International Arbitration 2023

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Sweden: Law and Practice & Trends and Developments
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Advokatfirman Vinge KB
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Advokatfirman Vinge KB is one of the largest commercial law firms in Sweden, operating as a full-service firm and with over 500 employees in Stockholm, Gothenburg, Malmö, Helsingborg and Brussels. Vinge has one of the largest dispute resolution practices in the Nordic region, with over 50 lawyers handling both international arbitration and litigation at all levels of the Swedish court system. A number of the firm’s lawyers also sit regularly as arbitrators.

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1. General

1.1 Prevalence of Arbitration
In the absence of a commercial court in Sweden, arbitration is generally the preferred means of resolving commercial disputes and arbitration clauses are regularly found in commercial contracts. Both domestic and international arbitrations are commonly held in Sweden. Sweden has long been a preferred seat of arbitration for international cases, largely as a result of the success of the SCC Arbitration Institute.

1.2 Key Industries
Since arbitrations are private, it is difficult to give a fuller comment other than to observe from the latest statistics of the SCC Arbitration Institute for 2021 that disputes brought to the SCC in that year most frequently concerned service agreements, business acquisitions, delivery agreements, M&A, construction agreements, and cooperation agreements.

1.3 Arbitral Institutions
The most used arbitral institution for international arbitration in Sweden is the SCC Arbitration Institute. The institute was founded in 1917 in Sweden and is one of the world’s leading dispute resolution institutions. No new arbitral institutions have been established in Sweden in the past few years.

1.4 National Courts
Within the court system in Sweden, there are three categories of courts: general courts, general administrative courts and special courts.

The general courts are designated to hear specific disputes related to international and domestic arbitrations. The general courts consist of District Courts, Courts of Appeal and the Supreme Court.

According to the Swedish Arbitration Act, an action to set aside an award and/or to declare an award invalid should be brought directly before the Court of Appeal in Sweden where the arbitration had its seat. Where the seat was Stockholm, the Svea Court of Appeal in Stockholm has jurisdiction.

2. Governing Legislation

2.1 Governing Legislation
International arbitrations and domestic arbitrations are governed by the Swedish Arbitration Act (1999:116). The extent to which the Swedish Arbitration Act should be based on the UNCITRAL Model Law was discussed in the preparatory works. The conclusion was that the UNCITRAL Model Law should not be used as a direct basis for the Swedish Arbitration Act, either in terms of structure or content. However, it was considered important to take the provisions of the UNCITRAL Model Law into account, and frequent references are made to the UNCITRAL Model Law in the preparatory works.

2.2 Changes to National Law
There have been no significant changes to the Swedish Arbitration Act in the past year nor is there any pending legislation that may change the arbitration landscape.

3. The Arbitration Agreement

3.1 Enforceability
In order for an arbitration agreement to be valid and enforceable under Swedish law, the following general remarks can be made. As a starting point, ordinary rules on contract law apply when the validity and scope of an arbitration agreement is determined. As a result, no particular
form is required to constitute an arbitration agreement. In theory, such an agreement may be oral, or it may even be formed by the parties’ conduct. However, eg, for reasons of evidence, arbitration agreements are in practice concluded in written form.

Since an arbitration agreement is a waiver of the right to court proceedings, it must also be clear that the parties have agreed on arbitration and not on any other form of dispute settlement mechanism.

With respect to arbitration agreements which relate to future disputes, Section 1 of the Swedish Arbitration Act also stipulates that the arbitration agreement must refer to a specific legal relationship, normally the contract in which the arbitration agreement or clause is contained. Section 1 of the Swedish Arbitration Act also provides that the subject matter of the dispute must be arbitrable (see further 3.2 Arbitrability).

3.2 Arbitrability

Sweden has rather particular rules regarding arbitrability. According to the Swedish Arbitration Act, an issue is generally arbitrable if the parties would be able to reach a settlement on the issue. Other issues which cannot be determined by the parties, such as matters of public law, are generally not arbitrable.

For example, disputes related to the registration of patents and trade marks are generally considered to be non-arbitrable. Sanctions for criminal liability (apart from damages) and, to a large extent, family law are also considered to be non-arbitrable.

With regard to competition law, Section 1 of the Swedish Arbitration Act provides that issues concerning the “civil law effects of competition law as between the parties” are arbitrable.

As a general rule, the time to assess whether a matter is arbitrable is when the arbitration agreement was concluded. This applies even if the issue has subsequently become arbitrable.

3.3 National Courts’ Approach

With respect to determining the governing law of the arbitration agreement, the national courts invariably follow Section 48 of the Swedish Arbitration Act, which in summary provides that the arbitration agreement is governed by Swedish law unless the arbitration agreement itself specifies otherwise. Swedish courts generally seek to give effect to valid arbitration agreements.

3.4 Validity

The Swedish Arbitration Act provides that if the validity of an arbitration agreement which constitutes part of another agreement must be determined in conjunction with a determination of the jurisdiction of the arbitrators, the arbitration agreement shall be deemed to constitute a separate agreement. This is an embodiment of the doctrine of separability. Accordingly, if the main agreement is alleged to be invalid, this does not automatically result in an invalidity of the arbitration clause.

4. The Arbitral Tribunal

4.1 Limits on Selection

As a starting point, the Swedish Arbitration Act provides that the parties may determine the number of arbitrators and the manner in which they shall be appointed.

Any person who possesses full legal capacity and is not bankrupt may act as an arbitra-
tor. It follows that only a natural person can be appointed as arbitrator. According to Swedish law, a person of sound mind obtains full legal capacity at the age of 18. It is not a requirement that the person is a Swedish citizen or resident in Sweden.

The Swedish Arbitration Act further stipulates that an arbitrator must be impartial and independent, and the Act includes provisions for the removal of an arbitrator where circumstances exist that may diminish confidence in the arbitrator’s impartiality or independence.

4.2 Default Procedures
Two-Party Arbitrations
Unless the parties have agreed otherwise, the Swedish Arbitration Act stipulates that the following default procedure shall apply when selecting arbitrators. There shall be three arbitrators. Each party appoints one arbitrator, and the arbitrators so appointed appoint the third.

If each party is required to appoint an arbitrator and one party has notified the opposing party of its choice of arbitrator in a request for arbitration, the opposing party must, within 30 days of receipt of the notice, notify the first party in writing of its choice of arbitrator. A party that has notified the opposing party of its choice of arbitrator in this manner may not revoke the choice without the consent of the opposing party. If the opposing party fails to appoint an arbitrator within the specified time, the District Court shall appoint an arbitrator upon the request of the first party.

