Arbitration in Sweden

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This note describes the main features of international arbitration in Sweden, offering practical guidance and insights into the legislative framework and pertinent case law.

Scope of this note

Sweden is a popular arbitral seat, known for its long-standing tradition of resolving disputes through arbitration, independent judiciary, and pragmatic legal culture.

This note describes the main features of international arbitration in Sweden, offering practical guidance and insights into the legislative framework and pertinent case law. It addresses all significant aspects of the arbitral process, from the prerequisites for a valid arbitration agreement and the arbitral tribunal's duties and powers, to the role of state courts, arbitral awards and post-award procedures, including challenges to awards and their enforcement.

Main features of international arbitration in Sweden

Arbitration in Sweden, and Swedish civil procedure in general, reflect a blend of civil and common law traditions. Almost all commercial disputes can be referred to arbitration by agreement of the parties. Swedish arbitration law prioritises party autonomy, allowing the parties to tailor the arbitration process to their needs, including the appointment of arbitrators of their choice. The arbitral tribunal must generally follow the procedure agreed on by the parties, unless the agreed process is illegal or impossible to implement. Beyond the specifics of the parties' agreement, the arbitral tribunal has broad discretion in conducting the arbitration.

Swedish arbitral proceedings are adversarial. It is the responsibility of the parties to present the factual matrix of the dispute and to gather and present evidence to the arbitral tribunal in support of their respective cases. All evidence is admissible, regardless of its nature or the manner in which it was obtained. Although there is no automatic duty of disclosure, the arbitral tribunal may, at the request of a party, order the other party to produce documents.

Unless the parties agree otherwise, cases are presented both in writing and orally. It is the responsibility of the parties' counsel to examine and cross-examine witnesses and experts. The arbitral tribunal will evaluate the evidence presented to it, but it cannot consider facts or evidence that neither party has relied on. The only statutory exception to this rule is the arbitral tribunal's right, unless both parties object, to appoint an expert to assist the tribunal.

Swedish arbitration law recognises the principle of kompetenz-kompetenz and an arbitral tribunal is generally considered to be in the best position to assess its own jurisdiction.

Swedish courts take a non-interventionist approach to arbitration but are available to provide the necessary assistance in aid of arbitration and are well versed in all arbitration-related matters. Successful challenges to arbitral awards are rare. Applications for the recognition and enforcement of foreign arbitral awards are examined with a view to facilitating the uniform application of the New York Convention.

Sources of Swedish arbitration law

The main source of Swedish arbitration law is the Swedish Arbitration Act (SFS 1999:116) (**SAA**). The SAA applies to all arbitrations seated in Sweden, both international and domestic (*section 46, SAA*). Although the SAA is not directly based on the UNCITRAL Model Law on International Commercial Arbitration (UNCITRAL Model Law), in practice there are only few significant differences between the two. The provisions of the SAA are largely non-mandatory, meaning that the parties can derogate from them by agreement. This is often

the case even where the SAA does not expressly state that derogation is allowed. The most recent amendments to the SAA were enacted through the Amendment Act (SFS 2018:1954), which entered into force on 1 March 2019. The revised SAA applies to arbitrations commenced on or after that date.

The provisions of the SAA are predominantly of general nature, with many aspects of its application to specific cases left to case law. Therefore, arbitration-related case law from the Swedish Supreme Court is another important source of Swedish arbitration law, although it is not formally binding on Swedish courts in the same way as the SAA. A selection of arbitration-related judgments and other decisions of Swedish courts is freely available in English translation on the Swedish Arbitration Portal maintained by the SCC Arbitration Institute (SCC) (see SCC: Swedish Arbitration Portal).

The legislative history of the SAA, in particular the Government Bills (see Government Bill 2017/18:257 and, in relevant parts, Government Bill 1998/99:35), sets out the rationale for the various provisions of the SAA and represents an important source of guidance for its interpretation and application.

Swedish courts will consider legal doctrine (such as academic commentaries) principally in relation issues for which there is no relevant guidance in the SAA, case law of the Swedish Supreme Court, and the legislative history to the SAA.

To confirm a particular solution to an unresolved issue under Swedish law, Swedish courts increasingly consider international soft law instruments and non-Swedish doctrinal sources on international arbitration.

The provisions of the Swedish Code of Judicial Procedure (CJP) are generally considered inapplicable to international arbitrations seated in Sweden, subject to certain exceptions. Notable exceptions include the rules on res judicata and the reimbursement of litigation costs, which are applied by analogy to arbitral awards and the reimbursement of arbitration costs, respectively.

As Sweden is an EU member state, EU law has direct effect in Sweden and takes precedence over Swedish law. In recent years, the supremacy of EU law over Swedish arbitration law has been highlighted in matters involving intra-EU investment treaty arbitrations (see Challenges to awards).

Key arbitral institutions

For an overview, and comparison of the features, of some of the leading international arbitration rules, see Practice note, Major international commercial arbitration rules: comparison and key features.

SCC

Most institutional arbitrations seated in Sweden are administered by the SCC. The SCC has distinguished itself as a reliable arbitral institution that stays at the forefront of innovation in dispute resolution to meet the needs of parties from around the world.

The SCC consists of the Secretariat and the Board of Directors. The Secretariat is responsible for the day-to-day administration of cases, while the Board of Directors is the decision-making body for various matters under the SCC Rules, including prima facie decisions on jurisdiction, decisions on the number, appointment and challenge of arbitrators, joinder and consolidation, the seat of arbitration (where the parties have not agreed this), and the costs of arbitration.

All SCC cases are managed through a digital case management platform, the SCC Platform, which provides secure communication and file sharing for the arbitral participants. The SCC ad hoc case management platform can also be used in other institutional and ad hoc arbitrations (see SCC: Case management).

In addition to the administration of standard and expedited arbitrations, the SCC offers emergency arbitration procedures, mediation, express dispute assessment procedures, the services of an appointing authority, and the administration of cases under the UNCITRAL Arbitration Rules. The SCC's hearing facilities and fund-holding services for ad hoc arbitrations are also popular features.

The most recent version of the SCC Arbitration Rules entered into force on 1 January 2023 (SCC Rules 2023) and applies to arbitrations commenced on or after that date.

For further information on SCC arbitration, see Practice note, SCC arbitration (2023 Rules): a step-by-step guide. For arbitrations commenced prior to 1 January 2023, see Practice note, SCC arbitration (2017 Rules): a step-by-step guide.

International Chamber of Commerce (ICC)

The ICC is the second most frequently used institution for arbitrations with a Swedish seat. Over the past decade, the ICC has grown in popularity in the Nordic countries, especially among multinational companies. Increased transparency in the appointment of arbitrators and the ability of in-house counsel to participate as observers in the work of the ICC International Court of Arbitration appear to play a role in the growing popularity of the ICC in the region.

For more information on ICC arbitration, see Practice note, ICC arbitration (2021 Rules): a step-by-step guide.

Arbitration agreement

Form and legal requirements

An arbitration agreement is an agreement between two or more parties to refer an existing or future dispute or disputes to arbitration. The SAA does not prescribe any particular form for an arbitration agreement and recognises oral arbitration agreements and arbitration agreements entered into by conduct (*section 1, SAA*). However, in practice most arbitration agreements are made in writing. The party relying on an oral agreement or an agreement by conduct must be able to prove the existence and content of the agreement.

To be valid and enforceable, an arbitration agreement must make it clear that the dispute is to be resolved by arbitration and the dispute must be arbitrable. An arbitration agreement concerning a future dispute must also specify, explicitly or impliedly, the legal relationship to which the agreement relates (*section 1, first paragraph, SAA*).

A reference in a contract to standard terms is sufficient to bind the parties to an arbitration clause contained in those terms (*Tureberg-Sollentuna Lastbilcentral ekonomisk förening v Byggnadsfirman Rudolf Asplund, Swedish Supreme Court, NJA 1980 page 46, at page 52*). If a contract does not refer to standard terms, the arbitration clause in the standard terms may still bind the parties on the basis of the practices established between the parties (*Skanska Aktiebolag v Värmeledningsaktiebolag Radiator, Svea Court of Appeal, RH 1989:83, at page 208*).

Parties entering into an arbitration agreement must have legal capacity. Under the SAA, the capacity of a party to enter into an arbitration agreement is considered a matter of status, which is governed by the law applicable to the party. The capacity of registered legal entities will usually be governed by the law of the country in which the entity is registered. Where registration is not required, the capacity will usually be governed by the law of the country where the entity's board is seated.

Scope of arbitration agreement

The parties are free to contractually define the scope of the arbitration agreement, subject to the statutory requirement that future disputes to be resolved through arbitration must pertain to the legal relationship(s) specified in the arbitration agreement (*section 1, first paragraph, SAA*).

The legal relationship may be specified explicitly or implicitly, and it may concern an existing or future relationship, provided that any future relationship is identified with sufficient specificity (*KB Components Plastunion v Husqvarna, Swedish Supreme Court, NJA 2023 page 437, at page 444, paragraph 17*) (KB Components v Husqvarna).

In practice, the legal relationship will usually be the contract containing the arbitration clause. Separate contracts are generally considered to form separate legal relationships.

If the wording of the arbitration agreement is ambiguous as to whether a particular dispute is covered, it is generally presumed that the parties intended to refer to arbitration all matters arising in the context of their business relationship (*Belgorkhimprom v Koca, Swedish Supreme Court, NJA 2019 page 171, at page 181, paragraph 13 and at page 190, paragraph 18*) (Belgor). An arbitration clause in a framework agreement is considered to cover disputes arising out of future purchase agreements, provided such future purchase agreements are identified with sufficient specificity in the framework agreement (*KB Components v Husqvarna, at page 444, paragraph 17*).

Future non-contractual disputes typically do not fall within the scope of an arbitration clause in a contract, as they are generally deemed to be outside the contractual relationship and lack the necessary specificity. However, in instances where the legally relevant facts underpinning the non-contractual claim directly correspond to those giving rise to a contractual claim, the non-contractual claim may exceptionally be considered to fall within the scope of the arbitration clause contained in the parties' contract (*L Consulting AB and others v Kemisten and others, Swedish Supreme Court, NJA 2017 page 226, at page 234, paragraphs 15-16* (L Consulting v Kemisten)*; Tupperware Nordic A/S v the Bankruptcy Estate of Facht Distribution, Swedish Supreme Court, NJA 2010 page 734, at page 743, paragraph 12* (Tupperware Nordic v Facht Distribution)*; Birger Perjos v Gatu och Väg AB, Swedish Supreme Court, NJA 2007 page 475, at pages 478-479*).

Arbitrability

The SAA defines arbitrability by reference to the parties' ability to reach an out-of-court settlement of the dispute. Any dispute that the parties may validly settle out of court is generally considered arbitrable (*section 1, first paragraph, SAA*).

Under the SAA, the parties' ability to reach an out-of-court settlement, and thus the arbitrability of a dispute, is assessed under Swedish law as the law of the seat of arbitration, and under the law of the arbitration agreement if different (*Governmental Bill 1998:99:35, at pages 194 and 234*).

The inarbitrability of a dispute under Swedish law at the time an award is rendered leads to the invalidity of the award (*section 33, first paragraph (1), SAA; Moscow City Golf v Nordea Bank, Swedish Supreme Court, NJA 2012 page 790, at page 802, paragraph 15 (*Moscow City Golf*); J.O. v Smart Board Production AB, Swedish Supreme Court, NJA 2018 page 323, at page 328, paragraph 12 and page 332, paragraph 33 (*Norwegian Award*)*). If a dispute is inarbitrable under Swedish law at the time the arbitration agreement is concluded but becomes arbitrable by the time the arbitral award is rendered, the initial non-arbitrability of the dispute is regarded as a matter concerning the validity of the arbitration agreement and a ground for setting aside the award on the application of a party (*section 34, first paragraph (1), SAA; Moscow City Golf, at page 802, paragraph 15*).

The non-arbitrability of a dispute under the law of the arbitration agreement, when this differs from Swedish law, may render the arbitration agreement invalid and provide grounds for setting aside the award on the application of a party (*section 34, first paragraph (1), SAA; Governmental Bill 1998:99:35, at pages 194 and 234;* see also *section 48, first paragraph, SAA).* In such cases, Swedish arbitration law, as the law of the seat, calls for a case-by-case assessment to determine whether the nature of the applicable foreign rules is such that a settlement before Swedish courts would not be acceptable. Generally, international disputes will be allowed to be resolved by arbitration, even if a similar domestic dispute would be deemed inarbitrable. For example, it is considered that there is often no reason to allow the mandatory rules pertaining to economic policy regulations in a foreign state to influence the possibility of an out-of-court settlement between the parties in Sweden (*Government Bill 1998/99:35, at pages 49-50; Moscow City Golf, at page 801, paragraphs 12-13*).

Where either a dispute is inarbitrable under Swedish law or the arbitration agreement is invalid under a foreign law applicable to it, including on the grounds of inarbitrability of the dispute under that law, the arbitration agreement does not constitute a bar to state court litigation in Sweden (*section 49, first paragraph (2), SAA*).

