

SWEDISH LAW AND ARBITRATION

REASONS FOR CHOOSING
SWEDISH LAW AND DISPUTE
RESOLUTION IN INTERNATIONAL
COMMERCIAL CONTRACTS

INTRODUCTION



Sweden is praised and recognized globally for its transparency and for its consistent adherence to the rule of law.¹ On the basis of such recognitions, Sweden, or rather its capital city Stockholm, has become one of the leading venues for international arbitration. Sweden has a stable, predictable and long-standing legal system based on solid democratic traditions.

Sweden is considered to be a civil law jurisdiction and, as such, Swedish law is predominately based on statutes. That being said, Swedish case law is well developed and an important part of the legal sources applied by courts and tribunals. On this basis, Sweden is characterized as a mixture of common and civil law, which contributes to making parties, counsel and arbitrators from both legal traditions feel equally at home when arbitrating in Sweden. Swedish substantive law is easily accessible and its application seldom offers any surprises to the international businessperson, making non-Swedish lawyers and arbitrators feel at home with the legislation as well. Indeed, Swedish substantive law is already a preferred choice in many commercial contracts with no connection to Sweden other than the parties' choice of law.

In this document Young Arbitrators Sweden ("YAS"), in cooperation with the Swedish Arbitration Association ("SAA"), has set out to briefly highlight some features of Swedish substantive law and describe the characteristics of arbitration in Sweden.² The document does not set out to comprehensively cover these areas but rather to provide the reader with a quick guide of what can be expected when choosing Swedish substantive law and arbitration in Sweden.

YAS is an organization with approximately 400 Swedish and international members. YAS aims to increase knowledge and interest amongst young practitioners in the field of arbitration by arranging seminars, conferences and other activities and by coordinating arbitration events with other international arbitration networks.

¹ Sweden is consistently ranked at the top of both Transparency International's Corruption Perception Index (<http://www.transparency.org/cpi2015>) and the World Justice Project's Rule of Law Index (<http://worldjusticeproject.org/rule-of-law-index>).

² This document is based on YAS Intitativ 2012 authored by Linn Bergman, Gisela Knuts, Kristoffer Löf, Fredrik Norburg, Björn Rundblom Andersson, Rikard Wikström and Marie Öhrström.

TABLE OF CONTENTS

1. WHY SWEDISH SUBSTANTIVE LAW?	3
Neutral and Predictable Law	3
Respecting Freedom of Contract	3
Simple and Straightforward Contract Mechanism	4
Commercial Realism Over Legal Formalism	5
Effective Remedies	5
Swedish Substantive Law Available in Foreign Languages	6
2. WHY ARBITRATION IN SWEDEN?	7
Transparent and Trustworthy Arbitration Venue	7
Long-standing Tradition	7
Arbitration-Friendly Legal Environment	8
Active and Competent Arbitration Community	9
Advanced Training of Arbitrators and Counsel	10
Convenient and Well-Functioning Venue	10
3. WHY THE SCC?	11
General considerations	11
Global Standing	11
Efficiency in Terms of Time and Costs	11
Institutional Excellence	12
Party Autonomy and Flexibility	12
Innovative Approaches in Developing Best Practices	13

1. WHY SWEDISH SUBSTANTIVE LAW?

1.1 NEUTRAL AND PREDICTABLE LAW

1.1.1. Swedish law provides for a neutral and predictable foundation for international trade. This is why Swedish law is frequently chosen as the governing law of international commercial contracts.

1.1.2. The Swedish legislative process has a firmly-rooted comparative approach to law making. As a result, Swedish commercial law and its principles are predictable and familiar to non-Swedish lawyers as well.

1.1.3. Swedish law is often categorized as a "middle ground" between civil law and common law because it possesses features both from civil and common law traditions. Swedish private law derives from both statutes and case law. Therefore, both civil law and common law practitioners can easily recognize the system and coordinate a dispute under Swedish law.

