

ALTERNATIVE DISPUTE RESOLUTION IN SWEDEN – A BRIEF INTRODUCTION

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The legal system of Sweden provides two primary options for a claimant to resolve commercial disputes: the ordinary court system and arbitration. Hence, mediation does not form a separate alternative of resolving disputes in Sweden. Nevertheless, mediation is included as an integral part of both the court system and arbitration proceedings. The Swedish Code of Judicial Procedure, used both in court and arbitration, provides a wide range of possibilities for the judges/arbitrators to induce the parties to make a final settlement of the dispute.

Arbitration is widely used for dispute resolution in commercial contexts in Sweden. One reason is that arbitration provides a discrete (in Sweden the ordinary courts have to obey the principle of publicity) and relatively fast method of resolving the dispute. Thus, arbitration clauses can be found in several Swedish commercial standard contracts. Another reason for the frequent use of arbitration in Sweden is the international recognition of the Arbitration Institute of the Stockholm Chamber of Commerce (“SCC”).

Commercial parties may agree on arbitration either pursuant to the ad hoc rules provided in Swedish legislation (the Arbitration Act) or pursuant to rules provided by SCC or similar institutes.

When arbitration is conducted in accordance with the Arbitration Act, the arbitration tribunal consists of three arbitrators unless the parties have agreed otherwise. If the proceeding has been initiated by written notice from the claimant, each party appoints one arbitrator and the appointed arbitrators in turn appoint the third arbitrator who also will be chairman of the arbitration tribunal. In general, the rules provided for in the Code of Judicial Procedure are applicable. However some exceptions are provided for in the Arbitration Act. Principally, these exceptions aim to make the proceeding less formal and more efficient than the rules of the Code of Judicial Procedure. For example, the parties are not obligated to orally present the whole case at the main hearing if an adequate presentation has been made in the written pleadings provided earlier in the proceedings.

Regarding proceedings pursuant to the SCC rules, these are initiated upon the filing of a request for arbitration to the SCC. Once a proceeding is initiated, the SCC has to decide if the institute has jurisdiction over the dispute. Moreover, the institute has to decide the number of arbitrators and appoint such arbitrators (if the parties have not agreed and cannot agree on the number of arbitrators and/or cannot appoint

the arbitrators without intervention). When the tribunal is appointed and the parties have paid the advance costs, the dispute is referred to the tribunal. The tribunal from this point forward will manage the proceedings in accordance with the rules of the SCC. The tribunal may have to decide, inter alia, the language and applicable law of the dispute. The rules regarding procedure-related issues are pragmatic to make the proceedings efficient. The final award shall be made no later than six months from the date the arbitration was referred to the arbitration tribunal (if the time limit is not extended by the SCC).

The SCC also provides rules for expedited arbitrations. The arbitration tribunal then consists of one arbitrator only. The parties have the ability to file a limited number of written pleadings. The final award in an expedited arbitration shall be made no later than three months from the date the arbitration was referred to the arbitrator.

As far as awarding the legal costs in arbitration, the general rule in Sweden is to award against the losing party all the reasonable fees and expenses plus all of the arbitrators' fees and expenses (including the administrative fee paid to the institute). Nevertheless, when the loss in the case is partial, the losing party's liability as to costs and arbitrators' fees will be proportionally reduced to the extent of the loss in the case.

The parties' total costs in arbitration cases are often higher compared to the costs incurred if the same case had been brought to a public court. This is mainly due to the amount of the arbitrators' fees. In contrast, the final cost of a typical one instance arbitration proceeding might actually be lower when comparing with those similar cases brought to civil litigation which may require several court appearances. Therefore, in civil litigation the counsellors' fees and the parties' general costs might result in higher amounts when compared to those incurred in arbitration, irrespective of the arbitrators' fees.

As a general rule, arbitration awards are not subject to appeal unless the arbitration tribunal has conducted a material error during the proceedings – for instance by disregarding some relevant fact or statement – in which case, there are some options for protest against the judgment. Protests are adjudicated by public courts (Court of Appeal).

Swedish arbitration awards are, in contradiction to public courts' judgements, enforceable in most jurisdictions around the globe.

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