

# ANNUAL REVIEW

## Commercial Arbitration

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# SWEDEN

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**Q WHAT FACTORS OFTEN INFLUENCE PARTIES IN THEIR CHOICE OF ARBITRATION OVER LITIGATION? COULD YOU OUTLINE SOME OF THE KEY BENEFITS OF THE ARBITRATION PROCESS FOR THOSE INVOLVED?**

**AZELIUS:** In my opinion, one of the key benefits of arbitration is the chance to influence who will settle the dispute and the ability to customise what expert knowledge you need in a tribunal. Although Swedish courts have generally shortened their handling time over the last decade, arbitral proceedings are still normally quicker than court proceedings. Swedish parties are less likely to use extensive discovery than common law parties due to the fact that the Swedish Code of Judicial Procedure provides very limited possibility to obtain disclosure of specific documents. However, these rules are not applicable in arbitration, unless otherwise expressly agreed. Swedish arbitral proceedings tend to be efficient. This fact, together with the very limited possibilities to challenge an award, often leads to lower legal costs for both parties.

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**Q HOW WOULD YOU DESCRIBE ARBITRATION FACILITIES AND PROCESSES IN SWEDEN? HOW DO THEY COMPARE INTERNATIONALLY?**

**AZELIUS:** The largest national institute for arbitral proceedings in Sweden is the Stockholm Chamber of Commerce (SCC). The Arbitration Institute of the SCC provides rules for arbitration and expedited arbitration as well as mediation. The Institute is not involved in controlling the award, which results in a more expeditious process. *Ad hoc* arbitral proceedings are based on the Swedish Arbitration Act. The Act is quite brief and leaves extensive scope for the exercise of party autonomy. Sweden is generally considered to be a 'neutral' choice in many east-west disputes. Approximately 50 percent of SCC cases involve at least one international party. In most cases, the facilities for arbitral proceedings are provided by the tribunal or by the parties. However, there are specific venues specialising in providing this service.

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**Q HAVE YOU SEEN ANY RECENT CHANGES IN ARBITRATION RULES IN SWEDEN? IF SO, WHEN WILL THESE BE BROUGHT INTO FORCE AND HOW DO YOU EXPECT THEY WILL AFFECT THE ARBITRATION PROCESS?**

**AZELIUS:** In 2010, the SCC introduced a new set of rules for emergency arbitrators. The emergency arbitrator has the authority to order interim measures before a case is referred to an arbitral tribunal or a sole arbitrator by the secretariat. The procedure is very quick – as a main rule, the emergency arbitrator must be appointed within 24 hours and the arbitrator’s decision has to be rendered no later than five days after the application was referred to the arbitrator. However, the Arbitration Act has remained unchanged since it entered into force in 1999 and there are no proposed changes thereto at this juncture.

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**Q HOW SUPPORTIVE ARE COURTS IN SWEDEN IN UPHOLDING AND ENFORCING ARBITRAL AWARDS? IS THE JUDICIARY ‘ARBITRATION FRIENDLY’?**

**AZELIUS:** The Swedish judicial system is very arbitration friendly and Sweden has acceded to the New York Convention, with no restrictions. An award is enforceable and may only be challenged on formal grounds by a party on application to the Court of Appeal. In the last decade, only around one tenth of the challenged awards have been set aside, usually on the basis of obvious procedural irregularities. Further, the court will dismiss an action if the defendant validly objects to the court’s competence by invoking an arbitration clause. In *ad hoc* proceedings, a party can apply to the court to appoint an arbitrator, for instance where the other party is obstructing the proceedings by failing to appoint an arbitrator. The Arbitration Act also includes exclusionary provisions in the event an arbitrator is obstructing the proceedings.

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**Q WHAT PRACTICAL ISSUES NEED TO BE DEALT WITH WHEN UNDERTAKING COMPLEX INTERNATIONAL, MULTI-JURISDICTIONAL ARBITRATIONS IN SWEDEN?**

**AZELIUS:** I believe that the practical issues in complex arbitral proceedings in Sweden are the same as elsewhere – there are always practical difficulties in endeavouring to align the schedules of witnesses, arbitrators and counsel. The Swedish principle of orality, which means that witness statements are generally not accepted in courts, leads to Swedish lawyers being less inclined to adduce witness statements. However, the national court system often allows witnesses to testify via video link. Accordingly, modern technology and custom allow witnesses to testify via video link and by telephone. Arbitrators are almost always flexible in relation to timetables and scheduling.

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**Q DO YOU BELIEVE MORE COMPANIES SHOULD INCLUDE ARBITRATION PROVISIONS IN THEIR CONTRACT CLAUSES AT THE OUTSET OF A COMMERCIAL VENTURE? WHAT ARE SOME OF THE KEY CONSIDERATIONS?**

**AZELIUS:** I certainly take the view that more companies should include arbitration provisions in their contracts and when doing so that they ensure that the dispute resolution clause is afforded as much attention during negotiations as the remainder of the contract. The clause should be well thought through, preferably by a specialist in ADR, and be clear and precise. This leaves less scope for raising formal and jurisdictional issues at a later stage. Another key consideration is whether to include an obligation to mediate before initiating arbitral proceedings. However, the difficulty with such a clause is that it can be used by an obstructing party to delay the initiation of arbitral proceedings.

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**Q CERTAIN JURISDICTIONS HAVE MADE CONCERTED EFFORTS TO IMPROVE THEIR PROFILE AS A SEAT OF ARBITRATION IN RECENT YEARS. DO YOU EXPECT THE CHOICE OF VIABLE ARBITRATION VENUES TO INCREASE GOING FORWARD?**

**AZELIUS:** It is unlikely that Sweden, which is a relatively small country, will see an increase in the number of arbitration institutes in the near future, although smaller institutes are already present in different parts of Sweden. However, I fully believe that arbitration, especially institutional, but also *ad hoc*, will continue to increase in popularity. This will certainly lead to an increase in different conference centres which will focus on providing a full service package for arbitral proceedings.

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 The logo for VINGE, consisting of the word "VINGE" in white, uppercase, sans-serif font, centered within a solid green rectangular background.

Krister Azelius has been a partner of Vinge since 1996 and heads the firm's litigation and arbitration team in Southern Sweden. He has extensive experience of international and national arbitration, as well as national litigation. He heads the team in several ongoing arbitral proceedings including an ongoing MUSD 120 insurance dispute. Furthermore, he has lead the firm's team in several widely publicised multi-party cases in the Swedish courts of general jurisdiction, including a multi-party action on behalf of 160 private investors against two insurance companies, as well as a dispute involving many well-known rock bands. Mr Azelius regularly publishes papers on dispute resolution issues in English and Swedish.



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