PANORAMIC

ARBITRATION

Sweden

LEXOLOGY

Arbitration

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LAWS AND INSTITUTIONS

Multilateral conventions relating to arbitration

Is your jurisdiction a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

The New York Convention was ratified in 1972 with no reservations. The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States of 1965 (the ICSID Convention) was ratified in 1966 and the Energy Charter Treaty in 1997. Since 1929, Sweden has also been a party to the 1927 – seldom applied but still effective – Convention on the Execution of Foreign Arbitral Awards and the 1923 Protocol on Arbitration Clauses.

Law stated - 15 January 2025

Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

Sweden is party to some 70 bilateral investment treaties, all of which contain arbitration clauses.

Law stated - 15 January 2025

Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The Swedish Arbitration Act of 1999 (the Arbitration Act; available online in English, Russian and Ukrainian) is the primary legal framework relevant to arbitration. In 2019, several amendments to the Act came into force, aimed at making the arbitration process more efficient and easily accessible, especially for non-Swedish parties.

The Arbitration Act applies to both international and domestic arbitrations, but deals only with arbitral proceedings seated in Sweden. It implements the New York Convention in respect of awards rendered outside Sweden. Arbitral awards rendered under the Arbitration Act are enforced according to the Swedish Enforcement Code.

As the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) is one of the world's leading dispute resolution forums, the SCC Rules often play an important role in both domestic and foreign arbitral proceedings.

Law stated - 15 January 2025

Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

No, but the Arbitration Act derives much of its content from the UNCITRAL Model Law. Unlike the UNCITRAL Model Law, the Arbitration Act:

- applies to both domestic and international arbitrations;
- does not require that the arbitration agreement be in writing;
- allows a party to request the court of appeal to review a tribunal's decision to dismiss a claim on the ground that the tribunal lacks jurisdiction;
- allows the parties – if both are foreign – to waive section 34 of the Arbitration Act on the setting aside of awards; and
- has rules on fees and costs of the arbitration.

Law stated - 15 January 2025

Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

The Arbitration Act contains a number of mandatory provisions. The most important of these are:

- section 21 (the arbitrators must hear a case on a non-discriminatory basis);
- section 24(1) (the arbitrators must allow the parties to present a case in writing or orally to the fullest extent necessary);
- section 25(3) (the arbitrators are prohibited from using coercive means such as swearing somebody in or imposing fines); and
- sections 33 and 34 concerning invalid awards and the setting aside of awards.

Law stated - 15 January 2025

Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

Yes. Pursuant to section 27(a) of the Arbitration Act, the arbitral tribunal shall apply the substantive law chosen by the parties without regard to the conflict of laws rules. In the absence of an agreement by the parties, the Act explicitly mandates the arbitrators to determine the applicable substantive law, but does not specify the basis for the

determination. In practice, however, the law applicable to the arbitration agreement in the absence of an agreement by the parties has been the law of the seat (ie, Swedish law).

Article 27 of the SCC Rules contains rules that are almost identical to those of the Arbitration Act with respect to the determination of the applicable law.

The mandatory law of another jurisdiction within the European Union other than the one chosen by the parties may be applied by the arbitral tribunal if permitted under the Rome I Regulation (EC 593/2008) (see Rome I, articles 3 and 9). With respect to jurisdictions outside the European Union, the Swedish choice of law rules shall determine whether there are overriding mandatory rules that the arbitral tribunal shall apply. As a minimum standard, the arbitral tribunal shall normally be bound by Swedish (if the arbitration is governed by Swedish law) and international public policy.

With respect to the arbitration agreement, the applicable law shall be determined by the arbitral tribunal in accordance with section 48 of the Arbitration Act. If the applicability of the Arbitration Act has not been determined before such issues arise, inter alia, because the place of arbitration has not yet been determined, a Swedish court or arbitral institution shall apply Swedish choice of law rules in determining whether the arbitration is governed by Swedish law.

Law stated - 15 January 2025

Arbitral institutions

What are the most prominent arbitral institutions situated in your jurisdiction?

The most prominent arbitration institution is the SCC Arbitration Institute of the Stockholm Chamber of Commerce. The SCC Arbitration Institute has developed into one of the world's leading arbitration institutions, with parties from some 40 countries using its services each year. There are also some much smaller arbitration institutes, such as the West Sweden Chamber of Commerce and the German-Swedish Chamber of Commerce.

Law stated - 15 January 2025

ARBITRATION AGREEMENT

Arbitrability

Are there any types of disputes that are not arbitrable?

Disputes that the parties cannot resolve by agreement are not arbitrable. This is generally the case when the dispute affects the public interest or the interest of third parties, such as security interests in property. Arbitrators may determine the civil law effects of competition law between the parties. As a general rule, consumer disputes are only arbitrable if the arbitration agreement was made after the dispute arose.

Law stated - 15 January 2025

Requirements

What formal and other requirements exist for an arbitration agreement?

Arbitration agreements are valid and binding in the same way as any other consensual agreement; therefore, there is no requirement of written form. However, for the arbitration agreement to be recognised, the agreement must be made in relation to a specific legal relationship (eg, a contract). An arbitration agreement may be made by reference to general terms and conditions containing an arbitration clause (see, for example, NJA 1980, p. 46).