If an arbitrator shall be appointed by other arbitrators, but they fail to do so within 30 days from the date on which the last arbitrator was appointed, the District Court shall appoint the arbitrator upon the request of a party. Unless the parties or the arbitrators have decided otherwise, the chairperson shall be the arbitrator appointed by the other arbitrators or by the District Court.

Multi-Party Arbitrations
Where an arbitration is commenced against several respondents, Section 14(3) of the Swedish Arbitration Act provides that, unless the respondents can agree upon a choice of arbitrator, then the District Court shall appoint all the arbitrators and any arbitrator already appointed shall be dismissed. Alternatively, such situations can be dealt with as separate arbitrations against each respondent.

4.3 Court Intervention
As a starting point, and unless the parties have agreed otherwise, the right to appoint arbitrators is given to the parties and the party-appointed arbitrators.

However, in certain specific situations and upon the request of a party, the Swedish Arbitration Act provides that the District Court shall appoint and remove an arbitrator. If the parties have so agreed, and any of the parties so requests, the District Court can appoint arbitrators also in situations other than those specified in the Swedish Arbitration Act.

4.4 Challenge and Removal of Arbitrators
The Swedish Arbitration Act contains particular provisions concerning the challenge or removal of arbitrators.

Impartiality and Independence
If a party so requests, an arbitrator shall be released from appointment if any circumstance exists that may diminish confidence in the arbitrator’s impartiality or independence. A challenge to an arbitrator must be presented within 15
days from the date on which the party became aware both of the appointment of the arbitrator and of the existence of the circumstance. The challenge is adjudicated upon by the arbitrators, unless otherwise decided by the parties (eg, by choosing a different challenge mechanism as mandated in arbitration rules).

If the challenge is successful, the decision is not subject to appeal.

If the challenge is unsuccessful, a party who is dissatisfied with a decision denying a challenge, or a decision dismissing a challenge as untimely, may file an application with the District Court that the arbitrator be released from appointment. The application must be submitted within 30 days from the date on which the party was notified of the decision. The arbitrators may continue the arbitral proceedings pending the determination of the District Court.

The parties may, alternatively, agree that a challenge to an arbitrator shall be conclusively determined by an arbitration institution.

**Delay to the Proceedings**

If an arbitrator has delayed the proceedings, the District Court is entitled, upon the request of a party, to release the arbitrator and appoint another arbitrator. The parties may decide that such a request shall, alternatively, be conclusively determined by an arbitration institution.

**4.5 Arbitrator Requirements**

The following requirements apply in relation to arbitrator independence, impartiality and/or disclosure of potential conflicts of interest.

**Requirements Pursuant to the Swedish Arbitration Act**

An arbitrator shall be impartial and independent. An arbitrator shall be released from appointment if any circumstance exists that may diminish confidence in the arbitrator’s impartiality or independence. Such a circumstance shall always be deemed to exist:

- if the arbitrator or a person closely associated with the arbitrator is a party, or otherwise may expect to receive a significant benefit or detriment as a result of the outcome of the dispute;
- if the arbitrator or a person closely associated with the arbitrator is the director of a company or any other association which is a party, or otherwise represents a party or any other person who may expect to receive a significant benefit or detriment as a result of the outcome of the dispute;
- if the arbitrator, in the capacity of expert or otherwise, has taken a position in the dispute, or has assisted a party in the preparation or conduct of its case in the dispute; or
- if the arbitrator has received or demanded compensation pursuant to an agreement that is not entered into jointly by the parties (with one exception with respect to security provided by one of the parties).

A person who is asked to accept an appointment as arbitrator must immediately disclose all circumstances which might be considered to prevent the person from serving as arbitrator. An arbitrator shall inform the parties and the other arbitrators of such circumstances as soon as all arbitrators have been appointed and thereafter in the course of the arbitral proceedings as soon as the arbitrator has learned of any new circumstance.
Requirements Pursuant to the SCC Arbitration Rules
Every arbitrator must be impartial and independent. Before being appointed, a prospective arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to the prospective arbitrator’s impartiality or independence.

Once appointed, an arbitrator shall submit to the SCC Secretariat a signed statement of acceptance, impartiality and independence, disclosing any circumstances that may give rise to justifiable doubts as to the arbitrator’s impartiality or independence. The Secretariat shall send a copy of the statement of acceptance, impartiality and independence to the parties and the other arbitrators.

An arbitrator shall immediately inform the parties and the other arbitrators in writing if any circumstances that may give rise to justifiable doubts as to the arbitrator’s impartiality or independence arise during the course of the arbitration.

A party may challenge any arbitrator if circumstances exist that give rise to justifiable doubts as to, inter alia, the arbitrator’s impartiality or independence.

5. Jurisdiction

5.1 Matters Excluded From Arbitration
According to the Swedish Arbitration Act, an issue must be arbitrable in order to be referred to arbitration: ie, in general, the parties must be able to reach a settlement on the issue in dispute. It follows that non-arbitrable matters may not be subject to arbitration. For example, disputes related to the registration of patents and trade marks are generally considered to be non-arbitrable. Sanctions for criminal liability (other than damages) and, to a large extent, family law are also considered to be non-arbitrable.

5.2 Challenges to Jurisdiction
According to the Swedish Arbitration Act, the arbitrators may rule on their own jurisdiction to decide the dispute.

5.3 Circumstances for Court Intervention
If the Arbitrators Find That They Have Jurisdiction
The arbitrators may rule on their own jurisdiction to decide the dispute. If the arbitrators have rendered a decision in which they find that they have jurisdiction to adjudicate the dispute, any party that disagrees with the decision may request the Court of Appeal to review the decision. The arbitrators may continue the arbitration pending the court’s determination.

The parties may also challenge an award on grounds of a lack of jurisdiction to decide the dispute.

The intervention of a court is dependent on a party’s request to review the arbitral tribunal’s decision on jurisdiction or to challenge the arbitral award.