In a commercial context, matters that are considered inarbitrable under Swedish law are essentially limited to:

- Matters affecting the public interest or the interests of third parties, such as the legal status of persons and entities, declarations of bankruptcy, the existence and validity of registered intellectual property rights, the existence of rights *in rem* (except for those rights *in rem* that can be settled out of court after the dispute has arisen), and taxation.
- Matters where the relief sought can only be granted by a court or a state authority, such as public law penalties and fines payable to public authorities, the appointment of certain officials, and similar forms of relief.

Competition law-related disputes involving the public interest or the interests of third parties, such as disputes over the imposition of penalties for infringements of competition law or the prohibition of a merger, are inarbitrable. However, disputes regarding the civil law effects of competition law between the parties to a dispute can be referred to arbitration under the SAA. This applies both to disputes which the parties can validly settle out of court , such as liability for damages, and to disputes over competition law-related matters that the parties cannot validly settle out of court, insofar as they concern the civil law effects of competition law between the parties, such as the validity of contracts for the future (*section 1, third paragraph, SAA*; *Systembolaget, at page 460, paragraphs 9-11; Norwegian Award, at page 328, paragraphs 12-13 and page 329, paragraph 19*). When deciding on the civil law effects of competition law between the parties, the arbitral tribunal is entitled to rule on the substance of competition law, including determining whether it has been infringed. If an arbitral tribunal enjoins or upholds conduct that is prohibited under competition law, the award will be deemed invalid under section 33, first paragraph (2) of the SAA as incompatible with the Swedish legal system (*Systembolaget, at page 460, paragraphs 10-11; Norwegian Award, at page 328, paragraphs 12-13*).

A dispute between a business entity and a consumer concerning goods, services, or other products supplied primarily for private use is arbitrable, but may only be referred to arbitration by agreement of the parties once the dispute has arisen. An arbitration agreement entered into in respect of such disputes before they arise will be deemed invalid (*section 6, first paragraph, SAA*).

Separability

The SAA recognises the principle of separability of the arbitration agreement (*section 3, SAA*). Therefore, where the existence and validity of a contract is in dispute, an arbitration clause contained in that contract is treated as an independent agreement, separate from the host contract. This means that the arbitration clause may remain valid even if the main contract is deemed invalid, unless the defects specifically pertain to the arbitration clause.

The principle of separability also means that different laws may apply to the main contract and its arbitration clause. Under the SAA, if the seat of arbitration is in Sweden, Swedish law will govern the arbitration agreement, unless the parties have expressly chosen another law for the arbitration agreement (*section 48, SAA*). Therefore, when the seat of arbitration is in Sweden, the existence, validity, applicability, and interpretation of the arbitration agreement will be governed by Swedish law (unless the parties have expressly agreed otherwise), including Swedish contract law rules on contract formation, invalidity of contract terms, and contract interpretation.

For a discussion of the principle of separability in international arbitration, see Practice note, Separability of arbitration agreements in international arbitration.

Unilateral arbitration agreements

An arbitration agreement that grants one party a unilateral right to choose between arbitration and litigation is valid and enforceable in Sweden, unless its enforcement would be unreasonable in all the circumstances. In commercial relationships, issues of unenforceability may arise if one party to the arbitration agreement is a financially weak individual entrepreneur, who is compelled to arbitrate at the election of the other, financially stronger, party (*G v Skandinaviska Aluminiumprofiler Aktiebolag, Swedish Supreme Court, NJA 1979 page 666, at pages 669-670*).

Extension of arbitration agreement to non-signatories

An arbitration agreement is generally binding only on the parties to it. However, there are circumstances in which an arbitration agreement may bind a non-contracting party. These include:

- **Contractual transfer of rights.** When rights under a contract containing an arbitration clause are transferred, the arbitration clause binds the transferee, regardless of whether the transferee was aware of the clause. The remaining original party to the contract is also deemed to be bound by the arbitration clause in relation to the transferee, except in special circumstances, such as a close personal relationship between the original contracting parties (*MS Emja v Wärtsilä Diesel, Swedish Supreme Court, NJA 1997 page 866, at pages 872-873*) (MS Emja).
- **Transfer of rights and obligations by operation of law.** In instances where rights and obligations are transferred by operation of law (universal succession) due to the death of an individual or a corporate reorganisation, the successor is generally bound by the arbitration clause in a contract entered into by the original party, except for matters relating to rights *in rem* (*MS Emja, at pages 871-872*). In the case of bankruptcy, its effect on a Swedish-seated arbitration will depend on whether the bankruptcy proceedings are initiated inside or outside the EU, and whether those proceedings are initiated before or after the arbitration (for bankruptcy proceedings in the EU, see *articles 7 and 18,* Regulation (EU) 2015/848 on Insolvency Proceedings). Where Swedish law applies, if the bankruptcy estate wishes to assert a claim against the bankrupt's counterparty, the estate will be bound by an arbitration clause contained in the contract between the bankrupt party and its counterparty, unless the dispute concerns a matter that cannot be settled out of court, such as disputes involving rights *in rem* (*The Bankruptcy Estate of Five Seasons Fritidsaktiebolag v Five Seasons Försäljningsaktiebolag, Swedish Supreme Court, NJA 1993 page 641, at page 644; Tupperware Nordic v Facht Distribution, at page 742, paragraph 9*). As well as being bound by an arbitration clause between the original parties, the bankruptcy estate should also be deemed entitled to rely on that clause as the bankrupt party would have been able to (compare with *MS Emja, at pages 872-873, addressing a contractual transfer of rights*). An arbitration clause entered into by the bankrupt debtor is also binding on the bankruptcy estate with regard to disputed claims of a creditor in bankruptcy proceedings (*P. Palén v O. Theorin and others, Swedish Supreme Court, NJA 1913 page 191; the Bankruptcy Estate of Svenska Kreditförsäljningsaktiebolaget v Reinsurers, Swedish Supreme Court, NJA 2003 page 3, at pages 6-9*). If an arbitration concerning a claim of a bankrupt party is ongoing when the bankruptcy proceedings are initiated, the bankruptcy estate is entitled to take over the arbitration from the bankrupt party (*chapter 3:9 first paragraph, Bankruptcy Act (1987:672) by analogy*). If an ongoing arbitration concerns a claim against the bankrupt party, the bankruptcy

estate may have the right to intervene in the proceedings to assist the bankrupt party (*chapter 3:9 second paragraph, Bankruptcy Act (1987:672) by analogy*). An award granting the creditor's claim against a bankrupt party will, however, be enforceable only against the bankrupt debtor and not against its estate.

- **Guarantors and co-liable parties.** An arbitration agreement in a contract between a creditor and a debtor is generally binding on guarantors and other co-liable parties in disputes concerning the debtor's liability. The guarantor may invoke an arbitration agreement between the creditor and the debtor against the creditor *(N. Rev. v P.J. and others, Swedish Supreme Court, NJA 1916 page 100; Kronan v EK and others, Swedish Supreme Court, NJA 1922 page 135)*. Similarly, the creditor may rely on the arbitration agreement against the guarantor, unless the guarantor's obligation to the creditor is independent of the debtor's obligation or there are special circumstances (*The Republic of Kazakhstan v E Export Company and others, Svea Court of Appeal, RH 2003:61*).
- **Third-party beneficiaries.** An arbitration clause in a contract is generally deemed binding on a third-party beneficiary that has asserted its substantive rights under the contract (*Göran H v Fritidsbolaget MCB AB, Labour Court, AD 1976 No 54, page 396)*. A third-party beneficiary seeking to enforce its rights under a contract should also be entitled to rely on the arbitration clause against a party to the contract.
- **Party conduct.** An arbitration agreement may exceptionally become binding on a non-signatory third party through the conduct of the parties involved in a particular transaction. For example, this may occur within a group of companies where the parent company actively participates in the performance of the contract entered into by its subsidiary. If the parent company's participation gives rise to a reasonable reliance on the part of the other party that the parent company intends to be bound by the contract, and the parent company, which could not have been unaware of that reliance, fails to communicate otherwise, the parent company may be deemed bound by the contract, including the arbitration clause (*Kazchrom v the Bancruptcy Estate of AIOC Resources, in liquidation and others, Svea Court of Appeal, case No T 6902-99*).

Remedies for breach of arbitration agreements

Parties to an arbitration agreement are considered to have a general contractual duty to act loyally in accordance with the purpose of the arbitration agreement. Where a party fails to comply with its duty to loyally perform an arbitration agreement, the other party has several remedies available. These include the right to specific performance, enforceable through judicial assistance (*section 4, second and third paragraphs, SAA; section 14, third and fourth paragraphs, SAA; sections 15-16, and 26, SAA*), the right to refer the dispute to the competent state courts (*section 5, SAA*), and, in exceptional cases, the right to compensation for damages caused by the breach, in accordance with the general principles of Swedish contract law.

A party's failure to pay its share of the requested security for the arbitrators' fees and costs does not entitle the other party to recover the payment during the arbitration proceedings, unless the parties have agreed otherwise (*3S Swedish Special Supplier AB v Sky Park AB, Swedish Supreme Court, NJA 2000 page 773, at page 778*). For a party's right to request a separate award for reimbursement of the payment of advances on costs in institutional arbitration, see, for example, article 51(6) of the SCC Arbitration Rules 2023.

Furthermore, where a party brings foreign proceedings in respect of a dispute that should have been referred to arbitration in Sweden, Swedish courts do not have the power to issue anti-suit injunctions despite the existence of an arbitration agreement. Such injunctions have no legal effect in Swedish courts (for proceedings within the EU, see *Allianz SpA and others v West Tankers Inc, Court of Justice of the EU, case No C-185/07; Gazprom OAO v Lietuvos Respublika, Court of Justice of the EU, case No. C-536/13*). Generally, commencing litigation concerning a matter covered by an arbitration agreement is viewed as an offer to resolve disputes through the courts and does not preclude the other party from initiating arbitration, provided that the latter has timely objected to the court's jurisdiction (*Government Bill 1998/99:35, page 105; section 4, SAA*).

Jurisdiction

The SAA recognises the principle of kompetenz-kompetenz, which confers on the arbitral tribunal the authority to determine its own jurisdiction (*section 2, first paragraph, SAA*). Within the ambit of *kompetenz-kompetenz*, the term "jurisdiction" is construed broadly, empowering the arbitral tribunal to adjudicate a wide array of issues (*Elf Neftegaz v Interneft and others, Swedish Supreme Court, NJA 2016 page 264, at pages 277-278*) (Elf Neftegaz). These include:

- The existence, validity and scope of the arbitration agreement.
- The arbitrability of a dispute.

- The proper initiation of the arbitral proceedings (including adherence to any mandatory pre-arbitral negotiations or cooling-off periods stipulated in the parties' agreement).
- The appointment of the tribunal (including objections concerning the agreed qualifications and the number of arbitrators).
- The existence of res judicata or *litis pendens*.

Under the SAA, an arbitral tribunal is generally bound to assume jurisdiction over a dispute, unless one or more of the parties raises objections (see *section 34, second paragraph, SAA, providing for a waiver of the right to challenge an award where a party, aware of a circumstance giving rise to the challenge, fails to raise it)*. Nevertheless, the arbitral tribunal may, of its own motion, consider whether the dispute referred to it is arbitrable under Swedish law and whether an award would be manifestly contrary to Swedish public policy (see *section 33, first paragraph, SAA*; *Elf Neftegaz, at page 276, paragraph 11*).

If the alleged existence of a particular fact is pertinent to jurisdiction and to the merits of the case, the arbitral tribunal should consider that fact solely on the merits. This rule emanates from the Swedish doctrine of assertions, which is deemed applicable to arbitrations under the SAA. According to the doctrine, when a party raises a claim under a contract containing an arbitration clause, the arbitral tribunal, in determining its jurisdiction, should not assess whether the rights asserted by that party actually exist. Instead, the arbitral tribunal should assume jurisdiction over the claim and, if it subsequently finds on the merits that the contract does not confer the alleged rights, it should reject the claim on the merits (*Petrobart Limited v The Kyrgyz Republic, Swedish Supreme Court, NJA 2008 page 406, at pages 416-417 (*Petrobart v Kyrgyz Republic*); Concorp Scandinavia AB v Xcaret Confectionery Sales AB, Swedish Supreme Court, NJA 2012 page 183, at page 190; L. Consulting v Kemisten, at page 233*).

If a party wishes to contest the jurisdiction of the arbitral tribunal, it must, as a general rule, raise its objections no later than in its statement of defence (*State Oil Company of the Republic of Azerbaijan v Frontera Resources, Svea Court of Appeal, RH 2009:55* (SOCAR v Frontera Resources*);* see also *article 29(2)(i), SCC Rules 2023*). On the waiver of the right to challenge an award, see Party may lose right to challenge.

Challenging decisions upholding jurisdiction

Where an arbitral tribunal separately confirms its jurisdiction prior to rendering the final award, any party may seek an immediate review of the decision before the Court of Appeal at the seat of the arbitration (*section 2, second paragraph, SAA*). Such an application must be filed within thirty days of the notification of the decision (*section 2, second paragraph and section 43, first paragraph, SAA*). The judgment of the Court of Appeal is final and binding, save for instances where both the Court of Appeal and the Supreme Court grant leave to appeal to the Supreme Court (*section 43, second paragraph, SAA*). The arbitral tribunal may continue the arbitral proceedings and render the award, even while the judgment of the Court of Appeal or the Supreme Court is pending (*section 2, second paragraph, SAA*).