However, case law has suggested that in situations where only a single reference is made to the general terms and conditions (containing an arbitration clause) – without further discussions or negotiations on the matter – the arbitration clause in the general terms and conditions may, under certain conditions, be considered null and void if the parties have unequal bargaining power, although the rest of the terms and conditions remain valid and binding between the parties (see the Appeal Court of Övre Norrland, Case RH 2012:8, decided on 19 January 2012; cf. NJA 1979, p. 666).

Law stated - 15 January 2025

Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

The validity of the arbitration agreement shall be determined separately from the validity of the main agreement. The ordinary rules and principles of Swedish contract law shall apply to determine the validity of an arbitration agreement. In addition, a party may lose the right to invoke an arbitration agreement as a bar to court proceedings if it opposes a request for arbitration, fails to select an arbitrator in a timely manner or fails to pay its share of the security required by the arbitrators. A declaration of bankruptcy or liquidation does not terminate an arbitration agreement (see NJA 2003, p. 3).

Law stated - 15 January 2025

Separability

Are there any provisions on the separability of arbitration agreements from the main agreement?

Yes. The separability of arbitration agreements from main agreements (the doctrine of separability) is set forth in section 3 of the Arbitration Act. Accordingly, when assessing issues relating to the validity of an arbitration agreement that is an integral part of a main agreement, the arbitrators shall consider the arbitration agreement as a separate and independent agreement. However, the doctrine of separability does not mean that an issue concerning the validity of the arbitration agreement will always fall within the jurisdiction of the arbitral tribunal, as the jurisdiction of the arbitral tribunal is also subject to other rules and principles. Certain grounds for invalidity of a main agreement may also apply to the arbitration agreement, such as invalidity due to lack of authority of the persons who signed the main agreement.

Law stated - 15 January 2025

Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

There are no rules in the Arbitration Act and there is no clear general answer in the case law. In the case of universal succession, the successor is bound by the arbitration agreement. Following a singular succession, the successor would normally be bound, unless this would be unreasonable (see the ***Emja*** case, NJA 1997, p. 866). The same principles seem to apply in relation to guarantors, etc (see, for example, RH 2003:61).

Law stated - 15 January 2025

Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

No. The ability of third parties to participate in arbitration is subject to the contractual terms of the arbitration agreement, either as part of the main agreement negotiated at the outset of the parties' business relationship, or as a supplemental or separate arbitration agreement at the time of the dispute.

However, article 13 of the Rules of the Stockholm Chamber of Commerce (SCC) provides for the possibility of additional parties joining an existing arbitration under certain circumstances.

Law stated - 15 January 2025

Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

The group of companies doctrine is not recognised as such, but a member of the same company group as the signatory may be or become bound by an arbitration agreement owing to general rules and principles of Swedish contract law.

Law stated - 15 January 2025

Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The validity of such an agreement is subject to the same requirements as ordinary arbitration agreements.

As to the different problems associated with multiparty arbitration, as of 1 March 2019, section 14(3) of the Arbitration Act addresses arbitrator appointments in multiparty proceedings. If multiple respondents cannot agree on a joint arbitrator appointment, a respondent party may request that the district court appoint arbitrators on behalf of all parties. This may result in the excusal of any arbitrator who has already been appointed.

Moreover, article 14 of the SCC Rules codifies when parties are allowed to make claims arising out of or in connection with more than one contract in a single arbitration. In deciding whether the claims shall be processed in a single arbitration, emphasis shall be placed on:

- whether the respective arbitration agreements are compatible;
- whether the relief sought arises out of the same transaction or series of transactions;
- the efficiency and expeditiousness of the proceedings; and
- any other relevant circumstances.

Article 15 of the SCC Rules further enables consolidation of arbitrations under certain circumstances. At the request of a party, a newly commenced arbitration may be consolidated with a pending arbitration if the parties agree to consolidate; all the claims are made under the same arbitration agreement; or where the claims are made under more than one arbitration agreement, the relief sought arises out of the same transaction or series of transactions and the arbitration agreements are found to be compatible.

Law stated - 15 January 2025

Consolidation

Can an arbitral tribunal in your jurisdiction consolidate separate arbitral proceedings? In which circumstances?

Yes, according to section 23(a) of the Arbitration Act, an arbitral tribunal may consolidate two or more separate arbitral proceedings under the following conditions:

1. all parties involved must consent to the consolidation;
2. the consolidation must be beneficial for the management of all cases; and
3. the same arbitral tribunal must have been appointed in all arbitrations.

Naturally, the condition in point (2) will vary depending on the circumstances; however, should the parties agree that the cases shall be consolidated, the arbitral tribunal should normally comply with the request.

Once consolidated, the cases may be bifurcated again should reasons therefore arise; for example, if the consolidation has proven to be non-beneficial for the management of the cases.

Article 15 of the SCC Rules contains a similar rule. However, under the SCC Rules, it is also a condition that the claims concerned have been made under the same arbitration agreement,

or that the relief sought arises out of the same transaction or series of compatible transactions. It is the board of the SCC, not the arbitral tribunal, that decides on a request to consolidate.

Law stated - 15 January 2025

CONSTITUTION OF ARBITRAL TRIBUNAL

Eligibility of arbitrators

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

No, provided that the person appointed as arbitrator has full legal capacity. Foreign nationality or lack of legal education is no impediment, and there is no requirement that an arbitrator must be selected from a list of arbitrators. No such official list exists. As concerns judges from a court of law, both active and retired judges may be appointed.

