SWEDEN

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1. EXECUTIVE SUMMARY

1.1 What are the advantages and disadvantages relevant to arbitrating or bringing arbitration-related proceedings in your jurisdiction?

Advantages

- Sweden is perceived as a venue where there is long experience of both domestic and international arbitration.
- Swedish arbitration law is advanced and follows the UNCITRAL Model Law on International Arbitration 1985 quite closely. There is a high degree of party control.
- Swedish courts support the arbitration process, recognising and enforcing arbitral awards and minimising successful challenges.
- The English language is widely used in Sweden.
- Stockholm is particularly well recognised as a venue for East–West arbitrations.
- The Arbitration Institute of the Stockholm Chamber of Commerce (SCC) is a well-known and well-reputed arbitration institute for both commercial and investment treaty arbitration which will celebrate its centenary in 2017.
- Arbitration in Sweden tends to be cheaper than in common law seats of arbitration.
- Sweden has a sizeable pool of experienced national and international arbitrators.

1.2 How would you rate the supportiveness of your jurisdiction to arbitration on a scale of 1 to 5, with the number 5 being highly supportive and 1 being unsupportive of arbitration? Where your jurisdiction is in the process of reform, please add a + sign after the number.

5+.

2. GENERAL OVERVIEW AND NEW DEVELOPMENTS

2.1 How popular is arbitration as a method of settling disputes? What are the general trends and recent developments in your jurisdiction?

Popularity

Commercial arbitration has a long tradition in Sweden and is the preferred method of resolving disputes between commercial parties.

One important event in Sweden's arbitration history occurred in the 1970s, when the American Arbitration Association and the USSR Chamber of Commerce and Industry designated Stockholm as the place of arbitration for

disputes between the USA and the USSR. This helped Sweden to rise to prominence as a venue for the resolution of East/West disputes.

Sweden owes much of its success today to the formation of the SCC. The SCC was founded in 1917. Today, it is considered one of the world's leading institutions for international dispute resolution. The SCC generally has around 200 new cases every year, with a fairly even balance between domestic and international cases (*for details see www.sccinstitute.com/statistics/*). The values in dispute range from a few thousand euros to tens of billions of euros.

Recent developments

The SCC is currently undertaking a review of its arbitration rules, ahead of its centenary in 2017.

Separately, the Swedish government has appointed a committee to investigate possible amendments to the Swedish Arbitration Act of 1999 (SAA), and the committee's report was published on 21 April 2015 (*SOU 2015:37*). With the aim of modernising and improving the existing Act, the report proposes, inter alia, the following additions to the SAA:

- Use of the term "seat" of arbitration (instead of "place" of arbitration).
- Provision for determination of the applicable substantive law in the absence of agreement between the parties.
- Appointment of arbitrators in multi-party arbitrations and the possibility of consolidation.
- Possibility for the arbitral tribunal to order interim measures by way of a special award.
- Limiting the right of parties (other than consumers) to challenge the jurisdiction of the arbitral tribunal by way of court proceedings while the arbitration proceedings are pending.
- Repeal of section 33 of the SAA (relating to the invalidity of arbitral awards).
- Various changes in respect of setting aside cases, including making the Svea Court of Appeal in Stockholm the exclusive forum for such cases and permitting the use of English in such court cases before the Svea Court of Appeal.

It is also interesting to note from the committee's report that, from a review of all challenge cases during the period 1 January 2004 to 31 May 2014, only 6% of cases have resulted in any success from the challenging party. Thus, the statistics show that it is extremely hard to challenge arbitral awards in the Swedish courts. One very recent example is a challenge proceeding from Svea Court of Appeal in Stockholm issued on 25 June 2015 (*case no T 2289-14*), where the appeal court declared an arbitral award invalid in its entirety on the basis that the arbitral tribunal was found to have exceeded its mandate. However, the circumstances of that case were exceptional.

2.2 Are there any unique jurisdictional attributes or particular aspects of the approach to arbitration in your jurisdiction that bear special mention?

Swedish law takes a strict approach to the question of arbitrability. Only cases that are capable of settlement by the parties are arbitrable; thus, public law issues are generally not arbitrable. It should be noted, however, that arbitrators are expressly entitled to rule upon the civil law effects of competition law as between the parties (*section 1, SAA*).

Another distinctive aspect is that arbitrators' powers to grant relief are framed by the parties' requests. Thus, it is particularly important in Swedish arbitration to take care in drafting the requests for relief, which must be specific and accurate.

2.3 Principal laws and institutions

2.3.1 What are the principal sources of law and regulation relating to international and domestic arbitration in your jurisdiction?

As mentioned above, the principal source of law is the SAA, which entered into force on 1 April 1999. The SAA replaced the Swedish Arbitration Act of 1929 and the Act Concerning Foreign Arbitration Agreements and Awards of 1929 (which in turn replaced the first act on arbitration in Sweden, adopted in 1887). The SAA applies to both domestic and international arbitrations taking place in Sweden.

As with all Swedish legislation, the preparatory works play an important part in the interpretation and application of the SAA.

In addition to the SAA, it should be noted that there is a considerable amount of Swedish case law on arbitration-related issues.

There are also several reference books in arbitration in Sweden, a number of which are written in English. The reference books on commercial arbitration in Sweden are authoritative but not binding and are often quoted by counsel in Swedish commercial arbitration. See, in particular:

- Heuman, *Arbitration Law of Sweden: Practice and Procedure* (2003).
- Hobér, *International Commercial Arbitration in Sweden* (2011).
- Andersson, Isaksson, Johansson and Nilsson, *Arbitration in Sweden* (2011).
- Madsen, *Commercial Arbitration in Sweden – A Commentary on the Arbitration Act* (1999:116).
- Arbitration Institute of the Stockholm Chamber of Commerce, *Arbitration Rules* (2007).