1.1.4. As regards the international sale of goods, Sweden has ratified the CISG (United Nations Convention on Contracts for the International Sale of Goods) and the Swedish Sale of Goods Act accords with the CISG's principles.

1.1.5. Sweden is a member of the European Union and its laws form part of the Swedish legal system.

1.2 RESPECTING FREEDOM OF CONTRACT

1.2.1 Swedish contract law is founded on the principle of freedom of contract.

1.2.2 Contracts are enforced in accordance with their terms and the principle of *pacta sunt servanda* is fundamental. Commercial contracts may only be modified or invalidated in exceptional situations.

1.2.3 The law places very few restrictions on party autonomy.

1.2.4 Nevertheless, the Swedish Contracts Act sets forth certain rules under which an otherwise binding agreement or other legal act can be altered or declared void on the grounds of duress, fraud, deceit or usury.

1.2.5 Furthermore, section 36 of the Swedish Contracts Act contains a general provision that permits one or more individual terms in a contract to be modified or set aside if the term is unconscionable considering the content of the contract, circumstances related to the formation of the contract, subsequent events or other

circumstances. If the whole contract is considered unconscionable, it may be set aside in full. As section 36 of the Contracts Act may in theory be given a broad application, it is not uncommon for parties wishing to modify or set aside parts of an otherwise binding contract to make reference to this statutory provision. However, the purpose of the provision is primarily to protect parties in relationships in which one party is inherently weaker than the other. In practice, the scope for applying section 36 of the Contracts Act in business-to-business contracts is therefore limited and in the overwhelming majority of commercial cases it has been rejected in favor of *pacta sunt servanda*.

1.3 SIMPLE AND STRAIGHTFORWARD CONTRACT MECHANISM

1.3.1 Swedish law on the formation and interpretation of contracts is in line with the UNIDROIT Principles of International Contracts and the Draft Common Frame of Reference (DCFR).



1.3.2 There are no formal requirements with respect to the conclusion of commercial contracts under Swedish law (with very few exceptions, *e.g.* contracts for the conveyance of land). Essentially, if it is possible to establish that the true intention of two or more parties at a particular time was to enter into an agreement on specific terms and conditions, then the agreement has been formed. In other words, when there is a ‘meeting of minds’ with respect to rights and obligations, there is an agreement.

1.3.3 The starting point for interpreting contracts under Swedish law is that a contract should be interpreted based on the common intention of the parties. Normally, the wording of the contract will be conclusive evidence of such common intention. However, when the wording of the contract as such proves insufficient to determine the content of an agreement, it must be supplemented by an overall assessment of *e.g.* (i) the nature, structure and overall purpose of the contract in question; (ii) the parties’ negotiations prior to entering into the contract; (iii) the parties’ actual conduct following the conclusion of the contract; (iv) practices which the parties may have established between them in prior contractual dealings; (v) trade usages; and (vi) reasonableness.

1.3.4 Under Swedish law, contracts cannot impose obligations on persons other than the parties, but they can create rights for third parties if the parties to the contract so intended.

1.3.5 The practice adopted is therefore highly pragmatic and easy to understand for in-house lawyers evaluating or coordinating a dispute without prior experience of arbitration or prior knowledge of Swedish law.

1.4 COMMERCIAL REALISM OVER LEGAL FORMALISM

1.4.1 An explicit aim of the Swedish legislator when adopting commercial legislation is to facilitate the conduct of business. Representatives of commercial interests are consulted in connection with the preparation of new commercial legislation and the legislator consistently avoids burdening parties with formalistic legal requirements.

1.4.2 A typical example of the Swedish non-formalistic approach is that a party cannot rely on another party's mistake where the party should reasonably have noticed the mistake.

1.4.3 Furthermore, there is no requirement for consideration. One of the cornerstones of Swedish commercial law is that a party is entitled to rely on an offer. The law places very few restrictions on the binding nature of offers and, consequently, there is no requirement for consideration.



