules regarding liability of an arbitrator. There is also no relevant case law on this subject. The prevailing view seems to be that an arbitrator's liability is much the same as any other party to a contract, except with regard to his decisions, i.e., a distinction is made between non-judicial and judicial acts. As to the latter, a very restricted liability applies, which is similar to that of judges in the courts.

Sect. 52 of the SCC Arbitration Rules provides that the SCC and the arbitrators are only liable in case of wilful misconduct or gross negligence.

Chapter IV. Arbitral Procedure

1. PLACE OF ARBITRATION (SEE ALSO CHAPTER V.3 – FORM OF THE AWARD)

Sect. 22 of the Arbitration Act (see **Annex I** hereto) provides that the parties shall be free to agree which location in Sweden shall be the seat of arbitration. Failing such agreement, the seat of arbitration shall be determined by the arbitrators. It is stated, however, that the arbitrators may hold hearings and other meetings elsewhere in Sweden, or abroad, unless otherwise agreed by the parties.

Sect. 46 of the Act specifies that the Act applies to arbitral proceedings taking place in Sweden. Thus, if the seat of arbitration is in Sweden, the Act applies.

2. ARBITRAL PROCEEDINGS IN GENERAL

a. Mandatory provisions

The parties have considerable freedom to adopt the procedure best suited to the circumstances of the case. As mentioned above, most provisions in the Arbitration Act are non-mandatory and to such extent the parties may agree on

the procedure either directly or by reference to arbitration rules, such as the SCC Arbitration Rules.

The Act provides in Sect. 21 that the arbitrators shall deal with the case in an impartial, practical, and speedy manner and that in doing so they shall act in accordance with the decisions of the parties to the extent they are not prevented from so doing.

Due process is dealt with in Sect. 24, which provides that the arbitrators shall afford the parties to the extent necessary an opportunity to present their respective cases in writing or orally. It is further provided that a party shall be given an opportunity to review all documents and all other materials pertaining to the dispute that are supplied to the arbitrators by the opposing party or another person.

b. Written and oral proceedings

The parties may decide a case on written evidence only, without hearing the parties in person. A hearing shall be arranged, however, if a party so requests, and in practice it is very rare that arbitrators decide a case without holding a hearing.

Unless otherwise agreed by the parties it is stipulated in Sect. 19 of the Act that arbitration proceedings are commenced when a party receives a request for arbitration. The request shall be in writing and include:

- an express and unconditional request for arbitration;
- a statement of the issues covered by the arbitration agreement and which are to be resolved by the arbitrators; and
- a statement of the party's choice of arbitrator where the party is required to appoint an arbitrator.

Unless otherwise agreed by the parties, the procedure before the arbitrators begins with an exchange of written pleadings. Under Sect. 23 the claimant shall within the period of time determined by the arbitrators submit its claims in respect of the issue stated in the request for arbitration, including the circumstances invoked by the party in support thereof. Thereafter the respondent shall state its position in relation to the claims, and the circumstances invoked by the respondent in support thereof.

Under Sect. 23 of the Act the claimant may submit new claims, and the respondent its own claims, provided that the claims fall within the scope of the arbitration agreement and, taking into consideration the time at which they are submitted or other circumstances, the arbitrators do not consider it inappropriate to adjudicate such claims. Subject to the same conditions, each party may during the proceedings amend or supplement previously presented claims and may invoke new circumstances in support of its case.

3. EVIDENCE

a. General

Sect. 25 of the Arbitration Act provides that it is up to the parties to supply the evidence.

There are no restrictions on the admissibility of evidence. Both written and oral evidence may be submitted. The arbitrators are free to evaluate the evidentiary significance of all documents, testimony or other circumstances which have been brought before them by the parties. However, the arbitrators may refuse to admit evidence which is tendered if such evidence manifestly is not relevant in the case or if there are reasons for such refusal having regard to the time at which the evidence is tendered.

b. Witnesses (fact witnesses and party-appointed expert witnesses)

The arbitrators have neither powers of compulsion, nor the right to administer oaths or so-called truth affirmations (the breach of which triggers criminal sanctions for perjury). Such powers are reserved exclusively for the courts.

However, the Arbitration Act provides in Sect. 26 that if a party wishes that a witness or an expert should testify under oath or that a party should be examined on truth affirmation, it may, after obtaining the permission of the arbitrators, make an application to such effect to the District Court. If the arbitrators consider that the action is justified, having regard to the evidence on record in the case, they shall approve the request. The District Court shall grant the application if the measure may lawfully be taken. The arbitrators shall be summoned to attend the hearing and be afforded an opportunity to ask questions. The absence of an arbitrator shall, however, not prevent the hearing from taking place.

With regard to witnesses, the general practice is that they are examined, cross-examined and re-examined by counsel. A Swedish arbitrator, however, will usually also put questions to the witness. As a rule, a witness should not attend the hearing before being examined.

c. Documentary evidence

The Arbitration Act does not include any provisions for the production of written evidence. In practice, however, it is accepted that arbitrators, at the request of a party, may order the opposing party to produce documents in its possession. This authority is based on Sect. 25 of the Act.

The arbitrators do not, however, have powers of compulsion. They may attach evidentiary weight to the fact that a party refuses to abide by an order of the arbitrators to produce documents, but the powers to enforce such order are reserved exclusively for the courts. The Act provides in Sect. 26 that if a party wishes that a party or other person shall be ordered to produce as evidence a document or object, it may, after obtaining the permission of the arbitrators, make an application to such effect to the District Court. If the arbitrators consider

that the action is justified, having regard to the evidence on record in the case they shall approve the request. The District Court shall grant the application if the measure may lawfully be taken.

4. TRIBUNAL-APPOINTED EXPERTS (SEE CHAPTER IV.3 FOR PARTY-APPOINTED EXPERT WITNESSES)

According to Sect. 25 of the Arbitration Act the arbitrators may appoint an expert unless both parties are opposed thereto. As mentioned above, according to Sect. 26, experts may be required to testify under oath by the District Court upon request by a party and permission of the arbitrators. Apart from that, no particular rules are laid down in the Act regarding experts. Their terms of reference will be decided by the arbitrators in consultation with the parties.

Parties may receive a copy of the expert's report, as it is provided in Sect. 24 that a party shall have the opportunity to review all documents and all other materials that are supplied to the arbitrators by the opposing party or another person, e.g., an expert.

Most experts in arbitrations seated in Sweden are appointed by a party. Tribunal-appointed experts are rarely seen in arbitrations in Sweden.

5. INTERIM MEASURES OF PROTECTION (SEE ALSO CHAPTER I.1 – LAW ON ARBITRATION)

The Arbitration Act provides in Sect. 4 that while the dispute is pending before arbitrators, or before such time, a Swedish court may irrespective of the arbitration agreement issue such decisions on interim measures of protection as the court by law has jurisdiction to make. This rule is not limited to arbitrations that take place in Sweden but will apply to arbitrations anywhere.

The Act in Sect. 25 also includes a provision on interim measures of protection decided by the arbitrators. It provides that unless the parties have agreed otherwise, the arbitrators may at the request of a party decide that the opposite party shall take a specified action in the course of the proceedings for the purpose of securing the claim that is being tried by the arbitrators. The arbitrators may demand that the party who requests the action to be taken shall provide security for the damage that may be inflicted on the opposite party. Decisions by arbitrators on interim measures of protection are, however, not enforceable.

The Act has not adopted Chapter IV.A of the UNCITRAL Model Law (2006 amendments) or any provisions in line with those included in such Chapter.

6. REPRESENTATION AND LEGAL ASSISTANCE

A party may be represented or assisted by any person of any nationality and profession.

The representative must either be appointed by the party orally before the tribunal, or be given a written power of attorney, the original of which should be produced by the representative.

In addition, a party may, as long as it is itself present before the tribunal, conduct his case with the aid of an assistant, who, for instance, may define the pleadings, examine witnesses and make a final speech. No formal appointment is necessary in the case of an assistant.

7. DEFAULT

It is stipulated in Sect. 24 of the Arbitration Act that if one of the parties, without showing valid cause, fails to appear at a hearing or otherwise to comply with an order of the arbitrators, such failure will not prevent a continuation of the proceedings and a resolution of the dispute on the existing materials. Hence, the position is the same for claimant and respondent default.

8. CONFIDENTIALITY OF THE AWARD AND PROCEEDINGS

The Arbitration Act does not include any provisions on confidentiality of the arbitral proceedings and the award. Of interest in this context is a case *Bulgarian Foreign Trade Bank Ltd (Bulbank) v. A.I. Trade Finance Inc (AIT)* decided by the Swedish Supreme Court in 2000 (NJA 2000 p. 538). The Supreme Court ruled that a party in arbitral proceedings is not bound by a duty of confidentiality unless agreed upon by the parties.

