

SWEDEN

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including

ANNEX I: The Swedish Arbitration Act (SFS 1999:116), updated as per SFS 2018:1954, entered into force on 1 March 2019

Chapter I. Introduction

1. LAW ON ARBITRATION

a. Legislation

The Swedish law on arbitration is mainly contained in the Arbitration Act of 1999 as amended in 2019 (the “Act” or the “Arbitration Act”; see Annex I hereto). The revised Act came into force on 1 March 2019 with several changes related to, inter alia, applicable substantive law, consolidation of arbitrations, judicial review of jurisdiction, challenge grounds and procedure. Revisions were adopted with the aim at modernizing the Act to further facilitate effective and attractive international and domestic arbitration in Sweden and at making Swedish arbitration law more easily accessible, especially for non-Swedish parties.

The scope of the Act is defined in Sect. 46, which provides that the Act shall apply to arbitrations seated in Sweden irrespective of whether the dispute has an international connection. The Act deals with arbitration proceedings in Sweden generally and also regulates the enforcement of foreign arbitral awards in Sweden.

The Act applies equally to domestic and international arbitration. Although it is not identical to the 1985 UNCITRAL Model Law on International Commercial Arbitration (the “Model Law”), the utmost attention was given to each provision of the Model Law when drafting the Arbitration Act, and as can be seen there are few differences in substance between the Act and the Model Law. The 2006 amendments of the Model Law, however, have not resulted in any amendments to the Act.

* This Report is based on an earlier National Report by Ulf Franke, past Secretary General, Arbitration Institute of the Stockholm Chamber of Commerce; Past Secretary General of ICCA. SCC legal counsel Natalia Petrik and SCC intern Alexey Pirozhkin contributed to those parts of the Report reporting on the 2019 amendments in the Swedish Arbitration Act.

The author wishes to thank Ms. Natalia Petrik, legal counsel at the Arbitration Institute of the Stockholm Chamber of Commerce, for preparing Chapter IX. Investment Treaty Arbitration.

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Some of the principal differences are as follows:

- The Act specifies the domain of arbitration and specifically refers to the determination on the existence of a particular fact, decisions ruling on the civil law effects of competition law as between parties, and filling of gaps (Sect. 1).
- Arbitration agreements relating to consumer transactions are only valid if entered into after the dispute has arisen (Sect. 6).
- Unlike the Model Law, the Act does not require the arbitration agreement to be in writing.
- The District Court, when requested to appoint an arbitrator, may reject the request only if it is manifestly obvious that the arbitration is not legally permissible, e.g., because of the invalidity of the arbitration agreement or the non-arbitrability of the subject matter (Sect. 18).
- Should the arbitral tribunal find that it does not have jurisdiction, this decision shall take the form of an award (Sect. 27).
- The Act contains a provision determining the law applicable to the arbitration agreement which has an international connection (Sect. 48), namely the law chosen by the parties or the law of the seat of arbitration.
- Awards made in Sweden are directly enforceable subject to a prima facie determination by the execution authority. This procedure is regulated in the Enforcement Procedure Code, not in the Act.
- The Act includes provisions on costs, a feature not found in the Model Law (Sects. 37-42).
- An award may be challenged due to absolute or relative invalidity (Sects. 33-34).

These grounds vary from the grounds for setting aside in the Model Law, which repeat the grounds for refusal of enforcement found both in the Model Law and the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”).

b. Mandatory provisions

Most provisions in the Act are non-mandatory, and to that extent parties may allow the procedure to be governed by other rules, such as the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the “SCC Arbitration Rules”) or the UNCITRAL Arbitration Rules.

2. PRACTICE OF ARBITRATION

a. General

Arbitration is widely used in Sweden, particularly in the commercial field. Although no figures are available because of the confidential character of arbitration, it is considered that a great number of business disputes are solved

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by arbitration. Most written contracts include an arbitration clause, and such clauses are common in standard form contracts.

Over the past few decades there has been an ever-growing trend to designate Sweden as the location of choice in arbitration clauses in international commercial contracts, and many international arbitration cases take place in Sweden.

b. Arbitral institutions

Institutional arbitration is also of long standing in Sweden. The Arbitration Institute of the Stockholm Chamber of Commerce (the “SCC”), which is the centre for institutional arbitration in Sweden, was established in 1917. The SCC administers both domestic and international arbitrations and has over the past decades emerged as one of the leading international arbitration institutions in the world. The SCC generally administers around 200 cases per year, half of which are international disputes.

The current SCC Arbitration Rules entered into force on 1 January 2017. They are available in the Swedish, English, Russian, Chinese, Arabic, German, Italian and Spanish languages. Although the SCC is also prepared to act as appointing authority and administering agency under other sets of arbitration rules, notably the UNCITRAL Arbitration Rules, most arbitration cases handled by the SCC are conducted in accordance with the SCC Arbitration Rules.

Apart from the SCC Arbitration Rules, the SCC has adopted Rules for Expedited Arbitrations, in force in their present version from 1 January 2017.