1.5 EFFECTIVE REMEDIES

1.5.1 Parties may freely agree on the remedies for breach of contract.

1.5.2 In the event the remedies for breach of contract have not been specified in the contract, Swedish law provides for a number of statutory remedies, including the right to specific performance, the right to a price reduction, the right to withhold performance, the right to claim damages and the right to terminate the contract for cause.

1.5.3 Swedish commercial law in general provides for full compensation for damage suffered due to a breach of contract, including compensation for lost profits. This means that the compensation should be an amount that puts the non-breaching party in the same economic position it would have been in had the breach not occurred, *i.e.* as if the contract had been duly performed. The burden of proving the breach, the damage and the causal relationship between the two falls on the party claiming damages.

1.5.4 Swedish law generally does not allow punitive damages or exemplary damages.

1.5.5 Contractual penalties as well as liquidated damages are recognized and enforceable under Swedish law.

1.5.6 Limitations of liability are recognized under Swedish law. They will, typically, be set aside only in the exceptional event of a breach of contract caused by wilful default or gross negligence. In the context of commercial contracts, the threshold for certain behavior to be considered grossly negligent or intentional is very high.

1.5.7 Swedish law provides for statutory interest for payment default and for restitution of payments, unless the parties have agreed otherwise.

1.6 SWEDISH SUBSTANTIVE LAW AVAILABLE IN FOREIGN LANGUAGES

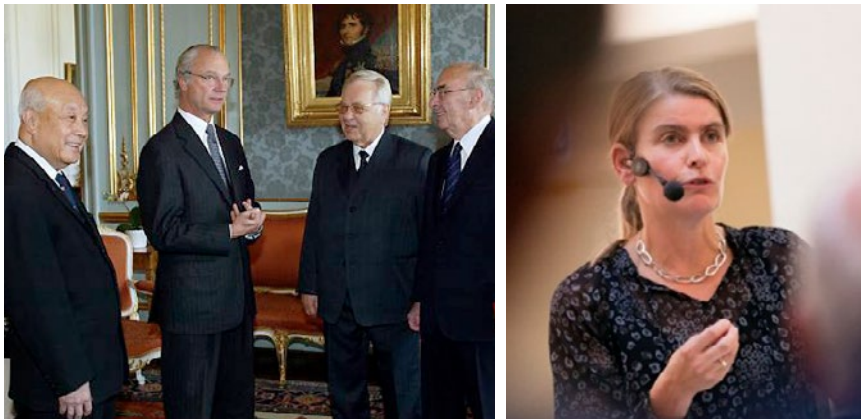
1.6.1 All key Swedish commercial legislation has been translated and is available in English. Fundamental Swedish commercial legislation is also available in Russian and Chinese on the Arbitration Institute of the Stockholm Chamber of Commerce's (SCC) website.

2. WHY ARBITRATION IN SWEDEN?

2.1 TRANSPARENT AND TRUSTWORTHY ARBITRATION VENUE

2.1.1 Sweden is recognized globally for its transparent and open society. Year after year, Transparency International ranks Sweden as one of the least corrupt countries in the world. Stockholm is also recognized as one of only a few jurisdictions in which it is safe to seat high-stake arbitrations.

2.1.2 With arbitration practitioners and users becoming increasingly aware of the dangers of corruption, finding neutral and unbiased seats for arbitration proceedings is of great importance. It is therefore no wonder that Stockholm, with its internationally-recognized low rate of corruption, international mind-set, arbitration-friendly courts, moderate costs and long-standing tradition, is today one of the leading venues for international arbitration under a variety of rules, including the SCC Arbitration Rules, the UNCITRAL Arbitration Rules and the ICC Rules.



2.1.3 Stockholm is also an international hub for many investment arbitrations under bilateral investment treaties and multilateral treaties, such as the Energy Charter Treaty.

