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International Arbitration

Sweden
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1. General

1.1 Prevalence of Arbitration

Arbitration (both institutional and ad hoc) is very prevalent in Sweden and is the preferred method of dispute resolution for major corporations. In the Roschier Disputes Index survey conducted in 2018, 76% of respondents stated that their preferred dispute resolution method is arbitration. This preference is largely due to the long history of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC). For many decades, the SCC Rules have been the preferred choice for East-West and intra-CIS disputes due to Sweden's standing as a neutral and transparent venue. The SCC is also a potential forum in the Energy Charter Treaty (ECT), as well as in many bilateral investment treaties around the world, which has further increased the number of international arbitrations seated in Sweden.

1.2 Trends

The trends in Swedish arbitration follow international trends. Two topics that have been discussed at arbitration seminars and conferences in Sweden over the past year are third-party funding and cybersecurity/GDPR issues.

Third-Party Funding

Third-party funding is increasingly gaining traction in Swedish arbitrations, including domestic arbitrations, and a number of third-party funders are now established on the Swedish market. While the perception of third-party funding has generally been positive on the Swedish market, there has been debate regarding the potential negative implications of third-party funding on arbitration, including on issues relating to conflicts of interest. The SCC adopted a policy in September 2019 requiring the disclosure of third parties with a vested interest in the outcome of an arbitration. The main purpose behind the policy is to ensure that potential conflicts are identified.

Cybersecurity/GDPR

Cybersecurity/GDPR issues in arbitration have been intensely discussed over the past year and the market is still struggling to establish standard protocols for adapting the arbitration procedure to adequately address these concerns. Certain new measures have been taken by the SCC, among other actors, to ensure the more secure transmission of documents and information in arbitrations, including the SCC Digital Platform (a secure digital platform for file-sharing, set up by the SCC) and the use of case-specific tablets for uploading documents and communicating during the course of an arbitration.

COVID-19

So far, the COVID-19 pandemic has primarily impacted on how arbitrators and counsel can interact during arbitration, as well as on the scheduling of hearings. While a number of party-induced motions to cancel scheduled hearings were granted at the beginning of the crisis, there has now been a push by, for eg, the SCC for hearings to take place digitally, even in the event that one of the parties has raised objections to the hearing being conducted in such a fashion.

1.3 Key Industries

The energy sector has experienced significant international arbitration activity in recent years in Sweden. The disputes range from the more traditional gas price review arbitrations to large investment treaty arbitrations relating to, eg, mining.

As mentioned in **1.1 Prevalence of Arbitration**, for a number of decades the SCC Rules have been used in East-West disputes. These disputes often concern large oil and gas contracts. Additionally, the SCC is listed as one of the potential forums in the Energy Charter Treaty (ECT), meaning that many investment treaty arbitrations relating to the energy sector take place in Sweden.

Moreover, the construction/infrastructure sector has traditionally given rise to many arbitrations and has continued to do so in the past year. The reason for this is that many large construction/infrastructure projects are currently underway in Sweden involving both international and domestic parties. These projects are often fraught with delays that, in many cases, result in disputes.

1.4 Arbitral Institutions

The SCC is the only international arbitration institution in Sweden. For that reason and for the reasons provided in **1.1 Prevalence of Arbitration**, the SCC has a strong position as a popular and reliable institution for both domestic and international disputes in Sweden. Some Swedish parties choose to include other arbitration institutions, such as the ICC, in their contracts while maintaining the seat in Sweden. This is, however, not that common and usually the result of a compromise between two international parties to a contract.

2. Governing Legislation

2.1 Governing Law

The Swedish Arbitration Act (SAA) governs international arbitration in Sweden (SFS 1999:116) and the latest revision (SFS 2018:1954) came into force on 1 March 2019. While most arbitrations fall under the revised and current act, the pre-revision provisions may still apply to certain arbitrations.

Sweden is not an UNCITRAL Model Law jurisdiction, and the form of the SAA does not correspond to the UNCITRAL Model Law. There are also some substantive differences in the SAA.

Nevertheless, the UNICITRAL Model Law played an important guiding role when the SAA was enacted and the SAA is generally considered to conform to the basic principles laid down in the UNCITRAL Model Law.

