International
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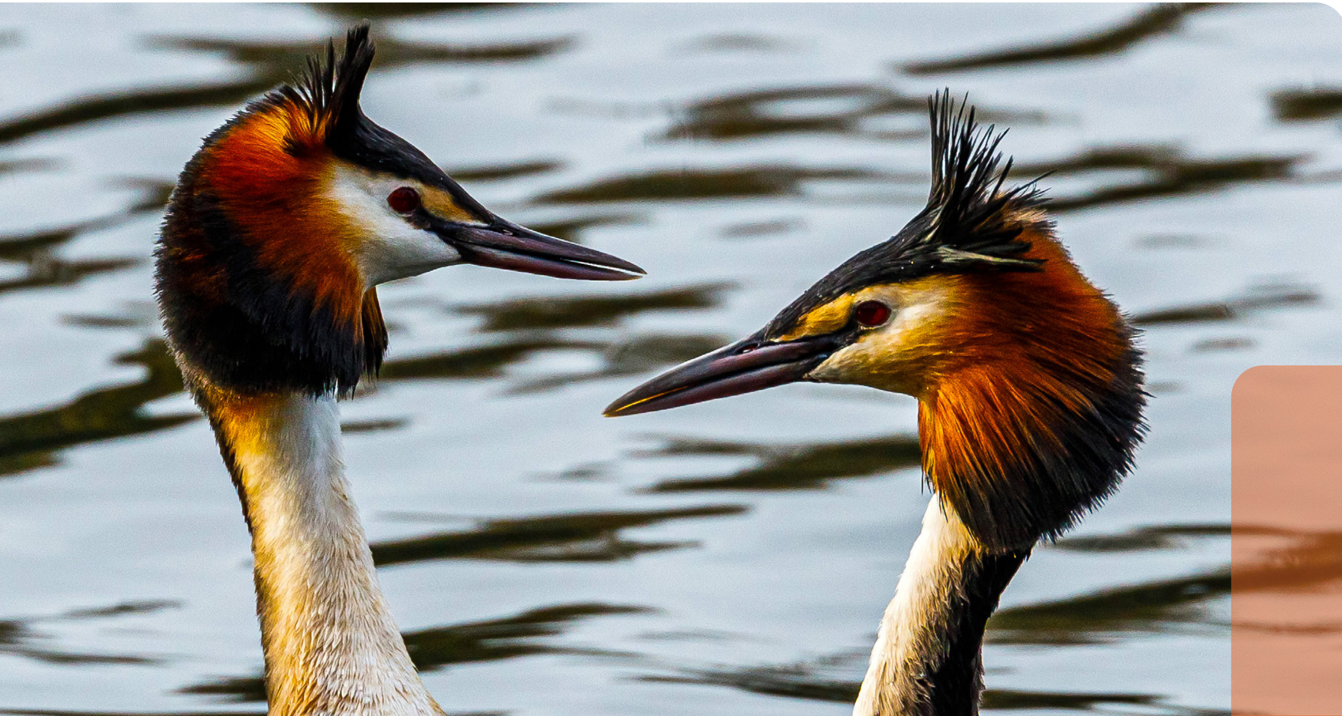

International Arbitration

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International Comparative Legal Guides

Sweden

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1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your jurisdiction?

An arbitration agreement must identify a defined legal relationship between the parties and have a reasonably unambiguous reference to arbitration.

While arbitration agreements are usually in written form, there are no legal requirements concerning the form. Thus, an arbitration agreement could be entered into orally or by the parties' conduct.

1.2 What other elements ought to be incorporated in an arbitration agreement?

It is advisable to decide the language of the proceedings, the substantive law of the dispute and the seat of the arbitration. It should be noted that a confidentiality clause is required for the parties to have a duty to keep the proceedings confidential.