Contractual stipulated requirements are not accepted in relation to gender, sexual identity, ethnic affiliation, religion, disability or age. This follows from sections 1 and 3 of the Swedish Discrimination Act, which states that a contract that reduces somebody's rights or obligations under the Act is invalid; therefore, the Discrimination Act applies to all kinds of contracts, including arbitration agreements, and also addresses indirect discrimination, meaning the effect that a contract might have on third parties. With regard to requirements in relation to nationality, it is not synonymous with ethnic affiliation, and if a requirement based on nationality can be objectively motivated, the requirement would be allowed.

Law stated - 15 January 2025

Background of arbitrators

Who regularly sit as arbitrators in your jurisdiction?

If the parties are Swedish or the dispute is governed by Swedish law, the arbitrators are usually lawyers qualified in Sweden and specialised either in arbitration or in the subject matter of the dispute. In addition, a number of active or retired judges from all levels of the court system are regularly appointed, often as chair of the tribunal. It is not common to appoint government officials as arbitrators in Sweden.

The Stockholm Chamber of Commerce (SCC) Arbitration Institute has a policy for the appointment of arbitrators where it is noted that it seeks to foster diversity (under policy 6). Statistics regarding the appointed arbitrators show a continued increase in the number of women appointed by the SCC.

Law stated - 15 January 2025

Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

The Arbitration Act provides that the parties may determine the number of arbitrators. However, it also states that unless the parties have agreed otherwise, there shall be three arbitrators. Each party has the right to appoint one arbitrator, and the appointed arbitrators then appoint the third arbitrator, who also becomes the chairman of the arbitral tribunal. If a party fails to appoint an arbitrator, the other party may request the district court to make the appointment.

Pursuant to article 16 of the SCC Rules, the SCC Arbitration Institute may determine the number of arbitrators taking into account the complexity of the case, the amount in dispute and other relevant circumstances. The parties may each appoint one arbitrator if the tribunal is to consist of three arbitrators. If a party fails to appoint an arbitrator, the SCC Arbitration Institute shall make the appointment. The SCC Arbitration Institute always appoints the chair, and the same applies when the dispute shall be referred to a sole arbitrator.

Where there is more than one claimant or respondent and the tribunal is to consist of more than one arbitrator, the claimants and respondents shall jointly appoint an equal number of arbitrators. If one of the parties fails to make such joint appointment, the SCC Arbitration Institute may appoint the entire arbitral tribunal.

Law stated - 15 January 2025

Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

A party may request the removal of an arbitrator if the arbitrator's impartiality is questionable. Such a motion must first be made to the arbitral tribunal, and the party may only resort to the courts if the motion is denied. Under the SCC Rules, a challenge is referred to the board of the SCC, which decides on the challenge. The board's decision may not be appealed.

The Swedish Supreme Court has confirmed the high standard of impartiality required. In *Jilkén v Ericsson AB* (NJA 2007, p. 841), the Supreme Court explicitly referred to the IBA Guidelines on Conflict of Interest in International Arbitration.

A request to the tribunal must be made within 15 days of the date on which the party became aware of the grounds for its suspicion, and an application to the court must be made within 30 days of the tribunal's decision. A court may also remove an arbitrator for delaying the proceedings. The court may then appoint a new arbitrator at the request of a party. The parties may agree that an arbitral institution shall decide all these questions.

Law stated - 15 January 2025

Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration and expenses of arbitrators.

Most scholars argue that the relationship between the parties and the arbitrators is contractual, although the contractual relationship is considered procedural. All arbitrators must be impartial, including party-appointed arbitrators, and the parties are obliged to pay reasonable compensation and expenses. This obligation is joint and several unless otherwise agreed.

Law stated - 15 January 2025

Duties of arbitrators

What are arbitrators' duties of disclosure regarding impartiality and independence throughout the arbitral proceedings?

Pursuant to section 9 of the Arbitration Act, a person who is asked to accept an appointment as an arbitrator shall promptly disclose any circumstances that may be deemed to affect his or her impartiality.

Article 18 of the SCC Rules contains a similar provision, which also imposes an obligation on the arbitrator, once appointed, to submit to the secretariat of the SCC a signed declaration of acceptance, availability, impartiality and independence, disclosing any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence.

The arbitrator shall disclose to the parties and to the other arbitrators any circumstances that may be considered to affect his or her impartiality, and this obligation shall continue throughout the arbitration.

Law stated - 15 January 2025

Immunity of arbitrators from liability

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

The liability of arbitrators is subject to the general rule of liability for negligence in Swedish contract law and is therefore not explicitly regulated. Failure to apply procedural rules would normally be considered negligent, and the liability of arbitrators is in this sense equivalent to the liability of judges. However, the contractual relationship between the parties and the arbitrators may allow for more flexibility, inter alia, by allowing the parties' expectations of the arbitrators to influence the assessment of liability.

In particular, article 52 of the SCC Rules provides that neither the SCC, nor any arbitrator, nor the administrative secretary of the arbitral tribunal, nor any expert appointed by the tribunal shall be liable to any party for any act or omission in connection with the arbitration, unless such act or omission constitutes wilful misconduct or gross negligence.