This decision notwithstanding, the confidential character of arbitration is usually respected in Sweden. However, documents filed in legal proceedings for setting aside an award or for enforcement purposes form part of public record, and hearings are open to the public. Judgments on such cases are also generally published.

There is a limited possibility for confidentiality under the Swedish Act on Trade Secrets (2018:558).

Chapter V. Arbitral Award

1. TYPES OF AWARD

The Arbitration Act (see **Annex I** hereto) defines the two concepts of award and decision and delineates the form a determination by arbitrators should take. It provides in Sect. 27 that the arbitrators shall decide the issues that have been referred to them by an award and that if they terminate the arbitral proceedings without deciding those issues, such a decision also shall be made by an award. Other determinations that are not embodied in an award are called decisions.

The Act provides in Sect. 29 wide leeway for the arbitrators to decide various partial issues in a determination that is called a separate award in the Act, but which can be termed a partial or an interlocutory award, as there are distinctions between different types.

In a partial award, one of several claims or part of one claim is determined, and in this respect the dispute is then determined once and for all. A partial performance award is enforceable.

In an interlocutory award, the assessment concerns a preliminary question that can have a bearing on the subsequent examination of the dispute. An interlocutory award is therefore not enforceable.

Both types of awards could be challenged and set aside. The time limit is counted from the day on which the party received the partial or interlocutory award as the case may be. It should be noted that a claim invoked as a defence by way of set off shall be adjudicated in the same award as the main claim.

Where a party has admitted a claim, in whole or in part, a separate award may be rendered in respect of that which has been admitted.

2. MAKING OF THE AWARD

There is no statutory time limit for making the award. However, Sect. 34 of the Arbitration Act provides that if the award has not been made within the time limit agreed upon by the parties, it may be set aside unless a party has waived this ground by failing to object.

The Act provides in Sect. 30 that unless the parties have decided otherwise, the opinion of the majority of the arbitrators shall prevail, but if no majority is attained for any opinion, the opinion of the chairman shall prevail.

The Act includes a provision aiming at preventing an arbitrator from obstructing the proceedings by failing to attend deliberations of the tribunal. It is provided in Sect. 30 that where an arbitrator fails, without valid cause, to participate in the determination of an issue by the tribunal, such failure will not prevent the other arbitrators from ruling on the matter.

The Act does not contain any provision concerning the right or obligation of such an arbitrator to express a dissenting opinion in the award. It is generally considered, however, that an arbitrator is entitled to attach a dissenting opinion to the award. In practice, such arbitrator usually fully states the reasons for his dissent. The dissenting opinion does not form part of the award but is usually annexed to it.

There is a requirement for a wet ink signature on awards in arbitrations seated in Sweden. However, in 2023 the Svea Court of Appeal[1] rejected an application to annul an arbitral award, finding that while the Swedish Arbitration Act requires wet ink signatures on awards, the defect can be cured by the arbitrators later signing the award in wet ink.

3. FORM OF THE AWARD

Under Sect. 31 of the Arbitration Act the award must satisfy several requirements: it shall be in writing, it must be signed by the arbitrators, and it must state the seat of arbitration and the date when made.

There is, however, no statutory provision requiring the arbitrators to state their reasons in the award. In practice, though, arbitrators almost invariably give reasons for their award.

With respect to signing the award, it is sufficient that the award be signed by a majority of the arbitrators, provided that the reasons why all the arbitrators have not signed the award are noted therein. The parties may also agree that the chairman of the arbitral tribunal alone shall sign the award.

Unless the parties have decided that the chairman alone shall sign the award, all arbitrators are thus expected to sign the award even if one of them does not agree with the decision reached by the majority.

4. JURISDICTION (SEE ALSO CHAPTER II.5 – EFFECT OF THE AGREEMENT)

As mentioned above, Sect. 2 of the Arbitration Act provides that arbitrators may rule on their own jurisdiction to decide the dispute. If the arbitrators have decided during the proceedings that they have jurisdiction, they are thus at liberty to so rule during the proceedings by way of a decision. Such a decision may be reversed or amended by the arbitrators.

If a party is dissatisfied with an arbitrators' decision, it could request the Court of Appeal to review the decision. Such a request shall be brought within thirty days from when the party was notified of the decision. The arbitrators may continue the arbitration pending the court's determination. Importantly, under Sect. 4a of the Act, a court may not try the issue of the arbitrator's jurisdiction

1. *Friendly Building AB v. Elsafemhundranio Kommanditbolag* (Case T 3385-22, 18 April 2023).

in a way other than review by the Court of Appeal (e.g., in a declaratory action) if the request is brought after the commencement of the arbitration.

Nevertheless, before commencement of arbitration, the party may request the court to determine the arbitral tribunal's jurisdiction (in effect declaring that the relevant arbitration agreement is not binding on the requesting party) in an action for a declaratory judgment.

In addition, the party may await the final award that embodies the decision on jurisdiction, and challenge the award within two months of receipt of the award. In the latter case, the party must, however, lodge a protest with the arbitrators in order to avoid the impact of the preclusion rule set forth in Sect. 34 of the Act. A decision by the arbitrators that they do not have jurisdiction is termed an award and may be appealed to the court within two months of receipt of the award.

5. APPLICABLE LAW

Under Sect. 27a of the Arbitration Act the dispute shall be determined by application of the law or rules agreed by the parties. If the parties have not chosen an applicable law to the substance of the dispute, the law should be determined by the arbitrators. If the parties have not given any indication of which conflict of laws rules they wish to have applied, arbitrators in an arbitration taking place in Sweden would generally apply Swedish rules to this aspect of the arbitration, even if they are not bound to do so. The basic choice of law principle in Sweden is that the law with which the case has the closest connection applies.

A direction to the arbitrators to decide the matter *ex aequo et bono,* considering only what is fair and equitable in the case at hand, is also valid. However, an agreement to that effect must be expressly stated.

It should also be noted that Sect. 48 of the Act contains a provision on the law governing arbitration agreements that have an *international* connection. It provides that unless the parties have made a choice of law, the arbitration agreement shall be governed by the law of the country in which the proceedings have taken place or shall take place in accordance with the arbitration agreement.

6. SETTLEMENT

Under Sect. 27 of the Arbitration Act, the parties may have a settlement embodied in an award by consent, i.e., an award on agreed terms. Arbitrators are not obliged to render such an award, but it is considered that they should do so unless there is some legal or other obstacle.

An award on agreed terms has the same status and effect as any other award on the merits. No provision is made in the Act regarding the formal requirements

for the award or limiting the grounds on which a consent award might be set aside.

7A. CORRECTION AND INTERPRETATION OF THE AWARD

The Arbitration Act contains in Sect. 32 provisions on correction and interpretation of an award.

If the arbitrators find that the award contains any obvious inaccuracy as a consequence of a typographical, computational or other similar mistake by the arbitrators or any other person, they may, within thirty days of the date of the announcement of the award, decide to correct the award.

The arbitrators may also correct an award, or interpret the decision in an award, where any of the parties so requests within thirty days of receipt of the award by that party.

The correction or interpretation shall be done within thirty days from the date of receipt by the arbitrators of the party's request.

The Act does not state what form a correction or interpretation should take. The tribunal is free to choose a form most practical in the actual case. For instance, a minor computational error could be corrected in the original award, while in other cases a corrected award could be issued.

7B. ADDITIONAL AWARD

The Arbitration Act contains a provision on additional awards in Sect. 32. If the arbitrators by oversight have failed to decide an issue that should have been dealt with in the award, they may, within thirty days of the date of the announcement of the award, decide to supplement the award. The arbitrators may also supplement an award where any of the parties so requests within sixty days of receipt by the arbitrators of the party's request.

As with corrections of an award, the Act is silent on what form an additional form should take. Usually an additional award is attached to the original award.

8. FEES AND COSTS

a. General

Unless otherwise agreed by the parties, the arbitrators may, upon request by a party, order a party to pay compensation for the opposing party's costs, and determine the manner in which the compensation to the arbitrators shall be finally allocated between the parties. The arbitrators' order may also include interest, if a party has so requested (Sect. 42 of the Arbitration Act).

Notwithstanding use of the word "may", it is the prevailing view that arbitrators shall make a decision if either party so requests.

b. Deposit

The Arbitration Act provides in Sect. 38 that the arbitrators may request security for their compensation. They may fix separate security for individual claims. If a party fails to provide its share of the security within the period of time stipulated by the arbitrators, the opposite party may provide the entire security. If the requested security is not provided, the arbitrators may terminate the proceedings wholly or partly.

It is further provided in Sect. 38 of the Act that during the course of the arbitration proceedings, the arbitrators may decide to draw on the deposit or other security in order to cover disbursements. When the compensation of the arbitrators has been determined in a final award, and that part of the award has become enforceable, the arbitrators may appropriate their compensation by drawing on the security and the interest accrued thereon, unless the parties discharge their payment obligations in accordance with the award.