2.2 Changes to National Law

The latest reform of the SAA came into force on 1 March 2019. The main purpose of the revisions was to further adapt the SAA to the international nature of arbitration. For example, the new act gives arbitrators express power to determine the applicable substantive law in the absence of party agreement, but does not specify the basis for that determination. In addition, the timeline for applications to set aside an arbitral award has been reduced from three to two months from the date when the party received the award. Moreover, certain aspects of the set-aside procedure can be undertaken in English, without interpretation in Swedish.

3. The Arbitration Agreement

3.1 Enforceability

No particular form is required for an arbitration agreement in Sweden. Hence, a binding arbitration agreement can in theory be concluded orally or through conduct. In practice, most arbitration agreements are in writing.

Under Section 1 of the SAA, an arbitration agreement may concern future disputes as well as an existing dispute. When future disputes are referred to in an arbitration agreement, the agreement to arbitrate must pertain to a defined legal relationship, typically the commercial contract that encompasses the arbitration agreement.

3.2 Arbitrability

The general approach is set out in Section 1 of the SAA, according to which civil and commercial disputes concerning matters in respect of which the parties may freely reach a settlement, are arbitrable. The SAA also explicitly confirms that the civil law effects of competition law are arbitrable.

The arbitrability rule is based on the requirement that the parties may not attain a legal position by arbitration which they could not achieve by mutual agreement. This also means that, if a claim is illegal or constitutes a *pactum turpe* (breach of law or good morals), the dispute cannot be settled by arbitration because the remedies are not sanctioned by law.

The SAA does not specify which disputes are arbitrable, but guidance is found in Swedish substantive law. It is noteworthy that the mere existence of mandatory provisions in civil law, consumer law, tenancy law or labour law does not in itself render all disputes in these fields non-arbitrable.

3.3 National Courts' Approach

Swedish courts are generally considered arbitration-friendly. When deciding whether a specific dispute is covered by a certain arbitration agreement, the court will construe the arbitration agreement based on the ordinary rules of contract interpretation, ie, assessing the parties' intentions when entering into the agreement, the literal meaning of the agreement and other related circumstances. Examples of situations where an agreement will not be enforced include where, even on a generous interpretation, the dispute falls outside the agreement, or where the dispute relates to a matter that is not arbitrable. Arbitration agreements are also subject to general contractual principles regarding invalidity due, for example, to duress or incapacity. See more in **5.5 Standard of Judicial Review for Jurisdiction/ Admissibility**.

3.4 Validity

According to Section 3 of the SAA, the principle of separability applies.

4. The Arbitral Tribunal

4.1 Limits on Selection

The main principle under both the SAA and the SCC Rules is that the parties are free to agree upon the number of arbitrators and the manner of their appointment. It should be noted, however, that an arbitration agreement under which one party is entitled to appoint the majority of the arbitrators is not acceptable.

According to Section 7 of the SAA, only those who possess full legal capacity with regard to their actions and property may act as arbitrators. Furthermore, according to Section 8 of the SAA and Article 18 of the SCC Rules, arbitrators must be impartial and independent.

4.2 Default Procedures

Ad Hoc Arbitrations

In ad hoc arbitrations, the appointment of arbitrators will be governed solely by the default provisions of the SAA. According to Section 13 of the SAA, an arbitral tribunal will by default consist of three arbitrators, of whom the parties appoint one each (this also applies in multi-party cases). Once the parties have chosen their respective arbitrators, the party-appointed arbitrators jointly appoint the third arbitrator, who will also serve as the chairperson. The SAA provides that, in the event of failure to act within certain set time limits, the district court

can, upon application, assist in the appointment process (see **4.3 Court Intervention**).

Institutional Arbitrations
As regards institutional arbitrations, Article 16 of the SCC Rules provides that the SCC Board will decide on a sole arbitrator or three arbitrators if the parties have not agreed on the number of arbitrators. The assessment of whether the tribunal should consist of one or three arbitrators is based on the complexity of the case, the amount in dispute and other relevant circumstances. If the parties have not agreed upon a procedure for appointment or if they fail to act within agreed time limits, the default procedure in Article 17 of the SCC Rules will apply. This procedure provides that a sole arbitrator shall be appointed jointly by the parties and (in the event of multiple arbitrators) each party shall appoint an equal number of arbitrators and the SCC Board will appoint the chairperson. If appointments are not made within the stipulated time, the SCC Board will appoint the arbitrator(s). In multi-party arbitrations with more than one arbitrator, the claimants and the respondents will jointly appoint an equal number of arbitrators. If either side fails to do so, the SCC Board may appoint the entire arbitral tribunal.

