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## Sweden

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### A. Legislation and rules

#### A.1 Legislation

On 21 November 2018, the Swedish legislature passed a revised Swedish Arbitration Act (“SAA”). The amendments are intended to make the arbitration process more efficient and more easily accessible, especially for foreign practitioners, ensuring that Sweden continues to be an attractive venue for international dispute resolution. The revised SAA is set to enter into force on 1 March 2019. Some of the key amendments to the SAA are described below.

- (a) Multi-party arbitrations - Regarding multiparty arbitrations, the amendments to the SAA entail that if an arbitration is commenced against two or more respondents and they cannot agree on the appointment of an arbitrator, the latter should be appointed by the District Court. If a respondent has already appointed an arbitrator, the latter shall be released.
- (b) Consolidation of two or more arbitrations into single arbitration proceedings - In its current form, the SAA does not contain any provisions governing consolidation. However, the revised SAA provides that two or more arbitrations may be

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- consolidated if the same arbitrators are appointed in all arbitral proceedings, the arbitrators decide that consolidation is beneficial to the arbitrations and the parties do not object.
- (c) Determination of the applicable substantive law by the arbitral tribunal in case of absence of an agreement between the parties - The revised SAA gives arbitrators an explicit mandate to determine the applicable substantive law in the absence of party agreement. The SAA does not regulate on which grounds the arbitrators shall make such a determination. If the parties have so agreed, the arbitral tribunal shall decide the dispute *ex aequo et bono*.
  - (d) The “excess of mandate” ground for challenging an award is revised to require that the excess of mandate must have affected the outcome of the dispute - The revised SAA introduces a provision, requiring the party challenging an award on the grounds of excess of mandate to prove that the outcome of the dispute has been affected by the excess of mandate.
  - (e) Shorter term for setting aside the arbitral award - The revised SAA will reduce the timeline for applications to set aside an arbitral award from three months to two months from the date when the party received the award.
  - (f) Independence of the arbitrators - Furthermore, emphasis is placed on the independence of the arbitrators. The current SAA only requires the arbitrators to be impartial. The amendments have extended the arbitrator to be not only impartial but also independent.
  - (g) The possibility of appealing an Appeal Court’s decision to the Supreme Court requires leave to appeal - The revised SAA introduces a leave to appeal requirement if a party wishes to appeal the local Appeal Court’s decision on a challenge. This



enables the Supreme Court to limit its examination to issue(s) of precedential value.

- (h) Implementation of the amended SAA - In summary, the amendments aim to meet the expectations of the international business community and to further strengthen the leading position of Sweden as a seat for international arbitration. The amended SAA act is expected to enter into force on 1 March 2019.

## A.2 Institutions, rules and infrastructure

- (a) INIRES Arbitration Institute - At the end of 2017, the new INIRES arbitration institute was established with offices in Stockholm and Malmö. INIRES also provides online arbitration service with the help of digital proceedings which allows the parties to submit a request for arbitration, submit their submissions, communicate and receive judgments online.

INIRES has issued arbitration rules and a model clause.<sup>5</sup>

- (b) The Arbitration Institute of the SCC -The SCC maintains a strong position as the largest arbitration institute in Sweden. The SCC is also one of the world's leading centers for international commercial and investment arbitration. The SCC Institute Arbitration Rules ("SCC Rules") are second only to the ICSID and UNICITRAL rules.

Over the last year, the number of arbitration proceedings administered by the SCC has grown dramatically. According to the SCC, the number of arbitrations referred to the SCC increased to 200 cases in 2017. The revision of the SCC Rules in 2017 made provision for summary procedures, multiparty and multicontract disputes as well as for expedited arbitrations. The SCC Rules offer proceedings under the ordinary SCC Rules and the separate SCC's Rules for Expedited

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<sup>5</sup> More information on INIRES can be found on their web page [www.inires.se](http://www.inires.se).

Arbitration. Particular focus is placed on efficiency and cost-effective procedures of both the parties and the tribunal.

## B. Cases

### B.1 Enforcement of a foreign arbitral award in Sweden

The Supreme Court<sup>6</sup> rejected the enforceability of a Norwegian arbitral award in Sweden on the basis that the award was clearly incompatible with applicable EU legislation. The case concerned a non-compete clause in a contract between a Norwegian and a Swedish party that prohibited the Swedish party from entering into contracts with other suppliers for a period of two years. Such provision was in breach of mandatory Swedish and EU competition law.

Despite the fact that the enforceability of the arbitral award was not an issue that had been raised by the parties at an earlier stage, the Supreme Court held that the enforceability of the award was a factor that needed to be considered by the court. The Supreme Court further confirmed its previous position that there was a need to safeguard that arbitral awards do not conflict with compulsory Swedish and EU competition law.