Alternatively, a party may also wait until the final award is rendered before challenging a decision affirming the arbitral tribunal's jurisdiction and, if necessary, challenge the final award pursuant to one or both of sections 33 and 34 of the SAA. To avoid the risk of being deemed to have accepted the jurisdiction of the arbitral tribunal, a party intending to challenge the arbitral tribunal's affirmative decision on jurisdiction post-award should explicitly object to the decision and reserve its right to challenge the final award (*section 34, second paragraph, SAA; Government Bill 2017/18:257, page 27*).

Challenging decisions declining jurisdiction

If the arbitral tribunal declines jurisdiction in its entirety, it must do so by way of an award, and any party may seek a review of that award by the Court of Appeal at the seat of the arbitration *(section 36, SAA*). Decisions that partially decline jurisdiction are classified as procedural decisions rather than awards, as determinations other than those terminating arbitral proceedings (which must be made by way of an award) are designated decisions (*section 27, first and third paragraphs, SAA;* see also *Government Bill 1998/99:35, page 230*). Such procedural decisions may only be reviewed through an action against the final award once it is rendered (*Government Bill 1998/99:35 at page 230*). On the distinction between awards and decisions, see Awards and decisions.

Swedish courts generally adopt a deferential approach towards an arbitral tribunal's determination of its own jurisdiction. Specifically, the courts typically hold that an arbitral tribunal is best positioned to assess its own jurisdiction. Consequently, the starting point is that the arbitral tribunal's interpretation of the contract and its evaluation of the evidence on jurisdictional issues are presumed to be correct (*Belgor, at paragraph 19*).

Arbitrators

Qualifications

Under the SAA, any person with full legal capacity may be appointed as an arbitrator (*section 7, SAA*). Legal capacity is usually determined under the personal law of the individual.

Independence and impartiality

The SAA requires that arbitrators are, and are under an ongoing duty to remain, impartial and independent (*section 8, SAA*). This duty applies to all arbitrators, irrespective of how or by whom they are appointed. An arbitrator shall be released from appointment if there exists any circumstances that may undermine confidence in the arbitrator's impartiality or independence (*section 8, SAA*). The assessment of an arbitrator's impartiality and independence is conducted objectively, without regard to the arbitrator's actual disposition towards the parties (*AJ v Ericsson, Swedish Supreme Court, NJA 2007 page 841, at page 858* (AJ v Ericsson*); Korsnäs Aktiebolag v AB Fortum Värme, Swedish Supreme Court, NJA 2010 page 317, at page 327, paragraph 4 (*Korsnäs v Fortum*)*).

Number and appointment of arbitrators

The parties are free to agree the number of arbitrators and the procedure for their appointment (*section 12, SAA*). In the absence of such an agreement, the arbitral tribunal shall consist of three arbitrators. Each party is entitled to appoint one arbitrator, with those two arbitrators jointly selecting the presiding arbitrator (*section 13, SAA*).

Pre-appointment interviews of arbitrators are permissible under the SAA, provided that the content of the interview does not compromise the prospective arbitrator's impartiality and independence.

Once a party has notified the other party of its choice of arbitrator in a request for arbitration, that choice cannot be revoked without the consent of the other party (*section 14, first paragraph, SAA*).

In the event that any required appointment is not made, the competent District Court shall, at the request of a party, appoint the arbitrator (*sections 14 and 15, SAA*). If a party fails to appoint an arbitrator within the stipulated time, the defaulting party forfeits its right to rely on the arbitration agreement to object to any court proceedings commenced to resolve the dispute (*section 5, first paragraph (2), SAA*) (see Commencing arbitration).

In cases where arbitration is initiated against multiple respondents who are unable to jointly appoint an arbitrator, the entire arbitral tribunal will be appointed by the competent District Court, and the claimant's appointed arbitrator will be released (*section 14, third paragraph, SAA*). Parties retain the right to designate an alternative appointing authority, such as an arbitral institution, by mutual agreement at any time.

Applications for the appointment of an arbitrator may be submitted to the District Court at the domicile of one of the parties in Sweden, the District Court at the seat of arbitration, or the Stockholm District Court (*section 44, SAA*). These applications are typically resolved without an oral hearing and are determined by a sole judge. Court appointments of an arbitrator are made within two to four months, depending on the specific circumstances of the case. The decision of the District Court is final and cannot be appealed (*section 44, first and third paragraphs, SAA*).

Challenges to and removal of arbitrators

An arbitrator may be released from their appointment at the request of a party, where circumstances exist that may diminish confidence in the arbitrator's impartiality or independence (*section 8, second paragraph, SAA*). The impartiality and independence of arbitrators are determined objectively (*AJ v Ericsson, at page 858; Korsnäs v Fortum, at page 327, paragraph 4*).

According to the SAA, the circumstances that will always be held to diminish confidence in either the impartiality or independence of an arbitrator include:

The arbitrator, or a person closely associated with the arbitrator, is a party to the dispute or may otherwise expect significant benefit or detriment from its outcome.

The arbitrator, or a person closely associated with the arbitrator, is a director of a party to the dispute or otherwise represents a party or another person who may expect significant benefit or detriment from the outcome of the dispute.

The arbitrator has taken a position in the dispute, as an expert or otherwise, or has assisted a party in preparing or presenting that party's case in the dispute.

The arbitrator has received or solicited compensation in violation of the SAA.

(*Section 8, SAA*)

Repeated appointments by the same party, counsel, or law firm may give rise to justifiable doubts regarding the arbitrator's impartiality or independence. To determine whether such doubts are justifiable, the number of appointments and their timeframe will be assessed in the context of the case (*Korsnäs v Forum, at page 327, paragraph 5*).

A challenge to an arbitrator must be made within fifteen days from the date on which the challenging party became aware of the appointment of the arbitrator and the circumstances giving rise to the challenge (*sections 9 and 10, SAA*).

Under the SAA, challenges to an arbitrator are heard by the arbitral tribunal, including the challenged arbitrator(s), unless the parties agree that another person or body should determine the challenge (*section 10, first paragraph, SAA*). This may occur, for example, where the parties have agreed to arbitrate under the rules of an arbitral institution.

If the arbitral tribunal upholds the challenge and removes an arbitrator, that decision is final and cannot be appealed (*section 10, second paragraph, SAA*). Conversely, if the arbitral tribunal rejects the challenge, or dismisses it as untimely, a party may apply to the competent District Court for the removal of the arbitrator (*section 10, third paragraph, SAA*). Such an application must be made within thirty days from the date on which the party was notified of the arbitral tribunal's decision. The arbitral tribunal may continue the arbitration pending the District Court's decision (*section 10, third paragraph, SAA*).

When deciding on challenges to arbitrators, Swedish courts consider the IBA Guidelines on Conflicts of Interest in International Arbitration, particularly in cases involving non-Swedish parties. The competent District Courts for these matters are the same as for those for the appointment of arbitrators (*section 44, SAA*) (see Number and appointment of arbitrators).

A decision of the District Court on a party's application for the removal of an arbitrator is final and is not subject to appeal, regardless of the outcome (*section 44, third paragraph, SAA*). Additionally, where the parties have agreed to apply institutional arbitration rules that provide for decisions of the arbitral institution on arbitrator challenges to be final, there will be no right of appeal to Swedish courts (*section 11, SAA*).

If an arbitrator has resigned or been released from their appointment, the party who appointed the arbitrator retains an unconditional right to appoint a replacement only if the reason for the resignation or removal arose after the appointment (*section 16, second paragraph, SAA*). If an arbitrator resigns or is removed due to circumstances existing at the time of the appointment, the competent District Court will appoint a new arbitrator on the application of a party. However, if the arbitrator who has resigned or was removed was initially appointed by a party, that party may still nominate a replacement. The District Court will appoint the proposed nominee, unless there are special reasons not to (*section 16, first paragraph, SAA*).

Arbitrator remuneration

The parties and the arbitral tribunal may agree, either directly or through the application of institutional rules, on the remuneration to be paid to the arbitral tribunal and the manner of its payment. For such an agreement to be valid, it must be concluded jointly by all parties to the dispute (*section 39, SAA*).

In the absence of an agreement, the parties are jointly and severally liable to pay the arbitral tribunal reasonable compensation for its work and expenses, as determined by the arbitral tribunal (*section 37, first paragraph, SAA*). If the arbitral tribunal finds that it lacks jurisdiction, the respondent may be ordered to pay compensation to the arbitral tribunal only in special circumstances, such as due to the respondent's conduct in the arbitration (*section 37, first paragraph, SAA*). The arbitral tribunal may, in its final award, order the parties to pay compensation to each of the arbitrators, together with interest from a date one month after the date of the award (*section 37, second paragraph, SAA*).

The reasonableness of the arbitral tribunal's fees is primarily determined by the complexity and extent of the arbitrators' work in the case. Fees at a level normally charged by external counsel are considered reasonable for the work of the arbitrators (*NEMU Mitt i Sverige AB v Jan H and others, Swedish Supreme Court, NJA 1998 page 574, at pages 579-580).*

The arbitral tribunal may require security for its fees and costs, and may set a separate security for each individual claim (*section 38, SAA*). Typically, on its constitution, the arbitral tribunal will require the parties to pay an advance on costs, to cover the tribunal's fees and expenses for the entire arbitration. In an ad hoc arbitration under the SAA, advances on costs are usually deposited in a client account with an arbitrator's law firms or with a third party under an agreement for fundholding services. Fundholding services in Sweden are provided by the SCC, among other providers.

If a party fails to pay its share of the requested security for the arbitrators' fees and costs by the date ordered by the arbitral tribunal, the opposing party may choose to provide the entire security or abandon the arbitration agreement for resolving the dispute and initiate court proceedings (*sections 38 and 5, SAA*). Where the requested security is not provided, the arbitrators may terminate the arbitration in whole or in part (*section 38, first paragraph, SAA*).

During the arbitral proceedings, the arbitral tribunal may only use the advances on costs paid by the parties to cover the expenses incurred by it in relation to the arbitration (*section 38, SAA*). Unless otherwise agreed by the parties and the arbitral tribunal, the arbitral tribunal can only use the advances for payment of its fees once those fees have been determined in the final award and the award has become enforceable in that part (*section 38, second paragraph, SAA*). The decision on the arbitrators' remuneration becomes enforceable two months after the date on which the party has received the final award, unless the decision has been appealed before that date (*section 41, SAA*) (see Appeals against decisions concerning arbitrator remuneration).

Mandate of arbitral tribunal

The primary task of an arbitral tribunal is to resolve the dispute in an impartial, practical, and expeditious manner (*section 21, SAA*).

In determining the substance of the dispute, the arbitral tribunal cannot go beyond the parties' requests for relief, the legally relevant facts on which those requests are based, and the evidence relied on by the parties. This follows from the general principle of Swedish arbitration law that the subject matter of an action is delimited by the parties. The principle means, among other things, that the tribunal cannot award monetary relief greater than that requested by a party, nor grant a qualitatively different relief, unless the parties agree otherwise (*Government Bill 1998/89:35, page 145; Government Bill 2017/18:257, page 49; Chelyabinsk Metallurgical Plant v Minmetals International Engineering Co Ltd, Svea Court of Appeal, case No T 1356-18, at pages 32-33*). The arbitral tribunal is also obliged to follow any joint instructions from the parties regarding the arbitral tribunal's assessment of the merits (*section 21, SAA; Soyak International Construction & Investment Inc v Hochtief AG, Swedish Supreme Court, NJA 2009 page 128, at page 139* (Soyak v Hochtief)).

On questions of applicable law, if the arbitral tribunal considers applying a rule of law for which neither party has advocated, each party should be given a reasonable opportunity to be heard. This follows from the principle of adversarial proceedings that applies in arbitrations under the SAA (for a party's right to be given a reasonable opportunity to be heard in civil litigation, see *PG and others v Trygghetsbolaget i Lund AB, Swedish Supreme Court, case No Ö 5886-16, at paragraphs 15-16*). A contract between the parties is not regarded as a source of law but rather as a fact evidencing the parties' agreement on a particular issue. Accordingly, for relief to be granted pursuant to a specific contractual clause, a party must positively rely on the parties' agreement on a specific issue, as evidenced by the relevant clause (for an example of reliance on a contract clause as constituting reliance on a factual circumstance in civil litigation, see *NCC Nordic Construction Company Aktiebolag v Idrilla Aktiebolags konkursbo, Swedish Supreme Court, NJA 1996 page 52, at page 61*).

In matters of procedure, the arbitral tribunal is generally bound to act in accordance with the procedural agreements of the parties, unless such agreements are illegal or impossible to implement (*section 21, SAA; Soyak v Hochtief, at page 139*).

Under the SAA, an arbitral tribunal may only assume the role of a contract drafter and fill in the gaps in a contract, resolve a dispute based on equity, or act as an *amiable compositeur*, where the parties have so agreed (*section 1, second paragraph, SAA;* see also *article 27, SCC Rules 2023 and article 21(3), ICC Rules 2021*).

The duties of an arbitrator are personal and cannot be delegated to another person. However, an arbitral tribunal may engage other persons, including experts and tribunal secretaries, to assist in the performance of its duties. In such cases, the arbitral tribunal should consult the parties (*section 25, first paragraph, SAA*; *see also article 24, SCC Rules 2023; regarding the tasks of a tribunal secretary, see Norse Hotels Sandinavia AB v Accor AHS AS, Svea Court of Appeal, case No. T 10896-16, at pages 26 and 37*).