2.2 LONG-STANDING TRADITION

2.2.1 Sweden has a long-standing tradition of supporting and respecting arbitration. Arbitration awards have been enforced by Swedish public authorities since at least the 17th century and references to arbitration as a recognized method of resolving disputes are found as early as in medieval legislation.

2.2.2 The New York Convention was ratified by Sweden in 1972. The Washington Convention on the Settlement of Investment Disputes was ratified by Sweden in 1966 and the Geneva Protocol on Arbitration Clauses was ratified by Sweden in 1929.

2.2.3 Ever since the introduction of the US/USSR Optional Clause Agreement (1977) between the AAA, the USSR Chamber of Commerce and the Stockholm Chamber of Commerce, Stockholm (via the SCC) has been the leading international arbitration venue for East-West disputes.

2.3 ARBITRATION-FRIENDLY LEGAL ENVIRONMENT

2.3.1 The principle of party autonomy is firmly entrenched in Sweden. Arbitration agreements are recognized as binding and the parties' choice of substantive law and language to use in the proceedings is respected.

2.3.2 The Swedish concept of arbitrability is broad and the freedom to refer commercial disputes to arbitration is essentially unrestricted.

2.3.3 Parties are free to appoint arbitrators of their own choice, as long as the arbitrator is independent and impartial.

2.3.4 Many of the world's most prominent arbitrators act in Sweden on a regular basis. Sweden is also home to an internationally-renowned and active arbitration institute, the SCC. As a result, Swedish arbitration practice continuously evolves in line with, and is at the forefront of, international best practice.

2.3.5 The Swedish tradition relating to the taking of evidence and production of documents is very similar to the IBA Rules on the Taking of Evidence. For example, long before the adoption of the IBA Rules, the Swedish tradition in arbitration and litigation proceedings alike has been to adhere to an adversarial principle, whereby:

- it is up to the parties to present the evidence and arguments on which they rely (cf. Article 3.1 of the IBA Rules);
- the parties are primarily responsible for the presentation of witness and expert evidence, and for cross-examining the other side's witnesses and experts (cf. Article 8.3 of the IBA Rules);
- requests for the production of documents must be granted to the extent they concern a specific document or category of documents, which has been explained to be relevant to the case and material to its outcome (cf. Article 3.3 of the IBA Rules); and
- the tribunal is free to assess the evidence presented to it (cf. Article 9.1 of the IBA Rules).

2.3.6 The Swedish Arbitration Act is a user-friendly and supportive system for arbitration of the highest international standard. The principles of the UNCITRAL Model Law have been incorporated into the Swedish Arbitration Act.

2.3.7 State courts are arbitration-friendly and abstain from asserting jurisdiction when the contract in dispute provides for arbitration.

2.3.8 Upon request, state courts provide assistance in the taking of evidence and granting of interim measures in arbitration proceedings.

2.3.9 Challenge actions against awards in arbitrations seated in Stockholm are brought in a specific division within the Svea Court of Appeal which specializes in arbitration cases.

2.3.10 The Swedish Arbitration Act is available in English, French, German, Russian, Polish, Romanian, Czech and Chinese on SCC's website.

2.3.11 There are several, comprehensive commentaries on Swedish arbitration law and practice available in English, including Commercial Arbitration in Sweden by Finn Madsen (2016); Arbitration in Sweden (2011) by Andersson/Isaksson/Johansson/Nilsson; International Commercial Arbitration in Sweden (2011) by Kaj Hobér; and Arbitration Law of Sweden (2003) by Lars Heuman.

2.4 ACTIVE AND COMPETENT ARBITRATION COMMUNITY

2.4.1 The Swedish arbitration community has a high level of knowledge, integrity and diversity. Due to its extensive international experience, there is an in-depth understanding of the expectations of foreign parties and counsel.

2.4.2 Conferences, seminars and roundtable discussions on international arbitration topics are frequently organized. This active community ensures that the Swedish arbitration environment conforms to international standards and adapts to and develops best practices.