The SCC Arbitration Institute offers fund-holding both in SCC arbitrations and for *ad hoc* arbitrations, seated in Sweden or elsewhere.

c. Arbitrators' fees and expenses

In the absence of the parties' agreement otherwise, the arbitrators may under Sect. 37 of the Arbitration Act fix the compensation due to them in the final award. Sect. 37 further provides that the arbitrators are entitled to reasonable remuneration for their work, and to be reimbursed their expenses. Most often, arbitrators appointed in *ad hoc* arbitrations under the Arbitration Act are remunerated on an hourly fee basis.

Under the SCC Arbitration Rules, the arbitrators' fees and the administrative fee of the SCC are based on the amount in dispute.

The parties are jointly and severally liable to pay the compensation specified in the award. If, however, the arbitrators have declared in their award that they do not have jurisdiction to decide the dispute, the party who did not request arbitration shall be liable for such payment only to the extent called for by special circumstances.

The parties have an unconditional right to challenge the arbitrators' decision regarding the payment of compensation to the arbitrators by instituting court proceedings within two months following the date on which they received the award. If they fail to do so, the decision becomes enforceable.

d. Costs of legal assistance

The main rule in Swedish proceedings is that the losing party pays all costs reasonably necessary for the conduct of the winning party's case. If a party is only partly successful, or if there are claims and counterclaims partly won and lost, the award on costs will be adjusted accordingly.

9. NOTIFICATION OF THE AWARD AND REGISTRATION

Sect. 31 of the Arbitration Act stipulates that the award shall be delivered to the parties immediately. Sect. 40 stipulates that the arbitrators may not withhold the award pending payment of compensation.

In Sweden, there is no requirement for the registering of an award.

10. ENFORCEMENT OF DOMESTIC AND INTERNATIONAL AWARDS RENDERED IN SWEDEN (SEE ALSO CHAPTER VI – ENFORCEMENT OF FOREIGN ARBITRAL AWARDS)

Although the Arbitration Act (see **Annex I** hereto) does not say so explicitly, an award on the merits is final and binding and cannot be amended (except if corrected according to Sect. 32 or if amended after having been remitted by a court according to Sect. 35, see below). A valid award on the merits thus constitutes *res judicata.*

The award becomes enforceable when given. The enforcement of foreign awards will be treated below. If enforcement of a Swedish arbitral award becomes necessary in Sweden, the 1981 Enforcement Procedural Code, as amended, will apply. An application should be made to the competent Swedish execution authority, which will enforce the award (without any requirements of a prior *exequatur* procedure) if:

(1) The arbitration agreement does not contain any provision giving a party the right to appeal the award on substantive grounds.
(2) The award fulfils the requirements in Sect. 31 of the Act with regard to written form and signature, the lack of which makes the award invalid under Sect. 33 of the Act (see Chapters V.3 above and VI.3 below).

The execution authority will not decide on the other grounds for invalidity under Sect. 33 of the Act, i.e., non-arbitrability and violation of public policy, but will, if there is reason to believe that the award is invalid on any such ground, instruct the applicant to apply to the court and have the issue of validity decided there.

The execution authority will not decide whether or not the award may be set aside on the basis of Sect. 34 of the Act, but will rather proceed to execution of the award. If an application to set aside an award or to have it declared invalid has been submitted to a court of law, the court in question will then also rule on the question of the execution of the award.

Before enforcement, the other party shall be given an opportunity to submit its views.

11. PUBLICATION OF THE AWARD

Although not explicitly stated in the Arbitration Act, the confidentiality of arbitration is strongly recognized in Sweden (see also Chapter IV.8 above). Arbitral awards are therefore very rarely published. When awards are published one may assume that this is with the consent of the parties.

As of 2022, selected awards from the SCC Arbitration Institute have been published in the ICCA Awards Series in the online database KluwerArbitration.com, in the section "Focus on Sweden". The awards, selected by the SCC, have been redacted in order to maintain confidentiality.

Between 1999 and 2010, the SCC Arbitration Institute reported on awards in the Stockholm International Arbitration Review. This journal is no longer published. Awards published in this review were suitably edited to meet requirements of confidentiality.

Furthermore, the SCC regularly publishes practice notes on the procedures in SCC arbitrations, *inter alia* relating to emergency arbitration proceedings, SCC decisions on *prima facie* jurisdiction, and SCC decisions on challenges to arbitrators. These practice notes are available on the SCC website, <www.sccarbitrationinstitute.com>.

Chapter VI. Enforcement of Foreign Arbitral Awards

1. ENFORCEMENT UNDER CONVENTIONS AND TREATIES

a. Treaty adherence

Sweden has ratified the Geneva Protocol on Arbitration Clauses of 1923 (the "Geneva Protocol"), the Convention on the Execution of Foreign Arbitral Awards of 1927 (the "Geneva Convention"), and the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), without availing itself of any of the reservations that are open to the Contracting States.

Sweden has also ratified the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "ICSID Convention"). A special statute of 1966 declares that awards made in accordance with this Convention are valid in Sweden. They are immediately enforceable just like court judgments if they contain an order for the payment of money.

b. Incorporation into Swedish law

The Arbitration Act (see **Annex I** hereto) incorporates provisions that implement the New York Convention.

The Act stipulates in Sect. 52 that an award that has been rendered abroad shall be considered a foreign award and that in applying the Act an award shall

be considered to have been made in the State in which the seat of arbitration is situated. In other words, under Swedish law, a territorial test is applied, which means that all awards rendered in a country other than Sweden are considered to be foreign and thus enforceable under the New York Convention and the corresponding Swedish legislation. It should also be noted that for present purposes it is immaterial under Swedish law which arbitration law, or which system of arbitration procedure, has been used in rendering the award.

The Act includes the relevant provisions of the New York Convention. In ratifying the New York Convention, Sweden did not exercise either the reciprocity reservation or the commercial reservation which was available to the signatories. Accordingly, foreign arbitral awards wherever they are rendered outside Sweden, and whether of a commercial character or not, are enforceable in Sweden pursuant to the New York Convention.

c. Procedure

For enforcing a foreign arbitral award in Sweden, a convenient summary method is available. Under Sect. 56 of the Arbitration Act, application is made to the Svea Court of Appeal in Stockholm, which has been given exclusive first instance jurisdiction as regards the summary procedure for enforcement. The opposing party shall be given the opportunity to be heard. If leave is granted, execution can be obtained immediately.

Both parties may appeal to the Supreme Court, but execution, if granted, will not be suspended by the appeal. If, however, proceedings are pending elsewhere to set aside the award or a motion for a stay of execution has been submitted, under Sect. 58 the Court of Appeal may postpone its decision and request security from the opposing party.

d. Grounds for refusal of enforcement

The circumstances under which a foreign arbitral award will be refused recognition and enforcement are listed in Sect. 54 of the Arbitration Act and conform to Art. V(1) of the New York Convention.

The Act in Sect. 55 mentions two further grounds, also found in the New York Convention (Art. V(2)), on which recognition and enforcement of foreign arbitral awards will be refused, namely that the award concerns a question that is not arbitrable under Swedish law, or that recognition and enforcement of the award would violate Swedish public policy.

e. Court decisions

It is noteworthy that the Swedish Supreme Court in several cases has stressed the importance of respecting the intentions underlying the New York Convention. The relevant example is *Planavergne S.A. v. Kalle Bergander Stockholm AB (NJA 2003 s. 379)*, where the Court stated that the provisions regarding enforcement should be interpreted in light of "the general efforts to

facilitate enforcement which [is] the main idea behind the [New York] Convention".

2. ENFORCEMENT WHERE NO CONVENTION OR TREATY APPLIES

Sweden did not make the reciprocity reservation when acceding to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention), and thus the conditions of this Convention apply to awards irrespective of where they were made. Accordingly, the rule of the New York Convention that no *exequatur* (leave of enforcement) is necessary from the country where the award was made, is applicable to all cases.

3. RULES OF PUBLIC POLICY

Public policy is a ground both for setting aside and for refusing enforcement of the award. A restrictive view on the application of public policy prevails in Sweden. Examples mentioned in the *travaux préparatoires* to the Arbitration Act include awards rendered as a result of threats or bribes, or claims based upon criminal acts as debts emanating from unlawful gambling.

There is only one recorded case on this point. In 2003 the Supreme Court denied enforcement in *Robert G. v. Johnny L. (NJA 2002 C 45)*, concluding that "the circumstances in connection with the arbitral award and its origin are such that it must be deemed manifestly incompatible with the fundamental principles of Swedish law to enforce the award".[2]

Chapter VII. Means of Recourse

1. APPEAL ON THE MERITS FROM AN ARBITRAL AWARD

a. Appeal to a second arbitral instance

The parties may agree on a second arbitral instance by referring to arbitration rules or otherwise. Such agreements are very rare.

b. Appeal to a court

The Arbitration Act (see **Annex I** hereto) does not provide for any appeal on the merits to the courts. However, there is no restriction on parties making an agreement to such effect, although this happens very rarely, if ever.