Sweden has ratified both the New York Convention and the ICSID Convention, and these ratifications entered into force on 28 January 1972 and 28 January 1967, respectively.

2.3.2 Which are the principal institutions that are commonly used and/or government agencies that assist in the administration or oversight of international and domestic arbitrations?

The SCC is the leading arbitration institute in Sweden. The SCC consists of a Secretariat and a Board, which is composed of both Swedish and international practitioners.

In addition to administering arbitrations under its own rules, the SCC has adopted procedures for acting as an appointing authority and/or as an administrating body in cases under the UNCITRAL Arbitration Rules 1976 (revised in 2010).

The SCC also has its own Mediation Rules, a revised version of which was published on 1 January 2014.

No Swedish government agencies administer or have oversight over arbitration in Sweden.

2.3.3 Which courts or other bodies have judicial oversight or supervision of the arbitral process?

Pursuant to the SAA, the relevant Swedish district court has jurisdiction over applications for judicial assistance with the taking of evidence, the appointment of arbitrators, the challenge of appointed arbitrators, applications for interim measures, applications regarding the arbitrators' jurisdiction, and challenges regarding the payment of compensation to the arbitrators.

However, challenges to arbitral awards and applications for the enforcement of awards are handled by the relevant Swedish Court of Appeal for the place where the proceedings took place. If the award does not state the place of proceedings but the SAA nevertheless applies, the Svea Court of Appeal in Stockholm is the competent court.

3. ARBITRATION IN YOUR JURISDICTION – KEY FEATURES

3.1 The appointment of an arbitral tribunal

3.1.1 Are there any restrictions on the parties' freedom to choose arbitrators?

Anyone with full legal capacity under Swedish law with regard to his or her actions and property may be an arbitrator pursuant to the SAA. This means that an arbitrator must be at least 18 years old, not be subject to legal guardianship and not be bankrupt.

Save for these requirements, the sole restriction as to the arbitrator's qualifications is that he or she is impartial. Arbitrators do not need to be admitted to the Swedish Bar, nor do they need to be legally qualified.

Sitting judges allowed to accept appointments as sole arbitrator or chairman of an arbitral tribunal but not as a party-appointed arbitrator (*see Cars, Lagen om skiljeförfarande. En kommentar (2001), pages 69 to 70 for further reference*).

The parties are free to agree on further restrictions on the choice of arbitrators, such as a requirement that the arbitrators should possess certain technical or legal expertise.

3.1.2 Are there specific provisions of law regulating the appointment of arbitrators?

The SAA contains provisions on appointment of arbitrators, at sections 12 to 18. These provisions apply unless the parties have agreed otherwise (*section 12*).

Where the SAA rules apply, there will be three arbitrators – one to be appointed by each party and the third arbitrator to be appointed by the party-appointed arbitrators. If the respondent fails to appoint its arbitrator within 30 days from receipt of the notice of arbitration, the district court may, upon the other party's request, appoint the arbitrator. The district court may also, upon the request of a party, be asked to appoint the third arbitrator should the two party-appointed arbitrators fail to do so within 30 days from the date on which the last arbitrator was appointed. There is also a similar rule where the parties have failed to make a joint appointment and where a third party (such as an arbitral institution) is required to appoint an arbitrator but fails to do so.

Where the parties have so agreed, the district court, upon the request of a party, also has a general duty to appoint the arbitrators in certain other circumstances (*section 12(3)*).

In addition to the above, the SAA also contains rules on the appointment of a new arbitrator where an arbitrator resigns or is discharged, where the arbitrator cannot fulfil hisor her duties due to circumstances arising after the appointment and where an arbitrator delays the proceedings.

As noted in *Section 2.1* above, the committee appointed by the Swedish government has recommended the introduction of a provision in the SAA allowing for the appointment of arbitrators in a multi-party situation.

3.1.3 Are there alternative procedures for appointing an arbitral tribunal in the absence of agreement by the parties?

Yes.

If the parties have not made a choice on the procedures, the SAA rules will apply, as set out in *Section 3.1.2* above.

3.1.4 Are there requirements (including disclosure) for "impartiality" and/or "independence", and do such requirements differ as between domestic and international arbitrations?

Under the SAA

An arbitrator must be impartial (*section 8, SAA*). This requirement applies equally in both domestic and international arbitrations.

Under section 9 of the SAA, a person who is asked to accept an appointment as arbitrator must, once appointed, immediately disclose to the parties and to the other arbitrators all circumstances concerning his or ler legal capacity or impartiality which might be considered to prevent him or her from serving as arbitrator. This is an ongoing obligation.

Under the SCC Arbitration Rules (only applicable where chosen by the parties)

Under the SCC Arbitration Rules, every arbitrator must be both impartial and independent (*Article 14(1)*). Before being appointed as arbitrator, a person shall disclose any circumstances which may give rise to justifiable doubts as to his or her impartiality or independence, and, upon appointment, a signed statement of impartiality and independence, including any disclosures, must be submitted to the SCC Secretariat (*Article 14(2)*). The obligation of disclosure is ongoing, and any subsequent disclosures must be made in writing to the parties and to the other arbitrators (*Article 14(3)*).

3.1.5 Are there provisions of law governing the challenge or removal of arbitrators?

Under the SAA

Pursuant to the SAA, an arbitrator shall, upon the request of a party, be dismissed from his or her position as arbitrator in a particular dispute if there are circumstances which could diminish confidence in the arbitrator's impartiality (*section 8*).