Liability of arbitrators

The SAA does not address the liability of arbitrators, and there are no precedents from the Swedish Supreme Court on this matter. The prevailing view in Sweden is that the mandate of an arbitrator should be regarded as a special type of engagement agreement, to which the principle of freedom of contract applies.

Unless otherwise agreed between the parties and an arbitrator, it is possible for an arbitrator to be

held liable under the general principles of Swedish contract law for damages caused to one or both parties due to negligence in the performance of the arbitrator's duties. Additionally, depending on the circumstances, the arbitrator's remuneration may be reduced on the same basis (*Government Bill 1929:226, page 46; Government Bill 1998/99:35, page 219; case No KKO:2005:14, Supreme Court of Finland*). Given their judicial nature, errors in the assessment of the merits should not give rise to liability, except in cases of criminal conduct or possibly gross negligence.

Swedish law may be deemed applicable to the arbitrator's engagement if, at the time the arbitrator accepted the mandate, the arbitration was to be governed by Swedish law, and the parties and the arbitrator did not agree on the law applicable to the arbitrator's engagement. Institutional arbitration rules typically contain specific provisions on the limitation of liability, which, if agreed on, will govern issues of liability. For example, article 52 of the SCC Arbitration Rules 2023 provided for wilful misconduct or gross negligence as exceptions to the exclusion of liability.

For further discussion, see Practice note, Arbitrator immunity and institutional liability in international arbitration.

Arbitration proceedings

Commencing arbitration

Under the SAA, an arbitration is deemed to have been commenced when a request for arbitration is delivered to the respondent's postal address or to an email account of an authorised representative of the respondent (see *section 19, first paragraph, SAA;* compare with *sections 14 and 54, first paragraph (2), SAA*). The request for arbitration must comply with the requirements of the SAA, namely it must be in writing and contain the following details:

- An express and unconditional request for arbitration.
- A description of the issues to be resolved by the arbitral tribunal, sufficient to provide a preliminary framework for the proceedings and for the respondent to select an arbitrator.
- The party's choice of arbitrator (if the party is required to appoint an arbitrator).

(*Section 19, SAA*)

If the request for arbitration does not comply with these requirements, it will be deemed inoperative and of no effect.

Where the parties have agreed to apply institutional arbitration rules, the requirements for the request for arbitration, the consequences of not meeting those requirements, and the date of commencement of the arbitration will be governed by the relevant rules (see, for example, *articles 6 and 8, SCC Arbitration Rules 2023; article 4, ICC Arbitration Rules 2021*).

The date of commencement of the arbitration determines, among other things, whether the arbitration was initiated within a contractual or statutory time limit according to the applicable substantive law (*section 45, first paragraph, SAA*).

The commencement date may differ from the date on which the respondent is deemed to have received proper notice of the arbitration and the claimant's appointment of an arbitrator. The latter date triggers the 30-day time limit for the respondent to appoint an arbitrator. For the respondent to be deemed to have been duly notified of the arbitration proceedings and the claimant's appointment of an arbitrator, the request for arbitration must have been actually received by an authorised representative of the respondent, who must have had the opportunity to read it (*Scanax Aktiebolag v Filmtjänst Aktiebolag, Swedish Supreme Court, NJA 1996 page 330, at page 332* (Scanax v Filmtjänst*); Lenmorniiproekt v Arne Larsson & Partner Leasing, Swedish Supreme Court, NJA 2010 page 219, at pages 225-226 (*Lenmorniiproekt v Arne Larsson)).

The claimant has a duty to verify the accuracy of the respondent's address and bears the burden of proving that an authorised representative of the respondent has been duly notified (regarding the delivery of a request for arbitration by email, see *Subway International BV v AE, NJA 2015 page 315, Swedish Supreme Court, at page 322, paragraphs 7-8*). This applies even if the claimant can show that it complied with a contractual notice provision (*Lenmorniiproekt v Arne Larsson, at pages 225-226*).

The deprivation of a party's right to appoint an arbitrator or otherwise present its case due to a failure to give proper notice is a ground for setting aside the award (*section 34, first paragraph (5) and (7), SAA*) (see Challenges to awards). In the context of enforcement, enforcement of an arbitral award may be refused if it is not apparent from the award or the circumstances of the case that the respondent has been duly notified, or if the respondent shows that it has not been duly notified of the arbitral proceedings (*section 54 first paragraph (2), SAA; Lenmorniiproekt v Arne Larsson, at page 226, paragraph 9).*

Under the SAA, once the respondent has been properly notified of the arbitration and the claimant's appointment of an arbitrator, the respondent must notify the claimant in writing of its choice of arbitrator within 30 days of the claimant's notification (*section 14, SAA*). Apart from the requirement to appoint an arbitrator, the SAA does not specify any requirements regarding the content of an answer to a request for arbitration. If the parties have agreed to apply institutional rules, the requirements to the content of an answer will be governed by those rules.

In accordance with the general principles of Swedish law, a request for arbitration may be withdrawn before, or at the same time as, the notification of the request to the respondent (see *article 7,* Swedish Contracts Act (SFS 1915:218)); see also *section 14, first paragraph, SAA*). Once the respondent has been notified of the request for arbitration, it is entitled to request that the arbitral tribunal decide the dispute on the merits in a final award, even if the claimant seeks to withdraw its claims (*section 28, SAA*).

The arbitral tribunal is deemed to be constituted on the appointment of the sole arbitrator or, in the case of a three-member tribunal, of the presiding arbitrator.

Consolidation, joinder and intervention

Under the SAA, an arbitral tribunal may consolidate two (or more) arbitrations where the following conditions are met:

- The consolidation will benefit the conduct of the proceedings.
- The same arbitrators have been appointed in both cases.
- All parties consent to the consolidation.

(*Section 23(a), SAA*)

If all parties request consolidation, the arbitral tribunal will typically uphold the principle of party autonomy and consolidate the proceedings. However, consolidated arbitrations may be re-separated at a later stage if there are reasons for doing so, such as if consolidation no longer benefits the proceedings (*section 23(a), SAA*). The parties are free to agree on different rules for consolidation than those set out in the SAA, including by agreeing to the application of institutional arbitration rules.

Although the SAA does not contain any provisions on joinder and intervention, the arbitral tribunal may, on the agreement of all parties concerned, join an additional party or allow the intervention of a third party.

Seat of arbitration

If the parties have not agreed on a specific seat of arbitration in Sweden, the seat will be determined by the arbitral tribunal (*section 22, first paragraph, SAA*). This determination is necessary as the seat of arbitration establishes which courts have supervisory jurisdiction over the arbitration (*sections 43 and 44, SAA*). The SAA does not specify the criteria to be applied by the arbitral tribunal in making this determination. In practice, the seat of arbitration is chosen based on what is most appropriate under the circumstances of the case.

The arbitral tribunal may hold hearings and other meetings elsewhere in Sweden or abroad, unless the parties agree otherwise (*section 22, SAA*). The availability of court assistance and oversight during and after the arbitral proceedings does not require any connection to Sweden other than the seat being in Sweden (*RosInvestCo v Russian Federation, Swedish Supreme Court, NJA 2010 page 508, at pages 513-514*).

If the parties have agreed to apply institutional rules of arbitration, the seat of arbitration will, in the absence of agreement by the parties, be determined in accordance with those rules (see, for example, *article 25, SCC Arbitration Rules 2023; article 18, ICC Arbitration Rules 2021*).

Conduct of the proceedings

The SAA contains very few mandatory rules of procedure. The arbitral tribunal has a broad discretion to determine the conduct of the proceedings in consultation with the parties. Procedural agreements between the parties regarding the conduct of the proceedings are generally binding on the arbitral tribunal, unless such agreements are illegal or impossible to implement (*section 21, SAA*).

The limits of both party autonomy and the arbitral tribunal's powers to determine the conduct of the proceedings are set by the rules of due process. These include equal treatment of the parties, with each being afforded a reasonable opportunity to present its case, and the right of each party to review all documents and other materials relating to the dispute that are submitted to the arbitrators by the opposing party or any other person (*sections 21 and 24, SAA*).

If a party, who has received proper notice of an arbitration, fails to participate or fails to comply with an order of the arbitral tribunal without good cause, the arbitral tribunal may continue the proceedings and decide the case on the basis of the documents on file (*section 24, third paragraph, SAA*). Default awards, granting relief to the claimant solely because a respondent fails to participate in the proceedings, are not allowed.

Unless the parties agree otherwise, arbitration in Sweden typically involves the following main steps:

- The filing of a request for arbitration, including information on the arbitrator appointed by the claimant.
- The filing of an answer to the request for arbitration, including information on the arbitrator appointed by the respondent.
- The appointment of the presiding arbitrator.
- The determination by the arbitral tribunal, in consultation with the parties, of the rules of procedure and the timetable for the proceedings.
- The exchange of the statement of claim and the statement of defense (including any counterclaim), setting out the parties' respective cases in full. The parties' written submissions are usually accompanied by the documentary and witness evidence relied on, as well as any expert reports.
- Document production, where requested by one or more of the parties.
- One or more further rounds of responsive written submissions.
- An oral hearing, at which the parties' respective cases are presented, and witnesses and experts are examined.
- In some cases, the arbitral tribunal may direct the parties to file post-hearing briefs.
- The filing of the parties' submissions on the costs of arbitration.
- The rendering of the award.

Unless the parties agree otherwise, the arbitral tribunal must hold an oral hearing on the merits of the case, where a party so requests (*section 24, first paragraph, SAA*). The arbitral tribunal may hold hearings by videoconference, even over the objection of one of the parties, subject to an overall assessment of the suitability of videoconferencing (see *Bergsala SDA AB v ICA Sverige AB, Svea Court of Appeal, case No. T 7158-20, at page 16*). Where both parties object to the use of videoconferencing for hearings, the tribunal will generally be required to hold an in-person hearing.

As Sweden is an EU member state, arbitrators, parties, their counsel, and arbitral institutions based in the EU are obliged to comply with the data protection rules of the General Data Protection Regulation 2016/679 (GDPR) in their data processing activities. GDPR compliance by arbitral participants includes obligations to ensure and demonstrate the lawfulness of their data processing and transfers, to minimise the personal data they process, to issue GDPR-compliant data privacy notices, ad to adopt appropriate data security measures, data breach procedures, data retention policies, and procedures for dealing with complaints by data subjects. For more information on this topic, see Data protection and cybersecurity issues at outset of arbitration proceedings.

Requests for relief and their basis

Unless the parties agree otherwise, each party is required to state, in accordance with the timetable fixed by the arbitral tribunal, the requests for relief and the legally relevant facts constituting the basis for the requested relief (*section 23, first paragraph, SAA*). In international arbitrations seated in Sweden, requests for relief and their factual and legal basis are usually set out in the statements of claim and defence, respectively.

In general, parties can, as appropriate, request both monetary and non-monetary relief, including declaratory relief and specific performance. A request for declaratory relief may concern the existence of a particular fact (*section 1, first paragraph, SAA*). Whether a specific type of remedy is available is considered to be a matter governed by the applicable substantive law. Procedural limitations on the relief sought, on the other hand, are governed by the law of the seat of the arbitration.

As a general principle of Swedish arbitration law, requests for relief must be specific, unless the parties agree otherwise (see also *article 29(1)(i), SCC Arbitration Rules 2023*). This generally means that each request for relief must indicate how the operative part of the award should be worded, were the tribunal to grant them. For example, if a party seeks an award of damages, the request for relief must specify both the exact amount and the currency. Similarly, if a party seeks interest, the request for relief must specify the rate of interest claimed (including whether it is to be simple or compound), together with the date from which interest began, or will begin, to accrue, and when it will cease to accrue. The requirement that a request for relief must be specific is motivated

by due process considerations and, in particular, the right of the parties to present their respective cases to the extent necessary (*sections 23 and 24, first paragraph, SAA*). Catch-all requests for relief (for example, a request that the tribunal grant such additional or further relief that it considers just and appropriate) do not allow the tribunal to grant a relief other than that specifically requested and may be dismissed as inadmissible at the request of a party.

Claims for performance are generally admissible after the disputed performance has become due. Where a party is considering seeking declaratory relief, such as requesting that the tribunal rules on the existence of a specific legal relationship or obligation, or interprets a contractual provision, it should consider the potential consequences for the parties' future relationship of a final and binding declaration on the relevant matter under the principles of res judicata. Under the SAA, if a party seeks damages for a breach of contract or other monetary or non-monetary performance, there is typically no need to seek declarations related to preliminary matters, such as a breach of contract. Requests for specific performance cannot be accompanied by requests for non-contractual penalties for failure to comply with the award, as such penalties are deemed inarbitrable under Swedish law.

The factual basis for the requested relief is usually presented in the form of a brief statement of legally relevant facts which, according to the applicable rule of law, give rise to the remedy that the party seeks in an arbitration. For example, if a party seeks payment of a sum of money, the legally relevant facts constituting the factual basis for the relief sought may be a transfer of funds from the claimant to the respondent on a certain date pursuant to a loan agreement between the parties, and the respondent's failure to repay the loan within the agreed period.