Usually, parties also refer to the rules of an arbitration institute, for example the SCC Arbitration Institute ("SCC") or ICC Arbitration. The SCC is the most used and internationally recognised arbitration institute in Sweden. Normally parties refer to either the SCC's ordinary Arbitration Rules (the "SCC Rules") or SCC's Expedited Arbitration Rules.

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

A valid arbitration agreement is a bar to court proceedings. Recognising the contractual freedom of the parties, the court will uphold an arbitration agreement unless it gives one of the parties an unfair procedural advantage (in which case the clause could be modified or be deemed invalid in part) or is deemed to be contractually invalid, for example if it resulted from duress or fraud.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in your jurisdiction?

Arbitration proceedings are governed by the Swedish Arbitration Act (the "Arbitration Act"), most recently amended in 2018.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

The Arbitration Act is applicable to both domestic and international arbitration proceedings, as long as the seat of the arbitration is in Sweden.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

During the enactment process of the Arbitration Act, the UNCITRAL Model Law had a significant influence on the design of the law. There are no significant differences.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in your jurisdiction?

The Arbitration Act is based on party autonomy and imposes few mandatory rules. The limitations to party autonomy concerning the proceedings themselves are normally defined by rules of due process. Thus, the parties shall be treated equally and be given sufficient opportunity to present their case.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your jurisdiction? What is the general approach used in determining whether or not a dispute is "arbitrable"?

For the matter to be arbitrable, the parties must be able to settle the matter in dispute. The applicable substantive law determines whether this is the case. Matters such as patent validity, tax, declaration of bankruptcy, family law and criminal law are excluded. In principle, all commercial disputes can be resolved through arbitration.

3.2 Is an arbitral tribunal permitted to rule on the question of its own jurisdiction?

Yes, the arbitral tribunal is authorised to rule on its own jurisdiction.

3.3 What is the approach of the national courts in your jurisdiction towards a party who commences court proceedings in apparent breach of an arbitration agreement?

The court does not conduct investigations as to whether there is an arbitration agreement between the parties that may be a bar to court proceedings. Further, even if the court knows that such an agreement exists, the court will not *ex officio* dismiss a claim on that basis. To avoid the jurisdiction of a national court, a defendant must invoke the arbitration agreement when first responding to the statement of claim.

3.4 Under what circumstances can a national court address the issue of the jurisdiction and competence of an arbitral tribunal? What is the standard of review in respect of a tribunal's decision as to its own jurisdiction?

A party may request a national court to rule on the arbitral tribunal's authority to decide the dispute. The arbitral tribunal may continue the arbitration pending the court's decision.

A decision by which the arbitral tribunal affirms its jurisdiction may be challenged by a party before the competent court of appeal. Such an action must be brought within 30 days from the date on which the party received the decision.

An award dismissing the case for lack of jurisdiction may be appealed to the competent court of appeal within two months of receiving the decision.

3.5 Under what, if any, circumstances does the national law of your jurisdiction allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

As a main rule, the arbitration agreement will bind only the parties to the agreement. However, in some cases, an arbitration agreement may also become binding upon third parties, including many cases of assignment, succession and guarantees provided by third parties.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in your jurisdiction and what is the typical length of such periods? Do the national courts of your jurisdiction consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

There are no limitations for commencement of arbitrations in the Arbitration Act. Limitation is a part of Swedish substantive law. The Swedish Limitations Act provides a general 10-year time limitation on all claims. For some types of claims there are shorter limitation periods.

3.7 What is the effect in your jurisdiction of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

Bankruptcy can affect arbitration proceedings in complex ways. The effects depend on which party is declared bankrupt. The bankruptcy estate (through the bankruptcy trustee) is given an opportunity to intervene in the arbitration proceedings. If the estate chooses not to intervene, the disputed property will be separated from the bankruptcy.