4.3 Court Intervention
Upon application by a party, a district court can assist in the appointment of arbitrators (Sections 14–17 of the SAA) if, eg, the other party or the co-arbitrators fail to participate in the appointment process within the necessary time limits. This is very rare in practice and will only arise in ad hoc arbitration.

4.4 Challenge and Removal of Arbitrators
Section 10 of the SAA
According to Section 10 of the SAA, a party can challenge an arbitrator if events or circumstances exist that endanger the impartiality and/or independence of the arbitrator. A challenge application of this kind must be filed within 15 days from the date on which the challenging party became aware of the event or circumstance that gave rise to the lack of impartiality/independence. Unless the parties have agreed that a third party, eg, an arbitration institution, will hear the challenge it will be decided upon by the arbitral tribunal. If the challenge is successful, the decision cannot be appealed.

Unsatisfactory Decision
A party that is dissatisfied with a decision denying or dismissing a challenge may, within 30 days of the decision, file an application with the district court requesting that the arbitrator be released from their duties. The arbitration may continue, pending the determination of the district court.

Delay
Pursuant to Section 17 of the SAA, either party can also apply to the district court (or if the parties so decide, an arbitration institution) to release an arbitrator on the grounds that the arbitrator has delayed the proceedings.

Article 19 of the SCC
Based on Article 19 of the SCC Rules, a party can also challenge an arbitrator within 15 days of becoming aware of the circumstances giving rise to the challenge. It can do so if there are justifiable doubts regarding the arbitrator's impartiality or independence, or if the arbitrator does not have the qualifications agreed by the parties. Failure to challenge an arbitrator constitutes a waiver of the party's right to challenge. The SCC Board will take a final decision on the challenge unless the other party agrees to the challenge, in which case, the arbitrator will resign. If a challenge is sustained, the arbitrator will be released.

4.5 Arbitrator Requirements
Both the SAA and the SCC Rules require that arbitrators are independent and impartial. The SCC Rules do not include a definition of "independence and impartiality". However, under Section 8 of the SAA, the following circumstances are always deemed to constitute a lack of independence and impartiality:

- if the arbitrator or a person closely associated with the arbitrator is a party to the dispute, or otherwise may expect noteworthy benefit or detriment as a result of the outcome of the dispute;
- 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 to the dispute, 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;
- 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
- if the arbitrator has received or demanded compensation which is not in accordance with the parties' joint agreement regarding compensation.

Under both Section 9 of the SAA and Article 18 of the SCC Rules, prospective arbitrators have to disclose all relevant circumstances in advance of being appointed. In addition, arbitrators must immediately inform the parties and other arbitrators if any circumstance affecting their impartiality and independence arise during the proceedings.

Swedish case law on independence and impartiality suggests that guidance on the issue can be derived from international sources, in particular, the IBA Guidelines on Conflicts of Interest in International Arbitration.

5. Jurisdiction

5.1 Matters Excluded from Arbitration

As set out in **3.2 Arbitrability**, civil and commercial disputes concerning matters in respect of which the parties may freely reach a settlement, are arbitrable. However, Section 6 of the SAA contains special rules for certain consumer matters and an arbitration agreement may not be invoked in a consumer matter entered into prior to the dispute.

5.2 Challenges to Jurisdiction

Section 2 of the SAA confirms that an arbitral tribunal can rule upon its jurisdiction.

5.3 Circumstances for Court Intervention

Although an arbitral tribunal has the power to rule on its own jurisdiction, a party may request that a competent Swedish court rules on the validity of an arbitration clause. However, after the commencement of an arbitration a party may no longer seek a court review of the arbitral tribunal's jurisdiction if the other party objects to such a review. In addition, if the arbitral tribunal renders a decision affirming its jurisdiction, a party's request for review has to be filed with the Court of Appeal within 30 days, according to Section 2 of the SAA.

When an arbitral tribunal finds that it lacks jurisdiction, it dismisses the case by means of an award, which follows from Section 27 of the SAA. Under Section 36 of the SAA a party can appeal the arbitral tribunal's award declining jurisdiction to the Swedish courts within two months of receipt of the award. The tribunal's ruling declining jurisdiction may thus be revisited by the Swedish courts, which may come to a different conclusion from that of the tribunal. If the arbitral tribunal's jurisdiction is confirmed by the court, the parties must subject themselves to the jurisdiction of the arbitral tribunal.