Law stated - 15 January 2025

JURISDICTION AND COMPETENCE OF ARBITRAL TRIBUNAL

Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

For the arbitration agreement to be a bar to court proceedings, a party must object to the jurisdiction of the court at the first opportunity to present the case to the court, otherwise the right to arbitration is deemed to have been waived. However, a party may at any time file a court action to try to obtain a declaration that the arbitral tribunal lacks jurisdiction (see section 2 of the Arbitration Act and the decision of the Swedish Supreme Court in ***Russian Federation v RosInvestCo UK Ltd***, NJA 2010, p. 508), including on the basis of an invalid arbitration agreement. Once the arbitral tribunal has been constituted, the tribunal may order a stay of the arbitral proceedings pending the court's decision or, as is usually the case, decide to continue the arbitral proceedings despite the parallel court proceedings.

Law stated - 15 January 2025

Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated, and what time limits exist for jurisdictional objections?

The arbitral tribunal may determine its own jurisdiction, but a party may still apply to a court for a final determination of the issue, although the arbitrators may continue the arbitral proceedings pending the court's decision. A decision by the tribunal to dismiss a claim without prejudice for lack of jurisdiction may be modified by the court of appeal. Grounds for challenging the jurisdiction of the arbitral tribunal shall be deemed waived if the party has participated in the proceedings without raising the objection.

Law stated - 15 January 2025

Distinction between admissibility and jurisdiction of tribunal

Is there a distinction between challenges as to the admissibility of a claim and as to the jurisdiction of the tribunal?

Yes. According to section 33 of the Arbitration Act, an award is invalid if it includes determination of an issue that, under Swedish law, may not be adjudicated by arbitrators (ie, the dispute is not 'arbitrable' and, therefore, is inadmissible). If an award is not covered by a valid arbitration agreement between the parties and, therefore, falls outside the scope of the tribunal's jurisdiction, it may instead be challenged under section 34 of the Act. The arbitrators have jurisdiction to consider and decide issues regarding their own jurisdiction under the ***Kompetenz-Kompetenz*** doctrine.

The difference between section 33 and section 34 of the Arbitration Act lies primarily in the fact that an action to set aside the award under section 34 must be brought within

two months of the date on which the party received the award. In respect of section 33, no time limit applies, which means that an award that is invalid owing to the dispute being inadmissible can be annulled without any time limitation.

Law stated - 15 January 2025

ARBITRAL PROCEEDINGS

Place and language of arbitration, and choice of law

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings? How is the substantive law of the dispute determined?

In the absence of an agreement by the parties, the arbitral tribunal may determine the place and language of the arbitral proceedings.

Although the arbitral tribunal should have discretion to determine the substantive law of the dispute, it has been argued by legal scholars that the arbitral tribunal should still use normative reasoning and identify a jurisdiction or system of law that is legally relevant to the dispute. The approach chosen when the parties have not agreed on the law applicable to their dispute is to apply the law of the seat, which is Swedish law.

Law stated - 15 January 2025

Commencement of arbitration

How are arbitral proceedings initiated?

The proceedings are initiated when the defendant party receives a request for arbitration, unless the parties have agreed otherwise. The request must be in writing and contain an express and unconditional request for arbitration, information about whether the question to be resolved is covered by the arbitration agreement and information about the claimant's choice of arbitrator.

If the Stockholm Chamber of Commerce (SCC) Rules apply, the proceedings are initiated when the SCC Arbitration Institute receives a request for arbitration. The request must be in writing and contain:

- information about the parties;
- their counsel and contact details;
- a summary of the dispute;
- preliminary information about the relief sought by the claimant;
- a copy or description of the arbitration agreement or arbitration clause;
- an indication of the arbitration agreement under which a certain claim is made in cases where claims are made under more than one arbitration agreement;
- any comments on the number of arbitrators and the seat of the arbitration; and
-

if applicable, information and contact details of the arbitrator appointed by the claimant.

The claimant must also pay a registration fee.

There is no requirement for signatures, and there is no need to provide more than one copy of the request for arbitration, neither under the Arbitration Act nor under the SCC Rules.

Law stated - 15 January 2025

Hearing

Is a hearing required and what rules apply?

No, but a party's request for a hearing must be granted unless the parties have agreed otherwise. According to the SCC Rules, a hearing must be held if a party so requests or if the tribunal considers it appropriate.

Following the outbreak of the covid-19 pandemic, a new sub-provision in article 32 of the SCC Rules clarifies that the arbitral tribunal may decide whether hearings are to be held in person or remotely. The Svea Court of Appeal has also confirmed the mandate of an arbitral tribunal to conduct oral hearings remotely, even if one of the parties objects (Svea Court of Appeal, Case No. T 7158-20).

Law stated - 15 January 2025

Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

In the absence of prior agreement between the parties, the arbitrators shall be free to consider all types of evidence, including documentary evidence, witness testimony, expert testimony, legal opinions and inspections. The parties shall provide the evidence and the arbitrators shall not take any initiative in this respect, except for the appointment of experts.

Third parties, parties and their representatives and employees may give evidence. Witnesses may not be sworn by the Tribunal. However, the arbitral tribunal may allow a party to request that a witness be sworn. The IBA Rules on the Taking of Evidence in International Commercial Arbitration are often used as a guide in international arbitration.