2. For an analysis of the case, see Heuman, Lars and Millqvist, Göran, "Swedish Supreme Court Refuses to Enforce an Arbitral Award Pursuant to the Public Policy Provision of the New York Convention", 20 J.INT'L Arb. (2003).

2. SETTING ASIDE OF THE ARBITRAL AWARD (ACTION FOR ANNULMENT, VACATION OF THE AWARD)

a. Grounds for invalidity or setting aside

The Court may not enter into the merits of the case. Nor can an award be set aside on the basis of an error in law or in fact.

The Arbitration Act contains two groups of narrow procedural grounds, the application of which may result in either an invalid award or a challengeable award.

i. Grounds for invalidity

Sect. 33 of the Arbitration Act sets out three grounds for invalidity of an arbitral award, namely:

(1) the award decides an issue which is non-arbitrable;
(2) the award or the manner in which the award has been rendered is clearly incompatible with the basic principles of the Swedish legal system (public policy); and
(3) the award has not been made in writing or it has not been signed by the arbitrators.

It should be noted that these three grounds are the only grounds on which an arbitral award may be rendered invalid. Hence, the list of grounds is exhaustive.

As mentioned in Chapter VII.2.*b* below, so-called exclusion agreements are accepted in certain cases. This does not, however, extend to a violation of the rules of public policy. As mentioned under Chapter VI.3 above, a restrictive view on the application of public policy prevails in Sweden.

It should also be noted that a finding of invalidity does not necessarily mean that the entire award is automatically invalid. If the arbitrators have decided issues that are non-arbitrable and, at the same time, issues that are arbitrable, only that part of the award which deals with non-arbitrable issues will be invalidated. This presupposes, of course, that it is possible to separate the non-arbitrable issues from the arbitrable issues in the award.

ii. Challengeable awards

Under Sect. 34 of the Arbitration Act an arbitral award shall, at the request of a party, be wholly or partially set aside:

- if it is not covered by a valid arbitration agreement between the parties;
- if the arbitrators have made the award after the expiration of the time limit decided on by the parties;
- if the arbitrators have exceeded their mandate, in a manner that probably influenced the outcome;

– if arbitral proceedings, according to Sect. 47, should not have taken place in Sweden;
– if an arbitrator was appointed in a manner that violates the parties' agreement or the Act;
– if an arbitrator was unauthorized due to any circumstance set forth in Sects. 7 or 8, i.e., the arbitrator either lacks full legal capacity or a circumstance exists which diminishes confidence in the arbitrator's impartiality and independence; or
– if, without fault of the party, there otherwise occurred an irregularity in the course of the proceedings which probably influenced the outcome of the case.

b. Procedure

i. General

If an award is invalid it is in principle not necessary to take any steps to have it set aside. A declaratory judgment, obtained by an ordinary action in the courts may, however, be desirable for practical reasons. There is no time limit for bringing such an action.

A party who wishes to challenge the award (have it set aside) must bring an action in the Court of Appeal within the jurisdiction in which the arbitral proceedings were held, alleging a ground of challenge within a period of two months from the time when it received the award. If a ground is substantiated, the court will set aside the award. However, it can make an order which sets aside the award only partially, if the part affected by the ground of challenge is severable from the rest of the award.

Determinations by the Court of Appeal may not be appealed. For the Supreme Court to review a determination of the Court of Appeal, leave for appeal is required. The Court of Appeal may grant such leave if it is of importance as a matter of precedent that the appeal be considered by the Supreme Court (Sect. 43 of the Arbitration Act).

It should also be noted that under Sect. 45a of the Act, in the challenge procedure related to jurisdictional decisions and in setting aside procedures, the Court of Appeal and the Supreme Court may, upon the request of the party, accept oral evidence in English without interpretation into Swedish.

ii. Waiver

So-called exclusion agreements are accepted in certain cases under Sect. 51 of the Arbitration Act. Two non-Swedish parties may enter into an agreement by which they waive in advance the right under the Act to challenge the award. This presupposes, however, that the parties in question are commercial parties and that the relationship between them is of a commercial nature.

Consequently, it is stipulated that if neither of the parties in a commercial relationship has its domicile, or place of business, in Sweden, the parties may, by agreement in writing, exclude or limit the applicability of the grounds for

setting aside awards. It is important to note that the exclusion agreement must be in writing and that it must *specifically* refer to the parties' waiver of the right to challenge an award. This means, for example, that it will not be sufficient for parties to refer to institutional rules which may contain clauses similar to an exclusion agreement.

This can be done both before the dispute has arisen, which is the most common, and thereafter.

Invalidity is beyond the control of the parties since the invalidity grounds have been formulated with a view to safeguarding the interest of the general public and/or of third parties.

A party is further not entitled to rely on a circumstance where he may be considered to have waived his right to rely on that circumstance by taking part in the proceedings without any objection based on that circumstance, or otherwise (Sect. 34).

The fact that a party has appointed an arbitrator in a case does not, however, imply a waiver of that party's right to challenge the jurisdiction of the tribunal in question.

iii. Effect of an award that has been set aside

If an arbitration award has been set aside or declared void a renewed examination of the dispute may be conducted by arbitrators. The arbitration agreement thus revives. Exceptions, of course, have to be made for cases where a court has ruled that the arbitration agreement was not valid or was not applicable to the dispute decided.

3. OTHER MEANS OF RECOURSE

The only other means of recourse available against an award is remission as provided in Sect. 35. It is stipulated that a court may stay an action concerning the invalidity or setting aside of an award for a certain period of time to provide the arbitrators with an opportunity to resume the arbitration proceedings, or to take other action which in the opinion of the arbitrators would eliminate the grounds for the invalidity or for the setting aside of the award.

Chapter VIII. Conciliation / Mediation

1. GENERAL

a. Overview

Sweden has not adopted the UNCITRAL Model Law on International Commercial Conciliation, or any other piece of legislation on conciliation. Amicable settlements of disputes and controversies are, however, much in

favour in Sweden. Parties invariably seek to settle disputes before resorting to litigation or arbitration and disputes which are not settled before litigation or arbitration is initiated are often settled in the course of the proceedings. However, such attempts at settlements are informal and do not follow any particular rules.

The SCC Arbitration Institute administers mediations, both domestic and international, in accordance with the SCC Mediation Rules, adopted in 1999 and considerably amended in 2014 and 2023. The SCC recommends that parties use a model mediation clause, such as this:

> "Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be referred to Mediation in accordance with the Mediation Rules of the SCC Arbitration Institute, unless one of the parties objects."

The SCC also offers the parties combined model clauses including mediation, for example:

> "Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall first be referred to Mediation in accordance with the Mediation Rules of the SCC Arbitration Institute, unless one of the parties objects.
>
> If one of the parties objects to Mediation or if the Mediation is terminated, the dispute shall be finally resolved [...]"
>
> When using the model clause, one of the options below should be inserted.
>
> Option 1: "... by arbitration in accordance with the Arbitration Rules of the SCC Arbitration Institute."
>
> Option 2: "... by arbitration in accordance with the Rules for Expedited Arbitrations of the SCC Arbitration Institute."
>
> Option 3: "… by arbitration at the SCC Arbitration Institute (the SCC). The Rules for Expedited Arbitrations shall apply, unless the SCC, taking into account the complexity of the case, the amount in dispute and other circumstances, determines that the Arbitration Rules of the SCC Arbitration Institute shall apply. In the latter case, the SCC shall also decide whether the tribunal shall be composed of one or three arbitrators.
>
> Option 4: "... in any court of competent jurisdiction."

In Sweden, both facilitating and evaluating mediations are used to resolve commercial disputes.

b. SCC Express

i. General

In 2021, the SCC Arbitration Institute launched the SCC Rules for Express Dispute Assessment ("SCC Express"), a unique neutral evaluation tool. In July 2023, the first SCC Express Dispute Assessment was handed down in a case administered under these rules. The first SCC Express case was concluded on time, within three weeks of being referred to the Neutral.

The SCC Express was designed in consultation with the SCC's users to provide an alternative form of dispute resolution to address a perceived gap in the available dispute resolution services. The SCC Express is a consensual and confidential process through which parties to a dispute receive a non-binding legal assessment of their dispute (the Express Dispute Assessment) within twenty-one days of the dispute being referred to the Neutral, for a fixed fee of EUR 29,000. The Express Dispute Assessment is made by a neutral legal expert (the Neutral) who manages the proceedings closely and plays an active role in them. The Express Dispute Assessment includes the Neutral's reasoned findings on the issues presented. The parties may also agree that the Express Dispute Assessment will be contractually binding.

