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Group Publisher
Richard Firth

Published by
Global Legal Group Ltd.
59 Tanner Street
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Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
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Chapter 28

Sweden

Fabian Ekeblad

Malin Van den Tempel

Advokatfirman Vinge KB

1 Regulatory

1.1 Which government bodies/agencies regulate insurance (and reinsurance) companies?

The Swedish Financial Supervisory Authority (*Sw. Finansinspektionen*) (the "Swedish FSA") is responsible for the supervision of insurance and reinsurance undertakings in Sweden. The Swedish FSA, *inter alia*, authorise insurance and reinsurance undertakings to conduct insurance or reinsurance business, supervises the business and may impose sanctions in case the undertaking fails to comply with the Swedish Insurance Business Act (2010:2043) (the "IBA") or other laws and regulations applicable to the insurance business. The Swedish Consumer Agency may also impose sanctions in case the undertaking fails to comply with Swedish consumer protection laws.

1.2 What are the requirements/procedures for setting up a new insurance (or reinsurance) company?

Insurance business may only be carried on by an undertaking which has been granted an authorisation by the Swedish FSA. Authorisation may only be granted to a company limited by shares (*Sw. aktiebolag*), a mutual insurance undertaking (*Sw. ömsesidigt försäkringsbolag*) or an insurance association (*Sw. försäkringsförening*). If the application for authorisation is complete, the application would generally be processed by the Swedish FSA within five months.

The IBA, the Swedish Companies Act and the Economic Association Act set out the relevant provisions regarding the formation and incorporation of an insurance undertaking.

An undertaking may only be granted an authorisation to conduct insurance business if it satisfies the following criteria:

- The articles of association or the by-laws are compliant with the IBA and other laws and regulations and otherwise include provisions which are required, having regard to the scope and nature of the proposed business.
- The proposed business is deemed to be compliant with the requirements under the IBA and other laws and regulations governing the business of the undertaking.
- The qualifying holder of shares in an insurance company is deemed to be suitable to exercise a significant influence over the management of the insurance company, which would include considerations regarding the good standing and capital strength of the qualifying holder.
- The persons who shall be involved in the management of the undertaking have sufficient knowledge and experience and otherwise are fit and proper for the assignment.

1.3 Are foreign insurers able to write business directly or must they write reinsurance of a domestic insurer?

1.3.1 Foreign insurers authorised and established within the EEA

A foreign insurer or an institution for occupational retirement established and authorised within the EEA – and which is not a reinsurance undertaking – may establish a branch or general agency (secondary establishment) or carry on business on a cross-border basis in Sweden without applying for an authorisation, however, before doing so the undertaking must notify its home supervisory authority. Passive provision of services would also require a prior notification.

A foreign insurer intending to carry on motor insurance business in Sweden must certify that it is a member of the Swedish Association of Motor Insurers (*Sw. Trafikförsäkringsföreningen*). A foreign insurer intending to carry on motor insurance business on a cross-border basis must also appoint a representative in Sweden.

A foreign insurer authorised and established within the EEA may carry on reinsurance business in Sweden from a branch or general agency, or write business on a cross-border basis without applying for an authorisation or notifying its home supervisory authority.

1.3.2 Foreign insurers authorised and established outside the EEA

A foreign insurer authorised and established outside the EEA may not write insurance or reinsurance business concerning risks situated in Sweden without authorisation by the Swedish FSA.

The foreign insurer may apply for an authorisation at the Swedish FSA to:

- carry on insurance business in Sweden by establishing a branch or general agency in Sweden (whereby the foreign insurer becomes authorised to carry on insurance business in Sweden); or
- market insurances (a form of provision of services on a cross-border basis) concerning risks situated in Sweden, if the insurances are mediated by an insurer, which has been granted an authorisation in Sweden and is either affiliated with the foreign insurer or has entered into a cooperation agreement with the foreign insurer.

An insurer, authorised and established in Switzerland, may benefit from the terms of the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance (as amended). An insurer, authorised and established in Switzerland, which intends to carry on direct non-life insurance business in Sweden by establishing a branch or general

agency in Sweden, may be exempted from certain requirements which are imposed on foreign insurers authorised outside the EEA. This does not apply to the provision of services on a cross-border basis.