If the Arbitrators Find That They Do Not Have Jurisdiction
If the arbitrators render a negative ruling on jurisdiction, and thus conclude the proceedings without ruling on the issues submitted to them for resolution, such an award may be amended, in whole or in part, by the Court of Appeal upon the application of a party. An action must be brought within two months from the date upon which the party received the award.
5.4 Timing of Challenge

Generally
The answer depends on the circumstances, as set out below. The Swedish Arbitration Act stipulates that the arbitrators may rule on their own jurisdiction to decide the dispute. If a party challenges the jurisdiction of the arbitral tribunal, it is up to the arbitrators to decide whether the issue should be addressed immediately or to defer it until the arbitral tribunal render its award on the merits. However, if it can be expected that the proceedings will last for a long period of time, it may be appropriate to decide the issue immediately.

If the Arbitrators Find That They Have Jurisdiction
If the arbitrators have rendered a decision finding that they have jurisdiction to adjudicate the dispute, any party that disagrees with the decision may request the Court of Appeal to review the decision. Such a request shall be brought within 30 days from when the party was notified of the decision. The arbitrators may continue the arbitration pending the court’s determination.

The arbitral tribunal’s decision is, however, not binding. As a result, a party dissatisfied with the decision does not need to challenge the decision in order to retain its right to challenge the award.

If a party would like to challenge the award (set aside action), it should, however, be noted that a party is not entitled to rely upon a circumstance which, through participation in the proceedings without objection, or in any other manner, the party may be deemed to have waived. Thus, if a party challenges the jurisdiction of the arbitral tribunal and if a decision is rendered, it is important that the party objects to the arbitral tribunal’s decision in order to preserve its right to later invoke such circumstances.

According to the Swedish Arbitration Act, a set aside action must be brought within two months from the date upon which the party received the award.

If the Arbitrators Find That They Do Not Have Jurisdiction
If the arbitrators render a negative ruling on jurisdiction, and thus conclude the proceedings without ruling on the issues submitted to them for resolution, such an award may be amended, in whole or in part, by the Court of Appeal upon the application of a party. An action must be brought within two months from the date upon which the party received the award.

5.5 Standard of Judicial Review for Jurisdiction/Admissibility
The standard or method of judicial review for questions of admissibility and jurisdiction is not an entirely clear issue under Swedish law.

In a precedent from 2019 (the so-called Belgor decision), the Swedish Supreme Court stated that the starting point for the court’s review should be that the arbitral tribunal’s interpretation and evaluation of the evidence is correct. However, and notwithstanding this precedent, leading legal scholars have suggested that the Court of Appeal may make a de novo review of the arbitrators’ jurisdiction.

5.6 Breach of Arbitration Agreement
A court may not, over an objection of a party, rule on an issue which, pursuant to an arbitration agreement, shall be decided by arbitrators. A party must invoke an arbitration agreement on the first occasion the party pleads its case on the merits in court.

During the pendency of a dispute before arbitrators or prior thereto, a court may, irrespective of
the arbitration agreement, issue such decisions in respect of security measures as the court has jurisdiction to issue.

5.7 Jurisdiction Over Third Parties
In general, arbitrators sitting in Sweden may not assume jurisdiction over third parties that are neither party to an arbitration agreement nor signatories to the contract containing the arbitration agreement. Note, however, that under the Swedish law doctrine of assertion, an arbitral tribunal should generally assume jurisdiction over an individual or an entity that the claimant asserts is a party to an arbitration agreement, provided that the claim is not manifestly unfounded.

6. Preliminary and Interim Relief

6.1 Types of Relief
According to the Swedish Arbitration Act, and unless the parties have agreed otherwise, the arbitrators may, at the request of a party, decide that, during the proceedings, the opposing party must undertake a certain interim measure to secure the claim which is to be adjudicated by the arbitrators. The arbitrators may prescribe that the party requesting the interim measure must provide reasonable security for the damage which may be incurred by the opposing party as a result of the interim measure.

An interim measure rendered by an arbitral tribunal is not strictly speaking enforceable under Swedish law, since (not being a final order) it does not constitute an order that must be taken into account by the Swedish Enforcement Authority. However, a party’s failure to comply with an interim order may be taken into account when the arbitral tribunal decides the case on the merits.

The types of relief that can be awarded vary. The Swedish Arbitration Act limits the arbitral tribunal only to the extent that an interim measure must be aimed at securing the claim which is to be adjudicated by the arbitrators. However, it is important that an interim measure does not pre-empt the merits of the dispute. For example, the arbitral tribunal may order the respondent to pay a certain amount into an escrow account or order a party to preserve certain evidential material.

6.2 Role of Courts
During the pendency of a dispute before arbitrators or prior thereto, a court may, irrespective of the arbitration agreement, issue such decisions in respect of security measures as the court has jurisdiction to issue. If a court grants such an interim or security measure before the arbitral proceeding has begun, the applicant must, within a month of the order, either institute a court action on the matter at issue or, if the claim is to be resolved out of court (eg, arbitration), initiate the appropriate proceeding. An interim measure rendered by a court is formally enforceable under Swedish law.

The general requirement for Swedish courts to have jurisdiction to grant interim relief is that the Swedish legal system has an interest in resolving the issue in dispute. Such interest exists if the connection between the dispute or the parties and Sweden is sufficiently strong. For example, if a party resides in Sweden or if a party does not reside in Sweden but has assets in Sweden, the courts are generally deemed to have jurisdiction. Hence, it follows that the seat of the arbitration is not the decisive factor when determining whether jurisdiction exists.

For example, if a party has a monetary claim against an opponent, the court may order the
provisional attachment of so much of the opponent’s property that the claim may be assumed to be secured on execution. Further, if a party has a superior right to certain property, the court may order provisional attachment of that property. The courts may also make an order for measures suitable to secure the applicant’s right.

The Swedish Arbitration Act does not contain provisions concerning emergency arbitration.

### 6.3 Security for Costs

**Court Proceedings**

As a general rule, a party may not request a Swedish court to order the other party to provide security for the first-mentioned party’s own costs. However, if a foreign legal entity (or a non-resident foreign national) initiates court proceedings in Sweden against a Swedish legal entity (or a Swedish national or a person domiciled in Sweden), the former shall, at the request of the latter, provide security for the costs which the foreign legal entity may be deemed to pay as a result of the final judgment in the case. In this regard, a national or a resident of a country in the European Economic Area and legal entities established under the law of such a country must be treated in the same way as Swedish nationals and Swedish legal entities.