The SCC Express was designed to help parties move forward in their contractual relationship with greater predictability of time and cost. It is primarily aimed at parties who have a continuing business relationship, value being able to work efficiently on a joint project, are looking for a swift and cost-effective dispute resolution process, are likely to accept the assessment without further legal action and are interested to know how the issues in dispute would be assessed in a full arbitration or litigation.

ii. Administrating an SCC Express case

Upon receipt of a request for an SCC Express by one party and payment of the administration fee of EUR 4,000, the SCC Arbitration Institute contacts the responding party to give it the opportunity to respond and provide its consent to the process. Once the responding party's consent has been confirmed, the remaining fee of EUR 25,000 must be paid. The SCC will thereafter appoint a Neutral within forty-eight hours and refer the case to him or her. Thereafter, the Neutral will guide the parties through the SCC Express process. To facilitate user-friendly, secure, and confidential communications and submissions of the SCC Express participants, the SCC provides access to its digital case management tool, the SCC Platform. The Neutral or either party can raise the question of whether the outcome of their SCC Express Dispute Assessment should be made binding on the parties. Within twenty-one days, the Neutral provides the Express Dispute Assessment to the parties, including a summary of the Neutral's conclusions on the issues in dispute.

iii. The first SCC Express case in 2023

In the first SCC Express case administered by the SCC, the parties had enjoyed a longstanding commercial relationship and shared a mutual interest in maintaining good relations. A disagreement arose as to the right of one of the parties to further payments under the parties' main agreement. The parties agreed to submit their dispute to the SCC under the SCC Express Rules, seeking a binding assessment on whether the requesting party was entitled to further payments and, if so, how much. After two rounds of written submissions and a short oral hearing, the Neutral delivered her assessment within the three-week deadline. The timely delivery of the binding assessment ensured a swift resolution to the parties' disagreement in accordance with the SCC Express Rules. The Neutral's reasoned assessment provided the parties with certainty in continuing their commercial relationship, allowing them to focus on the business at hand.

Further information on the SCC Express is available at <www.sccarbitrationinstitute.com> and in the SCC Express Guidelines.

2. LEGAL PROVISIONS

Under the Swedish Procedural Code, litigants are to be encouraged to conciliate their dispute. A court may even direct the parties to meet with a specially appointed mediator in order to try to settle their dispute. However, neither the Procedural Code, nor any other piece of legislation contains any rules on conciliation.

Chapter IX. Investment Treaty Arbitration

1. CONVENTIONS AND TREATIES

Sweden is a party to both the ICSID Convention and the 1994 Energy Charter Treaty (ECT). Sweden has also concluded more than seventy bilateral investment treaties (BITs), the overwhelming majority of which were made over the past two decades. It should be mentioned, however, that even before 1990 Sweden had concluded a number of bilateral "trade agreements" providing for quite similar standards of protection of foreign investments as the modern ones. One example is the Swedish-Cote d'Ivoire Trade Agreement made in 1965; another is the Swedish-Madagascar Trade Agreement made in 1966.

2. INVESTMENT ARBITRATION

a. BITs and investor-State disputes

Although Sweden does not employ a model BIT, all of its modern investment agreements provide for international standards of treatment of foreign investments, including non-discrimination, fair and equitable treatment, most favoured nation regime and protection against expropriation.

Similarly, all of the modern BITs contain an investor-State dispute resolution provision listing a number of options at the investor's choice. Some BITs include both arbitration and competent courts of the contracting party in whose territory the investment is made, others only provide for arbitration. The agreements with States that are also signatories to the ICSID Convention quite naturally include a reference to ICSID and, additionally, to arbitration under the UNCITRAL Arbitration Rules. For the agreements with States that are not party to the ICSID Convention, disputes are to be referred to *ad hoc* proceedings under the UNCITRAL Arbitration Rules.

The texts of the Swedish BITs in force are published on the official site of the Swedish Government.[3]

The first investment dispute against Sweden was initiated at ICSID in 2022 under the BIT between Sweden and China (1982).

b. Investment arbitrations at the SCC Arbitration Institute

It is worth mentioning that Sweden (and, in particular, the SCC Arbitration Institute) is a well-known forum for the resolution of investment disputes. Between 1993 and 2023 the SCC registered a total of 122 investment treaty disputes. Of the 122 investment treaty disputes administered at the SCC, ninety-one were administered under the SCC Arbitration Rules, twenty-six under the UNCITRAL Rules, and five in *ad hoc* arbitrations. Of these 122 disputes, seventy-two had their legal source in a bilateral investment treaty, thirty-two had their source in the ECT, and eighteen had their source in investment contracts or other types of contracts. The claimants have come from thirty different countries. In addition, the first award in a dispute based on the ECT was rendered under the SCC Arbitration Rules.

At the date of writing, there are 211 BITs that either explicitly mention Stockholm or the SCC Arbitration Institute, with 159 of these treaties currently in effect. Of the BITs mentioning the SCC, thirty-four were concluded between EU states, and twenty-seven of them have been terminated recently. Furthermore, the SCC is designated as a dispute resolution venue within the Russia-Ukraine BIT and the ECT. In January 2024, five investor-State arbitrations were pending at the SCC.

The investment proceedings under the auspices of the SCC are, as seen above, most often governed by the SCC Arbitration Rules, which adequately

3. See <www.regeringen.se/rattsliga-dokument/>.

satisfy the needs of both large and small-scale arbitrations. In 2017, a new Appendix III was included in the SCC Arbitration Rules, including further specifications for investment treaty arbitrations, *inter alia* on the number of arbitrators, submissions of third non-disputing persons, and the role of non-disputing treaty Parties.

As provided in the SCC Arbitration Rules, all arbitrations at the SCC are confidential, including those against States, unless the parties decide differently.

3. NATIONAL INVESTMENT LEGISLATION

The Swedish Parliament passed a new legislative act on 13 September 2023 regarding screening of foreign direct investments in Swedish entities (the "FDI Act"). The FDI Act provides a supervisory screening authority with the power to screen foreign direct investments and, if necessary, issue a prohibition on an investment. The purpose of such screening is to examine whether the foreign investment in question may harm national security or the public order.

The FDI Act entered into force on 1 December 2023 and will have a significant impact on mergers, acquisitions, and investments in Sweden.

ANNEX I

THE SWEDISH ARBITRATION ACT (SFS 1999:116)*

THE ARBITRATION AGREEMENT

Section 1
Disputes concerning matters in respect of which the parties may reach a settlement may, by agreement, be referred to one or several arbitrators for resolution. Such an agreement may relate to future disputes pertaining to a legal relationship specified in the agreement. The dispute may concern the existence of a particular fact.

In addition to interpreting agreements, the filling of gaps in contracts can also be referred to arbitrators.

Arbitrators may rule on the civil law effects of competition law as between the parties.

Section 2
The arbitrators may rule on their own jurisdiction to decide the dispute.

If the arbitrators have rendered a decision finding that they have jurisdiction to adjudicate the dispute, any party that disagrees with the decision may request the Court of Appeal to review the decision. Such a request shall be brought within thirty days from when the party was notified of the decision. The arbitrators may continue the arbitration pending the court's determination.

The provisions of Sections 34 and 36 apply in an action to challenge an arbitration award that includes a decision on jurisdiction.

Section 3
If the validity of an arbitration agreement which constitutes part of another agreement must be determined in conjunction with a determination of the jurisdiction of the arbitrators, the arbitration agreement shall be deemed to constitute a separate agreement.

Section 4
A court may not, over an objection of a party, rule on an issue which, pursuant to an arbitration agreement, shall be decided by arbitrators.

A party must invoke an arbitration agreement on the first occasion the party pleads its case on the merits in court. Invoking an arbitration agreement on a later occasion shall have no effect unless the party had a legal excuse and invoked the arbitration agreement as soon as the excuse ceased to exist. The invocation of an arbitration agreement shall be considered notwithstanding that the party who invoked the agreement has allowed an issue which is covered by the arbitration agreement to be determined by the Swedish Enforcement Authority in a case concerning expedited collection procedures.

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* Updated as per SFS 2018:1954, entry into force 1 March 2019. Unofficial translation prepared by Joel Dahlquist Cullborg on behalf of the Arbitration Institute of the Stockholm Chamber of Commerce.

During the pendency of a dispute before arbitrators or prior thereto, a court may, irrespective of the arbitration agreement, issue such decisions in respect of security measures as the court has jurisdiction to issue.

Section 4 a
A court may not, over the objections of a party, try the issue of the arbitrators' jurisdiction in a certain arbitration in a way other than as provided for in Section 2, if the request is brought after the commencement of the arbitration.

The first paragraph shall not apply to a dispute between a consumer and a business entity, if the consumer maintains that an arbitration agreement is invoked against him or her contrary to Section 6.