2.4.3 Swedish arbitration practitioners are fluent in English and many are experienced in cross-border arbitration both in Sweden and globally. A number of the Stockholm-based law firms have top-ranked dispute resolution practices and individuals.

2.4.4 There is a multitude of arbitration organizations in Sweden supporting the arbitration community, such as the SCC, the SAA, YAS, Swedish Women in

Arbitration Network (SWAN), the Stockholm Centre for Commercial Law and Stockholm University.

2.5 ADVANCED TRAINING OF ARBITRATORS AND COUNSEL

2.5.1 The Swedish arbitration community works actively to train and promote up-and-coming arbitrators and counsel.

2.5.2 Education initiatives include the Training Programme for Arbitrators hosted by the SCC and the SAA, the Master Program in International Commercial Arbitration Law at Stockholm University, and the basic arbitration training programme for junior associates by YAS.

2.5.3 The SCC seeks to appoint well-qualified young arbitration practitioners as arbitrators when appropriate.



2.6 CONVENIENT AND WELL-FUNCTIONING VENUE

2.6.1 Stockholm is easily accessible, vibrant, beautiful and an economic hub in Northern Europe.

2.6.2 Stockholm has a multitude of hearing venues experienced in accommodating international arbitrations and offers a wide variety of hotels and restaurants.

2.6.3 The cost of hosting an arbitration in Stockholm is lower than in most other arbitration capitals, despite its high-quality venues and accommodation.

3. WHY THE SCC?

3.1 GENERAL CONSIDERATIONS

3.1.1 The Stockholm Chamber of Commerce contributes to international trade and economic development globally by providing efficient mechanisms for dispute resolution. By being efficient and knowledgeable, and at the forefront of legal development, the SCC is one of the preferred arbitral institutions worldwide.

3.1.2 The SCC is continuously at the forefront of best practices in international arbitration, taking into account its users' needs, and develops its rules and practices accordingly. In 2017, the SCC will publish an updated set of Arbitration Rules and Rules for Expedited Arbitrations, further promoting efficiency in arbitration by introducing new tools to meet the current and future needs of the international business community.

3.2 GLOBAL STANDING

3.2.1 The SCC is one of the world's leading arbitration institutes. Around 200 disputes are filed with the SCC each year, of which approximately 50% are international arbitrations. The SCC also acts as appointing authority in *ad hoc* arbitrations, UNCITRAL arbitrations and administers investment arbitrations.

3.2.2 Over the years, some of the largest disputes in the world have been administered by the SCC, and the SCC continues to be one of the most popular venues for high-value claims.

3.2.3 Second only to the ICSID Convention Arbitration Rules, the SCC Rules are the most frequently used institutional rules for investment arbitration in the world.

3.2.4 Truly international – the SCC Board is the institute's decision-making body and the majority of its directors are internationally-distinguished arbitration practitioners.

3.3 EFFICIENCY IN TERMS OF TIME AND COSTS

3.3.1 Arbitration under the SCC Arbitration Rules is arguably the most expeditious of the leading institutional arbitration rules. The average time in an SCC proceeding under the SCC Rules is 12 months. In 2015, an award was rendered in over 50% of the SCC's cases within six to twelve months, and under the SCC Expedited Arbitration Rules, an award was rendered in over 62% of the SCC's cases within three to six months.

3.3.2 Experienced and knowledgeable arbitrators make scrutiny of awards redundant, which saves 2-3 months. The secretariat usually deals with a communication from any of the parties the day it is received by the SCC.

3.3.3 The SCC Expedited Arbitration Rules offer a fast-track alternative particularly suited for smaller disputes (see below section 3.5 Innovative Approaches in Developing Best Practices).

3.3.4 The SCC has the most efficient and accessible secretariat. You can always get a straight answer and a swift response from one of the several knowledgeable counsels at the secretariat.

3.3.5 Each case has a counsel and an assistant assigned to it, who see the case through from the request for arbitration until the award is rendered and the proceedings closed.