Section 8 of the SAA explicitly states four circumstances which, if applicable, will always cause the arbitrator's impartiality to be diminished:

- Where the arbitrator or a person closely associated to him or her is a party, or otherwise may expect a material benefit or detriment, as a result of the outcome of the dispute.

- Where the arbitrator or a person closely associated with him or her 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 a material benefit or detriment as a result of the outcome of the dispute.
- Where the arbitrator has taken a position in the dispute, as an expert or otherwise, or has assisted a party in the preparation or conduct of his or her case in the dispute.
- Where the arbitrator has received or demanded compensation from one of the parties without the consent of the other parties in violation of section 39(2) of the SAA.

Under the SCC Arbitration Rules

Under the SCC Arbitration Rules, a party may challenge any arbitrator if circumstances exist which give rise to justifiable doubts as to the arbitrator's impartiality or independence or if he or she does not possess qualifications agreed by the parties (*Article 15(1)*).

3.1.6 What role do national courts have in any such challenges?

Under the SAA

According to section 10 of the SAA, it is the arbitral tribunal (or another person, if the parties have so decided) which first tries a challenge to an arbitrator on grounds of lack of impartiality. The challenge must be presented within 15 days of the date on which the party becomes aware both of the appointment of the arbitrator and of the existence of the circumstance giving rise to the challenge. If the challenge is successful, that decision is final. If, however, the challenge is dismissed or rejected, the dissatisfied party may apply to have it retried by the district court. An application to the district court must be made within 30 days from the date on which the party receives the decision. The arbitrators may choose to continue the arbitral proceedings pending the district court's decision.

Under the SCC Arbitration Rules

Under Article 15 of the SCC Arbitration Rules, the challenge of arbitrators is decided by the SCC Board. The challenge must be submitted to the SCC Secretariat in the form of a written statement setting forth the reasons for the challenge within 15 days from when the circumstances giving rise to the challenge become known to the challenging party. The Board's decision is final.

3.1.7 What principles of law apply to determine the liability of arbitrators for acts related to their decision-making function?

Under the SAA

This question is not dealt with in the SAA and there is as yet no case-law on this matter (*see Hobér, 160*). Nevertheless, it is generally accepted that arbitrators are not immune from liability under Swedish law.

Damages might be available where an arbitrator has committed a crime or grossly violated his or her obligations to respect due process but to hold an arbitrator liable for his or her decision-making (for example, for having misapplied the law) would appear inappropriate and in violation of the principle that arbitral awards cannot be set aside on the merits (*Hobér, 161*).

Under the SCC Arbitration Rules

Article 48 of the SCC Arbitration Rules provides immunity for arbitrators except in cases of wilful misconduct or gross negligence.

3.2 Confidentiality of arbitration proceedings

3.2.1 Is arbitration seated in your jurisdiction confidential? What are the relevant legal or institutional rules which apply?

Under the SAA

The SAA is silent on the matter of confidentiality.

Under the SCC Arbitration Rules

Article 46 of the SCC Arbitration Rules provides that, unless otherwise agreed by the parties, the SCC and the arbitrators must maintain the confidentiality of the arbitration and the award.

Under case law and other legislation

The Swedish Supreme Court has confirmed that the parties are not bound by a duty of confidentiality in the absence of an express agreement to this effect (*see the famous Bulbank case from 2000, www.jpinfonet.se/Swedish-Arbitration-Portal/Search/?q=bulbank*). However, the parties are free to impose a duty of confidentiality on themselves in their arbitration agreement or by means of a separate agreement.

'In certain circumstances, there is also an obligation to protect business secrets in accordance with the Swedish Trade Secrets Act (*Lag (1990:409) om skydd för företagshemligheter*).

It is unclear whether arbitrators have an implied duty of confidentiality, but the most widely accepted view is that they do.

Counsel admitted to the Swedish Bar are subject to their own ethical rules, according to which they are required to keep confidential any information that they become aware of in their role as counsel unless otherwise permitted by their client.

Arbitral proceedings are generally held in private in Sweden.

3.2.2 To what matters does any duty of confidentiality extend (for example, does it cover the existence of the arbitration, pleadings, documents produced, the hearing and/or the award)?

The extent of the duty of confidentiality depends upon the drafting of the clause imposing that duty. Given that the main rule under Swedish law is that confidentiality obligations must be imposed expressly, the parties should draft the confidentiality clause in accordance with their specific needs. For example, an extensive arbitration clause might be drafted to cover the existence of the arbitration, the pleadings, documents produced, evidence relied upon, the hearing, the deliberations of the arbitrators and the award.

3.2.3 Can documents or evidence disclosed in arbitration be used in other proceedings or contexts?

As stated in *Section 3.2.1* above, there is no implied duty of confidentiality under Swedish arbitral law. Thus, in the absence of a specific confidentiality agreement between the parties, or any other duty of confidentiality imposed by law, the documents and evidence may be used in other proceedings or contexts.

3.2.4 When is confidentiality not available or lost?

This will largely be governed by the parties' agreement.

It is important to note, however, that in the event of challenge proceedings, or other court proceedings concerning the arbitration, all documents filed in Swedish courts become public documents and are available to the public. There are only limited possibilities for seeking exceptions to this general rule.

3.3 Role of (and interference by) the national courts and/or other authorities

3.3.1 Will national courts stay or dismiss court actions in favour of arbitration?

Yes. Pursuant to section 4 of the SAA, if a party brings a court action in respect of matters which fall within the scope of a valid arbitration agreement, and provided the respondent raises that agreement as a jurisdictional objection at the earliest opportunity, the Swedish courts are bound to dismiss such actions.

3.3.2 Are there any grounds on which the national courts will order a stay of arbitral proceedings?

No.