The arbitral tribunal's jurisdiction can also be reviewed in the context of set-aside proceedings under Section 34 of the SAA, see **11.1 Grounds for Appeal**. However, a passivity rule in Section 34 obliges the parties to object to circumstances that would otherwise be deemed to have been waived by their participation. Thus, in order to retain the right to set aside an award, a party cannot participate in the arbitral proceedings without objecting that the arbitration agreement is invalid or does not govern the issue raised.

5.4 Timing of Challenge

See **5.3 Circumstances for Court Intervention**.

5.5 Standard of Judicial Review for Jurisdiction/ Admissibility

Upon application by one of the parties, judicial review of jurisdictional issues is conducted by the Court of Appeal under Section 2 of the SAA. In principle, the Court of Appeal should make a full and independent assessment both as to the facts and the law, based on the grounds invoked by the parties. The same applies under Section 36 of the SAA.

Recent Ruling

In a recent case (reported in NJA 2019 p 171), the Supreme Court held that where the wording of the arbitration clause is unclear, a natural starting point for assessing the scope of the arbitration agreement is the presumption that the arbitration clause should serve a rational function and constitute a reasonable framework for the parties' interests. In light of these considerations, arbitration agreements should be interpreted broadly, as it can generally be assumed that parties to an arbitration agreement intend to resolve disputes quickly and in one and the same cohesive set of proceedings.

In addition, the court stated that an arbitral tribunal is generally in a better position to assess its own jurisdiction than a court, in connection with a subsequent challenge action. Based on this, the court held that there is a presumption that an arbitral award may not be set aside based on a lack of jurisdiction unless the challenging party manages to prove that the arbitral tribunal erred in its assessment as to the scope of the arbitration agreement.

Scope of Application

However, this case concerned an award being set aside under Section 34 of the SAA. It is still unclear whether its general dictum can also potentially be held to apply to a review of jurisdiction under Section 2 of the SAA, and the wider impact of the ruling is currently being discussed in depth in Sweden.

5.6 Breach of Arbitration Agreement

There are no direct consequences for a party that commences court proceedings and no particular approach is adopted by the courts against such party. Rather, the courts tend to base their assessment as to whether or not to allow the proceedings on an objective analysis of whether or not the parties have agreed to arbitration. In cases where there is an agreement clearly providing for arbitration, it is the actions of the counterparty that dictate whether or not the action will be dismissed. A court can dismiss or stay a matter on the basis of a timely jurisdictional objection by the counterparty, based on an arbitration agreement. The objecting party must invoke the arbitration agreement on the first occasion the party pleads its case on the merits before the court. Otherwise, the party will generally be considered to have waived its right to invoke the arbitration agreement.

5.7 Third Parties

The general rule under Swedish law is that the arbitration agreement only binds the signatory parties. However, in rare cases, an arbitration agreement may also be deemed to extend to and be binding on third parties as well, eg, in special cases of voluntary assignment or succession of rights and obligations under a contract. In these limited cases, there is no differentiation between foreign and domestic parties.

6. Preliminary and Interim Relief

6.1 Types of Relief

Unless the parties have agreed otherwise, the arbitral tribunal can order interim relief at the request of a party (Section 25 of the SAA and Article 37 of the SCC Rules).

In SCC proceedings, interim relief can be sought prior to the commencement of arbitration and the constitution of the arbitral tribunal through the appointment of an emergency arbitrator (Appendix II to the SCC Rules), who will have the same powers as an arbitral tribunal to order interim relief.

Arbitral tribunals are not restricted in terms of the type of interim relief that can be awarded. However, while interim measures are considered binding upon the parties, the prevailing view under Swedish law is that interim relief ordered by an arbitral tribunal is not enforceable in Sweden. In other words, a party that is granted interim relief by a tribunal cannot apply for court-assisted enforcement.

6.2 Role of Courts

Section 4(3) of the SAA allows the parties to request a court to order interim relief prior to or during the arbitration (also during an emergency arbitration). Article 37(5) of the SCC Rules expressly confirms that requests for court-ordered interim relief are not incompatible with an arbitration agreement or the SCC Rules.