A company reconstruction procedure does not affect arbitration proceedings.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

According to the Arbitration Act, the arbitral tribunal shall apply the law or set of rules agreed upon by the parties. If the parties have not agreed, the applicable substantive law will be determined by the arbitral tribunal. In a Swedish context, the arbitral tribunal will normally either apply the conflict rules of Swedish international private law (which includes EU rules) or determine which legal system has the closest connection to the contract.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

Due to the high degree of party autonomy, arbitrators will be very reluctant to forego the law chosen by the parties. In extraordinary cases, Swedish mandatory rules could prevail over the law chosen by the parties if the latter contains rules applicable to the dispute that are clearly in conflict with public policy (*ordre public*).

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

The arbitration agreement is treated as a separate agreement in the commercial contract. If there is a choice of law in the contract, Swedish law will assume that it applies only to the main, substantive agreement (see question 4.1) unless the parties have made it clear that the choice of law clause in the contract applies also to the arbitration agreement.

If no such clear choice of law concerning the arbitration agreement has been made, it shall be governed by the law of the country of the seat. Thus, an arbitration agreement providing for arbitration in Sweden will normally be governed by Swedish law.

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

Due to its emphasis on party autonomy, the Arbitration Act has few limitations in this regard. It should be noted that if the process of selecting the arbitrators has given a party an undue advantage, the arbitration award might later be set aside following a challenge. This would be the case, for example, if the arbitration agreement gives one party the right to appoint all the arbitrators. (See also question 5.4.)

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

The Arbitration Act stipulates that the arbitral tribunal shall normally consist of three arbitrators. Unless agreed otherwise, each party appoints one arbitrator, and the party-appointed arbitrators select the chairperson. If the selection procedure fails (for example, if a party fails to appoint its arbitrator in time) the other party can request that a court appoint that arbitrator.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

A court does not of its own initiative intervene in the selection of arbitrators. However, as noted in question 5.2, a court can, at the request of a party, assist in the selection of arbitrators, for example if a party obstructs the procedure.

5.4 What are the requirements (if any) imposed by law or issued by arbitration institutions within your jurisdiction as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators?

According to the Arbitration Act, as well as the SCC Rules, an arbitrator must be independent, impartial and have full legal capacity. A potential candidate must immediately disclose any circumstances that might render him or her incapable of serving as arbitrator, such as lack of impartiality or independence. Should any such circumstances arise at a later stage, they must be disclosed without delay.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in your jurisdiction? If so, do those laws or rules apply to all arbitral proceedings sited in your jurisdiction?

The procedural rules of the Arbitration Act are applicable to domestic and international arbitrations. Except for some general provisions serving to safeguard the fundamental interests of the parties, these rules are not mandatory. Pursuant to the principle of party autonomy, the arbitral procedure is primarily established by the parties' agreement.

6.2 In arbitration proceedings conducted in your jurisdiction, are there any particular procedural steps that are required by law?

Very few of the procedural rules in the Arbitration Act are mandatory. Arbitrators are, however, required to afford the parties an opportunity to present their respective cases in writing or orally. If a party so requests, and provided that the parties have not agreed otherwise, an oral hearing shall be held. A party shall be given an opportunity to review all materials pertaining to the dispute that have been submitted to the arbitrators.

6.3 Are there any particular rules that govern the conduct of counsel from your jurisdiction in arbitral proceedings sited in your jurisdiction? If so: (i) do those same rules also govern the conduct of counsel from your jurisdiction in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than your jurisdiction in arbitral proceedings sited in your jurisdiction?

The conduct of counsel in arbitral proceedings is not regulated by Swedish law. However, counsel may be bound by their respective codes of conduct. Members of the Swedish Bar Association are obliged to comply with the Code of Conduct of the Bar Association, irrespective of the site of the arbitral proceedings.

6.4 What powers and duties does the national law of your jurisdiction impose upon arbitrators?

The Arbitration Act authorises arbitrators to rule on their own jurisdiction to decide the dispute, determine the seat of arbitration, determine the applicable substantive law (if the parties have not done so), decide on the admissibility of evidence, appoint experts (unless both parties oppose this), order production of documents and order interim measures.