3.3.3 What is the approach of national courts to parties who commence court proceedings in your jurisdiction or elsewhere in breach of an agreement to arbitrate?

As discussed in *Section 3.3.1* above, a valid arbitration agreement constitutes a procedural impediment pursuant to the SAA. This means that a court is prevented from trying a question which, according to an arbitration agreement, should be tried by an arbitral tribunal.

However, the respondent in the court action must actively invoke the arbitration agreement as an impediment to court proceedings. Moreover, he or she must do so at the earliest opportunity; otherwise the right to do so will be precluded.

Swedish courts do not grant anti-suit injunctions, but they may make a declaratory judgment on the jurisdiction of the arbitrators. Such actions are brought as regular declaratory actions under the Procedural Code, meaning that the prerequisites to Swedish courts' jurisdiction, as well as any other requirements in the Procedural Code, must be met (*Hobér, 187 to 188*)

3.3.4 Is there a presumption of arbitrability or policy in support of arbitration? Have national courts shown a willingness to interfere with arbitration proceedings on any other basis?

Swedish courts are, in general, arbitration friendly. For example, it is extremely hard to challenge arbitral awards in the Swedish courts. As noted in *Section 2.1* above, from a review of all challenges to awards during the period 1 January 2004 to 31 May 2014, only 6% of cases resulted in a successful challenge.

Court intervention is only possible upon a party's request, in the following cases:

- Appointment of arbitrators (including discharging an arbitrator and appointing a new arbitrator).
- Challenge of arbitrators (unless otherwise agreed by the parties).
- Security (that is, interim) measures.
- Orders for the production of documents.
- Taking of evidence in court in support of the arbitration process.
- Challenge to the arbitral tribunal's jurisdiction.
- Challenge of the award.
- Dispute concerning an arbitrator's remuneration.
- Enforcement of the award.

In general, court intervention does not prevent the arbitration process from continuing. The arbitral tribunal may, in its own discretion, choose to continue the arbitral proceedings pending the determination of the court.

Section 4 of the SAA provides that, 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 (that is, interim) measures as the court has jurisdiction to issue.

3.3.5 Are there any other legal requirements for arbitral proceedings to be recognisable and enforceable?

In general, the requirements of due process need to be observed. Thus, a general principle is that the arbitrators should give the parties a fair and equal opportunity to present their case to the extent necessary. This means that, unless otherwise agreed, an oral hearing will need to be held if requested by one of the parties. In addition, each party must be given an opportunity to review all documents and all other materials pertaining to the dispute which are supplied to the arbitrators.

With regard to the arbitral award, the arbitral tribunal needs to ensure that the award is made in writing and signed by at least a majority of the arbitrators (unless the parties have agreed that the chairman alone can sign the award) (*section 31, SAA*).

It is, of course, also necessary to ensure that none of the grounds for setting aside or challenging the enforcement of the award can be invoked.

3.4 Procedural flexibility and control

3.4.1 Are specific procedures mandated in particular cases, or in general, which govern the procedure of arbitrations or the conduct of an arbitration hearing? To what extent can the parties determine the applicable procedures?

The SAA contains only a few provisions on procedure which apply in case the parties have not agreed otherwise – for example, by referring to the SCC Arbitration Rules.

A fundamental procedural principle stated in the SAA is that the arbitrators shall handle the dispute in an impartial, practical and speedy manner. In doing so, the tribunal shall act in accordance with the decisions of the parties insofar as there is no impediment to doing so. Thus, the arbitrators cannot set aside mandatory rules in the SAA or other law.

Another general principle under the SAA is that the arbitrators should give the parties a fair and equal opportunity to present their case in writing or orally to the extent necessary, according to the requirements of due process. Thus, unless otherwise agreed, an oral hearing will need to be held if requested by one of the parties. Further, each 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 anyone else.

3.4.2 Are there any requirements governing the place or seat of arbitration, or any requirement for arbitral hearings to be held at the seat?

The parties are free to decide on the place of arbitration, for example, in the arbitration clause or in the arbitration agreement. In the absence of such agreement, the SAA states that the arbitrators will decide the place of arbitration.

The parties are also free to agree where the arbitral hearings will take place. Unless otherwise agreed by the parties, hearings can be held anywhere in Sweden or abroad (*see Hobér, 300 to 301; and the Supreme Court decision, NJA 2010, page 508*).

3.4.3 What procedural powers and obligations does national law give or impose on an arbitral tribunal?

Pursuant to the SAA, the arbitrators are required to conduct the dispute in an impartial, practical and speedy manner. They must act in accordance with the agreement of the parties unless there is an impediment to them doing so.

The SAA also gives the arbitral tribunal the right to proceed *ex parte* where, for example, a party fails to appear at a hearing.

3.4.4 Evidence

3.4.4.1 What is the general approach to the gathering and tendering of written evidence at the pleading stage and at the hearing stage?

Pursuant to the SAA, the parties are responsible for supplying the evidence they need to support their respective cases and free to make use of any evidence that they desire.

There is a general rule under Swedish procedural law for the free evaluation of evidence. This means that any evidence is generally admissible but that the tribunal is free to evaluate its weight and relevance.

The limitation on this principle is that the arbitrators may refuse to admit evidence where it is manifestly irrelevant or has been submitted too late. In practice, arbitrators rarely exercise this right of refusal for fear of the award being challenged.

The parties and the arbitral tribunal normally agree on procedures for the arbitration in the introductory stages of the proceedings.

In international cases, it is common for guidance to be taken from the International Bar Association Rules on the Taking of Evidence in International Arbitration (revised in 2010).

3.4.4.2 Can parties agree the rules on disclosure? How does the disclosure in arbitration typically differ to that in litigation?