Section 5
A party shall forfeit its right to invoke the arbitration agreement as a bar to court proceedings if the party:

1. has opposed a request for arbitration;
2. fails to appoint an arbitrator in due time; or
3. fails, within due time, to provide its share of the requested security for compensation to the arbitrators.

Section 6
If a dispute between a business entity and a consumer concerns goods, services, or any other products supplied principally for private use, an arbitration agreement may not be invoked where such was entered into prior to the dispute. However, such agreements shall apply with respect to rental or lease relationships where, through the agreement, a regional rent tribunal or a regional tenancies tribunal is appointed as an arbitral tribunal and the provisions of Chapter 8, Section 28 or Chapter 12, Section 66 of the Land Code do not prescribe otherwise.

The first paragraph shall not apply where the dispute concerns an agreement between an insurer and a policy-holder concerning insurance based on a collective agreement or group agreement and handled by representatives of the group. Nor shall the first paragraph apply where Sweden's international obligations provide to the contrary.

THE ARBITRATORS

Section 7
Any person who possesses full legal capacity in regard to his or her actions and property may act as an arbitrator.

Section 8
An arbitrator shall be impartial and independent.

If a party so requests, an arbitrator shall be released from appointment if there exists any circumstance that may diminish confidence in the arbitrator's impartiality or independence. Such a circumstance shall always be deemed to exist:

1. if the arbitrator or a person closely associated with the arbitrator is a party, or otherwise may expect noteworthy benefit or detriment as a result of the outcome of the dispute;

2. if the arbitrator or a person closely associated with the arbitrator is the director of a company or any other association which is a party, or otherwise represents a party or any other person who may expect noteworthy benefit or detriment as a result of the outcome of the dispute;
3. if the arbitrator, in the capacity of expert or otherwise, has taken a position in the dispute, or has assisted a party in the preparation or conduct of its case in the dispute; or
4. if the arbitrator has received or demanded compensation in violation of Section 39, second paragraph.

Section 9
A person who is asked to accept an appointment as arbitrator shall immediately disclose all circumstances which, pursuant to Sections 7 or 8, might be considered to prevent the person from serving as arbitrator. An arbitrator shall inform the parties and the other arbitrators of such circumstances as soon as all arbitrators have been appointed and thereafter in the course of the arbitral proceedings as soon as the arbitrator has learned of any new circumstance.

Section 10
A challenge of an arbitrator on account of a circumstance set forth in Section 8 shall be presented within fifteen days from the date on which the party became aware both of the appointment of the arbitrator and of the existence of the circumstance. The challenge shall be adjudicated by the arbitrators, unless the parties have decided that it shall be determined by another party.

If the challenge is successful, the decision shall not be subject to appeal.

A party who is dissatisfied with a decision denying a challenge or dismissing a challenge as untimely may file an application with the District Court that the arbitrator be released from appointment. The application must be submitted within thirty days from the date on which the party was notified of the decision. The arbitrators may continue the arbitral proceedings pending the determination of the District Court.

Section 11
The parties may agree that a challenge as referred to in Section 10, first paragraph, shall be conclusively determined by an arbitration institution.

Section 12
The parties may determine the number of arbitrators and the manner in which they shall be appointed.

Sections 13–16 shall apply unless the parties have agreed otherwise.

If the parties have so agreed, and any of the parties so requests, the District Court shall appoint arbitrators also in situations other than those stated in Sections 14–17.

Section 13
There shall be three arbitrators. Each party appoints one arbitrator, and the arbitrators so appointed appoint the third.

Section 14
If each party is required to appoint an arbitrator and one party has notified the opposing party of its choice of arbitrator in a request for arbitration pursuant to Section 19, the opposing party must, within thirty days of receipt of the notice, notify the first party in writing of its choice of arbitrator. A party who has notified the opposing party of its choice of arbitrator in this manner may not revoke the choice without the consent of the opposing party.

If the opposing party fails to appoint an arbitrator within the specified time, the District Court shall appoint an arbitrator upon the request of the first party.

If arbitration has been requested against several parties and these parties are unable to jointly appoint an arbitrator, the District Court shall, upon the request of a respondent party within the time specified in the first paragraph, appoint arbitrators on behalf of all parties, and simultaneously also release any arbitrator already appointed.

Section 15
If an arbitrator shall be appointed by other arbitrators, but they fail to do so within thirty days from the date on which the last arbitrator was appointed, the District Court shall appoint the arbitrator upon the request of a party.

If an arbitrator shall be appointed by someone other than a party or arbitrators, but this is not done within thirty days of the date when the party desiring the appointment of an arbitrator requested that the person responsible for the appointment make such appointment, the District Court shall, upon the request of a party, appoint the arbitrator. The same shall apply if an arbitrator shall be appointed by the parties jointly, but they have failed to agree within thirty days from the date on which the question was raised through receipt by one party of notice from the opposing party.

Section 16
If an arbitrator resigns or is released due to circumstances which were known at the time of appointment, the District Court shall, upon the request of a party, appoint a new arbitrator. If the arbitrator was appointed by a party, the District Court shall appoint the person suggested by that party, unless there are special reasons speaking against it.

If an arbitrator cannot complete the assignment due to circumstances which arise after his or her appointment, the person who originally was required to make the appointment shall instead appoint a new arbitrator. Section 14, first and second paragraphs, and Section 15 shall apply to such an appointment. The time-limit of thirty days for the appointment of a new arbitrator applies also to the party who requested the arbitration, and is calculated in respect to all parties from the date on which the person who shall appoint the arbitrator became aware thereof.

Section 17
If an arbitrator has delayed the proceedings, the District Court shall, upon the request of a party, release the arbitrator and appoint another arbitrator. The parties may decide that such a request shall, instead, be conclusively determined by an arbitration institution.

Section 18
If a party has requested that the District Court appoint an arbitrator pursuant to Section 12, third paragraph, or Sections 14–17, the Court may reject the request only if it is manifestly obvious that the arbitration is not legally permissible.

THE PROCEEDINGS

Section 19

Unless otherwise agreed by the parties, the arbitral proceedings are initiated when a party receives a request for arbitration in accordance with the second paragraph hereof.

A request for arbitration must be in writing and include:

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

Section 20

If there is more than one arbitrator, one of them shall be appointed chairman. Unless the parties or the arbitrators have decided otherwise, the chairman shall be the arbitrator appointed by the other arbitrators or by the District Court.

Section 21

The arbitrators shall handle the dispute in an impartial, practical, and speedy manner. They shall act in accordance with the decisions of the parties, unless they are impeded from doing so.

Section 22

The parties determine which location in Sweden shall be the seat of arbitration. If the parties have not done so, the arbitrators shall determine the seat of arbitration.

The arbitrators may hold hearings and other meetings elsewhere in Sweden or abroad, unless otherwise agreed by the parties.

Section 23

Within the period of time determined by the arbitrators, the claimant shall state its claims in respect of the issue stated in the request for arbitration, as well as the circumstances invoked by the claimant in support thereof. Thereafter, within the period of time determined by the arbitrators, the respondent shall state its position in relation to the claims, and the circumstances invoked by the respondent in support thereof.

The claimant may submit new claims, and the respondent may submit its own claims, provided that the claims fall within the scope of the arbitration agreement and, taking into consideration the time at which they are submitted or other circumstances, the arbitrators do not consider it inappropriate to adjudicate such claims. Subject to the same conditions, during the proceedings, each party may amend or supplement previously presented claims and may invoke new circumstances in support of its case.

The first and second paragraphs hereof shall not apply if the parties have decided otherwise.

Section 23 a

An arbitration may be consolidated with another arbitration, if the parties agree to such consolidation, if it benefits the administration of the arbitration, and if the same arbitrators have been appointed in both cases. The arbitrations may be separated, if there are reasons for it.

Section 24
The arbitrators shall afford the parties, to the extent necessary, an opportunity to present their respective cases in writing or orally. If a party so requests, and provided that the parties have not otherwise agreed, an oral hearing shall be held prior to the determination of an issue referred to the arbitrators for resolution.

A party shall be given an opportunity to review all documents and all other materials pertaining to the dispute which are supplied to the arbitrators by the opposing party or another person.

If one of the parties, without valid cause, fails to appear at a hearing or otherwise fails to comply with an order of the arbitrators, such failure shall not prevent a continuation of the proceedings and a resolution of the dispute on the basis of the existing materials.

Section 25
The parties shall supply the evidence. However, the arbitrators may appoint experts, unless both parties are opposed thereto.

The arbitrators may refuse to admit evidence presented if it is manifestly irrelevant to the dispute or if such refusal is justified having regard to the time at which the evidence is invoked.

The arbitrators may not administer oaths or truth affirmations. Nor may they impose conditional fines or otherwise use compulsory measures in order to obtain requested evidence.