The overall duty of arbitrators is to conduct the arbitration in an impartial, practical and speedy manner, and to act in accordance with the parties' agreements unless there is any impediment to doing so.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in your jurisdiction and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in your jurisdiction?

Swedish procedural law restricts the appearance of attorneys from jurisdictions outside of the EEA and Switzerland in court proceedings. There is, however, no such rule applicable to arbitration proceedings.

6.6 To what extent are there laws or rules in your jurisdiction providing for arbitrator immunity?

There is no law in Sweden providing for arbitrator immunity. Under the SCC Rules, arbitrators may be liable for damage caused through gross negligence or intent.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

The Swedish courts may never intervene in arbitral proceedings without the request of a party. The courts' jurisdiction is limited to dealing with procedural issues specified in the Arbitration Act, including appointing and releasing arbitrators in certain situations, granting interim relief, ordering production of documents, hearing witnesses under oath and reviewing the arbitral tribunal's decision on jurisdiction.

7 Preliminary Relief and Interim Measures

7.1 Is an arbitral tribunal in your jurisdiction permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitral tribunal seek the assistance of a court to do so?

At the request of a party, an arbitral tribunal may award interim relief, including prohibitive measures restraining a party from taking certain action, positive measures requiring a party to take certain action, and measures aimed at ensuring the future enforcement of the award. Essentially, the Arbitration Act allows arbitral tribunals to grant the same interim measures as the UNCITRAL Model Law. The arbitral tribunal may also order the requesting party to provide reasonable security for the damage that may occur because of the interim measure.

An arbitral tribunal does not need to seek the assistance of a court to decide on interim measures. However, interim decisions by an arbitral tribunal are not enforceable in Sweden. Therefore, if a party does not comply with the arbitral tribunal's decision, the other party may have to apply for the same measures before a court.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

The Arbitration Act provides that a court is entitled to grant interim relief in arbitration proceedings if the requesting party shows probable cause for its claim, that there is a risk of its rights being frustrated if the relief is not granted, and that the requested measure is proportionate. Such requests do not have any effect on the jurisdiction of the arbitration tribunal.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

The existence of an arbitration agreement will not affect the approach of the national courts to a request for interim relief. The type of interim relief that may be granted will depend on the measures that are required to secure the applicant's interests. In exceptional cases, interim relief may be granted *ex parte*.

7.4 Under what circumstances will a national court of your jurisdiction issue an anti-suit injunction in aid of an arbitration?

Anti-suit injunctions do not exist under Swedish law.

7.5 Does the law of your jurisdiction allow for the national court and/or arbitral tribunal to order security for costs?

The arbitral tribunal may request that the parties provide security for the arbitral tribunal's own fees and expenses. Other than this, Swedish law does not provide for courts or arbitral tribunals to order security for costs. Under the SCC Rules, an arbitral tribunal may, in exceptional circumstances, order a claimant or a counterclaimant to provide security for the other party's costs.

7.6 What is the approach of national courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in your jurisdiction and in other jurisdictions?

An arbitral tribunal's interim measures are not enforceable in Sweden.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in your jurisdiction?

The parties are subject to very few evidentiary restrictions under Swedish law. The parties are responsible for presenting their evidence. The Arbitration Act provides that an arbitral tribunal may appoint experts unless both parties oppose this, but arbitrators will very rarely embark on any fact finding of their own initiative. The arbitral tribunal may refuse to admit evidence if it is manifestly irrelevant to the dispute or if such refusal is justified considering the time at which the evidence is presented.

The rules of evidence that apply in the proceedings are primarily established by the parties' agreement. The International Bar Association ("IBA") Rules on the Taking of Evidence in International Commercial Arbitration often serve as a guideline for the arbitral tribunal in international proceedings, as an expression of best practice in international arbitration.