The parties can agree on rules on disclosure.

The sole provision in the SAA which deals with the production of documents states that the arbitral tribunal, 'upon the request of a party, may order the other party to take certain measures to secure the claim to be tried by the arbitrators during the course of the arbitral proceedings. This rule has been interpreted as meaning that the arbitrators, at the request of one party, can order the other party to produce documents in its possession (*Hobér, 225*).

However, an order to this effect cannot be enforced; the only consequence of non-compliance with such an order is that the arbitral tribunal is free to draw negative inferences from that non-compliance. An enforceable order for the disclosure of documents can only be obtained by applying to the district court with the approval of the arbitral tribunal.

In relation to court proceedings, the rules on production of documents are set out in the Procedural Code. The most significant difference compared to arbitration is that a court order for the production of documents can be enforced by coercive measures. Pursuant to the Procedural Code, there are limitations as to what types of documents the court may order to be disclosed. In particular, it is necessary to show that a document is expected to have importance as evidence. Furthermore, an order of production excludes information falling, for example, under the attorney–client privilege. Personal notes are also excluded from production under the Procedural Code. These provisions of the Procedural Code are sometimes referred to as guidance when determining issues of disclosure in arbitration.

3.4.4.3 What are the rules on oral (factual or expert witness) evidence? Is cross-examination used?

As stated in *Section 3.4.4.1* above, the parties are responsible for their own evidence, including but not limited to their witnesses. Fact witnesses and experts are usually heard during the hearing on the merits of the case.

In domestic cases, written witness statements are uncommon; instead, parties submit a short statement of evidence stating the theme of the evidence that the witness will give orally. In international cases, however, written witness statements are common.

As arbitral tribunals do not have a right to use coercive measures, they cannot compel someone to be a witness, nor can they administer oaths. However, an application can be made under the SAA to have the witness heard in court in aid of the arbitration if it is considered necessary to compel the witness to attend or to administer an oath.

The normal approach is to hear a witness' direct testimony, followed by cross-examination and re-direct examination. When written witness statements are used, direct oral examination is often limited.

Experts may be appointed by the parties and also by the arbitrators (unless otherwise agreed between the parties). Expert evidence is usually in the form of an expert report. If the parties have appointed different experts, they can be examined separately, through cross-examination, or simultaneously through witness conferencing (*Hobér, 236*).

3.4.4.4 If there is no express agreement, what powers of compulsion are there for arbitrators to require attendance of witnesses (factual or expert) or production of documents, either prior to or at the substantive hearing? To what extent are national courts willing or able to assist? Are there differences between domestic and international arbitrations or as between orders sought as against parties and non-parties?

The arbitrators may not take oaths or affirmations of truth, nor can they impose fines or use coercive measures to collect evidence.

The parties can instead apply to the district courts for assistance in taking evidence in aid of the arbitration. Prior to a party's application to the district court, the party must obtain the prior approval from the arbitral tribunal, which should grant such approval if it believes the measure to be justified having regard to the evidence in the case. The district court has the power to summon witnesses, require witnesses to produce documents, and administer oaths or affirmations of truth. The arbitral tribunal attends the court hearing for this purpose – in effect, although the evidence is taken in court, the hearing takes place as if it is part of the arbitration hearing.

In relation to the production of documents, it is necessary to show that a document is expected to have importance as evidence. Furthermore, an order of production excludes information falling, for example, under the attorney–client privilege. Personal notes are also excluded from production under the Procedural Code.

This possibility to apply to the district courts applies to both domestic and international arbitrations. However, since the powers of the Swedish courts are generally limited to activities taking place in Sweden, in practice the powers of the Swedish courts are somewhat limited in cases involving foreign parties.

3.4.4.5 Do special provisions exist for arbitrators appointed pursuant to international treaties (that is, bilateral or multilateral investment treaties)?

The SAA does not contain special provisions in this regard.

3.4.5 Are there particular qualification requirements for representatives appearing on behalf of the parties in your jurisdiction?

No, counsel from other jurisdictions may appear. However, it is generally necessary for legal representatives to present a valid power of attorney.

3.5 The award

3.5.1 Are there provisions governing an arbitral tribunal's ability to determine the controversy in the absence of a party who, on appropriate notice, fails to appear at the arbitral proceedings?

Yes. Pursuant to the SAA, the arbitral tribunal has a right to proceed *ex parte* where a party, for example, fails to appear at a hearing without reason for non-appearance. The arbitral tribunal may then choose to decide the dispute based on the presented material. However, as the rule is optional, the arbitral tribunal is not required to continue with the proceedings.

3.5.2 Are there limits on arbitrators' powers to fashion appropriate remedies, for example, punitive or exemplary damages, specific performance, rectification, injunctions, interest and costs?

Arbitral awards may provide for payments of sum of money, specific performance, restitution, declaratory relief, the adaption of contracts and the filling of gaps in contracts (*Hobér, 271*).

The arbitrators' powers are limited and defined by the claimant's prayers for relief and the respondent's counterclaims, if any. It is therefore of great importance that the parties state clearly what they want the arbitrators to decide, since this will limit the scope of the arbitrators' powers.

Thus, the arbitrators are generally not given the right to determine appropriate remedies *ex officio* (*Hobér, 215*). If the arbitrators exceed their powers as granted to them by the parties, the final award may be set aside.

3.5.3 Must an award take a particular form? Are there any other legal requirements, for example, in writing, signed, dated, place stipulated, the need for reasons, method of delivery?

An award must be in writing and signed by the arbitrators. It is sufficient that the award is signed by a majority of the arbitrators, provided that the reason why not all the arbitrators have signed the award is specified in the award. The parties may also determine that the chairman of the arbitral tribunal signs the award alone. The award should, in addition, contain the date of notification to the parties as well as the place of the arbitration and should be served on the parties immediately.