As a general rule, each party may submit new requests for relief (including counterclaims by the respondent) during the arbitration, provided that they fall within the scope of the arbitration agreement and the arbitral tribunal does not consider that determining such requests would be inappropriate, having regard to the time at which they are submitted and any other relevant circumstances (*section 23, second paragraph, SAA*.)

Provided the same conditions are satisfied, each party may also amend previously submitted requests for relief and introduce new facts in support of them (*section 23, second paragraph, SAA*).

Evidence

It is the responsibility of the parties to present the evidence (*section 25, first paragraph, SAA*). The arbitral tribunal may not introduce evidence into the proceedings on its own initiative, but it may, where appropriate, appoint its own expert, unless both parties object (*section 25, first paragraph, SAA*). Where the applicable institutional rules of arbitration grant the arbitral tribunal broader powers in relation to evidence, those rules will supplement the provisions of the SAA (for example, see *article 31(3), SCC Arbitration Rules 2023, authorising the arbitral tribunal to order a party to produce documents or other evidence on its own initiative*).

The arbitral tribunal may refuse to admit evidence if it is manifestly irrelevant to the case or if such refusal is justified given the stage at which a party seeks to introduce the evidence (*section 25, second paragraph, SAA*).

The SAA does not impose any restrictions regarding the nature or forms of evidence, or the manner in which it was obtained. There are also no formal qualifications or other requirements for expert witnesses. The arbitral tribunal is free to evaluate all evidence according to the principle of free evaluation of evidence. However, irregularities in the manner in which the evidence was obtained may affect the probative value attributed to the evidence in question. For general guidance on the treatment of illegally obtained evidence in international arbitration, see Illegally obtained evidence in international arbitration.

The use of witness statements, instead of direct examination, is permitted and considered common practice in international arbitrations seated in Sweden. A party is always entitled to cross-examine witnesses and experts, whose evidence or opinion the other party relies on.

Under the SAA, an arbitral tribunal may not administer oaths or affirmations of truth (*section 25, third paragraph, SAA*). However, the arbitrators may inform the witness that they are expected to tell the truth. A party may also request permission from the arbitral tribunal to have a witness testify before a court under oath or an affirmation of truth. In such cases, the members of the arbitral tribunal will be summoned to hear the relevant evidence and may ask questions of the witness or expert (*section 26, SAA*).

For general guidance on the principles governing the use of evidence in international arbitration, see Practice note, Evidence in international arbitration.

Document production

The SAA does not impose an automatic duty of disclosure on the parties. However, at the request of a party, the arbitral tribunal may order the other party to produce documents (see *section 25, first and third paragraphs, SAA*). If the agreed institutional rules entitle the arbitral tribunal to require the production of documents by a party on its own initiative, such rules will supplement the SAA (see, for example, *article 31(3), SCC Arbitration Rules 2023*).

In the absence of an agreement between the parties, it is for the arbitral tribunal to determine the rules governing the production of documents. The rules on production of documents contained in the IBA Rules on the Taking of Evidence in International Arbitration (IBA Rules on the Taking of Evidence) are considered best practice and are usually used as guidelines for issues relating to the production of documents (see Practice note, Managing evidence under the IBA Rules on the Taking of Evidence in International Arbitration). The rules on document production in Swedish civil litigation are broadly similar to the IBA Rules on the Taking of Evidence.

Requests for broad categories of documents will normally be considered inadmissible fishing expeditions, as will requests for documents that may only assist a party in identifying further documents, witnesses, or other sources of information relevant to the case.

An arbitral tribunal may not use coercive measures, such as conditional fines, to compel the production of documents (*section 25, third paragraph, SAA*). However, if a party fails to comply with an order to produce documents, the arbitral tribunal may draw adverse inferences from such failure.

The SAA also entitles a party, with the permission of the arbitral tribunal, to seek judicial assistance to compel the production of documents (*section 26, first paragraph and section 44, second paragraph, SAA*). As a general rule, Swedish courts may issue orders, enforceable by sanctions for non-compliance, for the production of documents located in Sweden, and, in many cases, also outside of Sweden, provided that:

- The documents are in the possession, custody, or control of the person (entity) subject to the order.
- Compliance with the order does not necessitate the producing party to breach the laws of its country of domicile.

(*JK v VKP, Swedish Supreme Court, NJA 2022 page 249*) (JK v VKP)

If the producing party is a third party domiciled outside Sweden and the documents to be produced are located outside Sweden, the seat of arbitration in Sweden will not, in and of itself, be a sufficient basis for Swedish courts to order the production of documents (*JK v VKP, at paragraph 19*).

When deciding whether to grant a party permission to request judicial assistance, the arbitral tribunal should consider whether the production of the requested documents is justified in light of the existing evidence in the case (*section 26, first paragraph, SAA*). The arbitral tribunal should also assess whether the requested document production is lawful under Swedish law (*Euroflon Tekniska Produkter v Flexiboys i Motala, NJA 2012 page 289, Swedish Supreme Court, at page 301, paragraph 6*) (Euroflon v Flexiboys). For production to be lawful under Swedish law, the requested documents must be identified with sufficient specificity to enable enforcement of any production order, and the production must not be prevented by mandatory Swedish rules of confidentiality (*Euroflon v Flexiboys, at page 302, paragraphs 11-12*). If the documents requested by a party contain trade secrets, the producing party may only be ordered to produce such documents if there are exceptional reasons for ordering disclosure (*chapter 38:2 and 36:6, third paragraph, CJP*; *Euroflon v Flexiboys, at pages 303-304, paragraphs 16-17*). Notes made for personal use are also typically excluded from orders to produce documents (*chapter 38:2, third paragraph, CJP*).

The arbitral tribunal may refuse a party permission to seek judicial assistance in the production of documents if the documents to be produced pertain to a matter that that is irrelevant or sufficiently established by the evidence already presented (*section 26, first paragraph, SAA; Euroflon v Flexiboys, at page 301, paragraph 6*).

If the arbitral tribunal allows a party to apply for a court order for the production of documents, the District Court designated by the arbitral tribunal, or in the absence of such designation, the Stockholm District Court (*section 44, second paragraph, SAA*) will grant the application, provided that the requested production of document can lawfully be ordered under Swedish law (*section 26, first paragraph, SAA*). When deciding on the application, the District Court may not review the arbitral tribunal's finding that the requested production of documents is justified in light of the evidence in the case.

For general guidance on the rules and principles applicable to document production in international arbitration, see Practice note, Document production in international arbitration.

Confidentiality

Arbitral proceedings under the SAA are private in the sense that third parties do not have a right to information exchanged in an arbitration. However, the SAA does not contain any confidentiality provisions, and the parties are not considered to be bound by an implied duty of confidentiality (*Bulgarian Foreign Trade Bank v A.I. Trade Finance, NJA 2000 page 538, Swedish Supreme Court, at page 552*) *(*Bulbank*)*. Parties who want their arbitration to be confidential should include a confidentiality provision in their arbitration agreement or, if no such provision exists, seek to reach agreement on confidentiality once the dispute has arisen.

Any agreement on confidentiality should:

- Define the scope and duration of the duty of confidentiality and cover any exceptions to the duty.
- Require the parties to ensure that their representatives and all other participants in the arbitration (for example, witnesses and experts) undertake to comply with the duty of confidentiality.
- Provide for remedies for breaches of confidentiality that the parties wish to apply.

Unlike the parties, the arbitral tribunal is deemed to be bound by a duty of confidentiality in relation to all aspects of the arbitration. This duty arises from the nature of the arbitral tribunal's mandate (*Bulbank, at page 550*). Arbitrators who are members of a bar association are usually bound by confidentiality under the applicable ethical and statutory rules. Arbitrators and counsel acting for a party in the arbitration, who are members of the Swedish Bar Association, are bound by a duty of confidentiality.

For an example a confidentiality order that an arbitral tribunal may consider issuing, see Standard document, Confidentiality order: international arbitration.

Interim measures of protection

Under the SAA, parties to a dispute may apply to the arbitral tribunal and Swedish courts for interim measures of protection (*section 25, fourth paragraph and section 4, third paragraph, SAA*).

Where the parties have agreed to arbitrate under a set of institutional rules, those rules often expressly provide for a party to make an application to the arbitral tribunal or a competent court for interim measures (see, for example, *article 37, SCC Rules 2023*; *article 28, ICC Rules 2021*). Many institutional rules now also include emergency arbitrator provisions, allowing parties to seek the appointment of an emergency arbitrator to consider an application for urgent interim measures before the constitution of, or the referral of the case to, the arbitral tribunal (*see, for example, article 1* and *Appendix II, SCC Rules 2023; article 29* and *Appendix V, ICC Rules 2021*).

For further guidance on the use of emergency arbitration, see Practice note, Emergency arbitrators in international arbitration.

Arbitral tribunal's power to order interim measures

Unless the parties have agreed otherwise, an arbitral tribunal may, at the request of a party, order the other party to take certain interim measures to secure the claim (*section 25, fourth paragraph, SAA*).

Although the SAA does not specify the type of measures that may be granted, an arbitral tribunal has broad powers to order interim measures to secure both the enforcement of an award and the integrity of the arbitration process itself. This includes measures to preserve evidence that may be relevant and material to the outcome of the dispute.

Interim measures may not provide for premature enforcement of a claim, such as payment to the other party. Under the SAA, an arbitral tribunal seated in Sweden also lacks the power to order the claimant (or counterclaimant) to provide security for the other party's legal and other costs in defending the claims pursued by the claimant (or counterclaimant), unless the parties have agreed otherwise. For security for costs of the other party in institutional arbitration, see, for example, article 38 of the SCC Arbitration Rules 2023 and article 28(1) of the ICC Arbitration Rules 2021. The opposing party must always be heard before the arbitral tribunal decides on the measure (*section 24, first and second paragraphs, SAA*).

It is for the tribunal to determine when an interim measure is justified. Generally, the party seeking interim measures must show a prima facie case on the merits and urgency. As section 25 of the SAA is modelled on article 17 of the UNCTIRAL Model Law, the conditions for granting interim measures under the Model Law may provide guidance on the relevant criteria for interim measures under the SAA. When ordering interim measures, the arbitral tribunal may

require the requesting party to provide adequate security for any damage that may result from the measure (*section 25, fourth paragraph, SAA*).

Interim measures ordered by an arbitral tribunal are not enforceable in Sweden, even if issued in the form of an interim award, unless the arbitration agreement empowers the arbitral tribunal to order enforceable measures. However, if a party to the arbitration fails to comply with an order for interim measures, the arbitral tribunal may take this into account in its assessment of the evidence, including by way of negative inference.

For a general discussion of interim measures in international arbitration, see Practice notes, Interim, provisional and conservatory measures in international arbitration and Security for costs and claims in international arbitration.

Swedish courts' power to order interim measures

Unlike an arbitral tribunal, Swedish courts have the power, before, during, and after arbitral proceedings in Sweden or abroad, to order enforceable interim measures of protection that the court would have jurisdiction to order in civil proceedings, including interim measures on an ex parte basis (*section 4, third paragraph, SAA*). A party may request an enforceable interim measure from a court even if it has obtained interim measures from an arbitral tribunal.

In general, Swedish courts have jurisdiction over natural and legal persons domiciled in Sweden, and over property located in Sweden. The seat of arbitration in Sweden alone is not a sufficient basis for a court to order interim measures. The procedure for obtaining court-ordered interim measures is governed by *chapter 15 of the CJP*.

Swedish courts may order interim measures that are capable of being enforced, including attachment of property, orders to return control of property, and other interim measures to secure the future enforcement of a judgment or an award (*chapter 15:1-15:3, CJP*).

To obtain an enforceable interim measure from Swedish courts, a party must demonstrate:

- A degree of urgency.
- A probable cause for a claim that is likely to become (or already is) the subject of litigation or arbitration.
- Reasonable grounds to presume that, without the interim measure, the applicant's rights will be lost or substantially undermined.
- That the requested measure is proportionate in the circumstances of the case.

(*Chapter 15:1-15:3, CJP)*

In addition, the applicant must normally provide full and adequate security for any damage that the opposing party may suffer as a result of the measure (*chapter 15:6, CJP*).

An application for interim measures will be served on the respondent, who will be given the opportunity to respond. In cases of exceptional urgency, a party may apply to the court for interim measures on an ex parte basis (*chapter 15:5, third paragraph, CJP*).

Interim measures ordered by a court prior to the commencement of arbitral proceedings will be revoked 30 days after the order is made, unless arbitral proceedings are commenced within that period (*chapter 15:7, CJP*). If arbitral proceedings are duly commenced within the prescribed time, the order will remain in force until revoked by the court on the application of a party. The respondent may at any time request the court to reassess any of the prerequisites of the granted measure (*chapter 15:8, CJP*).

Awards

The arbitral tribunal's decision-making

Under the SAA, the members of an arbitral tribunal have equal decision-making powers and decide jointly on all matters in dispute. If the arbitrators cannot agree, the opinion of the majority prevails, unless the parties have agreed otherwise. Where there is no majority, the presiding arbitrator's opinion is determinative (*section 30, second paragraph, SAA*). The arbitral tribunal is free to decide on the voting procedure to be followed.