**Arbitration Proceedings**

The Swedish Arbitration Act does not provide for the possibility for a party to ask the arbitral tribunal to order the other party to provide security for the first-mentioned party’s own costs. On the other hand, the arbitrators may, however, request security for their own compensation.

It should be added that the SCC Arbitration Rules do have a specific provision that entitles a party to seek security for its own costs, but this provision stated that such security for costs should only be granted in exceptional circumstances.

### 7. Procedure

#### 7.1 Governing Rules

The Swedish Arbitration Act governs arbitral proceedings seated in Sweden. Although several of its provisions are not mandatory, parties may not opt out of the Arbitration Act. Despite the foregoing, the Arbitration Act is based on the principle of party autonomy and parties are given ample room to deviate from the default rules set out in the Arbitration Act. In other words, although parties are not able to agree that an arbitration in Sweden should be governed by a foreign procedural law, the parties are not precluded from agreeing on other rules of procedure where the Arbitration Act is not mandatory.

The provisions of the Arbitration Act which govern the actual conduct of the arbitration proceedings are few. Consequently, the parties may agree on supplementary rules, institutional or otherwise. In addition, most of the provisions in the Arbitration Act are non-mandatory.

However, there are some mandatory procedural rules which the parties may not agree to deviate from: eg, the provisions regarding the invalidity of an award; the provisions regarding the arbitrability of a dispute; and the requirement that an award must be written and signed by the arbitrators.

It can also be noted that, although the Swedish Code of Judicial Procedure is not formally applicable, Swedish lawyers and scholars sometimes refer to the local judicial code by analogy in relation to domestic arbitration seated in Sweden. This is much less common in respect of inter-
national arbitration seated in Sweden, although even in international arbitration reference is sometimes made to certain underlying principles as set out in the local judicial code.

7.2 Procedural Steps
In arbitral proceedings conducted in Sweden, there are no specific mandatory procedural steps that are required by law. However, the Swedish Arbitration Act contains a number of procedural provisions that apply unless the parties have agreed otherwise.

7.3 Powers and Duties of Arbitrators
In general, the powers of the arbitrators commence when the tribunal is constituted and last until the arbitration agreement is terminated, usually when the arbitrators have delivered a final award. This is true with respect to each arbitrator, unless any of the arbitrators resigns or otherwise ceases to be a member of the tribunal during the proceedings.

The arbitrators do, however, retain some residual powers even after the award has been delivered. Those powers include, among other things, the power to correct or supplement the award due to obvious inaccuracies or errors, as well as the power to interpret the operative part of the award.

As regards the arbitrators’ duties, in a general sense, the overarching duty for the arbitrators is to decide the dispute submitted to them. While doing so, the arbitrators must observe the fundamental principles and rules laid out in the Swedish Arbitration Act. Such duties include, among other things, the requirement that the arbitrators shall handle the dispute in an impartial, practical, and speedy manner. The arbitrators must further act in accordance with the parties’ instructions, unless they are impeded from doing so: eg, if the parties’ instructions violate any of the mandatory provisions in the Arbitration Act or law more generally. The arbitrators shall also afford the parties, to the extent necessary, an opportunity to present their respective cases and the award must further be made in writing.

With regards to the arbitrators’ powers, should the parties not have agreed thereon, the arbitrators have the power to determine the place of arbitration and to hold hearings and other meetings elsewhere in Sweden or abroad, unless otherwise agreed by the parties. Powers with respect to the conduct of the arbitral proceedings are likely to include the production of documents, to appoint experts, to hold hearings, to require the presence of witnesses, to receive evidence, etc.

7.4 Legal Representatives
Court Proceedings
As far as court proceedings in Sweden are concerned, a legal representative must be resident in Sweden or another state within the EEA. However, other persons may serve as representatives if the court considers it appropriate with regard to the circumstances in the particular case. Only a person deemed suitable by the court, by reason of that person’s honesty, knowledge, and earlier activities, may appear as a legal representative. Additionally, that person must also master the Swedish language.

Except as set out above, there are no prescribed qualifications or other requirements for legal practice. In principle, as long as the requirements set out above are fulfilled, anyone can act as a legal representative before a Swedish court, since the members of the Swedish Bar Association (Sw. Advokat) do not have a monopoly in respect of their professional activities. In practice, however, most private practitioners who
carry out commercial law are members of the Swedish Bar Association.

Arbitration Proceedings
In contrast to the restrictions set out above regarding court proceedings, there are no such requirements pertaining to legal representatives in arbitral proceedings. Thus, there are no rights of audience or other requirements with respect to legal representatives acting in arbitral proceedings.

8. Evidence

8.1 Collection and Submission of Evidence

Introduction
An important starting point under Swedish arbitration law is that the parties are generally required to supply the evidence. In other words, the initiative in respect of evidence is exclusively in the hands of the parties, not the arbitral tribunal.

Consequently, it is up to the parties to decide how the evidence is to be presented – and each party has a right to present its case largely as it sees fit. This is in line with the overarching principle of party autonomy under Swedish arbitration law.

Generally, the following methods of presenting evidence are available:

- production of documents;
- hearing of witnesses;
- hearing of experts; and
- inspection of the subject matter of the dispute.

Unless the parties agree otherwise, the IBA Rules on the Taking of Evidence in International Commercial Arbitration (the “IBA Rules”) are not formally applicable. However, they are very often used as important guidelines in international arbitrations seated in Sweden.

Documentary Evidence
In general, there are no restrictions as regards the use of documentary evidence. The parties are therefore allowed to rely on virtually all kinds of documents to prove their respective cases.

Production of Documents
There are no provisions concerning production of documents in the Swedish Arbitration Act. However, the common view is that arbitrators may order a party to produce documents in its possession at the request of another party. Documents which are in the possession of third parties, however, fall outside the scope of the arbitrators’ powers.

An order by the tribunal according to which a party is ordered to produce certain documents is not formally enforceable. However, this is remedied by the possibility for a party to turn to the competent Swedish District Court with a request for such documents to be produced to the court, subject to the arbitral tribunal’s approval. Certain issues regarding jurisdiction may arise, however, in this context – for example, a request for a foreign party to produce documents before the Swedish court may not formally be enforceable against the foreign party.

The arbitrators may also attach evidentiary weight to the fact that a party refuses to abide by an order to produce certain evidence.