A foreign insurer from a third country is however not required to apply for an authorisation in order to passively provide services concerning risks situated in Sweden to policyholders who have approached the foreign insurer on their own initiative, to procure the insurance cover. This means that no authorisation would be required if the policyholder approaches the foreign insurer on its own initiative to procure the insurance cover. In addition, the foreign insurer would not be required to apply for an authorisation in respect of one single insurance policy (whether "passive" or not).

1.4 Are there any legal rules that restrict the parties' freedom of contract by implying extraneous terms into (all or some) contracts of insurance?

The insurance activities would be subject to mandatory Swedish laws on marketing, consumer protection, data protection, insurance contracts, good insurance mediation practice, etc.

The Swedish Insurance Contracts Act (the "ICA") is applicable to insurance contracts and includes various provisions which are mandatory in favour of the policyholder, its assignee or the insured (unless otherwise provided in the ICA). This means that the ICA may restrict the terms of an insurance contract or disallow certain types of exclusion clauses. The Discrimination Act may also prohibit certain discriminatory terms in an insurance contract. Insurance contracts concerning risks situated in Sweden would be governed by the Regulation (EC) No 593/2008 (Rome I Regulation), which restricts the right of the parties to choose applicable law to the insurance contract.

Various mandatory provisions of the ICA, the Distance and Off-Premises Contracts Act (2005:59) and regulations issued by the Swedish FSA would, for example, apply regarding the obligation to provide pre-contractual or contractual information to customers and policyholders. An insurance undertaking is under an obligation to provide sufficient information to a customer before he or she enters into an insurance contract. The information shall include a description of the main terms of the insurance contact, which the customer should be aware of in order to assess the costs for and the scope of the insurance. The information shall also *inter alia* set out limitations in the insurance cover or important exclusion clauses. Failure to provide adequate information could result in a declaration by the court that the relevant exclusion clause is void.

1.5 Are companies permitted to indemnify directors and officers under local company law?

There may be some restrictions under Swedish company laws, but a company would generally be permitted to indemnify a director or other officer in case the relevant director or officer is liable to pay damages for any loss suffered by a shareholder, creditor or any other third party resulting from any breach of duty. Even though it is not an express requirement, an agreement to indemnify directors or officers should be approved by the shareholders in a general meeting. It is, however, unclear whether an agreement to indemnify a director or officer for acts or omissions caused by gross negligence or wilful intent would be enforceable under Swedish law.

1.6 Are there any forms of compulsory insurance?

There are several forms of compulsory insurance, i.e., insurance cover which is mandatory under law.

Owners of motor vehicles must be covered by traffic insurance. Insurance intermediaries, real estate agents and accountants must maintain professional indemnity insurance. There are also obligations to maintain compulsory insurance under the provisions of, for example, the Nuclear Plant Liability Act (1968:45), Air Traffic Act (2004:519), Railway Traffic Act (2004:519) or Sea Traffic Act (1994:1009).

An employer may be under an obligation to provide insurance benefits under the terms of a collective bargaining agreement, such as occupational old age pension, sick pay pension, occupational injury insurance, etc.

Advocates are also required to be covered by professional indemnity insurance in accordance with the rules of the Swedish Bar Association.

2 (Re)insurance Claims

2.1 In general terms, is the substantive law relating to insurance more favourable to insurers or insureds?

Any contract (including insurance and reinsurance contracts) may be modified or set aside pursuant to the Swedish Contracts Act (*Sw. lag (1915:218) om avtal och andra rättshandlingar på förmögenhetsrättens område*) and general equitable principles if the terms of the contract are deemed unreasonable, even if the circumstances giving rise thereto have arisen after the contract was entered into.

The substantive laws of Sweden are generally more favourable to the insured. The ICA includes various provisions which are mandatory in favour of the policyholder, its assignee or the insured (unless otherwise provided in the ICA). This means that the ICA may restrict the terms of an insurance contract or disallow certain types of exclusion clauses. Any term of an insurance contract which is contrary to any mandatory provision under the ICA is void. Unless a provision is mandatory, the parties, however, have complete freedom of contract. Insurance contracts concerning risks situated in Sweden would be governed by the Rome I Regulation, which restricts the right of the parties to choose applicable law to the insurance contract.