Law stated - 15 January 2025

Court involvement

In what instances can the arbitral tribunal request assistance from a court, and in what instances may courts intervene?

A court may also assist in the production of documents or other information that can be transmitted in writing (eg, electronic information). A party must first obtain the permission of the arbitral tribunal to apply to the court. An order of the tribunal to produce documents is enforceable. Courts have no general right to intervene in arbitral proceedings.

Law stated - 15 January 2025

Confidentiality
Is confidentiality ensured?

The parties do not have a mandatory duty of confidentiality unless the arbitration agreement expressly contains such a duty. However, it is common for the parties to maintain a high degree of confidentiality in arbitration, and it is often argued that this is part of the nature of the agreement (***naturale negotii***). Arbitral proceedings are private, unless otherwise agreed, and the arbitrators are obliged to treat the dispute confidentially. Lawyers who are members of the Swedish Bar Association have a duty of confidentiality towards their clients. Unless otherwise agreed, witnesses and experts do not have a duty of confidentiality.

If there is a duty of confidentiality, it extends not only to the proceedings, but also to the materials submitted during the proceedings and to the award. However, if an award is challenged in court, it usually becomes a public document and the same applies in case of enforcement.

Law stated - 15 January 2025

INTERIM MEASURES AND SANCTIONING POWERS

Interim measures by the courts
What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Pursuant to section 4(3) of the Arbitration Act, a court may order interim measures during and before the arbitral proceedings. Such an order is enforceable. The types of interim measures that may be ordered by a court include, but are not limited to, seizure of specific property or property equal to the value of a claim, and injunctions or orders to refrain from taking actions or performing acts detrimental to the interests of the petitioning party. A court decision made prior to the commencement of the arbitration shall be set aside if the plaintiff fails to commence the arbitration within 30 days.

An arbitral tribunal may also order interim measures, so there is no exclusivity for the courts in this respect. However, such an order by the arbitral tribunal is not enforceable unless the parties have agreed in the arbitration agreement that the arbitral tribunal shall have the power to make separate awards on interim measures. The Rules of the Stockholm Chamber of Commerce (SCC) also permit a party to apply to a court for interim measures. For interim measures prior to a request for arbitration, the SCC Rules provide a procedure with an emergency arbitrator.

Law stated - 15 January 2025

Interim measures by an emergency arbitrator

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

Yes. The Arbitration Act does not provide a basis for the appointment of an emergency arbitrator and a claimant in need of interim measures must apply to the courts for such measures under Chapter 15 of the Judicial Procedure Code.

However, since 2010, the SCC Rules provide for the possibility of requesting the appointment of an emergency arbitrator to deal with applications for interim measures. The procedure was introduced following a survey in which 82 per cent of counsel in SCC-administered arbitrations felt that interim measures should be available prior to the constitution of the arbitral tribunal or the appointment of a sole arbitrator. The SCC received four requests for the appointment of an emergency arbitrator in 2022.

Parties cannot opt out of the emergency arbitrator rules, which differ from, among other things, the ICC Rules of Arbitration.

Law stated - 15 January 2025

Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

An arbitral tribunal may order interim measures similar to those available in a court of law, but not under penalty of a fine, and such orders are unenforceable unless made in the form of a separate award.

It is common for arbitrators to require parties to provide security for the arbitrator's costs and fees in advance, as does the SCC Arbitration Institute. The parties usually pay half each. If a party fails to pay its share, the other party may choose to either pay the full amount of the security in order to commence the arbitration or to pursue its claim in court, since the non-paying party cannot invoke the arbitration agreement as a bar to court proceedings.

Law stated - 15 January 2025

Sanctioning powers of the arbitral tribunal

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use ‘guerrilla tactics’ in arbitration? May counsel be subject to sanctions by the arbitral tribunal or domestic arbitral institutions?

Neither the Swedish Arbitration Act nor the SCC Rules provide explicit rules to deal with guerrilla tactics. The arbitral tribunal must rely on its normal toolbox, which is limited to more

common tools such as, inter alia, setting time limits in procedural orders at the risk of the tribunal disregarding a party's default (eg, a late submission); drawing adverse inferences when assessing, for example, an unreasonable refusal to produce evidence or other types of counterproductive conduct; and taking into account unnecessary or unreasonable actions by a party when deciding on the apportionment of costs. Counsel cannot be directly sanctioned by the arbitral tribunal or the SCC Arbitration Institute.

However, the SCC Rules provide for the possibility of an expedited procedure in article 39. Under this article, a party may request the arbitral tribunal to rule on one or more issues of fact without necessarily taking all the procedural steps that might otherwise be adopted for the arbitration. The expedited procedure is a case management tool designed to permit the expeditious disposition of frivolous claims, such as where an allegation of fact or law material to the outcome of the case is manifestly untenable; where, even if the facts alleged by the other party were true, no award could be rendered in favour of that party under the applicable law; or where any issue of fact or law material to the outcome of the case is otherwise appropriate for determination by way of an expedited procedure.

Law stated - 15 January 2025

AWARDS

Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

In the absence of a prior agreement between the parties, the decisions of the arbitral tribunal shall be taken by a majority of the arbitrators. In the event of a tie, the chair's decision shall prevail. If an arbitrator refuses to participate in a decision without a valid reason, the other arbitrators may still decide on the matter.