There is no equivalent under Swedish arbitration law to common-law discovery. Unless the par-
ties have agreed on specific rules to be applied, Swedish arbitrators will normally follow the rules and principles contained in the Swedish Code of Judicial Procedure and/or the IBA Rules, as appropriate. Consequently, so-called fishing expeditions are not allowed under Swedish law, unless of course the parties have agreed otherwise.

Documents falling under the scope of attorney–client privilege may generally not be produced either to a court or to an arbitral tribunal, unless the party in question agrees otherwise.

Hearing of Witnesses
There are no provisions in the Swedish Arbitration Act governing how the examination of witnesses and experts should be conducted. Nevertheless, the examination of witnesses and experts usually proceeds in the following three stages:

• direct examination;
• cross-examination; and
• re-direct examination.

In cases where the parties have agreed to use witness statements, the witness statements will usually be used in place of direct examination.

The examination of witnesses is generally carried out by counsel, unless the parties have agreed otherwise. The arbitrators generally wait until counsel have finished their examination before asking any follow-up questions, which generally tend to be rather limited. Swedish arbitrators tend to take a rather careful approach when putting questions to witnesses, so as to avoid raising any doubts concerning their impartiality.

In line with what is stated in the IBA Rules, it is in general acceptable that witnesses may be interviewed and prepared before they testify orally.

Witness Statements
Unlike in court litigation in Sweden, the use of written statements is common practice in international arbitration proceedings. The arbitrators will normally try to reach an agreement with the parties in this regard. If the parties agree on using witness statements, it is common practice that the witness who has submitted a witness statement also appears at the hearing to be cross-examined by opposing counsel, if so requested.

The Main Hearing
If a party so requests, a main hearing shall be held. Since parties almost always exercise this right, a main hearing is held in almost all cases, unless the case settles before the hearing.

8.2 Rules of Evidence
Since the principle of the free evaluation of evidence applies, there are almost no formal rules of evidence that apply to Swedish arbitration. In general, a party can rely on almost any document, provided that the party can explain why the document in question is important as evidence.

Free Evaluation of Evidence
Under Swedish arbitration law, unlike in common law countries, the arbitrators may freely evaluate the evidence presented to them during the proceedings. Instead of formal evidential rules, the arbitrators are free to weigh the evidence as they see fit.

Generally, if a witness’s testimony is corroborated by documentary evidence, the arbitrators are often likely to attach more evidentiary weight
to that testimony. Also, an independent witness, with no interest in the outcome of the dispute, may often be given more weight than, for example, a party representative.

**Burden of Proof**

There are no rules in the Swedish Arbitration Act concerning burden of proof. However, the parties may agree on rules governing the burden of proof, for example by referring to the UNCITRAL Arbitration Rules. According to these rules, each party shall have the burden of proving the facts relied on to support its claim or defence. As a starting point, this is in line with what often applies in Swedish judicial practice.

On the other hand, in Swedish courts the burden of proof is sometimes placed on the party that has the best possibility of securing certain written or technical evidence, and such principles are sometimes relied upon in Swedish arbitration. It is also sometimes the case that a party that seeks to argue for a deviation from a customary practice has the burden of proving such a deviation.

The burden of proof may also shift, for example, depending on the issue in dispute and the applicable law.

**Rejection of Evidence**

The arbitrators have the power to reject evidence if it is presented too late in the arbitration or if it is manifestly irrelevant. However, this is relatively uncommon as a rejection may be relied on as a ground to challenge the award (since the parties must be given the opportunity to present their respective cases). In practice, the IBA Rules are also often used as guidelines in this regard.

Although there are no time limits for the presentation of evidence, the arbitrators may reject new evidence if one of the parties tries to introduce the evidence immediately prior to or during the final hearing.

**8.3 Powers of Compulsion**

Under Swedish arbitration law, arbitrators have no subpoena powers and therefore they cannot compel parties or witnesses to appear. Nor may they impose conditional fines or otherwise use compulsory measures in order to obtain requested evidence. Arbitrators also cannot administer oaths. However, subject to the consent of the arbitral tribunal, it is possible to hear witnesses under oath before the competent District Court.

As regards production of documents, the common view is that arbitrators may order one of the parties to produce documents in its possession at the request of another party. Documents which are in the possession of third parties, however, fall outside the scope of the arbitrators’ powers. An order by the tribunal to produce certain documents is, however, not formally enforceable. This is remedied by the possibility for a party to turn to the competent national court with such a request, subject to the arbitral tribunal’s approval.

Although rarely done in practice, the arbitrators may appoint their own expert, unless both parties object thereto.

**9. Confidentiality**

**9.1 Extent of Confidentiality**

The Swedish Arbitration Act does not contain any express provisions regarding confidentiality. Although the arbitral proceedings are private, the parties to an arbitration are not bound by confidentiality, unless the parties have explicitly agreed thereto. Hence, parties should consider...
incorporating a confidentiality clause into their arbitration agreement if they want to keep the arbitration proceedings confidential.

Counsel, arbitrators and the relevant arbitration institute (if applicable) are bound by confidentiality, the extent of which depends on their respective role in the proceedings, ethical obligations, institutional rules, etc. For example, the arbitrators are deemed to be under a duty of confidentiality which can only be lifted through the consent of both parties.

10. The Award

10.1 Legal Requirements
In general, there are few legal requirements for an arbitral award according to the Swedish Arbitration Act. The award must be in writing and signed by the arbitrators. If all arbitrators cannot sign the award, it is sufficient if a majority of the arbitrators signs the award. The reason why all the arbitrators have not signed the award must then be noted in the award.

Furthermore, the award should include details of the seat of the arbitration and the date when the award was rendered. If one of the arbitrators has a dissenting opinion, this opinion is usually included in the award, although this is not a formal requirement. The Arbitration Act does not require that the award is reasoned, but in practice reasoned awards are usually provided in almost all cases (and institutional rules usually require awards to be reasoned).

Unless the parties have agreed otherwise, there are no time limits with respect to the rendering of an award (however, institutional rules usually impose time limits).

10.2 Types of Remedies
An arbitral tribunal may generally grant the same types of remedies and relief that are available to a court. There are, however, some restrictions. For example, an arbitral tribunal cannot order a party to undertake an action that is prohibited by law.

As regards punitive damages, it is in practice most unlikely that an arbitral tribunal sitting in Sweden would award punitive damages. It is often assumed that an award of punitive damages would be contrary to public policy, although the question of whether such an award would be enforceable is not entirely settled.