If a member of the arbitral tribunal fails to participate in the determination of an issue without good cause, the other arbitrators can still decide the issue (*section 30, first paragraph, SAA*). The purpose of this rule is to avoid situations where one arbitrator can frustrate the proceedings.

Awards and decisions

The SAA distinguishes between arbitral awards and other decisions. The significance of the legal form lies in the different legal consequences attached to an arbitral award, as opposed to a decision. An award has res judicata effect with respect to the issues it determines. By contrast, decisions that do

not constitute an award, as a rule, lack res judicata effect and may be amended by the arbitral tribunal after the parties have been given an opportunity to comment (*Neurovive Pharmaceutical AB v CicloMulsion AG, Swedish Supreme Court, NJA 2019 page 382, at pages 392-394, paragraphs 11 and 23-24*) (CicloMulsion).

The SAA mandates that the following decisions be rendered in the form of an arbitral award:

- Decisions determining the merits of the case (*section 27, first paragraph, SAA*).
- Decisions dismissing the case in its entirety without deciding the merits, such as due to lack of jurisdiction or the existence of procedural bars to the resolution of the dispute on the merits (*section 27, first paragraph, SAA*).
- On request of the parties, decisions confirming a settlement of a dispute (*section 27, second paragraph, SAA*).

A decision to terminate (write off) the proceedings without deciding the merits of the case shall be made in the form of a decision. Such decisions may be taken where:

- A party withdraws its claim (and the other party does not request that the tribunal proceed to decide the case on the merits).
- The parties fail to pay the requested advances on the costs of the arbitration.
- The time limit for rendering the award expires.
- The case is settled by the parties and they do not request that the tribunal renders a consent award confirming the settlement.

While any decisions terminating (writing off) the proceedings without deciding the merits of the case are classified as procedural decisions, rather than arbitral awards, the provisions of the SAA on arbitral awards still apply to them (*section 27, third paragraph, SAA*). This includes provisions concerning:

- The formal requirements of an award (*section 31, SAA*).
- The amendment of an award (*section 36, SAA*).
- The setting aside of an award with respect to the allocation of the costs of the arbitration between the parties (*section 36, second paragraph, SAA*).
- The costs of arbitration (*sections 37, 39-42, SAA*).
- The forum for actions against awards (*section 43, SAA*).

Lastly, the SAA classifies all other rulings by an arbitral tribunal during the pendency of an arbitration as procedural decisions. These include an affirmative decision on jurisdiction, a partial dismissal of a case for lack of jurisdiction, or other partial termination (writing off) of the proceedings without deciding the case on the merits, a determination of a challenge to an arbitrator, and other procedural determinations, shall be made in the form of a decision (*section 27, third paragraph, SAA*). Unlike decisions terminating (writing off) the proceedings without deciding the merits or the case, the provisions of the SAA on arbitral awards do not apply to these procedural decisions.

Whether an arbitral tribunal's ruling constitutes an arbitral award or a decision is determined based on the principle of substance over form, irrespective of the form or title chosen by the arbitral tribunal (*Russian Federation v RosInvestCo UK Limited, Svea Court of Appeal, case No. T 58-08 and Joint Stock Company Acron v Yara International ASA, Svea Court of Appeal, case No T 7200-08, addressing the nature of an "award on jurisdiction" rendered under section 2, SAA in its wording prior to the 2019 amendments*).

Form, content and notification of an award

Arbitral awards must:

- Be made in writing.
- Be signed by the arbitrators. However, it will suffice if the majority of the tribunal signs it, provided that the award explains why this is the case. With the agreement of the parties, the presiding arbitrator alone may sign the award.
- State the seat of arbitration and the date on which the award was made.

(*Section 31, SAA*)

An award that does not comply with the requirements of written form and signature is deemed invalid (*section* 33, *first paragraph (3), SAA*). If an award lacks information concerning the seat of arbitration and the date of the award, the omission may be remedied by supplementing the award (*section 32, SAA*).

Although it is not an express requirement of the SAA, an arbitral award must identify the parties to the dispute. It must also contain an operative part with clear rulings on each request for relief. Where the award also determines the arbitral tribunal's fees and expenses (or includes such a determination made by an arbitral institution administering the proceeding), the decision on the tribunal's compensation must be included in

the operative part of the award, with the fees and costs of each arbitrator being stated separately (*section 37, second paragraph, SAA*).

Awards containing, in their operative part, a decision on the compensation of the arbitral tribunal must include instructions on what a party must do if it wishes to amend the award with respect to the arbitrators' remuneration (*section 41, SAA*; for model wording, see SCC's Guidelines for Arbitrators).

Awards in which the tribunal declines jurisdiction must include instructions on what a party must do if it wishes to amend the award (*section 36, SAA*; for model wording, see SCC's Guidelines for Arbitrators).

In addition, it is good practice to include in the award:

- The text of the underlying arbitration agreement.
- Information on the notification of the request for arbitration to the respondent (*Lenmorniiproekt v Arne Larsson, at page 225, paragraph 3 and page 226, paragraph 9*).
- The procedural history of the arbitration, including any procedural decisions made by the tribunal during the arbitration.
- The parties' respective positions, including each party's requests for relief and the legally relevant facts on which those requests are based.

These details help to confirm the mandate of the arbitral tribunal and the opportunity for each party to present its case, and facilitate the determination of the res judicata effect of the award.

Unlike many arbitration laws, the SAA does not require that an award be reasoned (by contrast, see, for example, section 52(4), *English Arbitration Act 1996 and article 31(2),* UNCITRAL Model Law). However, it is common practice for arbitral tribunals to issue reasoned awards, not least because rendering an unreasoned award may cause enforcement problems in some jurisdictions. Therefore, if an arbitral tribunal is contemplating making an unreasoned award, it should first consult the parties.

Under the SAA, incomplete or inconsistent reasons for an arbitral award are generally not considered to be a challengeable error (*Soyak v Hochtief, at page 140*). However, if the award lacks any information on the arbitral tribunal's assessment of a party's request for relief or of a legally relevant fact (basis) relied on by a party in support of the requested relief, this may, depending on the circumstances, provide grounds for challenging the award (see further, Challenges to awards).

The arbitral tribunal must deliver or send the award to each party immediately after it is rendered (*section 31, third paragraph, SAA*). An award is deemed to have been made when it is made available to the parties. As the time limit for any challenge proceedings generally starts to run from the date of notification of the award to the party, it is good practice for arbitral tribunals to request that the parties acknowledge receipt of the award.

Request to correct, supplement or interpret award

If an award contains an obvious inaccuracy resulting from a clerical, arithmetical, or other similar error, or if the arbitral tribunal has inadvertently failed to decide an issue referred to it, either party may request the arbitral tribunal to correct the award or to issue an additional one. An award cannot be corrected if it requires the arbitral tribunal to reconsider the merits of the case.

An award may be supplemented to remedy an omission in the operative part of the award or elsewhere in the award, such as where the arbitral tribunal inadvertently failed to state the date of the award or the seat of arbitration, or failed to rule on a request for relief. If the tribunal has overlooked a legally relevant fact in deciding a party's request for relief, the omission cannot normally be corrected by supplementing the award. This is because corrective measures in the form of supplementation are intended to address independent issues which the arbitral tribunal has inadvertently failed to decide.

If the operative part of an award is unclear or ambiguous, either party may also request that the arbitral tribunal provides an interpretation of the award to resolve the ambiguity (*section 32, SAA*). An interpretation of an award can only be made in relation to the operative part of the award, as opposed to requesting that the tribunal clarify or expand on its reasoning, which is not permitted.

An application to correct, supplement, or interpret an award must be made within 30 days after the award has been notified to the parties.

If the arbitral tribunal itself discovers an obvious inaccuracy in the award, it may also correct or supplement it on its own initiative. This must be done within 30 days of rendering the award. An interpretation of an award may only be made at the request of a party (*section 32, first paragraph, SAA*).

The arbitral tribunal is not obliged to take any corrective measures, even if both parties request them. If the arbitral tribunal decides to correct or interpret the award at the request of a party,

this must be done within 30 days of receiving the party's application. If the arbitral tribunal determines that it is appropriate to supplement the award, the supplementation must be made within 60 days of the party's application (*section 32, second paragraph, SAA*).

Whether the arbitral tribunal is acting on its own initiative or at the request of a party, it must afford the parties an opportunity to comment on the corrective measure (*section 32, third paragraph, SAA*).

If the parties have agreed on the application of institutional arbitration rules, the provisions of such rules on available corrective measures will apply instead of the SAA where relevant (see, for example, *article 47, SCC Arbitration Rules 2023; article 36, ICC Arbitration Rules 2021*).

Costs of arbitration

General rules

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order the other party to reimburse the costs incurred by the requesting party in connection with the arbitration and determine the final apportionment between the parties of the compensation to the arbitral tribunal (*sections 42 and 23, SAA*).

As a general rule, costs follow the event. Consequently, the successful party is considered to be entitled to reimbursement from the losing party of its reasonable costs incurred in connection with the arbitration (*chapter 18:1, CJP by analogy*). In adjudicating a party's claim for costs, the arbitral tribunal may also consider the time and effort expended on each claim or issue raised, as well as other relevant circumstances, including the conduct of the parties in the arbitration.

Recoverable costs may include attorneys' fees, costs of preparing and presenting the case, including costs attributable to the time and effort expended by employees and authorised representatives, compensation for the time spent and expenses of witnesses, and the fees and expenses of experts.

The reasonableness of legal fees incurred by a party is primarily assessed by reference to the complexity and scope of the work required of the counsel, the amount in dispute, the significance of the outcome of the case to the party, and the diligence and expertise demonstrated by the party's counsel (on the reasonableness of legal fees incurred by a party in civil litigation, see *chapter 18:8, first paragraph, CJP by analogy* and *Sala international AB v Alliance Assurance Co LTD and others, Swedish Supreme Court, NJA 1997 page 854, at page 860*).

A party may also request that the arbitral tribunal awards interest on the costs of the arbitration (*section 42, SAA*). Under Swedish arbitration law, interest on arbitration costs is considered a procedural issue governed by the law applicable to the arbitration agreement. Therefore, in arbitrations seated in Sweden, the arbitral tribunal may award interest on the costs of the arbitration in accordance with the Swedish Interest Act (SFS 1975:635) (Interest Act) and, by analogy, the CJP. Pursuant to the Interest Act, the interest rate is eight per cent, plus the official Swedish reference rate set by the Swedish Riksbank from time to time (*section 6, Interest Act*). The interest is payable from the date of the award until full payment is made (*chapter 18:8 second paragraph, CJP by analogy*). If the arbitration costs are claimed in a currency other than Swedish krona, the rate of interest may be adjusted accordingly.

Under the SAA, the arbitral tribunal has the power to adjudicate the parties' claims for costs even if it determines that it lacks jurisdiction over the merits of the case. In instances where the arbitral tribunal lacks jurisdiction, the respondent may be ordered to pay the costs of the arbitration only under special circumstances, such as due to the respondent's conduct during the arbitration (*section 37, first paragraph, SAA*).

Third-party funding

The use of third-party funding in arbitrations seated in Sweden is permissible, although it is not expressly regulated under Swedish law. Any claim for reimbursement of the funded party's arbitration costs is decided based on the generally applicable rules on the reimbursement of costs.

A funded party is entitled to recover the arbitration costs it incurred, even if those costs were paid by its funder, provided that the funded party is obliged to reimburse the funder in the event of a favourable outcome (for examples of cases addressing litigation costs paid by a funder, see *Russian Federation v Quasar de Valores SICAV S.A. and others, Stockholm District Court, case No T 15045-09 (reversed on other grounds);* see also *OAO Tyumenneftegaz v First National Petroleum Corporation, Svea Court of Appeal, case No T 7070-18, at p. 34*). The costs of funding are generally considered non-recoverable. However, in exceptional circumstances, the funded party

may be entitled to recover reasonable funding costs under the applicable arbitration rules, such as where the need for funding was caused by the conduct of the other party (for examples of institutional rules on the reimbursement of all reasonable costs incurred in connection with the arbitration, see *Article 50, SCC Arbitration Rules; Article 38(1) ICC Arbitration Rules*).

For further information on third party funding in international arbitration, see Practice note, Third-party funding for international arbitration claims: overview.

Challenges to awards

Under the SAA, an arbitral award is deemed final and binding on the parties with respect to the arbitral tribunal's assessment of the merits of the dispute.

If the arbitral award or the manner in which it was made suffers from procedural errors, the aggrieved party may request the competent Court of Appeal to, in whole or in part:

- Declare the award invalid (*sections 33 and 43, SAA*).
- Set aside the award (*sections 34 and 43, SAA*).
- Amend the award or a decision terminating (writing off) the proceedings without deciding the merits (*section 36, first paragraph and section 27, third paragraph, SAA*).

Additionally, a party or an arbitrator may apply to the competent District Court for an amendment of an award insofar as it relates to the remuneration of the arbitrators (*section 41, first paragraph and section 43, third paragraph, SAA*).

Invalidity of an arbitration award

The SAA provides three grounds on which an award may be declared invalid, in whole or in part:

- The award decides a matter that is not arbitrable under Swedish law.
- The award, or the manner in which it was made, is manifestly incompatible with the fundamental principles of the Swedish legal system.
- The award does not comply with the requirements of the SAA regarding written form and signature.