Reinsurance is exempted from the application of the ICA and the parties have complete freedom of contract. Provisions of the ICA may, however, according to the preparatory works, if deemed appropriate, be implied in a reinsurance contract.

2.2 Can a third party bring a direct action against an insurer?

A person who has suffered damage may make a claim directly against the insurer for indemnity (direct action) under a liability insurance policy in the following circumstances:

(a) the insured is under a legal obligation to maintain the liability insurance cover (i.e. a compulsory liability insurance policy);

(b) the insured is declared insolvent or is subject to a public composition; or

(c) the insured is a legal person which has been dissolved.

A person, who is a consumer and who has suffered damage, may claim directly against the insurer to the extent the insured is unable to indemnify the claimant.

2.3 Can an insured bring a direct action against a reinsurer?

The insured is not a party to a reinsurance contract and would be prevented from bringing a claim directly against the reinsurer,

unless there is a cut-through indemnification endorsement in favour of the insured. A cut-through indemnification endorsement is a separate agreement between the insured and the reinsurer whereby the insured becomes a party of the reinsurance contract. The insured would then have a right to make a claim directly against the reinsurer instead of making a claim at its (insolvent) insurer. It should, however, be noted that the administrator of the bankruptcy estate may not recognise the validity of the endorsement and that it potentially could be challenged in court.

2.4 What remedies does an insurer have in cases of either misrepresentation or non-disclosure by the insured?

In case the policyholder has acted fraudulently or contrary to good faith in connection with an obligation to disclose information in accordance with the provision of the ICA the insurance policy may be void.

In case of a consumer insurance policy, if the policyholder otherwise has acted with wilful intent or by negligence in connection with any duty to disclose information, the indemnity payment may be reduced to the extent reasonable, having regard to the importance of the information in relation to the risk assessment and other relevant circumstances. This means that the indemnity payment may be reduced in proportion to the failure to disclose the relevant information (for example 50 per cent of what the policyholder would have been entitled to had he or she not failed to provide the information). The indemnity payment may be reduced to zero.

In case of a business insurance policy, if the policyholder with wilful intent or by negligence has disregarded its obligation to disclose information and where the insurer can demonstrate that the policy would not have been issued had the policyholder complied with its obligation, the insurer may be released from its obligation for any insured event which occurs. If the insurer can demonstrate that the insurance policy would have been issued at a higher premium or with modified terms, the obligation shall be limited to the amount reflected by the premium and other terms agreed to. The terms of the insurance contract may provide that the insurer, as an alternative, is only liable to the extent it is demonstrated that the inaccurate information had no significance for the occurrence of the insured event or for the extent of the damage.

2.5 Is there a positive duty on an insured to disclose to insurers all matters material to a risk, irrespective of whether the insurer has specifically asked about them?

A person intending to enter into an insurance contract (or renew or vary an insurance contract) is – if requested by the insurer – under an obligation to disclose information which may be relevant to the issuance of the insurance contract. The policyholder must provide accurate and complete answers to any questions of the insurer. The policyholder is generally not under a positive duty to provide the information, unless requested by the insurer to do so, except in some circumstances:

(a) If the policyholder becomes aware that any information previously disclosed was inaccurate regarding matters of material importance to the risk assessment, then the policyholder is under a duty to disclose correct information to the insurer.

(b) In case of a business insurance contract, the policyholder is under a positive duty to disclose such information which is of material importance to the risk assessment of the insurer, also where the insurer has not requested the policyholder to provide the information.

2.6 Is there an automatic right of subrogation upon payment of an indemnity by the insurer or does an insurer need a separate clause entitling subrogation?

The insurer has a statutory right of subrogation to the insured's claim for damages arising from a loss, to the extent such claim is covered by the insurance policy and has been indemnified by the insurer. The insurer can, however, never achieve a better position in relation to the defendant than the insured.

The right of subrogation of an insurer may however be limited under the terms of the so called Subrogation Agreement (*Sw. Regressöverenskommelsen*), which applies between many, but not all, Swedish insurance companies.

3 Litigation - Overview

3.1 Which courts are appropriate for commercial insurance disputes? Does this depend on the value of the dispute? Is there any right to a hearing before a jury?