It is sufficient for the majority of the arbitrators to sign the award, provided that the reason for the failure to obtain the signatures of all the arbitrators is stated in the award. The parties may agree that the presiding arbitrator alone shall sign the award.

Law stated - 15 January 2025

Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

Dissenting opinions are permitted, and the majority normally cannot prohibit the minority from expressing a dissenting opinion in the award or as an annex to the award. However, this right is not unconditional and a dissenting opinion may be precluded, for example, if the award has already been rendered or if the rendering of the award would be delayed pending the dissenting opinion. A commonly cited reason for allowing dissenting opinions is that an arbitrator should be given the opportunity to protect himself or herself from potential claims as a result of the majority's position.

A dissenting opinion has no direct effect on the validity or enforceability of the award, but it may provide the parties with insights into how to formulate a challenge to the award if the dissenting opinion addresses procedural errors.

Law stated - 15 January 2025

Form and content requirements

What form and content requirements exist for an award?

The award shall be in writing and shall state the place of arbitration and the date of its announcement. There is no legal requirement that the arbitrators give reasons for the award, but unless the parties have expressly waived it, the arbitrators should assume that the parties want reasons and should give them.

Law stated - 15 January 2025

Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

No, the Arbitration Act does not provide for a specific time limit for the rendering of the award; this issue is subject to the agreement of the parties. Pursuant to section 21 of the Arbitration Act, the arbitral tribunal shall apply an agreement between the parties on the conduct of the arbitral proceedings, including a provision on the time limit for rendering the award. However, exceptions are allowed if there is a foreseeable obstacle to the application of the agreement. Such an impediment may be that the arbitral tribunal considers it impossible or unreasonable to render the award within the time limit because of the scope or complexity of the dispute.

According to the rules of the Stockholm Chamber of Commerce (SCC), the arbitral award shall be rendered six months after the dispute has been submitted to the arbitral tribunal. If necessary, the board of the SCC Arbitration Institute may extend the time limit.

Law stated - 15 January 2025

Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

The date of the announcement of the award shall govern the arbitrators' ability to correct or supplement the award without the request of a party. The arbitrators may correct obvious inaccuracies, such as clerical errors, miscalculations or similar oversights. The date of delivery of the award shall determine, inter alia, the obligation of the arbitrators to correct, supplement or interpret decisions in an award at the request of a party. In both cases, the time limit shall be 30 days. A revision of the award shall be made within 60 days of the arbitrators' decision to correct or amend the award.

The date of delivery of the award shall also determine the time limits for challenging the award. An application to a court to challenge the award should be made within three months of the date of delivery of the award or, if the award has been revised, within three months of the date of delivery of the revised award. An award which does not decide an issue raised during the arbitral proceedings may also be modified in whole or in part at the request of a party. In such cases, the time limit shall be three months from the date of delivery.

Law stated - 15 January 2025

Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

The arbitral tribunal may grant relief in respect of an unlimited number of affirmative acts, such as the payment of money and benefits in kind, such as the delivery of goods or the completion of a construction project. An order that a party refrain from an act is also considered a type of negative measure that may be granted. It is also possible to grant declaratory relief, including, but not limited to, the existence of a fact or legal requirement.

The arbitral tribunal may make final awards, including consent awards, and separate awards such as interlocutory, preliminary and partial awards.

Law stated - 15 January 2025

Termination of proceedings

By what other means than an award can proceedings be terminated?

None. Pursuant to section 27(1) of the Arbitration Act, the termination of an arbitral proceeding shall always be by an award, including in the case of a dismissal without prejudice (eg, for lack of jurisdiction). In the case of a withdrawal of a claim, the tribunal must hear the case on its merits if the other party so requests. If the other party makes no such request, the tribunal must issue what is known as a 'termination award' to dismiss the case. The termination award seems to be a Swedish peculiarity. In most jurisdictions, the withdrawal of the parties' claims or an agreement to terminate the proceedings would result in a procedural order being issued (see article 32(2) of the Model Law).

Law stated - 15 January 2025

Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

Normally, the losing party must pay the winning party's costs, but where the parties win and lose on a partial claim, costs should be apportioned on an equitable basis. Generally, all types of costs attributable to the arbitration are recoverable, provided that they are reasonable.

Such costs include, but are not limited to, arbitrators' fees, attorneys' fees, production of evidence, disbursements and expenses.

Law stated - 15 January 2025

Interest
May interest be awarded for principal claims and for costs, and at what rate?

Yes. If requested by a party, interest may be awarded for both principal claims and costs. The rate depends on the applicable substantive law. The current rate according to the Swedish Interest Act is 8 per cent plus the reference interest rate as determined by the Swedish National Bank. The rate before maturity of a debt may be 2 per cent above the reference rate.

Law stated - 15 January 2025

PROCEEDINGS SUBSEQUENT TO ISSUANCE OF AWARD

Interpretation and correction of awards
Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

Yes. Any decision to revise or interpret an award should be preceded by an opportunity for the parties to provide comments.

Law stated - 15 January 2025

Challenge of awards
How and on what grounds can awards be challenged and set aside?