(*Section 33, SAA*)

If any of the grounds for invalidity of an arbitral award apply, the award shall be considered invalid *ab initio*. In view of the public nature of the interests involved, an action to declare an award invalid is not subject to any time limit.

The court may stay the proceedings to allow the arbitral tribunal to resume the arbitration or to take other measures which, in the opinion of the arbitral tribunal, would eliminate the ground of invalidity of the award (*section 35, SAA*).

Unlike the grounds for setting aside an arbitral award under section 34 of the SAA, which may be excluded by agreement of the parties (*section 51, SAA*), the grounds for invalidity of an arbitral award under section 33 are mandatory and cannot be contracted out of.

Invalidity of award: non-arbitrability

For an award to be declared invalid, in whole or in part, on the grounds that it resolved an issue that was not arbitrable under Swedish law, the non-arbitrability must have existed at the time the award was made (*Moscow City Golf, at page 802*). In *Spain v Novenergia II – Energy & Environment (SCA) (Svea Court of Appeal, case No T 4658-18)*, the Svea Court of Appeal found that EU law prevented an EU member state and an investor from another EU member state from settling disputes under the Energy Charter Treaty by arbitration, as such arbitration would interfere with the autonomy of the EU legal order. The court held that EU law was part of Swedish law and, consequently, such disputes were not arbitrable under Swedish law (see Legal update, Swedish Court of Appeal annuls intra-EU investment arbitration award). However, in subsequent case law, arbitral awards rendered in intra-EU investment treaty disputes have been declared invalid as incompatible with the Swedish legal system pursuant to section 33, first paragraph (2) of the SAA.

Invalidity of award: incompatibility with Swedish legal system

An award is invalid if it is manifestly incompatible with the fundamental substantive or procedural principles of the Swedish legal system. The competent court will assess whether the alleged incompatibility is "manifest" based on the nature and weight of the public interest at stake (*Systembolaget, at pages 460-461, paragraph 12*). In *Poland v PL Holdings*, the Swedish Supreme Court ruled that, as EU law is part of Swedish law, it would be contrary to Swedish public policy to uphold arbitral awards rendered pursuant to arbitration agreements that violated the principles of the EU legal system. Consequently, the Supreme Court declared the separate and final award in the dispute invalid (*Poland v PL Holdings, Swedish*

Supreme Court, NJA 2022 page 965, discussed in Legal update, Swedish Supreme Court annuls arbitral awards because of their inconsistency with Swedish public policy). The Svea Court of Appeal made similar findings in:

- Festorino Invest Limited and others v Republic of Poland (case No T 12646-21), discussed in Legal update, Svea Court of Appeal annuls intra-EU ECT arbitration award, including in relation to non-EU investor and costs.
- Kingdom of Spain v Triodos SICAV II (case No T 15200-22), discussed in Legal update, Swedish Court of Appeal once again declares intra-EU investment treaty award invalid on grounds of public policy.
- Republic of Italy v Athena Investments A/S and others (case No T 3229-19).
- Republic of Italy v CEF Energia B.V. (case No T 4236-19), discussed in Legal update, Swedish Court of Appeal consistent in declaring intra-EU investment treaty award invalid on grounds of public policy.
- Kingdom of Spain v Foresight Luxembourg Solar and others (case No T 1626-19), discussed in Legal update, Yet another intra-EU investment treaty award annulled as incompatible with Swedish public policy (Svea Court of Appeal).

Invalidity of award: Lack of written form and signature

If the award does not comply with the requirements of the SAA regarding written form and signature (see Form, content and notification of an award), it is deemed invalid. Such defects also constitute an impediment to the enforcement of the award (*chapter 3:15, first paragraph (2), Enforcement Code*). An arbitral tribunal may, on its own initiative or at the request of a party, eliminate the ground for invalidity by supplementing the award in accordance with section 32 of the SAA or by taking the necessary measures on the referral of the dispute back to the arbitral tribunal by Swedish courts under section 35 of the SAA.

Setting aside an arbitration award

Grounds for set aside

An arbitral award may be set aside, in whole or in part, on the application of a party, on the following grounds:

- **The award is not covered by a valid arbitration agreement between the parties (*section 34, first paragraph (1), SAA*)**. An arbitral award is not covered by a valid arbitration agreement if, for example, no valid arbitration agreement was ever concluded, an arbitration agreement, once valid, has subsequently become invalid or does not cover the issues decided in the award. Notable examples of successful challenges to arbitral awards on this ground include *Ukraine v Norsk Hydro (Svea Court of Appeal, case No T 3108-06) and the Russian Federation v RosInvestCo UK Ltd (Svea Court of Appeal, case No T 10060-10).* See also *the Russian Federation v ALOS 34 SL and others (Svea Court of Appeal, case No T 9294-12*).
- **The award was made after the time limit agreed by the parties (*section 34, first paragraph (2), SAA*).** If the parties have agreed that the arbitral tribunal must render the award within a specific time frame from the referral of the dispute, and there is no agreed mechanism for extending that time limit, any award rendered after the expiry of the time limit will be liable to be set aside.
- **The arbitrators exceeded their mandate in a manner that likely influenced the outcome (*section 34, first paragraph (3), SAA*).** A tribunal will exceed its mandate where, for example, it grants more than requested by a party (*ultra petita*), based the award on a legally relevant fact party did not rely or acted *ex aequo et bono* without the parties' agreement. The requirement that the excess of mandate must have likely influenced the outcome of the case necessitates that the challenging party not only demonstrate the excess of mandate but also establish a causal link between the excess of mandate and the outcome of the case. Notable examples of successful challenges to arbitral awards on the grounds of excess of mandate include *Tyumenneftegaz v First National Petroleum Corporation (Svea Court of Appeal, case No T 2289-14 and T 7070-18); SJ AB v Arriva Östgötapendeln AB (Svea Court of Appeal, case No T 3179-17);* and *Chelyabinsk Metallurgical Plant v Minmetals International Engineering Co Ltd (Svea Court of Appeal, case No T 1356-18*). These cases were decided under the SAA in its wording before the 2019 amendments, which introduced the requirement that the excess of mandate likely affected the outcome of the case (see also section 34, first paragraph (7), SAA). However, the Court of Appeal assessed whether the excess of mandate affected the outcome in each mentioned case.
- **The arbitration should not have taken place in Sweden (*section 34, first paragraph (4), SAA*).** A party may commence an arbitration in Sweden if the parties' arbitration agreement designates Sweden as the seat, Sweden is determined to be the seat of arbitration by either the tribunal or an arbitral institution, or all parties consent to this (*section 47, first paragraph, SAA*).

An arbitration can also be commenced in Sweden if the respondent is domiciled in Sweden or is otherwise subject to the jurisdiction of Swedish courts, unless the parties' arbitration agreement provides for the arbitration to be seated abroad (*section 47, second paragraph, SAA*). If none of these instances applies, then the arbitration cannot take place in Sweden and any award rendered would be liable to be set aside (*section 47, third paragraph, SAA*).

- **An arbitrator was appointed in a manner contrary to the parties' agreement or the SAA (*section 34, first paragraph (5), SAA*).** An arbitrator will be deemed to have been appointed in a manner contrary to the parties' agreement if the arbitrator does not possess the characteristics, qualifications, or nationality agreed by the parties (including through the adoption of institutional rules), or the agreed procedure for the appointment was not followed.
- **An arbitrator was not authorised to decide the dispute (*section 34, first paragraph (6), SAA*).** To have the authority to decide a dispute, an arbitrator must have full legal capacity (*section 7, SAA*) and be impartial and independent (*section 8, SAA*). If the arbitrator lacked any of these qualities and this fact only became known to the challenging party after the award was made, the award may be set aside (see also *section 10, section 11, section 34, second paragraph, and section 44, third paragraph, SAA*). Notable examples of successful challenges on this ground include *AJ v Ericsson* and *KPMG AB v ProfilGruppen AB (Svea Court of Appeal, case No T 1085-11)*.
- **A procedural irregularity occurred in the arbitration, through no fault of the challenging party, which likely affected the outcome (*section 34, first paragraph (7), SAA*).** This ground is a catch-all provision covering various types of procedural irregularities, such as a party not being given a reasonable opportunity to present its case, an arbitral tribunal failing to consider a request for relief, a legally relevant fact (basis) or evidence relied on by a party, or an arbitral tribunal wrongly dismissing a request for relief or a legally relevant fact (basis) without assessing the merits, or wrongly dismissing evidence. This ground also includes decisions on matters that constitute res judicata, *lis pendens* or inadmissible claims, a failure of an arbitral tribunal to comply with a joint procedural instruction of the parties, and other irregularities. As with the excess of mandate under section 34, first paragraph (3), this ground necessitates that the challenging party not only demonstrate the existence of a procedural irregularity but also a causal link between the irregularity and the outcome of the case. Furthermore, the effect of the irregularity on the outcome must be of reasonable importance to the challenging party (*Belgor, at page 192, paragraphs 31-32).* A notable example of a successful challenge on this ground is the case of *CicloMulsion,* where a separate award was set aside because the arbitral tribunal deviated from its earlier decision on a substantive issue, without informing the parties and providing them an opportunity to comment.

Party may lose right to challenge

To preserve its right to challenge an award, the dissatisfied party must raise the relevant objection with the tribunal during the arbitration proceedings. A party will not be entitled to challenge an award based on a circumstance of which it was aware but did not raise (*Government Bill 1998/99:35, pages 149 and 236*). In such circumstances, the party may be deemed to have waived its right to challenge (*section 34, second paragraph SAA*).

The appointment of an arbitrator and the payment of an advance on costs by a party do not constitute acceptance of the jurisdiction of the arbitral tribunal (*section 34, second paragraph, SAA*). However, unconditional compliance with an award without reserving the right to challenge it will be regarded as a waiver of the right to challenge the award.

The SAA does not prescribe a specific time within which the relevant objection must be raised with the tribunal to avoid preclusion. This is left to be determined in light of the circumstances of each case. However, objections to the jurisdiction of the arbitral tribunal must, as a general rule, be raised no later than in the statement of defence (*SOCAR v Frontera Resources;* see also *article 29(2)(i), SCC Rules 2023*).

Time limit for set aside application

An application to set aside an award must be brought within two months of the date on which the challenging party was notified of the award or, if the award has been corrected, supplemented, or interpreted, within two months of the date of the notification of the award in its final form (*section 34, third paragraph, SAA*).

Once the time limit for filing the application has expired, a party may not supplement its application by raising new grounds for setting aside.

As in the case of an application to declare an award invalid, the court may, at the request of a party, stay the set aside proceedings to allow the arbitrators to resume the arbitration or to take other measures

which, in the opinion of the arbitral tribunal, will eliminate the ground for setting aside (*section 35, SAA*). The court will take this step if it finds that the application to set aside the award is justified, or if both parties apply for a stay (*section 35, SAA*).

Contracting out of section 34

If none of the parties to the arbitration agreement is domiciled or has its place of business in Sweden, and the agreement concerns a commercial relationship, the parties may, by express written agreement, exclude or limit the right to request that an award be set aside under section 34 (*section 51, first paragraph, SAA*).

If the parties have agreed to exclude or limit the application of section 34, an award will be recognised and enforced in Sweden as though it were a foreign award (*section 51, second paragraph, SAA*) (see Recognition and enforcement of arbitral awards).

Amendments to awards and decisions terminating the proceedings without resolving the merits

An arbitral award dismissing a case in its entirety without deciding the dispute on the merits, and a decision that otherwise terminates (writes off) the proceedings without resolving the dispute on the merits, may be amended in whole or in part by the competent Court of Appeal on the application of a party (*sections 36, 27, third paragraph, and 43, SAA*). For examples of situations in which the proceedings are terminated by an award or a decision without deciding the merits of the dispute, see Awards and decisions.

If an arbitral tribunal dismisses a dispute for lack of jurisdiction, and the dissatisfied party does not bring an action before Swedish courts to amend the negative award on jurisdiction, the dispute may not subsequently be resolved by arbitration. If the competent court finds that, contrary to the negative jurisdictional award, the arbitration agreement is valid and applicable to the dispute, the court's decision will constitute a binding declaration. However, the court cannot compel the original arbitral tribunal to resume the arbitration. Therefore, any party wishing to resolve the dispute by arbitration will need to commence new arbitral proceedings or request the former arbitral tribunal to resume the proceedings.

In that new or resumed arbitration, the respondent will not be able to raise the same objection to the arbitral tribunal's jurisdiction as that finally determined by the court. A notable example of a successful application to amend a negative award on jurisdiction is *Petrobart v Kyrgyz Republic*, where the Swedish Supreme Court partially set aside the award on the basis that the arbitral tribunal had incorrectly dismissed the case without resolving the dispute on the merits. Another example is *OAO Arkhangelskoe Geologodobychnoe Predpriyatie v Archangel Diamond Corporation (case No. T 2277-04)*, where the Svea Court of Appeal, applying the Act on Arbitrators (SFS 1929:145), the predecessor of the SAA, upheld the judgment of the Stockholm District Court, which set aside an arbitration award that had dismissed the dispute without resolving it on the merits.