In Sweden there are no courts that are specialised in insurance disputes. Instead, commercial insurance disputes are, as for all civil actions, commenced at the competent District court, regardless of the value of the dispute. Jury hearings do not exist in insurance disputes.

3.2 How long does a commercial case commonly take to bring to court once it has been initiated?

It is not easy to indicate the average length of a commercial case. Even if the case is rather ordinary and uncomplicated, it would probably take about one-and-a-half to two years to get a judgment in the first instance. However, the courts adopt measures to speed up the process, such as making the parties agree to a rather tight plan for exchanging pleadings and by scheduling oral preparation as well as the final hearing at an early stage.

A leave to appeal is required for a civil case to be tried in the second instance, by the Court of Appeal, as well as in the last instance, by the Supreme Court. In the last instance, however, the possibilities to be granted a leave of appeal in a commercial case are limited, as a leave to appeal will only be granted for such cases that are of interest in terms of constituting a precedent.

4 Litigation - Procedure

4.1 What powers do the courts have to order the disclosure/discovery and inspection of documents in respect of (a) parties to the action and (b) non-parties to the action?

Under Swedish law the courts means to *ex officio*, by its own initiative, order disclosure or discovery and inspection of documents are limited. However, on the request of a party, the courts may issue an order for discovery (*Sw. edition*), directed towards anyone in possession of documents that can be expected to have significance as evidence in the dispute, i.e. towards both parties and non-parties to the proceeding. Nevertheless, an order for discovery regarding documents that include professional secrets would not be issued unless exceptional reasons were at hand.

The party requesting disclosure of certain documents must identify the documents carefully and specify the evidentiary importance of the documents. An order for discovery of documents may be sanctioned by a conditional fee. The general view under Swedish law is that disclosure should not be ordered until a case has commenced.

4.2 Can a party withhold from disclosure documents (a) relating to advice given by lawyers or (b) prepared in contemplation of litigation or (c) produced in the course of settlement negotiations/attempts?

A party is entitled to withhold from disclosure documents that relate to advice from lawyers, documents prepared in contemplation of litigation or produced in the course of settlement negotiations or attempts.

Documents containing trade secrets, as well as memoranda and records intended exclusively for personal use, are in general protected, unless there are exceptional reasons for disclosing the documents.

4.3 Do the courts have powers to require witnesses to give evidence either before or at the final hearing?

Witnesses are normally called by the courts to give evidence at the final hearing. Witnesses that are summoned to appear in court have a duty to give evidence and, as a general rule, written witness statements cannot be submitted. If, however, a witness cannot attend the final hearing, or if appearing at the final hearing would entail unreasonably high costs or inconvenience, a witness may give evidence outside of the final hearing. In such events, the taking of evidence may take place at a special meeting at the competent court or at a foreign court. For witnesses refusing to give evidence, the courts may take compulsory measures, such as imposing a conditional fine, fetching the witness to court or ultimately detaining the witness in custody.

4.4 Is evidence from witnesses allowed even if they are not present?

Please see the response to question 4.3 above.

4.5 Are there any restrictions on calling expert witnesses? Is it common to have a court-appointed expert in addition or in place of party-appointed experts?

There are no restrictions for a party on providing evidence by expert opinion, besides the fact that an expert witness may not be related to the matter in dispute or to any of the parties in such a way that the reliability of his testimony can be questioned. However, prior to the hearing of the expert witness, the party stating the evidence must file an expert report with the court, which should be communicated with the opposite party.

In our experience, court-appointed experts are highly uncommon in general, and in civil cases especially. The fees for court-appointed experts are paid out of public funds. If a court-appointed expert would need information about circumstances of importance to his assignment, the court may order a party or a non-party of the action to be heard, or other inquiry to be brought before the court prior to the final hearing.

4.6 What sort of interim remedies are available from the courts?

There are several forms of interim remedies available. The courts may order provisional attachment (*Sw. kvarstad*) of so much of the adversary's property that the relevant claim can be assumed to be covered in case of distraint. An order of attachment would require that the party requesting it show probable grounds for possession of a claim which is, or can be assumed to be, subject of legal proceedings or adjudication in other similar forms, and that it is reasonable to expect that the adverse party would evade payment of the debt by absconding, removal of property or other means.