The Arbitration Act makes a difference between grounds for invalidity and grounds for challenge. Grounds for invalidity can be invoked without time limit but are restricted to awards that violate Swedish public policy, awards that decide a matter that was not arbitrable or awards that were not delivered in written form or signed by a majority of the arbitrators. Grounds for challenge are broader in scope but must be raised within three months of receipt of the award. The grounds available for a challenge are exclusively related to procedural faults; therefore, faults related to substantial law, as the merits of the case, do not form grounds for challenge. Procedural faults that make an award challengeable are as follows:

- the matter is not covered by a valid arbitration agreement;
- the arbitrators have announced the award after the expiration of a period decided on by the parties or the arbitrators otherwise exceeded their mandate;
- the arbitral proceedings should not have taken place in Sweden;
- an arbitrator has been appointed contrary to the parties' agreement or the Arbitration Act;

- an arbitrator was not authorised to try the case; or
- there otherwise occurred a procedural irregularity that is presumed to have affected the outcome of the case and the petitioning party is not at fault.

An award may be declared invalid or set aside in part.

Law stated - 15 January 2025

Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

A challenge of an award is made directly at the second instance at a competent court of appeal and must be made within two months of the date on which the party received the award. If the court of appeal gives the parties permission to appeal its judgment and if the Supreme Court grants leave to appeal (ie, if the case involves a question that needs to be clarified for future application of the law) the Supreme Court will try the case as the last instance. A party challenging an award would have to consider that it takes between one and two years depending on the complexity of the case for the court of appeal to reach a decision and another year or so for the handling of the case by the Supreme Court. The costs are very hard to foresee.

Law stated - 15 January 2025

Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

An award rendered in Sweden is enforceable according to section 3(1)(1)(4) of the Enforcement Code. Section 3(15) states that an enforceable award must be in writing and signed by a majority of the arbitrators. The bailiff must always give the adverse party the opportunity to comment on the enforcement application before taking any action.

Foreign awards that are covered by Council Regulation (EC) No. 44/2001 of 22 December 2000, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Brussels I Regulation), can be enforced by the Swedish Enforcement Agency (SEA) directly. However, in most other cases, before a foreign award can be enforced in Sweden, it is required that a court first decides that the judgment is enforceable in what is called a declaration of enforceability. The application for a declaration of enforceability shall be lodged with the Svea Court of Appeal. As soon as the declaration of enforceability has been obtained, the foreign award may be enforced through the SEA. The court only reviews that the award meets the formal requirements (which are largely the same as set out in the New York Convention); it does not review the merits or substance of the award. Generally, it is believed that Swedish courts take a pro-enforcement approach.

Law stated - 15 January 2025

Time limits for enforcement of arbitral awards

Is there a limitation period for the enforcement of arbitral awards?

No, there is no limitation period to file a petition for the recognition and enforcement of an arbitral award as such. However, limitation periods under Swedish substantive law or under foreign substantive law may apply with regard to the claim arising from the award.

Law stated - 15 January 2025

Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

As far as the authors know, there exist a couple of lower instance cases where Swedish courts have denied execution on the basis that the award had been set aside by the courts of the place of arbitration, but no case where the court has granted execution in such circumstances. Furthermore, it has been argued by scholars that the Swedish rule on execution of arbitral awards is non-discretionary and that the wording of the rule prohibits any execution of an award that has been set aside. It could also be argued that the Swedish rule on execution must be interpreted in accordance with article V(1)(e) of the New York Convention, which states that execution may be refused. While awaiting a precedent, there is the opinion that the open provision of the New York Convention would prevail over a narrow interpretation of the Swedish execution rule.

Law stated - 15 January 2025

Enforcement of orders by emergency arbitrators

Does your domestic arbitration legislation, case law or the rules of domestic arbitration institutions provide for the enforcement of orders by emergency arbitrators?

There are no special rules in Swedish arbitration law or enforcement law that allow for the enforcement of an emergency arbitrator's decision. However, the parties may agree (in the arbitration agreement) to give an emergency arbitrator the power to render his or her decision in the form of a separate award, such as an interim or preliminary award. If the decision is in the form of an award, it can be enforced in the same way as an award resolving the dispute.

The Rules of the Stockholm Chamber of Commerce (SCC) contain provisions allowing emergency arbitrators to make separate awards (see article 37(1)-(3) of the SCC Rules in conjunction with Appendix II, article 1). Such an award would therefore be enforceable.

Law stated - 15 January 2025

Cost of enforcement

What costs are incurred in enforcing awards?

With regard to foreign awards, an application for recognition and enforcement involves no application fee, but there may be costs for translating the award as well as lawyers' fees. After the court's decision to permit enforcement, the bailiff will charge a fee of 600 kronor to execute the measures necessary for the enforcement, such as distraint. If property must be sold by way of public auction, the bailiff will charge a percentage on the sale. The percentage depends on what kind of property is sold.

A party is entitled to obtain a decision on costs in matters concerning enforcement of foreign awards (see ***Sydsvensk Produktutveckling AB in bankruptcy and JA v American Pacific Corporation***, NJA 2001, p. 738 II).

Concerning awards rendered in Sweden, the bailiff will charge the same fee to enforce the award (including any measures to be executed).

Law stated - 15 January 2025

OTHER

Influence of legal traditions on arbitrators

What dominant features of your judicial system might exert an influence on an arbitrator from your jurisdiction?