Swedish courts can thus grant interim relief in support of an arbitration, including a foreign-seated arbitration, provided that they have jurisdiction over the particular interim relief application. Swedish courts can grant the types of interim relief provided for in Chapter 15 of the Swedish Code of Judicial Procedure (CJP), including, inter alia: the attachment of assets to protect monetary claims; the attachment of property to protect a claim of ownership; and other orders either preventing a party from doing something or prescribing that a party should do something under threat of fine, in order to protect another type of claim.

6.3 Security for Costs

Swedish law does not allow courts to order security for the costs of an arbitration. Thus, security for costs ordered by a court is not an available remedy in Sweden.

As regards arbitral tribunals, the SAA does not contain any explicit provisions regarding tribunal-ordered security for costs. However, the generally accepted view is that the SAA implicitly allows tribunal-ordered security for costs if the arbitration rules selected by the parties provide for security for costs as an available remedy. It is therefore unclear under Swedish law whether or not tribunal-ordered security for costs is available in ad hoc arbitrations.

In arbitrations conducted under the SCC Rules, in exceptional cases and upon request by a party, the arbitral tribunal can order a claimant or counter-claimant to provide security for costs in a manner that the arbitral tribunal deems appropriate. If the party does not comply, the arbitral tribunal can stay or dismiss the claims (or part thereof) of the party requested to provide security.

7. Procedure

7.1 Governing Rules

The SAA

The SAA includes certain rules governing the procedure on, eg, the initiation of arbitration, the appointment of arbitrators, and the seat of arbitration. However, in general the SAA provides for the flexibility for the parties and the arbitral tribunal to adapt the arbitration proceedings to the case at hand.

Section 21 of the SAA sets out that the arbitral tribunal must handle the dispute in an impartial, practical and expeditious manner and that it must act in accordance with the decisions of the parties unless it is impeded from doing so. Furthermore, Section 24 of the SAA stipulates that the parties have a right to be heard and to duly present their case.

The SCC

The SCC Rules contain more detailed regulations relating to both the commencement of proceedings (Articles 16–21) and the proceedings themselves (Articles 22–40). However, the SCC Rules merely set out a framework for how to conduct the proceedings in the absence of a party agreement. Thus, the rules grant the parties significant leeway to agree upon the details of how the proceedings should be conducted. According to Article 28, the arbitral tribunal is obliged, upon being referred the case, to promptly hold a case management conference with the parties to organise, schedule and establish procedures for the conduct of the arbitration. In addition, the arbitral tribunal

must send a copy of the timetable and any subsequent modifications to the parties and to the secretariat. Such provisions are intended to support the efficient handling of cases under the SCC Rules.

7.2 Procedural Steps

The SAA

Unless the parties have agreed otherwise, the following main steps will apply for the arbitration proceedings in accordance with the SAA:

- the arbitration proceedings are initiated when a party receives a request for arbitration in writing from the other party;
- the claimant will have the opportunity to state its claims and circumstances in support of the claim;
- the respondent will have the opportunity to state its position in relation to the claims, and the circumstances in support of its position; and
- the arbitrators will give the parties an opportunity to present their respective cases in writing or orally. If a party so requests, an oral hearing will be held prior to the determination of the dispute.

Unlike court proceedings, new claims may in general be submitted by both parties during the proceedings, provided that the claims fall within the scope of the arbitration agreement and provided that the arbitrators do not consider it inappropriate to adjudicate such claims. Accordingly, both parties may also amend or supplement previously presented claims and invoke new circumstances in support of their cases during the proceedings. Finally, the arbitrators will determine the dispute in a final award.

The SCC

The SCC Rules likewise include rules on the written submissions of the parties, the presentation of evidence and a potential oral hearing. Notably, the SCC Rules also allow for the possibility in Article 39 for a party to request that the arbitral tribunal decide one or more issues of fact or law by way of summary procedure. In addition, the SCC has special rules for expedited arbitration.

7.3 Powers and Duties of Arbitrators

An arbitral tribunal has broad powers to conduct the proceedings in the manner it deems appropriate, whilst respecting the parties' agreement and the remit of the authority given to it by the parties. As noted in **7.1 Governing Rules**, an arbitral tribunal has a duty to handle the dispute in an impartial, practical and speedy manner, as well as to enable each party's right to be heard.