Unless the parties have agreed otherwise, the arbitrators may, at the request of a party, decide that, during the proceedings, the opposing party must undertake a certain interim measure to secure the claim which is to be adjudicated by the arbitrators. The arbitrators may prescribe that the party requesting the interim measure must provide reasonable security for the damage which may be incurred by the opposing party as a result of the interim measure.

Section 26
If a party wishes a witness or an expert to testify under oath, or a party to be examined under truth affirmation, the party may, after obtaining the consent of the arbitrators, submit an application to such effect to the District Court. The aforementioned shall apply if a party wishes that a party or other person be ordered to produce as evidence a document or an object. If the arbitrators consider that the measure is justified having regard to the evidence in the case, they shall approve the request. If the measure may lawfully be taken, the District Court shall grant the application.

The provisions of the Code of Judicial Procedure shall apply with respect to a measure as referred to in the first paragraph. The arbitrators shall be summoned to hear the testimony of a witness, an expert, or a party, and be afforded the opportunity to ask questions. The absence of an arbitrator from the giving of testimony shall not prevent the hearing from taking place.

THE AWARD

Section 27
The issues referred to the arbitrators shall be decided in an award. If the arbitrators terminate the arbitral proceedings without deciding such issues, this shall also be done through an award, except for cases referred to in the third paragraph.

If the parties enter into a settlement agreement, the arbitrators may, at the request of the parties, confirm the settlement in an award.

Other determinations, which are not decided in an award, are designated as decisions. The dismissal of an arbitration is also designated as a decision. The provisions of this Act that concern arbitral awards also apply to such decisions, to the extent applicable.

The assignment of the arbitrators shall be deemed complete when they have delivered a final award, unless otherwise provided in Sections 32 or 35.

Section 27 a
The dispute shall be determined with application of the law or rules agreed to by the parties. Unless otherwise agreed by the parties, a reference to the application of a certain state's law shall be deemed to include that state's substantive law and not its rules of private international law.

If the parties have not come to an agreement in accordance with the first paragraph, the arbitrators shall determine the applicable law.

The arbitrators may base the award on ex aequo et bono considerations only if the parties have authorized them to do so.

Section 28
If a party withdraws a claim, the arbitrators shall dismiss that part of the dispute, unless the opposing party requests that the arbitrators rule on the claim.

Section 29
A part of the dispute, or a certain issue which is of significance to the resolution of the dispute, may be decided through a separate award, unless opposed by both parties. However, a claim invoked as a defence by way of set off shall be adjudicated in the same award as the main claim.

If a party has admitted a claim, in whole or in part, a separate award may be rendered in respect of that which has been admitted.

Section 30
If an arbitrator fails, without valid cause, to participate in the determination of an issue by the arbitral tribunal, such failure will not prevent the other arbitrators from ruling on the matter.

Unless the parties have decided otherwise, the opinion agreed upon by the majority of the arbitrators participating in the determination shall prevail. If no majority is attained for any opinion, the opinion of the chairman shall prevail.

Section 31
An award shall be made in writing and be signed by the arbitrators. It suffices that the award is signed by a majority of the arbitrators, provided that the reason why all of the

arbitrators have not signed the award is noted therein. The parties may decide that the chairman of the arbitral tribunal alone shall sign the award.

The award shall state the seat of the arbitration and the date when the award is made.

The award shall be delivered or sent to the parties immediately.

Section 32

If the arbitrators find that an award contains any obvious inaccuracy as a consequence of a typographical, computational, or other similar mistake by the arbitrators or any another person, or if the arbitrators by oversight have failed to decide an issue which should have been dealt with in the award, they may, within thirty days of the date of the announcement of the award, decide to correct or supplement the award. They may also correct or supplement an award, or interpret the decision in an award, if any of the parties so requests within thirty days of receipt of the award by that party.

If, upon the request of any of the parties, the arbitrators decide to correct an award or interpret the decision in an award, such shall take place within thirty days from the date of receipt by the arbitrators of the party's request. If the arbitrators decide to supplement the award, such shall take place within sixty days.

Before any decision is made pursuant to this Section, the parties should be afforded an opportunity to express their views with respect to the measure.

INVALIDITY OF AWARDS AND SETTING ASIDE AWARDS

Section 33

An award is invalid:

1. if it includes determination of an issue which, in accordance with Swedish law, may not be decided by arbitrators;
2. if the award, or the manner in which the award arose, is clearly incompatible with the basic principles of the Swedish legal system; or
3. if the award does not fulfil the requirements with regard to the written form and signature in accordance with Section 31, first paragraph.

The invalidity may apply to a certain part of the award.

Section 34

An award that may not be challenged under Section 36 shall, following an application, be wholly or partially set aside upon the request of a party:

1. if it is not covered by a valid arbitration agreement between the parties;
2. if the arbitrators have made the award after the expiration of the time limit set by the parties;
3. if the arbitrators have exceeded their mandate, in a manner that probably influenced the outcome;
4. if the arbitration, according to Section 47, should not have taken place in Sweden;
5. if an arbitrator was appointed in a manner that violates the parties' agreement or this Act,
6. if an arbitrator was unauthorized to adjudicate the dispute due to any circumstance set forth in Sections 7 or 8; or

7. if, without fault of the party, there otherwise occurred an irregularity in the course of the proceedings which probably influenced the outcome of the case.

A party shall not be entitled to rely upon a circumstance which, through participation in the proceedings without objection, or in any other manner, the party may be deemed to have waived. A party shall not be regarded as having accepted the arbitrators' jurisdiction to determine the issue referred to arbitration solely by having appointed an arbitrator. It follows from Sections 10 and 11 that a party may lose the right under sub-section 6, first paragraph, to rely upon a circumstance as set forth in Section 8.

An action must be brought within two months from the date upon which the party received the award or, if correction, supplementation, or interpretation has taken place pursuant to Section 32, within a period of two months from the date when the party received the award in its final wording. Following the expiration of the time limit, a party may not invoke a new ground of objection in support of its claim.

Section 35

A court may stay proceedings concerning the invalidity or setting aside of an award for a certain period of time in order to provide the arbitrators with an opportunity to resume the arbitral proceedings or to take some other measure which, in the opinion of the arbitrators, will eliminate the ground for the invalidity or setting aside:

1. provided the court holds that the claim in the case shall be accepted and either of the parties requests a stay; or
2. both parties request a stay.

If the arbitrators make a new award, a party may, within the period of time determined by the court and without issuing a writ of summons, challenge the award insofar as it was based upon the resumed arbitral proceedings or an amendment to the first award.

Section 36

An award whereby the arbitrators concluded the proceedings without ruling on the issues submitted to them for resolution may be amended, in whole or in part, upon the application of a party. An action must be brought within two months from the date upon which the party received the award or, if correction, supplementation, or interpretation has taken place in accordance with Section 32, within a period of two months from the date upon which the party received the award in its final wording. The award shall contain clear instructions as to what must be done by a party who wants to challenge the award.

An action in accordance with the first paragraph that only concerns an issue referred to in Section 42 is permissible if, in the award, the arbitrators have considered themselves to lack jurisdiction to adjudicate the dispute. If the award concerns another matter, a party who desires to challenge the award may do so in accordance with the provisions of Section 34.

COSTS OF ARBITRATION

Section 37
The parties shall be jointly and severally liable to pay reasonable compensation to the arbitrators for work and expenses. However, if the arbitrators have stated in the award that they lack jurisdiction to determine the dispute, the party that did not request arbitration shall be liable to make payment only insofar as required due to special circumstances.

In a final award, the arbitrators may order the parties to pay compensation to them, together with interest from the date occurring one month following the date of the announcement of the award. The compensation shall be stated separately for each arbitrator.

Section 38
The arbitrators may request security for the compensation. They may fix separate security for individual claims. If a party fails to provide its share of the requested security within the period specified by the arbitrators, the opposing party may provide the entire security. If the requested security is not provided, the arbitrators may terminate the proceedings, in whole or in part.

During the proceedings, the arbitrators may decide to realize security in order to cover expenses. Following the determination of the arbitrators' compensation in a final award and if the award in that respect has become enforceable, the arbitrators may realize their payment from the security, in the event the parties fail to fulfil their payment obligations in accordance with the award. The right to security also includes income from the property.

Section 39
The provisions of Sections 37 and 38 shall apply unless otherwise jointly decided by the parties in a manner that is binding upon the arbitrators.

An agreement regarding compensation to the arbitrators that is not entered into jointly by the parties is void. If one of the parties has provided the entire security, such party may, however, solely consent to the realisation of the security by the arbitrators in order to cover the compensation for work expended.

Section 40
The arbitrators may not withhold the award pending the payment of compensation.