Furthermore, although not explicit requirements under the SAA, the award must also identify the parties to the dispute, the dispute itself and contain a clear and definitive decision (*see, for example, Stockholm Chamber of Commerce, Arbitration in Sweden, 2nd revised edn (1984), 133*). Although not a statutory requirement, most arbitrators, in practice, give reasons for their decisions (*see, for example, Hobér, 266 and Heuman, 497*).

The SCC Arbitration Rules specifically require that the arbitral tribunal must give reasons (*Rule 36(1)*).

3.5.4 Can an arbitral tribunal order the unsuccessful party to pay some or all of the costs of the dispute? Is an arbitral tribunal bound by any prior agreement by the parties as to costs?

As a starting point, the SAA states that the parties are jointly responsible for paying reasonable fees to the arbitrators for their work and their expenses.

Unless otherwise agreed by the parties, the arbitrators may, upon request by a party, order the opposing party to pay compensation for the party's costs and determine the manner in which the arbitrators' compensation shall be finally allocated between the parties. The' order may also include interest, if a party has so requested. When making these decisions, the arbitrators may look at the provisions applicable to court cases in the Procedural Code (*Hobér, 274*).

Particular rules apply where the arbitral tribunal determines that it does not have jurisdiction to try the dispute. In those circumstances, the party who did not request arbitration will only be responsible for paying the fees to the extent that this is caused by special circumstances, such as where that party's actions have given rise to excessive costs.

Under section 39(2) of the SAA, remuneration agreements entered into between just one party and one or more arbitrators are invalid. However, subject to that rule, parties can in principle make their own agreements regarding

the costs of the arbitration (for example, that one party shall bear a greater share of the costs). Such an agreement will be binding if the arbitral tribunal accepts the assignment in the knowledge of the agreement (*see Heuman, 557 to 558*).

3.5.5 What matters are included in the costs of the arbitration?

The SAA does not name the recoverable costs, but usually the costs in question are as follows (*Hobér, 274*):

- The winning party's share of the arbitrators' fees and expenses.
- If applicable, the winning party's share for the applicable arbitration institution.
- The winning party's costs relating to the presentation of evidence.
- Reasonable fees and costs of the winning party's counsel.
- Compensation to the winning party for work done and time spent on the dispute, including, for example, loss of salary.

In relation to the first point, arbitrators are entitled to compensation for their expenses, such as travel and hotel costs. However, where such expenses are considerable, the arbitrators should obtain the prior consent of the parties (*Heuman, 555*).

3.5.6 Are there any practical or legal limitations on the recovery of costs in arbitration?

Except as stated in *Section 3.5.5*, the SAA does not provide any limitations as to the recovery of costs. In practice, however, if the costs are disputed, the arbitrators will generally determine whether the costs claimed are reasonable '(*Hobér, 275*).

3.5.7 Are there any rules relating to the payment of taxes (including VAT) by foreign and domestic arbitrators? If taxes are payable, can these be included in the costs of arbitration?

There are no such rules in the SAA. However, the tax rules applicable to each arbitrator generally apply (*Hobér, 178 to 180*).

3.6 Arbitration agreements and jurisdiction

3.6.1 Are there form, content or other legal requirements for an enforceable agreement to arbitrate? How may they be satisfied? What additional elements is it advisable to include in an arbitration agreement?

Pursuant to the SAA, arbitration agreements do not have to be written; hence oral agreements or agreements established by the parties' conduct (if they can be proved) are in principle valid.

In order for an arbitration agreement to be valid, the agreement to arbitrate must:

- Be entered into by legally qualified parties, which, in relation to corporations, means that corporations must be properly constituted and the agreement entered into by authorised representatives.

- Clearly state the parties' agreement to arbitrate an existing or future dispute. If the arbitration agreement concerns a future dispute, the subject of the agreement must pertain to a legal relationship specified in the agreement.
- Only concern matters that the parties can settle through arbitration.
- Not be invalid based on general contract law principles (fraud, duress, unreasonableness, and so on), though such contract law principles are rarely relied upon successfully in commercial arbitration.

It is recommended that parties draft the arbitration clause carefully, in order to avoid problems when a dispute has arisen, regarding, for example, the seat, or whether the arbitration should be ad hoc or in accordance with certain institutional rules. If the parties agree to the SCC rules, the SCC recommends that the parties use the model clauses available at *http://sccinstitute.com/dispute-resolution/model-clauses/*. As stated in *Section 3.2.1*, the parties should also consider adding an express confidentiality undertaking if they want the proceedings to be confidential for the parties as well.

3.6.2 Can an arbitral clause be considered valid even if the rest of the contract in which it is included is determined to be invalid?

Yes. This rule was previously stated only in case-law, but has now been codified in the SAA.

3.6.3 Can an arbitral tribunal determine its own jurisdiction ("competence-competence")? When will the national courts deal with the issue of jurisdiction of an arbitral tribunal? Need an arbitral tribunal suspend its proceedings if a party seeks to resolve the issue of jurisdiction before the national courts?

Yes. However, the arbitral tribunal's decision is not final and jurisdiction can also be tested by the Swedish courts upon a party's request. The arbitral tribunal need not suspend its proceedings pending the court's decision.

3.6.4 Is arbitration mandated for certain types of dispute? Is arbitration prohibited for certain types of dispute?

Yes, arbitration is permitted solely for such disputes that, in theory, the parties could settle by agreement. Excluded from arbitration are, for example, disputes dealing with public law matters, divorce, birth and criminal matters.

Aside from specific statutory arbitration (which is beyond the scope of this survey), there are no requirements for disputes to be settled by way of arbitration.