10.3 Recovering Interest and Legal Costs
At the request of a party, the arbitral tribunal may at its discretion determine the allocation of costs as between the parties. Such costs include a party’s costs incurred with respect to the arbitration proceedings, including reasonable legal fees, compensation to the arbitrators and the institution (if applicable), costs for the party’s own work and costs relating to evidence. As a general rule, costs follow the event, i.e., the loser pays the winner’s fees. However, an allocation of costs which is proportional to the claimant’s success is also common.

Under Swedish law, parties may claim interest on their principal claim and costs, unless otherwise agreed between the parties. As a main rule, the interest rate is equivalent to the base rate as determined by the Riksbank (Sweden’s central bank), plus eight percentage points. However, the parties are free to agree on another rate.
11. Review of an Award

11.1 Grounds for Appeal

Unless otherwise agreed by the parties, an arbitral award cannot be appealed on the merits. Note, however, that there is a limited exception with respect to (i) the award of compensation to the arbitrators, and (ii) a decision by the arbitral tribunal to deny jurisdiction; both such decisions can be appealed to the courts as set out in the Swedish Arbitration Act.

In other respects, as set out below, an award may be challenged on the grounds set out in the Swedish Arbitration Act. According to the Arbitration Act, upon challenge of a party, an award shall be set aside wholly or partially if:

- the award is not covered by a valid arbitration agreement between the parties;
- the arbitrators have made the award after the expiration of the time limit set by the parties;
- the arbitrators have exceeded their mandate, in a manner that probably influenced the outcome;
- the arbitration should not have taken place in Sweden;
- an arbitrator was appointed in a manner that violates the parties’ agreement or the Arbitration Act;
- an arbitrator was unauthorised to adjudicate the dispute due to lack of full legal capacity or was not impartial or independent; or
- there otherwise occurred an irregularity in the course of the proceedings without fault of the party, which probably influenced the outcome of the case.

An award may also be declared invalid. According to the Arbitration Act, an award is invalid if:

- the subject matter of the dispute was not arbitrable;
- the award, or the manner in which the award arose, is clearly incompatible with the basic principles of the Swedish legal system (ordre public); or
- the award does not fulfil the requirements with regard to the written form and signature in accordance with the Arbitration Act.

If any of the grounds for invalidity are fulfilled, the award is invalid ipso jure. This means that no further action is needed; the award is invalid by law. However, in practice, a party may well wish to have the award formally declared invalid by the competent appellate court.

An action to have an award set aside in challenge proceedings must be brought within two months from the date when the challenging party received the award (or a correction, supplementation or interpretation of the award). Following the expiration of the two-month period, a party may not invoke a new ground in support of its challenge of the award. In contrast to challenge proceedings, an action to have an award declared invalid is not limited in time.

An action against an arbitral award must be initiated before the competent appellate court, ie, within the jurisdiction of which the arbitral proceedings had its seat. If the seat of arbitration is not determined, or not stated in the award, the action against the arbitral award may be brought before the Svea Court of Appeal in Stockholm.

The appellate court’s judgment may not be appealed, unless leave to appeal is granted by the court, as well as the Swedish Supreme Court. A leave of appeal may be granted if it is of importance as a matter of precedent that the
appeal is considered by the Swedish Supreme Court.

11.2 Excluding/Expanding the Scope of Appeal
If none of the parties is domiciled or has its place of business in Sweden, then the parties may agree to waive the right to invoke any or all grounds for challenging the arbitral award. Such an agreement must, however, be done in writing and must explicitly state the parties’ intent; a mere reference to, for example, institutional rules under which this possibility exists is not enough. The parties’ relationship must also be commercial in nature.

It is important to note, however, that the right to have an award declared invalid cannot be waived.

As far as expanding the scope of grounds for challenge is concerned, the parties are free to do so.

11.3 Standard of Judicial Review
Arbitral awards are final and binding on the merits, unless the parties have agreed otherwise. Findings by the arbitrators concerning substantive law or evaluation of evidence therefore fall outside the review of the courts.

12. Enforcement of an Award
12.1 New York Convention
Sweden has without any reservations signed the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”). The provisions in the New York Convention have subsequently been incorporated into the Swedish Arbitration Act. Sweden has also signed and ratified several other treaties dealing with enforcement of foreign arbitral awards, such as the Washington Convention on the Settlement of Investment Disputes of 1965 (the “ICSID Convention”) and the 1927 Convention on the Execution of Foreign Arbitral Awards (the predecessor to the New York Convention).

12.2 Enforcement Procedure
Domestic or Foreign?
The Swedish Arbitration Act differentiates between domestic and foreign arbitral awards. An arbitral award is domestic if it has been rendered by an arbitral tribunal sitting in Sweden. In other instances, the arbitral award is foreign.

Enforcement of Domestic Arbitral Awards
According to the Swedish Enforcement Act, a domestic arbitral award is principally enforceable in the same manner as a final and binding domestic court judgment. Hence, there is no need for exequatur proceedings. Consequently, a party may directly turn to the Swedish Enforcement Authority with an application to enforce the award.

Enforcement of Foreign Arbitral Awards
In principle, foreign arbitral awards are recognised and enforced in Sweden provided that an arbitration agreement exists. However, a foreign arbitral award cannot be enforced until it has undergone exequatur proceedings. Accordingly, an application for enforcement must be submitted to the Svea Court of Appeal in Stockholm. However, the application cannot be granted unless the opposing party has been afforded an opportunity to present its case. Consequently, the opposing party may resist the enforcement of the arbitral award based on the grounds set out in the Swedish Arbitration Act (which princi-
pally correspond to those set out in Article V in the New York Convention).

If the court grants the enforcement application, the foreign arbitral award will become enforceable in Sweden in the same way as judgments and orders of national courts. The award can then be enforced upon application to the Swedish Enforcement Authority.

Where a Domestic Arbitral Award Has Been Set Aside
If an arbitral award has been set aside or declared invalid in a final and binding judgment, then there is nothing more to enforce. Should enforcement measures already be under way, then they must cease immediately (unless otherwise ordered), and as far as possible be reversed.

Where a Foreign Arbitral Award Has Been Set Aside
If the foreign award has been set aside by a competent foreign authority in which the award was rendered, the arbitral award will not be recognised and enforced in Sweden.