A court may also, if requested by a party, impose an appropriate sanction, such as a prohibition of a certain business or of performing a certain act, under penalty of a fine, to secure the claimant's legal rights. This would require that it can be reasonably expected that the adverse party, by carrying on a certain activity, by performing or refraining from performing a certain act, or by other means, will prevent or render difficult the exercise of the claimant's right or substantially diminish its value.

Generally, a request for provisional attachment or other sanction may not be granted unless the adverse party has been given the opportunity to express his opinion. However, in cases where there is an imminent danger, the courts may order such sanctions provisionally without hearing the adverse party. In cases where a provisional attachment or other sanction have been ordered, separate from a legal proceeding, the claimant is required to bring an action before the court or initiate an arbitration within one month of the order, or otherwise the order will lapse.

A requirement for interim remedies is that the claimant deposits sufficient security with the court, to compensate the adverse party for the potential losses he may suffer. Exceptions from this requirement can be made if the claimant is unable to provide such security and is able to show that he has exceptional reasons for his claim.

4.7 Is there any right of appeal from the decisions of the courts of first instance? If so, on what general grounds? How many stages of appeal are there?

In Sweden there are two stages of appeal from decisions of the courts of first instance, the Court of Appeal and the Supreme Court.

All final judgments or judicial decisions of the courts of first instance may be appealed at the Court of Appeal, the second instance. As for intermediate decisions of the first instance, some decisions may be appealed independently, and certain types of decisions may only be appealed in connection with the appeal of a final judgment or decision.

A leave to appeal is required for any judgment or decision in a civil case to be tried in second instance. The general grounds for a leave to appeal in second instance are that: there are reasons to doubt the accuracy of the judgment; the accuracy of the judgment cannot be judged on the basis of the reasons for judgment; the case is of interest in terms of constituting a precedent; or, alternatively, there are exceptional reasons for the case to be tried in second instance.

For any judgment of the Court of Appeal to be tried in the Supreme Court, the Supreme Court must grant a leave to appeal. In civil cases the only ground for a leave to appeal is that the case is of interest in terms of constituting a precedent.

4.8 Is interest generally recoverable in respect of claims? If so, what is the current rate?

Interest of a claim which is running prior to a judgment being obtained, must be claimed in order to be recoverable.

If a claim with a fixed due date is not paid in time, interest will run from the due date. In other events, interest will start running 30 days after which the claimant has sent an invoice or otherwise made a claim which sets out that non-payment will cause interest to run,

unless both debtor and creditor are proprietors of business and the debt is originated within their business activity, in which case it is not necessary to specify that non-payment will cause interest to run. However, the debtor is not obliged to pay interest in relation to the time prior to him receiving the claim.

The rate of interest for one year corresponds to the current reference rate, at present one per cent, with an addition of eight (8) percentage units.

Interest in respect of litigation expenses will run from the date of judgment, regardless if interest has been claimed.

4.9 What are the standard rules regarding costs? Are there any potential costs advantages in making an offer to settle prior to trial?

The standard rule regarding litigation costs is that the losing party must pay the costs of the winning party. However, if the plaintiff wins only partially, the costs should, in principle, be proportionally allocated in relation to the degree of success.

The reimbursement of litigation expenses should fully cover the party's costs of preparing and performing the action, such as attorney's fees and expenses for witnesses. Nevertheless, the courts would only order a party to compensate such of the opposite party's costs that are considered reasonable.

If the parties in a dispute are reconciled prior to trial, the parties would, in general, carry their own litigation costs. How to apportion the litigation costs could of course be a part of the settlement.

4.10 Can the courts compel the parties to mediate disputes? If so, do they exercise such powers?

No, the courts have no powers to compel the parties to mediate disputes.

4.11 If a party refuses to a request to mediate, what consequences may follow?

Not applicable, please see the reponse to question 4.10 above.

5 Arbitration

5.1 What approach do the courts take in relation to arbitration and how far is the principle of party autonomy adopted by the courts? Are the courts able to intervene in the conduct of an arbitration? If so, on what grounds and does this happen in many cases?