Section 41
A party or an arbitrator may file an application with the District Court concerning amendment of the award as regards the payment of compensation to the arbitrators. Such application must be filed within two months from the date upon which the party received the award and, in the case of an arbitrator, within the same period from the announcement of the award. If correction, supplementation, or interpretation has taken place in accordance with Section 32, the application must be filed by a party within two months from the date upon which the party received the award in its final wording and, in the case of an arbitrator, within the same period from the date when the award was announced in its final wording. The award shall contain clear instructions as to what

must be done by a party who wants to challenge the award in this respect. The procedure will be administered in accordance with the Court Matters Act (1996:242).

A decision pursuant to which the compensation to an arbitrator is reduced shall also apply to the party who did not bring the action.

Section 42

Unless otherwise agreed by the parties, the arbitrators may, upon the request of a party, order the opposing party to pay compensation for the party's costs and determine the manner in which the compensation to the arbitrators shall be finally allocated between the parties. The arbitrators' order may also include interest, if a party has so requested.

FORUM AND LIMITATION PERIODS ETC.

Section 43

An action pursuant to Sections 2, second paragraph, or 33, 34, and 36 shall be considered by the Court of Appeal within the jurisdiction of which the arbitration had its seat. If the seat of arbitration is not determined, or not stated in the award, the action may be brought in the Svea Court of Appeal.

The determination of the Court of Appeal may not be appealed. However, the Court of Appeal may grant leave to appeal its determination if it is of importance as a matter of precedent that the appeal be considered by the Supreme Court. For the Supreme Court to review the Court of Appeal's determination, leave of appeal by the Supreme Court is required. This does not apply, however, to the appeal of a decision by which the Court of Appeal has dismissed an appeal of a determination made by the Court of Appeal.

An application pursuant to Section 41 shall be considered by the District Court at the seat of arbitration. If the seat of arbitration is not stated in the award, the action may be brought before the Stockholm District Court.

Section 44

Applications to appoint or release an arbitrator shall be considered by the District Court at the place where one of the parties is domiciled or by the District Court at the seat of arbitration. The application may also be considered by the Stockholm District Court. If possible, the opposing party shall be afforded the opportunity to express its opinion upon the application before it is granted. If the application concerns the removal of an arbitrator, the arbitrator should also be heard.

Applications concerning the taking of evidence in accordance with Section 26 shall be considered by the District Court determined by the arbitrators. In the absence of such decision, the application shall be considered by the Stockholm District Court.

If the District Court has granted an application to appoint or release an arbitrator, such decision may not be appealed. Neither may a determination of the District Court in accordance with Section 10, third paragraph, otherwise be appealed.

Section 45

If, according to law or by agreement, an action by a party must be brought within a certain period, but the action is covered by an arbitration agreement, the party must request arbitration in accordance with Section 19 within the stated period.

If arbitration has been requested in due time but the arbitral proceedings are terminated without a legal determination of the issue which was submitted to the arbitrators, and this is not due to the negligence of the party, the action shall be deemed to have been initiated in due time if a party requests arbitration or initiates court proceedings within thirty days of receipt of the award, or if the award has been set aside or declared invalid or an action against the award in accordance with Section 36 has been dismissed, from the time that this decision becomes final.

Section 45 a
In cases brought under Section 2, second paragraph, or 33, 34 or 36, the Court of Appeal may, upon the request of a party, accept oral evidence in English without interpretation into Swedish.

The first paragraph applies also to the procedure in the Supreme Court.

INTERNATIONAL MATTERS

Section 46
This Act shall apply to arbitral proceedings seated in Sweden even if the dispute has an international connection.

Section 47
Arbitral proceedings in accordance with this Act may be commenced in Sweden, if the arbitration agreement provides that the arbitration shall have its seat in Sweden, or if the arbitrators or an arbitration institution pursuant to the agreement have determined that the proceedings shall be seated in Sweden, or if the opposing party otherwise consents thereto.

Arbitral proceedings in accordance with this Act may also be commenced in Sweden against a party which is domiciled in Sweden or is otherwise subject to the jurisdiction of the Swedish courts with regard to the matter in dispute, unless the arbitration agreement provides that the proceedings shall be seated abroad.

In other cases, arbitral proceedings in accordance with this Act may not take place in Sweden.

Section 48
If an arbitration agreement has an international connection, the agreement shall be governed by the law agreed upon by the parties.

If the parties have not reached such an agreement, the arbitration agreement shall be governed by the law of the country where, in accordance with the parties' agreement, the arbitration had or shall have its seat.

The first paragraph shall not apply to the issue of whether a party was authorized to enter into an arbitration agreement or was duly represented.

Section 49
If foreign law is applicable to the arbitration agreement, Section 4 shall apply to issues which are covered by the agreement, except when:

1. in accordance with the applicable law, the agreement is invalid, inoperative, or incapable of being performed; or

2. in accordance with Swedish law, the dispute may not be determined by arbitrators.

The jurisdiction of a court to issue such decisions regarding security measures as the court is entitled to issue in accordance with law, notwithstanding the arbitration agreement, is set forth in Section 4, third paragraph.

Section 50

The provisions of Sections 26 and 44 regarding the taking of evidence during the arbitral proceedings in Sweden shall also apply in arbitral proceedings seated abroad, if the proceedings are based upon an arbitration agreement and, pursuant to Swedish law, the issues referred to the arbitrators may be resolved through arbitration.

Section 51

If none of the parties is domiciled or has its place of business in Sweden, such parties may in a commercial relationship through an express written agreement exclude or limit the application of the grounds for setting aside an award as are set forth in Section 34.

An award which is subject to such an agreement shall be recognized and enforced in Sweden in accordance with the rules applicable to a foreign award.

RECOGNITION AND ENFORCEMENT OF FOREIGN AWARDS, ETC.

Section 52

An award rendered abroad shall be deemed to be a foreign award.

In conjunction with the application of this Act, an award shall be deemed to have been rendered in the country where the arbitration had its seat.

Section 53

Unless otherwise stated in Sections 54–60, a foreign award which is based on an arbitration agreement shall be recognized and enforced in Sweden.

Section 54

A foreign award shall not be recognized and enforced in Sweden if the party against whom the award is invoked proves:

1. that the parties to the arbitration agreement, pursuant to the law applicable to them, lacked capacity to enter into the agreement or were not properly represented, or that the arbitration agreement was not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;
2. that the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present its case;
3. that the award deals with a dispute not contemplated by, or not falling within, the terms of the submission to arbitration, or contains decisions on matters which are beyond the scope of the arbitration agreement, provided that, if the decision on a matter which falls within the mandate can be separated from those which fall outside the mandate, that part of the award which contains decisions on matters falling within the mandate may be recognized and enforced;

4. that the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration was seated; or
5. that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.

Section 55
Recognition and enforcement of a foreign award shall also be refused if a court finds:

1. that the award includes determination of an issue which, in accordance with Swedish law, may not be decided by arbitrators; or
2. that it would be clearly incompatible with the basic principles of the Swedish legal system to recognize and enforce the award.

Section 56
An application for the enforcement of a foreign award shall be lodged with the Svea Court of Appeal.

The original award or a certified copy of the award must be appended to the application. Unless the Court of Appeal decides otherwise, a certified translation into the Swedish language of the entire award must also be submitted.

Section 57
An application for enforcement shall not be granted unless the opposing party has been afforded an opportunity to express its opinion upon the application.

Section 58
If the opposing party objects that an arbitration agreement was not entered into, the applicant must submit the arbitration agreement in an original or a certified copy and, unless otherwise decided by the Court of Appeal, must submit a certified translation into the Swedish language, or in some other manner prove that an arbitration agreement was entered into.

If the opposing party objects that a petition has been lodged to set aside the award or a motion for a stay of execution has been submitted to the competent authority as referred to in Section 54, sub-section 5, the Court of Appeal may postpone its decision and, upon the request of the applicant, order the opposing party to provide reasonable security in default of which enforcement might otherwise be ordered.

Section 59
If the Court of Appeal grants the application, the award shall be enforced as a final judgment of a Swedish court, unless otherwise determined by the Supreme Court following an appeal of the Court of Appeal's decision.

Section 60
If a security measure has been granted in accordance with Chapter 15 of the Code of Judicial Procedure, in conjunction with the application of Section 7 of the same Chapter, a request for arbitration abroad which might result in an award which is recognized and may be enforced in Sweden shall be equated with the commencement of an action.

If an application for the enforcement of a foreign award has been lodged, the Court of Appeal shall examine a request for a security measure or a request to set aside such decision.

PROVISIONAL REGULATIONS

2018:1954

1. This Act shall enter into force on 1 March 2019.

2. Older provisions still apply to arbitral proceedings which have been commenced prior to the entry into force. Despite this, the following new provisions shall still apply:

(a) the applicable procedural order in Section 41 and the possibility to allow for oral evidence in English in Section 45 a in procedures initiated after the entry into force, and

(b) the requirement of leave to appeal in Section 43, second paragraph, for appeals of Court of Appeal determinations that are rendered after the entry into force.