8.2 What powers does an arbitral tribunal have to order disclosure/discovery and to require the attendance of witnesses?

At the request of a party, an arbitral tribunal may order that the other party disclose a document or an object or order a witness or an expert to attend a hearing. Unlike measures ordered by the courts (see question 8.3), such orders are not enforceable in Sweden and cannot be sanctioned. However, an arbitral tribunal may be entitled to draw adverse inferences if a party refuses to comply.

8.3 Under what circumstances, if any, can a national court assist arbitral proceedings by ordering disclosure/discovery or requiring the attendance of witnesses?

With the consent of the arbitral tribunal, a party may request that a district court order the opposing party or a third party to disclose a document or an object, or request that a witness or an expert be examined under oath before a district court. The courts' measures in these regards are enforceable and can be sanctioned in various ways. The arbitral tribunal shall approve

such requests if it finds that the measures are justified, with regard to the evidence in the case. If approved by the arbitral tribunal, the district court shall grant the request unless it is unlawful.

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal and is cross-examination allowed?

Swedish law does not regulate the form of witness testimony in arbitration. However, the parties often agree upon the use of written witness statements. The party relying on the statement must produce the witness for cross-examination at the hearing if so requested by the other party.

Arbitrators cannot administer legally sanctioned oaths, and no means of coercion are available if a witness fails to appear at a hearing. However, a party may request that a witness be examined under oath before a district court (see question 8.3). Swedish procedural law applies to such examinations and cross-examination is always allowed.

8.5 What is the scope of the privilege rules under the law of your jurisdiction? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

Swedish law does not regulate privilege in arbitration but, as noted in question 8.1, the IBA Rules may serve as guideline for the arbitral tribunal. In court proceedings, privilege applies to counsel who are members of the Swedish Bar Association. In-house counsel cannot be members of the Bar Association and, consequently, do not fall within the scope of privilege.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of your jurisdiction that the award contains reasons or that the arbitrators sign every page?

According to the Arbitration Act, an award shall be made in writing and state the place of arbitration and the date on which the award is made. 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. The arbitrators do not have to sign every page of the award. There is no formal requirement that the award contains reasons.

9.2 What powers (if any) do arbitral tribunals have to clarify, correct or amend an arbitral award?

The arbitral tribunal may correct or supplement an award if it contains an obvious inaccuracy because of a typographical, computational or other similar mistake, or if the arbitral tribunal by oversight has failed to decide an issue that should have been decided. Upon request by a party within 30 days of receipt of the award, the arbitral tribunal may also correct or supplement an award or interpret a decision therein.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in your jurisdiction?

The Arbitration Act makes a distinction between an action to declare an arbitral award invalid *ab initio*, and an action to set aside an award.

An award is invalid: (1) if the award includes determination of an issue that is non-arbitrable under Swedish law; (2) if the award, or the manner in which it was made, is clearly incompatible with Swedish public policy; or (3) if the award is not in writing or has not been signed in the required manner.

At the request of a party, an award shall be wholly or partially set aside if: (1) the award is not covered by a valid arbitration agreement between the parties; (2) the arbitrators have rendered the award after the expiry of an agreed time limit set by the parties, or the arbitrators have otherwise exceeded their mandate; (3) the arbitral proceedings should not have been conducted in Sweden; (4) an arbitrator has been appointed contrary to the agreement between the parties or the Arbitration Act; (5) an arbitrator has been unauthorised due to lack of capacity or impartiality; or (6) there has otherwise occurred an irregularity in the course of proceedings that is likely to have affected the outcome.

10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

If none of the parties is domiciled or has its place of business in Sweden and the matter concerns a commercial relationship, the parties may, through an express written agreement, exclude or limit the application of the grounds for setting aside an award. It is not possible to waive the right to challenge an award that is invalid under the Arbitration Act (see question 10.1).

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

Swedish law does not recognise any grounds for the appeal of an arbitral award on the merits. However, the parties may agree on a right to appeal the award to a secondary arbitration tribunal.