A valid arbitration agreement serves as a bar to court proceedings. The courts are also prevented to hear certain types of disputes which shall be determined by arbitration exclusively.

The Swedish Arbitration Act (*Sw. lag om skiljeförfarande (1999:116)*) states that a court may not, over an objection of a party, rule on an issue which, pursuant to an arbitration agreement, shall be decided by arbitrators. It should be noted that a party must invoke an arbitration agreement on the first occasion that a party pleads his case on the merits in the court. Invocation of an arbitration agreement raised on a later occasion has no effect unless the party had a legal excuse and invoked the arbitration agreement as soon as the excuse ceased to exist.

Irrespective of the arbitration procedure, the courts are not prevented from deciding certain matters with respect to the arbitration agreement, such as the arbitrators' jurisdiction to decide the dispute. The arbitrators may rule on their own jurisdiction to decide the dispute. Nevertheless, this does not prevent a court from determining such a question at the request of a party. The arbitrators may continue the arbitral proceedings pending the determination by the court.

The courts are also entitled under certain circumstances to appoint arbitrators, or appoint new arbitrators where an arbitrator resigns or is discharged. For example, if the respondent fails to appoint an arbitrator within the stipulated time, the District Court may make the appointment upon request by the claimant. Nor does the arbitration agreement prevent a court from, upon request by a party, deciding on security measures with respect to claims under consideration by the arbitral tribunal.

5.2 Is it necessary for a form of words to be put into a contract of (re)insurance to ensure that an arbitration clause will be enforceable? If so, what form of words is required?

Since general contractual principles apply to the arbitration clause, involving freedom of contract, no specific form of words is required. The parties are free to agree on the arbitral agreement, with exception of disputes relating to consumers (please see question 5.3 below).

5.3 Notwithstanding the inclusion of an express arbitration clause, is there any possibility that the courts will refuse to enforce such a clause?

Generally, Swedish courts recognise and enforce arbitration agreements, and a valid arbitration clause serves as a bar to court proceedings. Parties may agree on arbitration prior to, as well as after, the dispute.

As provided in section 5 of the Arbitration Act a party may, however, lose its right to rely on the arbitration agreement if it has:

(a) opposed a request for arbitration by the other party;

(b) failed to appoint an arbitrator in time; or

(c) failed to pay his share of requested security for compensation to the arbitrators.

These circumstances can be characterised as breaches of the arbitration agreement, which allows the other party to treat the agreement as terminated.

It is possible that there are other material breaches of the arbitration agreement which would entitle the opposite party to terminate the arbitration agreement. As the Arbitration Act is silent on this matter, it would probably be difficult to terminate the agreement on grounds which are not specified in section 5, and which do not relate to general grounds for invalidity of contract, such as fraud or duress.

An arbitration clause may also be set aside pursuant to section 36 of the Contracts Act if it is considered to be unreasonable, having regard to the contents of the agreement, the circumstances prevailing at the time the agreement was entered into, subsequent circumstances and circumstances in general. The courts are, however, restrictive on applying this rule to set arbitration clauses or agreements aside, unless the dispute regards unequal parties.

Where a dispute between a business enterprise and a consumer concerns goods, services, or other products supplied principally for private use, an arbitration agreement may not be invoked if it was entered into prior to the dispute. However, this restriction does not apply where the dispute regards an agreement between an insurer and a policy-holder concerning insurance based on a collective agreement or a group agreement which is handled by a representative

of the group. Nor does this restriction on agreeing to settle disputes through arbitration apply where Sweden's international obligations provide the contrary.

5.4 What interim forms of relief can be obtained in support of arbitration from the courts? Please give examples.

Both a court and an arbitral tribunal may, at the request of a party, order provisional measures. There are several reasons why it is more advantageous for a claimant to turn to a court if he wants to be secured without delay. Firstly, the court's decision is enforceable, in contrast to the decision made by arbitral tribunals. Additionally, the court can order provisional measures, such as attachment, without hearing the opposite party in case there is an imminent danger. The provisions of the Code of Judicial Procedure determine what types of provisional measures that can be ordered.

A party may obtain an attachment order or other interim measures when it is foreseen, or there is proof, that the adverse party will remove his assets and make them inaccessible for future attachment. A Swedish District Court is competent to order provisional attachment if the respondent is domiciled in Sweden.