3.6.5 What, if any, are the rules which prescribe the limitation periods for the commencement of arbitration proceedings and what are such periods?

The SAA does not provide for limitation periods for the commencement of proceedings. However, section 45 specifically states that where, according to law or by agreement, legal action must be taken within a particular time, then (in a case covered by an arbitration agreement) arbitration must be commenced within that period of time.

In relation to claims based on contract, the general prescription period under Swedish law is ten years from the accrual of the claim. However, prescription is a complex subject and there are a number of exceptions to the general rule.

3.6.6 Does national law enable an arbitral tribunal to assume jurisdiction over persons who are not party to the arbitration agreement?

As a general rule, the answer is no and Swedish law generally takes a conservative approach to this issue.

However, in a few cases, the arbitration agreement may bind third parties – for example, if the parties to the agreement are substituted through singular or universal succession, if arbitration clauses are extended to guarantee agreements as a result of third parties' conduct ""and in relation to third party beneficiary agreements (*see, for example, Hobér, 127 and Heuman, 77 to 104*).

3.7 Applicable law

3.7.1 How is the substantive law governing the issues in dispute determined?

Pursuant to the SAA, arbitration agreements with an international connection are subject to the law that the parties have chosen.

If the parties have not specifically agreed on the applicable law of the arbitration agreement, the agreement is governed by the law of the country, which, based on the arbitration agreement, is the place of the proceedings.

Swedish conflict of law rules determine the applicable law in respect of the question whether a party was competent to enter into the arbitration agreement or whether the party was validly represented.

3.7.2 Are there any mandatory laws (of the seat or elsewhere) which will apply?

There are no mandatory rules in respect of the arbitral procedure but there are various other mandatory laws which can apply – for example, as regards commercial agents or employment law.

4. SEEKING INTERIM MEASURES IN SUPPORT OF ARBITRATION CLAIMS

4.1 Can an arbitral tribunal order interim relief? If so, in what circumstances? What forms of interim relief are available and what are the legal tests for qualifying for such relief?

Unless otherwise agreed by the parties, the arbitrators may, at the request of a party, grant interim measures during the proceedings to secure the claim which is to be decided by the arbitral tribunal. However, the SAA does not specify the requirements to be fulfilled before the arbitral tribunal may order interim relief. It is considered that, to be successful, the requesting party must at least show that (i) the party has a reasonable chance of winning the case and (ii) the relief is relatively urgent (for example, a risk that the opposing party may transfer money) (*Hobér, 249*). If the parties have not agreed otherwise, the arbitral tribunal may also use the conditions stated in the Model Law for guidance.

In connection with an order for interim relief, the tribunal may order that the requesting party holds security corresponding to the harm which the interim relief may cause the other party. In practice, this is almost always required.

Where the SCC rules apply, there is also a possiblity to appoint an emergency arbitrator before the commencement of an arbitration.

4.2 Have national courts recognised and/or limited any power of an arbitral tribunal to grant interim relief?

A decision by an arbitral tribunal on interim relief is not considered formally enforceable. However, in practice, such a decision can have important evidential value.

4.3 Will national courts grant interim relief in support of arbitration proceedings and, if so, in what circumstances?

Yes, the national courts may grant interim relief in accordance with the Procedural Code, notwithstanding whether or not the arbitral proceedings are ongoing.

For example, a party seeking an order to freeze its counterparty's assets must show to the court (i) probable cause for its claim which either is or can expected to be subject to a court dispute or similar and (ii) that it can reasonably be expected that the opposing party will act in such a way as to avoid paying the debt. If these criteria are met, the district court may order the opposing party to give security corresponding to the requesting party's claim.

4.4 Are national courts willing to grant interim relief in support of arbitration proceedings seated elsewhere?

Yes.

The provisions of sections regarding the taking of evidence during the arbitral proceedings in Sweden also apply in respect of arbitral proceedings which take place abroad, where the proceedings are based upon an arbitration agreement and, pursuant to Swedish law, the issues which are referred to the arbitrators may be resolved by arbitration. In general, Swedish courts have jurisdiction where there is a Swedish interest in the administration of justice with respect to the issue in question (*see, for example, Hobér, 240*). It is, however, not entirely clear that sufficient interest exists in a request for production of documents located outside Sweden, in an arbitral proceeding between two non-Swedish parties (*ibid, 240*). If the Swedish courts have jurisdiction, the SAA states that questions concerning the taking of evidence shall be considered by the district court determined by the arbitrators, and in the absence of such decision, by the Stockholm District Court.

5. CHALLENGING ARBITRATION AWARDS

5.1 Can an award be appealed to, challenged in or set aside by the national courts? If so, on what grounds?

Arbitral awards are final and binding on the merits as of the day they are rendered.

However, under certain limited circumstances an arbitral award may be challenged or set aside on procedural grounds.

The SAA makes a distinction between awards that are invalid and awards that are challengeable. An award is invalid in case the award:

Decides an issue which is not arbitrable pursuant to Swedish law.

Has been rendered in violation of Swedish public policy.

Has not been made in writing and/or signed by the arbitrators.

If any of these conditions are met, the award is invalid without the parties needing to take any action. A party can also apply to the district court in order to obtain a declaration from the court that the award is invalid.

Failure to state the name and place of the arbitration and to date the award does not render the award invalid.

Challengeable awards must be challenged in order to be set aside. Pursuant to the SAA, it is the appellant court at the relevant jurisdiction which is authorised to try a challenge of an allegedly invalid award. If the seat of arbitration is Stockholm, the competent court is the Svea Court of Appeal.