7.4 Legal Representatives

Neither the SAA nor the SCC Rules contain any provisions on qualifications or requirements relating to legal representatives appearing in arbitration proceedings in Sweden. Therefore, legal representatives appearing in an arbitration seated in Sweden may have qualifications other than domestic ones, or no formal qualifications at all.

8. Evidence

8.1 Collection and Submission of Evidence

The general approach to the collection and submission of evidence is that the parties to the arbitration are responsible for obtaining and presenting evidence to support their claims.

Under the SAA, the arbitral tribunal has the power to appoint an expert unless both parties are opposed to this. However, tribunal-appointed experts are rare.

Furthermore, the SAA provides that arbitrators may refuse to admit evidence if it is considered manifestly irrelevant to the dispute or if such refusal is justified with regard to the time at which the evidence is invoked.

Producing Documents

There are no specific legislative provisions for document-production procedures in arbitration. Nevertheless, document-production requests are increasingly common, in particular, in more complex arbitrations. The IBA Rules on the Taking of Evidence in International Commercial Arbitration are often used as general guidance by arbitral tribunals and referred to by the parties.

Oral Hearings

At oral hearings, following a traditional Swedish model, the legal counsel of each party typically presents the documentary evidence as part of their opening statement. This is followed by the direct examination and cross examination of witnesses and experts. Written witness statements have not historically been used in domestic arbitration to any significant degree. However, witness statements are becoming more common in domestic arbitrations and are also customarily used in international arbitrations seated in Sweden.

8.2 Rules of Evidence

The SAA does not include any detailed provisions on the taking of evidence or on the rules of evidence. Under the SCC Rules, the admissibility, relevance, materiality and weight of evidence is subject to the arbitral tribunal's discretion. Arbitration proceedings seated in Sweden typically follow the Swedish liberal approach regarding the rules of evidence, meaning that an arbi-

tral tribunal may freely evaluate all evidence presented to it and that there are no strict rules on the admissibility of evidence.

8.3 Powers of Compulsion

Under the SAA, an arbitral tribunal may not administer oaths or truth affirmations. Nor may it impose conditional fines or otherwise use compulsory measures in order to obtain evidence from a party or a third party.

If a party would like a witness or an expert to testify under oath, subject to obtaining the consent of the arbitral tribunal, the party may apply for the testimony to be taken under oath before a local district court. A similar request can also be made for the court-ordered production of written or oral evidence under compulsion from a party or third party. The district court will apply the provisions of the CJP in executing such an application. The arbitral tribunal will be afforded the opportunity to attend and to ask questions.

9. Confidentiality

9.1 Extent of Confidentiality

Arbitration proceedings are not public and a third party does not have any right to obtain information about, or gain access to documents relating to, an arbitration. Neither does a third party have the right to, eg, attend a hearing before the arbitral tribunal. By contrast, court proceedings are generally public, which means that third parties have a right to obtain copies of written pleadings submitted by the parties and other information regarding the case, as well as to attend the main hearing. In court, a party must be able to successfully argue for grounds for confidentiality (such as the existence of trade secrets) in order for certain information to remain non-public.

With that said, there is no general or inherent duty of confidentiality imposed on the parties to an arbitration under Swedish law. Consequently, unless the parties have agreed otherwise, each party may unilaterally choose to make disclosures about the arbitration. Therefore, in practice, provisions on confidentiality are often included in arbitration agreements.

The arbitral tribunal has a duty of confidentiality, and under the SCC Rules this also applies to the SCC and any administrative secretary of an arbitral tribunal.

10. The Award

10.1 Legal Requirements

Under the SAA

Under the SAA, an arbitral award must be made in writing and be signed by the arbitrators. Furthermore, the award must state the seat of the arbitration and the date when the award was made. The award will be delivered or sent to the parties immediately. The SAA does not specify any time limits on delivery of the award. However, any time limit set by the parties is binding on the arbitral tribunal.

Under the SCC

The same basic requirements apply under the SCC Rules, according to which the final award must be made no later than six months from the date the case was referred to an arbitral tribunal. The SCC Board may extend this time limit upon a reasoned request from the arbitral tribunal or if otherwise deemed necessary; in complex arbitrations this may often be the case. However, the most recent statistics of the SCC for 2019 show that 27% of the awards were rendered within six months from the date of referral. In addition, half of the awards were rendered between six and 12 months from referral.