Another example of obtainable interim measures is that the court, in case there is a risk of a contractor cancelling work that must be completed to avoid more extensive damage, may decide on suitable provisional measures to safeguard the claimant´s legal rights.

5.5 Is the arbitral tribunal legally bound to give detailed reasons for its award? If not, can the parties agree (in the arbitration clause or subsequently) that a reasoned award is required?

The Arbitration Act does not require that an arbitration tribunal give reasons for its award or decision. The parties can agree that a reasoned award is required, both in the arbitration clause and subsequently. However, even without such an agreement, it has become common practice in Sweden to give detailed reasons for awards and decisions of arbitral tribunals.

5.6 Is there any right of appeal to the courts from the decision of an arbitral tribunal? If so, in what circumstances does the right arise?

Generally speaking, arbitral awards are final and the merits of the case may not be appealed.

Nevertheless, under certain circumstances provided in the Arbitration Act, an award could be regarded either invalid or challengeable. Invalid awards are *ab initio* and forever, which means that no activity from any of the parties is required for the award to be invalid. Challengeable awards may be set aside by a court of law under certain circumstances, at the request of a party. In such cases an action must be brought by a party within three months from the date the award was communicated to him.

Under the Arbitration Act there are three exhaustive grounds for invalidity of an arbitral award:

(a) it includes determination of an issue which may not be decided by arbitrators;

(b) the award or the manner in which the award has been rendered violates Swedish public policy; or

(c) the award has not been made in writing and it has not been signed by the arbitrators.

As to challengeable awards, an arbitral award will, at the motion of a party, be wholly or partially set aside if:

(a) it is not covered by a valid arbitration agreement;

(b) the arbitrators have rendered the award after the expiration of the period decided on by the parties, or where the arbitrators have otherwise exceeded their mandate;

(c) arbitral proceedings should not have taken place in Sweden;

(d) an arbitrator has been appointed contrary to the agreement between the parties or the Arbitration Act;

(e) an arbitrator was unauthorised; or

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

Fabian Ekeblad
Advokatfirman Vinge KB
Smålandsgatan 20
Box 1703
SE 111 87 Stockholm
Sweden

Tel: *+46 10 614 3097*
+46 70 714 3097
Email: *fabian.ekeblad@vinge.se*
URL: *www.vinge.se*

Fabian Ekeblad is the head of Vinge's insurance practice group. Vinge's insurance practice group was founded in 1990, which made Vinge the first law firm in Sweden with an insurance business law specialisation. Vinge's insurance practice is insurer-led and is particularly strong in the field of insurance-related transactions and regulatory work. Fabian graduated in law in 1998 (LL.M., University of Stockholm), joined Vinge in 1997 and has been partner with the firm since 2006. He is a member of the Swedish bar association. On the initiative of the Swedish Financial Supervisory Authority Fabian Ekeblad has been appointed, and is acting as, liquidator of the only two Swedish insurance undertakings that have lost their licence. Fabian Ekeblad's practice focuses on transactions within the insurance sector, regulatory as well as insurance contracts and policy matters. He is responsible for the client relationship with several leading national and international life and non-life insurance companies and insurance intermediaries. Fabian is listed as a leading lawyer by Chambers & Partners and other major ranking institutes.

Malin Van den Tempel
Advokatfirman Vinge KB
Smålandsgatan 20
Box 1703
SE 111 87 Stockholm
Sweden

Tel: *+46 10 614 3121*
+46 70 714 3121
Email: *malin.vandentempel@vinge.se*
URL: *www.vinge.se*

Malin Van den Tempel is a member of the Swedish Bar Association and the Law Society of Northern Ireland having graduated in law from the University of Lund (1992-1996) and the Queen's University of Belfast (1996-1999) with a diploma in legal practice 2002. She has previous experience as a legal advisor in Northern Irish and Swedish law firms and as a legal counsel at the legal insurance division of the Swedish Financial Supervisory Authority. Malin has particular expertise in insurance contract law and regulatory matters, company law, insurance M&A transactions (including portfolio transfers) and financial services. She acts for major Swedish and international clients including insurers established within and outside the EEA.

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GLG
Global Legal Group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

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