Further, the SCC has adopted Procedures for the Administration of Cases and Procedures as Appointing Authority under the 2010 UNCITRAL Arbitration Rules.

The SCC has also adopted Mediation Rules, which are in force from 1 January 2014.

The SCC Rules and further information about the activities of the SCC can be obtained from the Secretary General of the Arbitration Institute of the Stockholm Chamber of Commerce at the following contact details:

Mail: PO Box 16050
S-103 21 Stockholm
Sweden
Visits: Brunnsgatan 2
SE-111 38 Stockholm
Sweden
Telephone: +46 8 555 100 00
Facsimile: +46 8 566 316 50
E-mail: arbitration@chamber.se

The SCC Rules and other materials are available in several languages on the SCC Institute’s website: <www.sccinstitute.se>.

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3. BIBLIOGRAPHY

a. Reports

Regeringens proposition 2017/18:257 En modernisering av lagen om skiljeförfarande

b. Books

Books in English

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Heuman, Lars

Arbitration Law of Sweden: Practice and Procedure (Juris Publishing, New York 2003) 746 p. + appendices

Hobér, Kaj

Selected Writings on Investment Treaty Arbitration (Utbildningshuset / Studentlitteratur, 2013) 558 p.

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Commercial Arbitration in Sweden, 4rd ed. (Jure AB, 2016) 600 p.

Oldenstam, Robin; Löf, Kristoffer et al.

Mannheimer Swartling's Concise Guide to Arbitration in Sweden (Mannheimer Swartling Advokatbyrå, second edition, 2019) 276 p.

Ragnwaldh, Jakob; Andersson, Fredrik and Salinas Quero, Celeste E.

A Guide to the SCC Arbitration Rules (Kluwer Law International, 2019) 258 p.

Books in Swedish

Heuman, Lars

Skiljemannarätt [Law of Arbitration] (Stockholm 1999) 754 p. + appendices

Lindskog, Stefan

Skiljeförfarande [Arbitration] (Stockholm 2005) 1,278 p. + appendices

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c. Articles

Stockholm Arbitration Yearbook 2019, Calissendorff, Axel and Schöldström, Patrik, eds. (Kluwer Law International 2019) includes the following articles related to arbitration in Sweden:

Danielsson, Christer

“Swedish Arbitration-Related Case Law 2017–2019”

Schöldström, Patrik

“The 2019 Changes in the Swedish Arbitration Act”

Tibell, Alison

“Too Early to Decide? An Examination of Dispositive Motions in International Arbitration”

Gustafsson, Bruno

“Article 38 of the SCC Rules: An Analysis of Security for Costs in TPF Arbitration”

Gentele, Oskar

“Combating Due Process Paranoia in Swedish Arbitration”

Forward! Bnepöd! Framåt! Essays in Honour of Prof Dr Kaj Hobér, Bylander, Eric; Jonsson Cornell, Anna and Ragnwaldh, Jakob, eds. (Iustus förlag 2019) includes the following articles on arbitration in Sweden:

Dahlquist Cullborg, Joel

“Challenges of Treaty-Based Arbitral Awards in Swedish Courts”

Franke, Ulf and Magnusson, Annette

“The Emergence of an International Arbitral Institution for the 21st century”

Storskrubb, Eva

“Navigating EU Law and the Law of Arbitration. From the Horizon of Commercial Arbitration in Sweden”

Worth reading are also:

Blomkvist, Christina

“Production of Documents – Swedish Supreme Court Confirms a Continuing Arbitration-Friendly Application in Swedish Courts”, 18 *The Columbia Journal of European Law Online* (2012) p. 25

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Foester, Alexander

“The Stockholm Rules (SCC)” in Schütze, R., *Institutional Arbitration - Article-by-Article Commentary*, 2nd ed. (Beck C.H., in association with Hart Publishing, Oxford and Nomos Verlagsgesellschaft, Baden-Baden, 2020)

Hope, James

“Investor-State Arbitration Before the SCC” in *Investor-State Arbitration 2020*, Second Edition (Global Legal Group 2019) p. 14

Ipp, Anja Havedal

“International Arbitration in Stockholm: Modern, Efficient ADR with Century-Old Roots”, 11 *New York Dispute Resolution Lawyer* (2018, No. 2) p. 79

Magnusson, Annette and Petrik, Natalia

“East Meets West in Stockholm” in *Arbitration and Regulation of International Trade: Russian, Foreign and Cross-Border Approaches. Liber Amicorum in Honor of the 70th Anniversary of A. S. Komarov* (2019) p. 338

c. Journals

The Stockholm Arbitration Report, later called the Stockholm International Arbitration Review, was published by Juris Publishing in cooperation with the SCC 1999 – 2010 twice or three times per year. Each copy includes material on international arbitration in Sweden.

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The full National Report Sweden can be found on [KluwerArbitration.com](http://www.kluwerarbitration.com) at <<http://www.kluwerarbitration.com/document/KLI-KA-ICCA-HB-110-006-n>>