3.3.6 The electronic case management system ensures each case is managed effectively and securely.



3.3.7 In all SCC cases, party autonomy is highly valued. The SCC procedures are therefore unobtrusive, allowing the SCC to maintain its flexible, accessible, and cost-effective nature.

3.4 INSTITUTIONAL EXCELLENCE

3.4.1 Users' satisfaction with SCC arbitration is high and repeatedly confirmed through the SCC User's Survey.

3.4.2 Characteristic of the work of the SCC is to be close to the dispute and in constant dialogue with the parties.

3.4.3 The SCC is known for its swift service and no-nonsense approach.

3.4.4 The SCC guarantees equal and neutral treatment by always ensuring the integrity of the SCC rules and procedures.

3.4.5 The SCC's international recognition functions as a stamp of quality for the arbitral awards and facilitates the enforcement of awards in foreign jurisdictions.

3.5 PARTY AUTONOMY AND FLEXIBILITY

3.5.1 Parties have a choice between the SCC Arbitration Rules with one or three arbitrators, the SCC Expedited Arbitration Rules with one arbitrator, and the SCC Mediation Rules – whichever mechanism they think is best suited for resolving their disputes.

3.5.2 Parties appoint one co-arbitrator each and they may also jointly appoint the chairperson, if they so choose. When the case is to be decided by a sole arbitrator, the parties are always afforded the possibility to appoint that person jointly.

3.5.3 When the SCC appoints arbitrators, the parties' wishes will be taken into account. When balancing the interests of the parties, the SCC always strives to appoint an individual with a profile acceptable to both parties.

3.6 INNOVATIVE APPROACHES IN DEVELOPING BEST PRACTICES

3.6.1 The SCC offers the possibility of appointing an emergency arbitrator where a party seeks interim measures before the constitution of an arbitral tribunal and time is of the essence. It is the fastest procedure under institutional rules where the SCC emergency arbitrator is to render the emergency decision within 5 days.

3.6.2 A party may also request interim measures from the local Swedish courts without it being considered incompatible with the arbitration agreement or with the SCC Arbitration Rules. Minor and straightforward matters relating to interim measures are usually decided by the court of first instance within a few weeks, and if there is evidence of a tangible risk of sabotage or collusion by the respondent, a decision can be obtained without prior notice to the respondent.

3.6.3 The SCC offers Expedited Arbitration Rules for small and medium-sized disputes. The expedited rules provide for an award within 3 months from the referral of the case file to the arbitrator and only allow a limited number of submissions per party. In practice, an award is usually rendered within 4-5 months. The model clause combining the expedited rules with the arbitration rules ensures maximal flexibility and a truly tailor-made arbitration.

3.6.4 A separate award on the advance on costs can be requested by a party that has provided the other party's portion of the advance on costs. Such an award can be requested as soon as the case has been referred to the arbitral tribunal and is enforceable in most jurisdictions.

3.6.5 The costs of the proceedings are determined by the amount in dispute, which provides for foreseeability and fair remuneration for the arbitrators. You only pay for what you ask for and you can calculate the arbitration costs before you even file a request for arbitration. There is no need to count hours and no need to negotiate rates with arbitrators.

3.6.6 On its website, the SCC provides English, Russian and Chinese translations of the main Swedish procedural and substantive legislation. In addition, the SCC provides English translations of Swedish case law on arbitral issues via the Swedish Arbitration Portal, accessible on the SCC website. SCC also provides news on arbitration matters related to Sweden and/or SCC on the Internet and in its monthly newsletter.

FOR FURTHER INFORMATION REGARDING THIS
DOCUMENT PLEASE CONTACT THE YAS BOARD:

annica.borjesson@maqs.com
kristin.campbell-wilson@chamber.se
andreas.johard@hannessnellman.com
eric.johnson@cederquist.se

kristina.ljungstrom@norburgscherp.se
azadeh.razani@msa.se
daniel.waerme@gda.se