At the request of a party, an arbitral award that dismisses the case in its entirety without deciding the merits of the dispute may be amended solely with respect to the arbitral tribunal's decision on the costs of the arbitration (*section 36, second paragraph, SAA*). Decisions regarding the costs of arbitration, which are contained in decisions terminating (writing off) the proceedings, may only be challenged in accordance with the rules for setting aside arbitration awards (*section 36, second paragraph and section 27, third paragraph, SAA*).

An action seeking the amendment of an arbitral award that dismissed a case without deciding the dispute on the merits, or a decision otherwise terminating (writing off) the proceedings without deciding the merits, must be brought within the same time limit and before the same court as an action to set aside an award (see Time limit for set aside application and Forum and rules of procedure).

The parties are free to agree, either before or after the dispute arises, to exclude the application of section 36 of the SAA. Whether such an agreement has been concluded will be assessed in accordance with the general principles governing the conclusion of contracts (*Boeing and others v Energia and others, Swedish Supreme Court, NJA 2015 page 991, at pages 1006-1007*).

Appeals against decisions concerning arbitrator remuneration

The SAA grants parties and arbitrators the right to appeal to the Swedish courts against decisions concerning the remuneration of the arbitrators (*section 41, first paragraph, SAA*). The right of appeal exists against both an arbitral tribunal's own decision on remuneration and decisions made by arbitral institutions that are included in the operative part of an award (see *Soyak v WM and others, Swedish Supreme Court, NJA 2008 page 1118, at*

page 1128). When a decision on the remuneration of the arbitrators is made by an arbitral institution in accordance with the arbitration rules agreed on by the parties, the parties are generally deemed to be bound by the agreed rules, including any applicable fee schedules.

An appeal against a decision concerning the remuneration of the arbitrators must be brought within two months from the date of notification of the award to the parties and, in the case of an arbitrator, within the same period from the date of the award. In the case of correction, supplementation, or interpretation, the two-month period will run from the date of notification of the award in its final form to the party and, in the case of an arbitrator, from the date of the award in its final form (*section 41, SAA*).

Review of awards on the merits

The SAA does not preclude the parties from agreeing that an appeal on the merits of an arbitral award may be brought before either an arbitral tribunal or a district court as a court of first instance. Proceedings before an arbitral tribunal will be governed by the relevant provisions of the SAA, whereas proceedings before a district court will be governed by the CJP. If an arbitral award is subject to review on the merits, it cannot be enforced until the time for lodging an appeal has expired without an appeal being filed (*chapter 3:15, Enforcement Code*).

Forum and rules of procedure

Applications against awards and decisions pursuant to any of section 2, second paragraph (see Jurisdiction), and sections 33, 34, and 36 of the SAA are heard by the Court of Appeal at the seat of the arbitration. If the seat of arbitration is not determined, the action may be brought before the Svea Court of Appeal (*section 43, SAA*). Judgments of the Court of Appeal are final unless both the Court of Appeal and the Swedish Supreme Court grant leave to appeal (*section 43, SAA*). Leave to appeal is granted in cases that raise an important matter of precedent that the Supreme Court should consider.

Actions to annul, set-aside, or amend an award or a decision are governed by the ordinary rules of civil procedure under the CJP. Proceedings usually involve both written exchanges and an oral hearing, and are conducted in Swedish. However, the parties may submit evidence in English, unless the Court of Appeal or the Supreme Court requires a translation into Swedish (*section 45a, SAA*).

The parties' written arguments usually involve two or more rounds of submissions. The proceedings are public, and all documents filed with the court, including the arbitral award, may be obtained by third parties upon request, without the need for the third party to demonstrate an interest in the challenge proceedings. A party to the dispute may, on its own initiative or after having been given an opportunity to comment, request that certain information constituting trade secrets or other sensitive information about a party's business, the disclosure of which would cause substantial harm to the party, be treated as confidential and not be disclosed (*chapter 36:2,* the Public Access to Information and Secrecy Act (SFS 2009:400)). If the request for confidentiality is justified, the relevant documents will be redacted accordingly.

The arbitral tribunal is not notified of, nor given an opportunity to comment on, any of the applications. However, either party may call a member of the arbitral tribunal as a witness. Although the deliberations are confidential, an arbitrator who is called to testify as a witness in the set-aside proceedings may be required to disclose information that is of importance to the proceedings. In *CME v Czech Republic*, the Svea Court of Appeal held that the duty to testify under oath in court under the CJP applied to the deliberations of an arbitral tribunal sitting in Stockholm. However, the court also stated that it would not apply any sanctions against the arbitrators in the case for failing to cooperate or answer a particular question if the arbitrator felt that the relevant testimony would entail a breach of the duty of confidentiality as an arbitrator (*CME v Czech Republic, RH 2003:55*; see also *Law Firm v Attorney General, Swedish Supreme Court, NJA 2010 page 122, at paragraph 16 of the supplement opinion*).

Unlike actions to annul, set aside, or amend an award or a decision terminating (writing off) the proceedings, appeals against decisions on the remuneration of the arbitrators under section 41 of the SAA are heard by the District Court at the seat of the arbitration. The proceedings are governed by the Court Matters Act (SFS 1996:242), which means that the proceedings are usually limited to written exchanges.

Recognition and enforcement of arbitral awards

The rules on the recognition and enforcement of arbitral awards differ depending on whether the award was made in an arbitration seated in Sweden (Swedish awards) or abroad (foreign awards).

Swedish awards

An arbitral award made in an arbitration seated in Sweden may be enforced in Sweden in a manner similar to that for a Swedish court judgment from the day on which the award is made, without the need for judicial confirmation of recognition and enforcement (*exequatur*). An application to annul, set aside, or amend an award does not impede its enforcement (execution) in Sweden, unless the Court of Appeal hearing the application decides otherwise (*chapter 3:18, Enforcement Code*). Generally, the competent Court of Appeal will, at the request of a party, stay the enforcement (execution) of a Swedish arbitral award or revoke enforcement measures already taken if it appears likely that the action against the award will succeed (on the Court of Appeal's broad powers to stay the enforcement (execution) of a Swedish arbitral award, see *Government Bill 1998/99:35, pages 183 and 251*).

Enforcement (execution) proceedings are initiated by an application filed with the Swedish Enforcement Authority (*chapter 3:15, Enforcement Code*). Once filed, the application undergoes a summary examination to ensure that the arbitration agreement between the parties does not provide for a right to appeal the award on the merits and that the award meets the requirements of written form and signature. The opposing party will be notified of the application and given an opportunity to comment. A party seeking enforcement (execution) may apply to the competent Swedish court for interim measures of protection, including ex parte interim measures (see Interim measures of protection).

If the arbitration agreement does not provide for an appeal on the merits and the award complies with the prescribed written form and signature requirements, the Enforcement Authority will enforce the award. However, if there is a reason to believe that an award may be invalid, the Enforcement Authority will order the party seeking enforcement (execution) to commence an action regarding the validity of the award within one month after service of the order. An action regarding the validity of the award will be heard by the Court of Appeal at the seat of the arbitration in accordance with section 43 of the SAA.

If an arbitral award was made in an arbitration seated in Sweden but is based on an arbitration agreement containing an agreement to exclude or limit the grounds for setting aside an award, the procedure for the recognition and enforcement of the award in Sweden will be governed by the rules applicable to foreign awards (*section 51, second paragraph, SAA*) (see Foreign awards).

Foreign awards

An arbitral award made abroad must undergo a recognition and enforcement procedure (*exequatur*) before it can be executed in Sweden. A foreign arbitral award will be declared enforceable in Sweden unless one of the grounds for non-enforcement provided for in sections 54 or 55 of the SAA applies (*section 53, SAA*).

Sweden is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NYC), without any reservations or declarations (see *Checklist*, New York Convention enforcement table: status). Therefore, foreign arbitral awards are enforceable in Sweden, regardless of whether they resolve disputes arising out of a commercial relationship and without regard to reciprocity. Sections 54 and 55 of the SAA closely mirror article V of the NYC.

An application for recognition and enforcement of a foreign arbitral award in Sweden (*exequatur*) must be made to the Svea Court of Appeal (*section 56, first paragraph, SAA*). The application must be accompanied by the original award or a certified copy of it, together with a certified Swedish translation of the entire award (*section 56, second paragraph, SAA*). A certified translation of the award into Swedish is not normally required for awards in English (*section 45(a), SAA*). The proceedings are governed by the Court Matters Act.

The opposing party shall be notified of the application and afforded an opportunity to comment on it (*section 57, SAA*). A party seeking recognition and enforcement may apply to the competent Swedish court for interim measures of protection, including ex parte interim measures (see Interim measures of protection).

A foreign arbitral award will not be granted *exequatur* in Sweden if the party against whom the award is invoked can establish any of the following grounds for non-recognition and non-enforcement:

- One of the parties to the arbitration agreement lacked the capacity to enter into the agreement, was not properly represented, or the agreement is invalid under the law to which the parties have subjected it, or, failing any indication thereof, under the law of the country in which the award was made.
- A party was not given proper notice of the appointment of the arbitrator(s) or of the

arbitration proceedings, or was otherwise unable to present its case.

- The arbitrators exceeded their mandate in respect of the dispute submitted to them or decided matters outside the scope of the arbitration agreement.
- The composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties, or, in the absence of such an agreement, with the law of the country where the arbitration was seated.
- The award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.

(*Section 54, SAA*)

Although there are minor differences in wording, section 54 of the SAA is interpreted so as to ensure its conformity with article V of the NYC and to facilitate the enforcement of awards (*KB I Stockholm AB v Société Planavergne SA, Swedish Supreme Court, NJA 2003 page 379, at page 383 (*Société Planavergne SA*); Adelina Gross AB v Hammeum International, Swedish Supreme Court, NJA 2018 page 504, at page 510, paragraph 16 (*Adelina Gross*)*).

A party is not entitled to resist recognition and enforcement on the basis of a circumstance of which it subjectively was aware, but did not raise, during the arbitration (*Adelina Gross, at pages 510-511*). For further discussion of article V of the NYC, see Practice note, Enforcing arbitral awards under the New York Convention 1958: overview: Defences to and resisting enforcement: article V.

If the party resisting recognition and enforcement of an arbitral award denies that there was a valid arbitration agreement, the party seeking *exequatur* must submit the original or a certified copy of the arbitration agreement (together with a certified Swedish translation unless the Court of Appeal or the Supreme Court decides otherwise) or otherwise prove the existence of the agreement (*section 58, first paragraph, SAA*). The burden of proof regarding the existence of a valid arbitration agreement generally rests on the party seeking enforcement. However, in cases where the arbitral tribunal has found a valid arbitration agreement between the parties, Swedish courts will generally assume that the arbitral tribunal was best positioned to assess its own jurisdiction and place the burden of proof on the party resisting enforcement (*Société Planavergne SA, at page 383*).

There are only a few instances in which Swedish courts have declined to enforce a foreign arbitral award pursuant to section 54 of the SAA. Notable among these are the cases of *Belaya ptitsa-Kursk v Robot Grader AB (NJA 2018 page 291)* and *Subway International BV v AB (case No Ö 5300-12)*, where the Swedish Supreme Court and the Svea Court of Appeal, respectively, refused enforcement on the grounds that the party was not afforded a reasonable opportunity to present its case. Additionally, in *Lenmorniiproekt v Arne Larsson*, the Swedish Supreme Court denied enforcement on the basis that the party had not been properly notified of the arbitration proceedings.

In addition to the exceptions to the recognition and enforcement mentioned above, the Svea Court of Appeal will, of its own motion (or on the application of a party), refuse recognition and enforcement of a foreign award if it finds that the award contains a determination of an issue that is not arbitrable under Swedish law, or if recognition and enforcement of the award would be manifestly incompatible with the basic principles of the Swedish legal system (*section 55, SAA*). Regarding the latter ground, there are only a few known cases in which Swedish courts have refused *exequatur* on public policy grounds. For instance, in *Robert G v Johnny L (NJA 2002 Note C 45)*, the Supreme Court refused recognition and enforcement of a fictitious arbitral award. Similarly, in *Finants Collect OÜ v HK (case No Ö 7419-15)*, the Svea Court of Appeal refused recognition and enforcement of an arbitral award on the grounds that there were substantial doubts that the award was part of a procedural fraud and that the respondent in the enforcement proceedings had failed to provide adequate explanations regarding the relevant circumstances.

The Svea Court of Appeal may defer its decision on the recognition and enforcement of a foreign arbitral award pending the outcome of any proceedings to set aside the award or any application for a stay of enforcement at the seat of the arbitration. The court may, at the request of the party seeking recognition and enforcement, condition the postponement of *exequatur* on the provision of adequate security by the party opposing recognition and enforcement (*section 58, second paragraph, SAA*). Proceedings to set aside the award at the seat of the arbitration do not constitute grounds for postponing recognition and enforcement in Sweden, unless it is demonstrated that the challenge is likely to succeed (*Latvia v SwemBalt AB, Swedish Supreme Court, NJA 2002,*

Note C 62, at page 66; Forenede Cresco Finans AS v Datema AB, Swedish Supreme Court, NJA 1992 page 733, at page 739).

If the Svea Court of Appeal grants the application for recognition and enforcement, the award may be enforced as a final judgment of a Swedish court, unless the Supreme Court decides otherwise following an appeal of the Court of Appeal's decision (*section 59, SAA*).