Since Sweden and its capital, Stockholm, have been among the most frequently chosen venues for international arbitration for more than half a century, arbitral proceedings in Sweden display very few particularities in relation to the judicial system. Swedish practice, however, recommends flexibility and party autonomy.

As to the various procedural issues that may arise during arbitral proceedings, the Code of Judicial Procedure exercises some influence and is not infrequently applied analogously. The Code of Judicial Procedure therefore influences Swedish arbitral proceedings, but with important exceptions; for example, written witness statements are allowed and are frequently used, particularly in international proceedings. To this end, party officers may also testify before the arbitral tribunal. Likewise, although arbitrators from Sweden are generally opposed to the use of US-style discovery, as in international arbitrations in general, it is often agreed to use Redfern schedules for document production requests.

Law stated - 15 January 2025

Professional or ethical rules

Are specific professional or ethical rules applicable to counsel and arbitrators in international arbitration in your jurisdiction? Does best practice in your jurisdiction reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?

No formal requirements exist for counsels and arbitrators under the Arbitration Act, and there are no rules that would allow an arbitrator to reject an inappropriate counsel or other party

representatives. However, general principles of contract law and procedural law may allow for an arbitrator not to accept the purported authority of a party representative, therefore treating the party as being without representation and proceeding with the arbitration on that basis. Such general rules can, inter alia, be found in Chapters 11 and 12 of the Code of Judicial Procedure.

If the counsel is a member of the Swedish Bar Association, the Code of Conduct of the Bar Association applies. If an arbitrator is a member of the Swedish Bar Association, the rules on conflicts of interest set out in the Code of Conduct do not apply. Accordingly, a member of the Swedish Bar Association acting as an arbitrator is only subject to the particular conflict rules that apply by law and the relevant institutional rules.

Good practice in Sweden with regard to international arbitration could be described as a mix between general principles deriving from the Code of Judicial Procedure and the Bar Association's Code of Conduct. Good practice is sometimes in accordance with the IBA Guidelines on Party Representation in International Arbitration, but sometimes not. On a general note, the IBA Guidelines go somewhat further and give more power to the arbitral tribunal than good practice in Sweden. Full application of the IBA Guidelines would require the parties' consent.

Law stated - 15 January 2025

Third-party funding

Is third-party funding of arbitral claims in your jurisdiction subject to regulatory restrictions?

According to the Stockholm Chamber of Commerce, the number of cases where the parties disclose their funders increases every year, and generally the phenomena is no longer new.

Although permitted, the effect that third-party funding could have on the distribution of costs and expenses in the arbitral proceedings should be noted. Costs normally follow the event, and the losing party pays for the winning party's costs and expenses. As a rule, all kinds of costs attributable to the arbitral proceedings are recoverable and include, but are not limited to, arbitrators' fees, counsel's fees, production of evidence, expenses and disbursements. If the winner has external funding and the financier has incurred costs in the arbitration, such costs could be recoverable, although case law to that end is still to be seen.

However, if the losing side had external funding, it is uncertain whether the financier may be (jointly) liable for the winning side's costs and expenses in certain cases. Recent developments in case law suggest that the courts are willing to see beyond the principal party in the proceedings if that entity is just a vehicle for the underlying financiers or benefactors. It remains to be seen whether arbitral tribunals will move in the same direction and if such approach will hold up if challenged before the courts given, for example, that arbitral proceedings are consensual by nature.

In 2019, the Stockholm Chamber of Commerce adopted a policy encouraging the disclosure of the identity of 'any third party with a significant interest in the outcome'.

Law stated - 15 January 2025

Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

Arbitrators may be called on to testify before a court in proceedings where the award is challenged, and this may include what has been said during deliberation. Attorney–client privilege is not protected under Swedish law to the same extent as, for example, in the Anglo-American legal systems.

Law stated - 15 January 2025

UPDATE AND TRENDS

Legislative reform and investment treaty arbitration

Are there any emerging trends or hot topics in arbitration in your country? Is the arbitration law of your jurisdiction currently the subject of legislative reform? Are the rules of the domestic arbitration institutions mentioned above currently being revised? Have any bilateral investment treaties recently been terminated? If so, which ones? Is there any intention to terminate any of these bilateral investment treaties? If so, which ones? What are the main recent decisions in the field of international investment arbitration to which your country was a party? Are there any pending investment arbitration cases in which the country you are reporting about is a party?

The ongoing Russian war against Ukraine continued to influence legal discussions, with sanctions remaining a pivotal topic. Notably, the Svea Court of Appeal has announced its intention to seek a preliminary ruling from the Court of Justice of the European Union regarding the interpretation of the 'no claims' provision in the EU's Russia sanctions regulation. This move underscores the complexity and significance of sanctions in arbitration, as parties navigate the intricate interplay between international regulations and arbitration agreements.

A significant decision by the Swedish Supreme Court has clarified the enforceability of cost allocation in arbitration awards using the Stockholm Chamber of Commerce (SCC) template. In the ***Naked Juicebar*** case(NJA 2023, p. 1067), the court addressed whether an award's language sufficiently mandated payment obligations for enforcement purposes. Despite the award not explicitly stating payment terms, the court found that it implied joint and several liability for costs, thus making it enforceable. This decision reassures the arbitration community about the validity of the SCC's cost allocation template, ensuring clarity and enforceability in future awards.

Law stated - 15 January 2025