Where a Domestic Arbitral Award is Subject to Ongoing Set-Aside Proceedings
Ongoing set-aside proceedings do not automatically entail that an arbitral award cannot be enforced. The party seeking to have the arbitral award set aside must request that the court orders a stay of the enforcement. While doing so, the requesting party must present evidence to convince the court that the challenge is likely to be successful and that the enforcement therefore should be suspended until further notice.

The court will then weigh in the likelihood of success of the challenge and the extent of the prejudice that may be caused to the respective parties if enforcement is allowed to continue or is suspended.

Where a Foreign Arbitral Award is Subject to Ongoing Set-Aside Proceedings
If the foreign award is subject to ongoing set-aside proceedings at the seat, the court may postpone its decision upon objection from the party resisting enforcement. In reaching a decision, the court must balance the interests of the parties and the court’s assessment must be based on all relevant circumstances.

As a starting point, the resisting party must present convincing reasons for a stay to be granted. However, the approach taken by the courts will be restrictive. The Swedish Supreme Court has attributed decisive importance to the public interest in facilitating enforcement of foreign arbitral awards.

In one of the more recent cases decided by the Swedish Supreme Court, the court emphasised that there was uncertainty as to whether the set-aside proceedings would be successful, and that it could take a long time until a final decision was reached. In light of “the general interest in facilitating the enforcement of foreign arbitral awards”, the court held that there were not sufficient reasons to grant a stay.

Finally, upon request of the enforcing party, the court may order the resisting party to provide reasonable security in default of which enforcement might otherwise be ordered.

State Immunity as Means to Resist Enforcement
There are no provisions in Swedish legislation regarding immunity for a foreign state from enforcement in Sweden. However, Swedish courts observe and adhere to principles on state
immunity established in customary international law.

Sweden has ratified the United Nations Convention on Jurisdictional Immunities of States and Their Property (the “Convention”) and incorporated the Convention into law. Although neither the Convention nor the Swedish Act incorporating the Convention have entered into force (at the time of writing, August 2023), the restrictive approach on state immunity expressed in the Convention is adopted in Sweden.

Generally, the approach taken by the courts, with respect to immunity from suit, is that immunity only extends to sovereign acts, not commercial. However, enforcement measures are considered more intrusive than subjecting a state to the jurisdiction of a foreign court. Accordingly, a foreign state enjoys a broader immunity from enforcement.

However, the foreign state’s immunity from enforcement is not absolute. There is case law from the Swedish Supreme Court – in line with the principle that enforcement can be carried out in property used for purposes other than governmental or non-commercial – in which the foreign states failed to successfully plead immunity from enforcement.

12.3 Approach of the Courts
As a consequence of the general pro-enforcement attitude of the Swedish courts and the limited grounds for refusal set out in the Swedish Arbitration Act, there are very few Swedish cases where enforcement has been refused. Under Swedish arbitration law, recognition and enforcement of a foreign arbitral award shall be refused if the court finds that it would be clearly incompatible with the basic principles of the Swedish legal system to recognise and enforce the award. Consequently, the starting point is that the public policy exception refers to what is considered to fall thereunder from a Swedish public policy perspective.

Under Swedish arbitration law, public policy concerns only extremely offensive cases in respect of arbitral awards where there has been a failure to comply with fundamental legal principles. As examples of such arbitral awards, reference is made, in the preparatory works of the Swedish Arbitration Act, to claims that are based on gambling or on criminal acts, eg, obligations to pay a contractually agreed bribe.

In light of the above, the possibilities to refuse enforcement of an arbitral award on public policy grounds are very limited and, since the relevant provision in the Arbitration Act should be given a restrictive interpretation, it is extremely seldom that it is applicable.

It should be noted that particular rules apply concerning competition law, particularly in the context of EU competition law.

13. Miscellaneous

13.1 Class Action or Group Arbitration
With respect to court proceedings, Swedish law allows for class actions and group proceedings. Class action arbitration and group arbitration are, however, not subject to specific regulation in Sweden.

13.2 Ethical Codes
The Swedish Arbitration Act provides that an arbitrator shall be impartial and independent.

With respect to court proceedings, the Swedish Code of Judicial Procedure stipulates that only a
person deemed suitable by the court, by reason of that person’s honesty, knowledge, and earlier activities, may act as counsel. An additional requirement is that the counsel shall master the Swedish language.

Furthermore, if a counsel or an arbitrator is a member of the Swedish Bar Association, and thus holds the title *Advokat*, he or she is always required to follow the Bar Association’s code of conduct (whether in court proceedings or arbitration proceedings).

### 13.3 Third-Party Funding

Third-party funding is not subject to specific regulation in Sweden. However, this does not mean that there are no laws or regulations that may be relevant in the context of third-party funding, eg, rules regarding legal costs, conflict of interest, confidentiality and production of documents, all of which could potentially be relevant.

### 13.4 Consolidation

The Swedish Arbitration Act provides that an arbitration may be consolidated with another arbitration, if the parties agree to such consolidation, if it benefits the administration of the arbitration, and if the same arbitrators have been appointed in both cases. The decision to consolidate separate arbitral proceedings is made by the arbitral tribunal (not by the court).

Note that institutional rules, such as the SCC Arbitration Rules, generally have specific rules governing consolidation.

### 13.5 Binding of Third Parties

In principle, under Swedish law, a contract, and thus an arbitration agreement or clause, is only binding between the parties entering the contract. In certain situations, however, a third party may, depending on the circumstances, be bound by an arbitration agreement – for example, in the following instances.

- Universal succession – all rights and obligations of a legal subject pass on to another subject, eg, following a merger between two companies.
- Bankruptcy – a company that has been declared bankrupt is no longer authorised to enter into contracts or to plead in court or arbitration proceedings. Instead, the right to represent the company lies with the receiver.
- Singular succession.
- Guarantee agreement.

The main principle provides that an arbitral award, as well as a court judgment, has res judicata effect between the parties. However, in some cases an arbitral award (and a court judgment) may have a res judicata effect against a third party (eg, in cases of succession).
Trends and Developments

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Advokatfirman Vinge KB is one of the largest commercial law firms in Sweden, operating as a full-service firm and with over 500 employees in Stockholm, Gothenburg, Malmö, Helsingborg and Brussels. Vinge has one of the largest dispute resolution practices in the Nordic region, with over 50 lawyers handling both international arbitration and litigation at all levels of the Swedish court system. A number of the firm’s lawyers also sit regularly as arbitrators.