10.2 Types of Remedies

In general, there are no limits on the types of remedies that an arbitral tribunal may award. Rather, this is regulated on a case-by-case basis having regard for what has been agreed between the parties and the law applicable to the merits of the case. If Swedish law applies, punitive damages would be excluded, since punitive damages cannot be awarded under Swedish law.

In addition, any remedies that would be considered incompatible with the basic principles of the Swedish legal system (*ordre public*), would be excluded.

10.3 Recovering Interest and Legal Costs

If Swedish law is applicable to the merits of the case, a successful party is entitled to delay interest on claims in accordance with the Interest Act, unless otherwise agreed between the parties. Under Swedish law, interest can also be awarded on legal costs.

With regard to legal costs, the right for a party to recover such costs is set out in both the SAA and the SCC Rules. The division of the legal costs between the parties will be decided by the arbitral tribunal. There are no rules under the SAA on the apportioning of costs, but the general principle under Swedish law is that the "loser pays", with certain exceptions and additional considerations.

Under the SCC Rules, the arbitral tribunal will have regard to the outcome of the case in apportioning costs, with each party

contributing to the efficiency and expeditiousness of the arbitration and any other relevant circumstances.

11. Review of an Award

11.1 Grounds for Appeal

Parties can seek to have an award set aside based on procedural errors by the arbitral tribunal, or to have the award declared invalid as a result of *ordre public*. There is no possibility of appeal on the merits.

Under Section 34 of the SAA, an arbitral award can be set aside upon motion of a party:

- if it was not covered by a valid arbitration agreement;
- if the arbitrators have made the award after the expiration of the period decided on by the parties;
- if the arbitrators exceeded their mandate in a manner that probably influenced the outcome of the case;
- if Sweden was not the proper place of arbitration;
- if an arbitrator was appointed contrary to the parties' agreement or the SAA;
- if an arbitrator failed to meet the impartiality standard or did not have full legal capacity; or
- if a procedural irregularity probably influenced the outcome of the case.

The aggrieved party cannot rely upon a circumstance relevant to Section 34 which, through participation in the proceedings without objection, or in any other manner, the party may be deemed to have waived. The aggrieved party is required to submit an application to set aside the arbitral award to the competent court of appeal within two months of receiving the award in its final form.

An award can also be declared invalid under Section 33 of the SAA:

- if it includes determination of an issue which, in accordance with Swedish law, may not be decided by arbitrators;
- if the award, or the manner in which the award was made, is clearly incompatible with the basic principles of the Swedish legal system; or
- if the award does not fulfil the requirements with regard to written form and signatures, in accordance with the SAA.

There is no set time-bar for bringing an invalidity claim.

11.2 Excluding/Expanding the Scope of Appeal

For non-Swedish commercial parties, the SAA provides the opportunity to enter into an agreement pursuant to which the parties waive (in advance) the right to apply to set aside an award under Section 34 of the SAA. In order to be effective, such an agreement must be made in writing and be sufficiently specific and clear. The right to claim that the award is invalid under Section 33 cannot be waived.

The parties can also agree to extend the rights under Section 33 or 34.

11.3 Standard of Judicial Review

The standard of judicial review is directed by the limited grounds of recourse in Sections 33 and 34 of the SAA (see **11.1 Grounds for Appeal**). Thus, there is no de novo review of the merits of the case. However, in principle, the Court of Appeal hearing the action should make a full and independent assessment both as to the facts and the law concerning the grounds raised in the application for setting aside the award or for invalidity. Regarding specific grounds for setting aside the award or for invalidity, the Supreme Court has in its rulings also sometimes opined on the remit of the assessment in particular contexts. See **5.5 Standard of Judicial Review for Jurisdiction/Admissibility** regarding the assessment of jurisdiction. In addition, in case NJA 2015 p 438, the Supreme Court has dealt with the issue of the assessment of *ordre public* in the context of competition law.

12. Enforcement of an Award

12.1 New York Convention

Sweden ratified the New York Convention in 1972 without any reservations and its provisions have been incorporated into the SAA.

12.2 Enforcement Procedure

The SAA differentiates between Swedish and foreign arbitral awards based on the seat of arbitration.

Swedish Awards

Swedish awards constitute an execution title and can be directly enforced in accordance with the Swedish Enforcement Code. The Swedish Enforcement Authority conducts a summary review prior to execution. If there is reason to assume that the award is invalid but there is no pending court action on invalidity, the Enforcement Authority will order the applicant to initiate such court proceedings within one month of the order, or else the enforcement proceedings will be cancelled.