10.4 What is the procedure for appealing an arbitral award in your jurisdiction?

An action shall be brought before the competent court of appeal. If the seat of arbitration has not been decided or stated in the award, the action shall be brought before the Svea Court of Appeal. Except for claims regarding invalidity, an action must be brought within a period of three months from the receipt of the award.

11 Enforcement of an Award

11.1 Has your jurisdiction signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Sweden has signed and ratified the New York Convention without reservations. There is no national legislation specifically

related to the Convention but there are legal provisions on the recognition and enforcement of foreign arbitral awards in the Arbitration Act and the Swedish Enforcement Code.

11.2 Has your jurisdiction signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

Sweden has not signed any such conventions.

11.3 What is the approach of the national courts in your jurisdiction towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

Swedish arbitral awards are recognised and enforceable in the same way as judgments by the national courts, meaning that an application for enforcement of an arbitral award should be filed directly with the Swedish Enforcement Authority (*Kronofogdemyndigheten*). As a main rule, foreign arbitral awards are also recognised and enforceable, but enforcement of foreign awards involves two steps. First, an application for enforcement shall be filed with the Svea Court of Appeal, which shall determine whether the award is in line with Swedish public policy. Additionally, the respondent can make certain objections against enforcement. Second, if the Court grants the application, the party seeking enforcement shall file an application for enforcement with the Swedish Enforcement Authority.

11.4 What is the effect of an arbitration award in terms of *res judicata* in your jurisdiction? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

Arbitral awards have *res judicata* effects in the same way as judgments by the national courts, meaning that the issue that has been determined by an arbitral tribunal is, as a main rule, precluded from being re-tried in subsequent proceedings. However, determining the scope of *res judicata* effects may be very complicated, and there is a significant body of Swedish case law related to this question.

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

Enforcement of a foreign arbitral award may be refused if the award is in breach of fundamental principles of Swedish law or if the arbitrators have decided issues that may not be tried by arbitrators. Such grounds for refusing enforcement are applied restrictively.

12 Confidentiality

12.1 Are arbitral proceedings sited in your jurisdiction confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

Arbitral proceedings in Sweden are private, meaning that the Swedish principle of public access to information does not apply. Moreover, the arbitral tribunal is considered to have a duty of confidentiality towards the parties. However, as noted in question 1.2, a confidentiality clause is required for the parties to be bound by confidentiality.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

Yes, unless the parties have agreed otherwise.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

While the Arbitration Act does not explicitly mention any such limits, enforcement of a foreign arbitral award may be refused if it conflicts with Swedish public policy. It is uncertain what types of remedies, if any, might be considered to conflict with Swedish public policy.

13.2 What, if any, interest is available, and how is the rate of interest determined?

Interest is determined in accordance with the parties' agreement or the applicable substantive law. Under Swedish law, interest is determined in accordance with the Swedish Interest Act.

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

The Arbitration Act provides the arbitral tribunal with a mandate to order a party to reimburse the counterparty's legal fees and to allocate the arbitration costs between the parties. There is a strong loser pays-principle under Swedish law, but the arbitral tribunal should nevertheless always consider the reasonableness of a cost claim. The parties may agree on other principles for cost allocation.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

Arbitral awards are not subject to tax *per se*, but depending on the subject matter of the dispute, payments made or received in accordance with an arbitral award may be subject to tax implications, including, but not limited to, income tax or VAT.

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of your jurisdiction? Are contingency fees legal under the law of your jurisdiction? Are there any "professional" funders active in the market, either for litigation or arbitration?

There are no such general restrictions. However, according to the Code of Conduct of the Swedish Bar Association, its members are not permitted to fund their clients' claims and the use of contingency fee agreements is restricted. There are a few professional third-party funders of litigation and arbitration active in the Swedish market.

14 Investor-State Arbitrations

14.1 Has your jurisdiction signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?

Yes, Sweden is a party to ICSID.