The grounds for challenge which, at the request of a party, will cause the arbitral award to be wholly or partially set aside are:

The award is not covered by a valid arbitration agreement between the parties.

The arbitrators have rendered the award after the expiration of the period decided on by the parties, or the arbitrators have otherwise exceeded their mandate.

The arbitral proceedings should not have taken place in Sweden.

The arbitrator has been appointed contrary to the agreement between the parties or the SAA.

An arbitrator was incompetent to hear the case under the specific grounds set out in the SAA.

Without fault of the party, an irregularity has occurred in the course of the proceedings which has likely influenced the outcome of the case.

5.2 Can the parties exclude rights of appeal or challenge?

Provided that there is an explicit agreement in writing, two non-Swedish parties may exclude their right to challenge the arbitral award provided that (i) the parties are commercial parties and (ii) the relationship between them is commercial. However, in relation to arbitrations where one of the parties is Swedish, this right of exclusion does not apply.

5.3 What are the provisions governing modification, clarification or correction of an award (if any)?

The provision on correction of arbitral awards is limited to "obvious inaccuracies" due to (i) the arbitrators' or someone else's typographical error, miscalculation or other similar error, or (ii) the arbitrators' failure (by oversight) to decide an issue which was supposed to be ruled on in the arbitral award. Where the arbitrators find that (i) or (ii) has occurred, the arbitrators may order a correction of or an addition to the award within 30 days from the date of the award's announcement. '

The arbitrators may also correct or supplement an award or interpret a decision in the award, upon the request of a party, within 30 days of that party's receipt of the award. If the arbitrators decide to correct or supplement an

award, such change shall be made within 30 days from the date on which the arbitrators received the request. If the arbitrators themselves find that the award should be amended, this must be done within 60 days.

In any event, the SAA states that before the tribunal decides on the correction of the award, both parties should be given an opportunity to express their views on the measure.

6. ENFORCEMENT

6.1 Has your jurisdiction ratified the New York Convention or any other regional conventions concerning the enforcement of arbitration awards? Has it made any reservations?

Yes. Sweden ratified the New York Convention without any reservations or reciprocity requirements with effect as from 28 January 1972. In addition, the ICSID Convention entered into force in Sweden on 28 January 1967.

6.2 What are the procedures and standards for enforcing an award in your jurisdiction?

Swedish arbitration awards are enforceable automatically and may be enforced by making an application to the Swedish Enforcement Authority (*Kronofogdemyndigheten*). However, according to the relevant legislation, before the award may be executed, the Enforcement Authority must carry out a summary review of the award.

The Enforcement Authority should refuse execution if (i) the arbitral grounds do not meet the writing criterion or signature requirement, as explained in *Section 5.1* above, or (ii) the award can be expected to be challenged and the deadline for such challenge has not yet expired. If the Enforcement Authority believes there to be a risk that the award is invalid or contrary to Swedish public policy, it should direct the party seeking enforcement to initiate court proceedings, within one month.

The enforcement of foreign arbitration awards in Sweden correspond to the procedures for the New York Convention. Although there are some slight differences in the wording of the provisions on enforcement in the SAA and primarily Article V in the New York Convention, it is generally considered that the courts will interpret the SAA in light of the New York Convention (*Hobér, 359*). A foreign award, that is, an award which has been rendered abroad, shall be deemed to have been made at the place of arbitration. Under the SAA, the grounds for refusing recognition or enforcement of an award are:

- Lack of capacity of the parties, parties not duly represented or the arbitration agreement being invalid.
- Due process; the party against whom the award is invoked was not properly notified of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present his or her case.
- Exceeding the terms of the submission to arbitration or the award containing decisions on matters beyond the scope of the agreement.
- The arbitral tribunal's composition or the arbitral procedure was not in accordance with the parties' agreement or, failing such agreement, not in accordance with the law of the state where the arbitration took place.
- The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the state in which, or under the law of which, the award was made.

There are also two grounds which should be applied by the enforcing court *ex officio*:

- The award determines issues that are non-arbitrable.
- The award would be clearly incompatible with basic principles of the Swedish legal system, that is, public policy.

An application for the enforcement of a foreign award should be lodged with the Svea Court of Appeal. The party seeking enforcement must append a certified copy of the award to the application. Under the SAA, the award must be in Swedish but the Appeal Court may dispense with this requirement and allow the party seeking enforcement to append the award in English (*Heuman, 743*). An application for enforcement will not be granted unless the opposing party has been afforded an opportunity to express his opinion upon the application.

Unlike the New York Convention, there is no requirement that the party applying for recognition and enforcement supply the original arbitration agreement or a duly certified copy thereof since oral arbitration agreements are recognised in Sweden (*Hobér, 373*). However, where the losing party opposes the existence of an arbitration agreement, the party seeking recognition and enforcement of a written arbitration agreement must supply the original arbitration agreement or a duly certified copy thereof. Where a party is seeking recognition and enforcement of an oral arbitration agreement, the party must prove that the agreement to arbitrate was entered into in some other manner, for example by witness evidence. If the Appeal Court grants the application, the award is enforced as a final judgment of a Swedish court, meaning that the award is executable with the Enforcement Authority.

In 2014, the Svea Court of Appeal, which is the Swedish court that tries all arbitral awards rendered in Stockholm, published procedural guidelines, which are available in English at *www.sccinstitute.com/media/56038/arbitration-cases-before-the-svea-court-of-appeal-version-1.pdf*.

6.3 Is there a difference between the rules for enforcement of "domestic" awards and those for "non-domestic" awards?

Yes. As explained in *Section 6.2*, Sweden maintains one order for the enforcement of awards that are domestic (that is, rendered in Sweden) and another order for the enforcement of awards that are non-domestic (that is, international).