### B.2 The right for a party to present its case in the arbitral proceedings

The Supreme Court<sup>7</sup> refused the recognition and enforcement of a foreign arbitral award on the grounds that the respondent had not been given an opportunity to present its case in the arbitration.

The case concerned arbitral proceedings conducted in Russia in accordance with the International Arbitration Court at the Chamber of Commerce of the Russian Federation. The parties had, on several occasions, informed the tribunal that they sought to settle the dispute and had, therefore, requested the hearing to be postponed. The parties

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<sup>6</sup> Case no. NJA 2018 s. 323.

<sup>7</sup> Case no. NJA 2018 s. 291.



could not reach a settlement and subsequently, the respondent requested the tribunal for time to submit its statement of defense, which was denied. The arbitral proceedings were conducted without the respondent submitting a statement of defense and a decision was made in the claimant's favor.

The Supreme Court concluded that the arbitral award could not be enforced since the respondent had not been given an opportunity to present its case on the merits. The fact that the tribunal had disregarded basic principles of due process in conjunction with the prohibition in challenging the award in Russia, prevented the recognition and enforcement of the arbitral award in Sweden.

### B.3 Losing the right to challenge an arbitral award

The Supreme Court<sup>8</sup> held that a party had lost its right to object to an arbitral award on the grounds that it had knowingly delayed making its objections until after the arbitral award.

The case concerned a Swedish and a Serbian party who had entered into an agreement with an arbitration clause that stipulated the procedure for the appointment and composition of the arbitral tribunal and for the use of *ad hoc* arbitration in Serbia. The claimant initiated arbitral proceedings against the respondent in Serbia. The respondent failed to respond to the request, did not submit a statement of defense and failed to attend the main hearing. The claimant was awarded damages and sought to enforce the award in Sweden. The respondent challenged the arbitral award on the grounds that the arbitration proceedings were contrary to the parties' agreement on *ad hoc* arbitration.

The Supreme Court stated that parties to arbitral proceedings were generally barred from objecting to the proceedings on grounds that they were aware of at an early stage of the proceedings. An objection to arbitral proceedings should be made at the initial stage of the

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<sup>8</sup> Case no. NJA 2018 s. 504.

proceedings. A party that knowingly delayed an objection should be precluded from making such objection at a later stage. The court also went on to note that a party was precluded from making objections regarding the arbitral tribunal until after the award. The Supreme Court upheld the Appeal Court's decision and concluded that the respondent had been informed of the arbitral proceedings but subsequently had failed to raise any objections. The respondent was thus barred from challenging the arbitral award.

#### **B.4 The arbitral tribunal had exceeded its mandate**

The appellant (respondent in the arbitration proceedings) challenged the award under item two of section 34 of the SAA, requesting that the Court of Appeal annul the award in its entirety, or alternatively in part.<sup>9</sup> The challenging party argued three separate grounds for annulment: (i) that the tribunal had decided issues that were not covered by a valid arbitration agreement between the parties; and (ii) the tribunal exceeded its mandate by failing to review the dispute in accordance with the parties' instructions. Third, the tribunal committed a procedural error by not providing the party an opportunity to argue its case. This final argument was based on a claim that the tribunal did not allow for extensions of time or for the appointment of an independent expert. Therefore the challenging party argued that the award should be annulled in its entirety or alternatively partially due to excess of mandate and/or material procedural error.

The respondent in the challenge proceedings (claimant in the arbitration) claimed that there was a valid arbitration agreement covering the matters in dispute, and that the parties had agreed that the additional works in question would be covered by the arbitration clause, or at least such an agreement came into existence because of the respondent party's passivity and implied actions. The respondent further argued that the tribunal had not committed any procedural errors in its handling of the case, because it was reasonable not to allow extensions of time and that in determining the date for interest

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<sup>9</sup> Svea Court of Appeal, case no. T 6247-15.



accrual the tribunal had undertaken a review on the merits and no procedural error was made. The respondent further argued that if an error was made, it had no effect on the outcome of the arbitration, or alternatively was caused by the other party.

The Appeal Court partially annulled the award. It held that the determination in relation to compensation for additional works was not covered by a valid arbitration agreement. Additionally, the Appeal Court found that the arbitral tribunal in its award had based its decision in relation to interest on an incorrect assumption, that the parties agreed that interest calculation should be based on the invoice date. The Appeal Court reasoned that a procedural error occurred which would likely affect the outcome and this was not caused by the challenging party.

However, the Appeal Court dismissed the final argument that the challenging party had not been provided a reasonable opportunity to present its case. The Appeal Court considered that the tribunal did not fail in its management of the proceedings by not granting extensions of time or rejecting the challenging party's request for the appointment of a non-partisan expert.

The Appeal Court held that the award compensation for additional works and other interest amounts are clearly separable from other parts of the award. Therefore, the Appeal Court partially annulled the award to the extent that the operative part of the award dealt with the amount for additional works and interest.