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Introduction
In respect of trends and developments in international arbitration in Sweden over the recent couple of years, two matters in particular can be mentioned, as in the following discussion.

Statistics From the SCC Arbitration Institute
The SCC Arbitration Institute (SCC) (formerly the Arbitration Institute of the Stockholm Chamber of Commerce) is based in Stockholm, Sweden. Having been in existence for over 100 years, the SCC forms the hub of arbitration activity in Sweden, and it follows that its statistics provide a useful insight regarding arbitration activities in the country.

It should be noted that parties choosing arbitration in Sweden generally choose institutional arbitration rather than ad hoc arbitration. The SCC is by far the most popular choice of institution, followed by the ICC. (There is, of course, also ad hoc arbitration, but it is difficult to know how many ad hoc arbitrations take place in Sweden every year.)

The SCC’s statistics for 2022 reveal an arbitration market that has been affected both by the COVID-19 pandemic and by the war in Ukraine. Thus, the total number of cases (143) is considerably down from the high of 213 cases in 2020. On the other hand, the total value of the cases is comparatively high, at EUR1.6 billion.

One interesting development is that 19% of the cases filed before the SCC in 2022 had their seat of arbitration outside Sweden. This is perhaps surprising, since the SCC is generally associated with arbitrations taking place in Sweden. Of the foreign-seated arbitrations, the most popular foreign seat was London, followed by a range of other seats including Frankfurt, Helsinki, Copenhagen, Reykjavik, Singapore and Warsaw. This development may reflect the fact that SCC arbitration has certain particular features that are popular internationally, including expedited arbitration and the SCC’s emergency arbitration which is considerably faster than emergency arbitration at other institutions.

Although the majority of parties who use SCC arbitration are Swedish, the 2022 statistics reveal that 41% of the parties were of other nationalities – 37 other nationalities in total.

Regarding the language of the arbitrations filed before the SCC in 2022, 50% were in Swedish and 48% were in English, with 2% in Russian.

Regarding the time taken from referral of the case to the tribunal until the final award, 67% of arbitrations under the general SCC rules were concluded within 12 months, and 84% of arbitrations under the expedited SCC rules were concluded within six months. This is impressively efficient, although of course some other cases were not so efficient.

With respect to the applicable law, whilst 77% of the arbitrations listed were under Swedish substantive law, 13 other substantive laws were chosen – the most common substantive law, after Swedish law, being English law.

The statistics reveal that 60% of the arbitrations had three arbitrators, and 31% of the arbitrations had one arbitrator. (The statistics do not reveal what happened in the other 9% of cases – the explanation being perhaps that the position was unclear at the commencement of these arbitrations.)

The SCC has remarked in its statistics that the arbitrators appointed in 2022 were from four continents. Not surprisingly, the vast majority
were Swedish, but a total of 19 other nationalities were also chosen.

In this context, it is good to see that there were very few challenges – only three challenges in total in 2022, of which only one challenge was sustained.

The SCC appointed 27% of the arbitrators. Of the total number of arbitrators appointed, 34% were women; but where the SCC appointed the arbitrators, 54% were women. This highlights the SCC’s continued impressive record in promoting diversity in arbitral appointments.

Finally, the SCC’s statistics show that only two emergency arbitrations were commenced in 2022, both of which were dismissed.

To summarise the picture given by these statistics, although the SCC’s caseload is somewhat small by comparison with some of its competitors, the caseload remains healthy with an even spread of domestic and international cases. The SCC also continues to lead the way on diversity and efficiency.

Recent Case Law in the Field of Arbitration

Sweden is well-known as an arbitration-friendly jurisdiction, and it is therefore not surprising that it is very rare for arbitral awards to be successfully challenged.

However, challenges are sometimes successful and recent case law reveals an unusually high number of successful cases, at four in total before the Svea Court of Appeal in 2022.

These cases can be summarised briefly as follows.

**Svea Court of Appeal case no. T 1356-18, 4 November 2022**
This was an international arbitration before a Russian steel producer and a Chinese contractor. The Svea Court of Appeal found that the arbitral tribunal had exceeded its mandate in several respects: first, by awarding compensation for costs that had not been claimed for; second, by relying upon facts that had not been argued; and, third, by failing to consider a limitation issue that had been invoked.

**Svea Court of Appeal case no. T 3623-21, 24 November 2022**
This was a domestic arbitration, in which the Svea Court of Appeal (by a majority) also found that the arbitral tribunal had exceeded its mandate. The Court found that the relief awarded by the arbitral tribunal did not correspond to the relief actually sought, and on that basis the award was set aside. The Supreme Court has recently granted leave to appeal in this case, and it is to be hoped that the Supreme Court will provide useful clarity on this point.

**Svea Court of Appeal case no. T 4658-18, 13 December 2022**
**Swedish Supreme Court case no. T 1569-19, 14 December 2022**
These two cases both concern cases arising out of the well-known *Achmea* ruling, in which the CJEU decided that investor-state arbitration under a bilateral investment treaty was incompatible with EU law.

In the Svea Court of Appeal case no. T 4658-18, the dispute was between a Luxembourg investor and the Kingdom of Spain. The arbitral tribunal found in favour of the investor, but Spain challenged the award on the basis of the *Achmea* decision. The Svea Court of Appeal found that the award concerned questions which were not
arbitrable and therefore declared the award invalid.

In the Supreme Court case no. T 1569-19, the dispute was between the investor PL Holding and the Republic of Poland. The arbitration proceeding was initiated under a bilateral investment treaty (BIT). Here, too, the arbitral tribunal found in favour of the investor, but the case was challenged before the Svea Court of Appeal. The Svea Court found that the case could be distinguished from Achmea on the basis that Achmea did not prevent the investor and the state from entering into an ad hoc arbitration agreement. On appeal to the Supreme Court, the Supreme Court referred the issue on a preliminary reference to the CJEU, which concluded in its preliminary ruling (PL Holdings, C-109/20) that an ad hoc arbitration agreement was also precluded in this context. On this basis, the Supreme Court accordingly found that the underlying arbitral awards were invalid.

Summary
It is interesting to see such important issues being considered by the courts, since it is somewhat rare for arbitration issues to be decided in court. As noted above, it is to be hoped that additional clarification will be provided by the Supreme Court in respect of the second case (Svea Court of Appeal case no. T 3623-21, 24 November 2022), in which leave to appeal has recently been granted.
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