Foreign Awards

An application for enforcement of a foreign award must be lodged with the Svea Court of Appeal in order to obtain an execution title. Foreign awards are recognised and enforced in Sweden, unless any of the grounds for refusal set out in Sections 54 and

55 of the SAA, which correspond to Article V(1) and V(2) of the New York Convention, apply. One of the grounds for refusing recognition and enforcement is 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. 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 in the seat of arbitration, 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.

Sovereign Immunity

According to Supreme Court case law, state immunity only applies to sovereign acts by a state. A state's commercial acts or acts under private law are therefore not covered by state immunity. State immunity can be invoked with regard to property which is used in a state's official functions, but state-owned non-commercial property is not automatically covered by immunity.

12.3 Approach of the Courts

Swedish courts generally have an arbitration-friendly approach towards the recognition and enforcement of arbitration awards. As Swedish courts strive to facilitate enforcement of arbitral awards in accordance with the New York Convention, the grounds for refusal are often restrictively interpreted.

The standard for refusing to enforce awards on public policy grounds is very high. In order for a court to refuse to enforce an award on public policy grounds, the award or the proceedings themselves must be found to be clearly incompatible with the fundamental principles of the Swedish legal system.

13. Miscellaneous

13.1 Class-Action or Group Arbitration

There are no specific rules on class-action arbitration or group arbitration in Sweden.

13.2 Ethical Codes

No specific ethical codes are applicable to counsel or arbitrators acting in arbitration in Sweden. However, members of the Swedish Bar Association must comply with the code of conduct of the Swedish Bar Association, within its remit of application, which sets out ethical standards.

13.3 Third-Party Funding

Third-party funding is permitted in Sweden. There are no specific laws or mandatory rules relating to third-party funding. However, Swedish case law suggests that the courts are inclined to derive guidance on third-party funding issues from international guidelines.

As mentioned in **1.2 Trends**, the SCC has adopted a policy requiring the disclosure of third parties with a vested interest in the outcome of an arbitration, including funders. Prospective or appointed arbitrators are required to take this information into account when making any disclosure or statement of independence and impartiality.

13.4 Consolidation

Under the SAA, an arbitral tribunal (but not a court) can decide on consolidation if the following prerequisites are met:

- the parties agree to consolidation;
- it benefits the administration of the arbitration; and
- the same arbitrators have been appointed in the cases to be consolidated.

Under the SCC Rules, a newly commenced arbitration can be consolidated with a pending arbitration by the SCC Board, upon the request of a party, if:

- the parties agree; and
- all the claims are made under the same arbitration agreement; or
- where the claims are made under more than one arbitration agreement, the relief sought arises out of the same transaction or series of transactions and the SCC Board considers the arbitration agreements to be compatible.

In deciding whether to consolidate, the SCC Board will consult with the parties and the arbitral tribunal and will have regard to:

- the stage of the pending arbitration;
- the efficiency and expeditiousness of the proceedings; and
- any other relevant circumstances.

13.5 Third Parties

See **5.7 Third Parties**. There is no general rule that enables a national court to bind a foreign third party to arbitration.

Under Article 13 of the SCC Rules, under certain circumstances and upon requestat an early stage in the arbitration proceedings, the SCC Board can join additional parties to a pending arbitration provided that the SCC does not manifestly lack jurisdiction over the dispute between the parties, including any additional party requested to be joined to the arbitration. In deciding whether to grant the Request for Joinder, where claims are made under more than one arbitration agreement, the board will consult with the parties having regard to the same circumstances as mentioned in **13.4 Consolidation**.

Roschier is one of the leading law firms in the Nordic region, with offices in Helsinki and Stockholm. The firm is well known for its excellent track record of advising on demanding international business law assignments and large-scale transactions. The firm's clients include leading domestic and international corporations, financial service and insurance institutions, investors, growth and other private companies with international operations, as well as government authorities. With some 300 lawyers and practitioners in Finland and Sweden, and a vast network of established relationships with leading law firms, Roschier is internationally recognised as a top-tier firm in all its core practice areas. Roschier's dispute resolution practice is one of the fastest-growing disputes teams in Sweden, and regularly handles the most complex, high-value international commercial and investment treaty disputes in the region, with an emphasis on international arbitration and complex commercial court disputes.

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