14.2 How many Bilateral Investment Treaties ("BITs") or other multi-party investment treaties (such as the Energy Charter Treaty) is your jurisdiction party to?

According to the United Nations Conference on Trade and Development, Sweden is a party to 54 BITs that are in force. Sweden is also a party to the Energy Charter Treaty, as well as other multi-party investment treaties.

14.3 Does your jurisdiction have any noteworthy language that it uses in its investment treaties (for example, in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

Sweden's investment treaty model is based on the Organisation for Economic Co-operation and Development ("OECD") model agreement.

14.4 What is the approach of the national courts in your jurisdiction towards the defence of state immunity regarding jurisdiction and execution?

Sweden has adopted a restrictive approach to state immunity and has ratified the UN Convention on Jurisdictional Immunities of States and Their Properties (which, however, has not yet come into force). In a 2011 case regarding state immunity, the Swedish Supreme Court noted that a state's immunity from suit only extends to sovereign acts and not to commercial acts. As regards immunity from execution, the Supreme Court referred to the Immunities Convention (and Sweden's ratification thereof) and concluded that enforcement may be granted at least in relation to property used for purposes other than governmental non-commercial purposes.

15 General

15.1 Are there noteworthy trends or current issues affecting the use of arbitration in your jurisdiction (such as pending or proposed legislation)? Are there any trends regarding the types of dispute commonly being referred to arbitration?

Arbitration is already the dominant form of resolution of large commercial disputes in Sweden. However, the workload of the Swedish courts has risen significantly over the last few years due to an increased political focus on crime repression. Since the Swedish courts deal with both criminal matters and civil matters (such as commercial disputes), and since the former are prioritised, it often takes several years to have commercial disputes adjudicated by the courts. Over time, this trend will likely make arbitration an even more attractive option for dispute resolution.

Another trend is that third-party funding is on the rise in Swedish arbitration.

15.2 What, if any, recent steps have institutions in your jurisdiction taken to address current issues in arbitration (such as time and costs)?

To make its arbitrations faster and more cost-efficient, the SCC introduced rules in 2017 that enable the arbitral tribunal to consider each party's contribution to the efficiency and expeditiousness of the arbitration when allocating arbitration costs and legal fees between the parties. At the same time, the SCC introduced a provision that authorised the arbitral tribunal to order claimants and counterclaimants to provide security for costs in exceptional cases (such as cases with frivolous claims). Moreover, the SCC's schedules of costs for the arbitrators' fees tend to reduce the costs of SCC proceedings compared to many other types of arbitration.

According to 2023 statistics, the final award was rendered within 12 months (from the referral to the arbitral tribunal) in two thirds of the cases tried under the SCC Rules. In SCC Expedited Arbitrations, the final award was rendered within three months in almost half of the cases and within six months in all cases.

Accordingly, SCC arbitration tends to be an efficient form of dispute resolution from a time and cost perspective.

In 2021, the SCC launched the SCC Express Rules, under which parties can apply for the appointment of a neutral legal expert who shall opine on the merits of the case within three weeks. Unless agreed otherwise, the findings of the legal expert are not contractually binding and not enforceable. The cost for SCC Express is fixed at EUR 29,000. The first case was administered in 2023.

15.3 What is the approach of the national courts in your jurisdiction towards the conduct of remote or virtual arbitration hearings as an effective substitute to in-person arbitration hearings? How (if at all) has that approach evolved since the onset of the COVID-19 pandemic?

According to the Arbitration Act, an oral hearing shall be held upon request of a party. In a 2022 decision, the Svea Court of Appeal concluded that the arbitral tribunal has a mandate to decide that participation should be remote unless the parties have agreed otherwise.

The use of completely virtual hearings increased dramatically during the pandemic. It has decreased since then but may still be more common than before the pandemic. Currently, most parties, counsel and arbitrators seem to prefer to conduct final hearings in person, when possible. However, remote witness examinations are still more common than before the pandemic and we expect them to remain so.

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