

GAR KNOW HOW CHALLENGING AND ENFORCING ARBITRATION AWARDS

Sweden

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APRIL 2022

Applicable requirements as to the form of arbitral awards

1 Must an award take any particular form?

An award shall be made in writing and shall state the date of the award and the seat of the arbitration. Furthermore, an award shall be signed by the arbitrator(s) or the majority of the arbitrators, if the reason why not all arbitrators have signed the award is stated in the award.

Applicable procedural law for recourse against an award (other than applications for setting aside)

2 Are there provisions governing modification, clarification or correction of an award? Are there provisions governing retraction or revision of an award? Under what circumstances may an award be retracted or revised (for fraud or other reasons)? What are the time limits?

An award may be corrected if the arbitrators find that it contains an obvious inaccuracy as a consequence of a typographical, computational, or other similar mistake by the arbitrators or any other person. An award may be supplemented (modified) if the arbitrators, by oversight, have failed to decide an issue that should have been dealt with in the award. The arbitrators may decide to correct or supplement an award within 30 days of the date of the announcement of the award.

Also, the arbitrators may correct or supplement an award or clarify (interpret) the decision in an award if any of the parties so requests within 30 days of receipt of the award by that party. In such case, a correction or clarification shall be made within 30 days from the receipt of the request. If the arbitrators decide to supplement an award, it shall take place within 60 days of the request.

The action to correct or supplement an award cannot be used to revisit assessments of facts and evidence. Instead, it is a means to address obvious inaccuracies.

If an action for the invalidity or the setting of an award has been initiated, the court seized may stay the proceedings for a certain period of time to provide the arbitrators with an opportunity to resume the arbitral proceedings or to take some other measure that, in the opinion of the arbitrators, will eliminate the ground for the invalidity or setting aside provided that (i) the court holds that the claim in the case shall be accepted and either of the parties requests a stay or (ii) both parties request a stay. In other words, the case may be referred back to the arbitrators. There are no formal restrictions as to what measures the arbitrators may take following a remittal.

3 May an award be appealed to or set aside by the courts? What are the differences between appeals and applications to set aside awards?

Apart from certain statutory arbitrations and unless otherwise agreed, an arbitral award may not be appealed (ie, reassessed on the merits). However, an award may, under certain circumstances, which are enumerated in the Swedish Arbitration Act, be invalidated or set aside in full or in part.

The grounds for invalidating an award are mandatory and the invalidity affects the award ipso jure. For these reasons, there is no time limit to request a declaration that an award is invalid.

An award can only be set aside upon a party's request.

Applicable procedural law for setting aside of arbitral awards

4 Is there a time limit for applying for the setting aside of an arbitral award?

Setting aside proceedings must be initiated within two months from the date when the challenging party received the award (or a correction, supplementation or clarification of the award). After the expiry of the two-month period, a party may not invoke a new ground for the challenge of the award. An application for a declaration that an award is invalid is not time limited.

5 What kind of arbitral decision can be set aside in your jurisdiction? Can courts set aside partial or interim awards?

All awards in which an issue is finally determined can be set aside.

6 Which court has jurisdiction over an application for the setting aside of an arbitral award? Is there a specific court or chamber in place with specific sets of rules applicable to international arbitral awards?

Setting aside proceedings shall be brought before the court of appeal that has jurisdiction over the seat of arbitration. If the seat of arbitration is not decided or stated in the award, the proceedings may be brought before the Svea Court of Appeal in Stockholm.

7 What documentation is required when applying for the setting aside of an arbitral award?

To initiate setting aside proceedings, the application must meet the general requirements of an application for a summons. Thus, the application must state a distinct request for relief (eg, the part of the award that should be set aside), a detailed account of the circumstances invoked as the basis for the request for relief (merely stating the rules relied upon is not sufficient), a specification of the means of evidence offered and what shall be proved by each means and the circumstances rendering the court competent, unless this is apparent from what is otherwise stated.

8 If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with the application for the setting aside of an arbitral award? If yes, in what form must the translation be?

The language of setting aside proceedings is Swedish. This means that the parties' submissions shall be made in Swedish and that a hearing will be carried out in Swedish. The court may permit that evidence, documentary or oral, is submitted in English. Thus, translations may be required.

9 What are the other practical requirements relating to the setting aside of an arbitral award? Are there any limitations on the language and length of the submissions and of the documentation filed by the parties?

When submitting an application for the setting aside of an award, a fee of 2,800 krona shall be paid to the court.

Furthermore, according to the Swedish constitution, all documents that are submitted to a governmental authority (eg, a court) become public and will be disclosed upon request unless there is a statutory ground for secrecy (eg, trade secrets).

10 What are the different steps of the proceedings?

In general, following the submission of the application for a summons, the defendant will be ordered to submit a statement of defence. Thereafter, the court will determine a timetable for the setting aside proceedings. In more complex cases, the court may also hold a preparatory hearing in order to clarify the case and the parties' positions. Also, the parties may be afforded an opportunity to exchange further submissions. Setting aside proceedings are usually adjudicated after a main hearing. However, simpler cases can be adjudicated without a hearing, unless a party requests that a hearing be held.

11 May an arbitral award be recognised or enforced pending the setting-aside proceedings in your jurisdiction? Do setting aside proceedings have suspensive effect? If not, which court has jurisdiction over an application to stay the enforcement of the award pending the setting aside proceedings, and what are the different steps of the proceedings?

An application for the setting aside or invalidation of an award does not have suspensive effect. However, the court seized with the application (ie, the competent court of appeal or the Supreme Court following appeal) may, upon a party's request, suspend enforcement during pending setting aside proceedings. A request to suspend enforcement may be made at any stage of the setting aside proceedings. Enforcement of an award shall be suspended if there are reasons to assume that there are grounds to set aside the award. The assessment shall also include a balancing of the parties' interests.

12 What are the grounds on which an arbitral award may be set aside?

Under Swedish law, a distinction is made between awards that are invalid and awards that may be set aside. Notably, there is no time limit for seeking a declaration that an award is invalid.

According to the Swedish Arbitration Act, an arbitral award is invalid, in part or in whole, if:

- if it includes determination of an issue that, in accordance with Swedish law, may not be decided by arbitrators;
- if the award, or the manner in which the award arose, is clearly incompatible with the basic principles of the Swedish legal system; or
- if the award does not fulfil the requirements with regard to the written form and signature in accordance with the Swedish Arbitration Act.

According to the Swedish Arbitration Act, an arbitral award may be set aside, in part or in whole, if:

- the award is not covered by a valid arbitration agreement between the parties;
- the award has been rendered after the expiry of the period set by the parties;
- the arbitrators have exceeded their mandate in a manner that has possibly affected the outcome;
- the arbitral proceedings should not have taken place in Sweden according to the Swedish Arbitration Act;
- an arbitrator has been appointed contrary to the parties' agreement or the Swedish Arbitration Act;
- an arbitrator was unauthorised because he or she did not possess full legal capacity in relation to his or her actions and his or her property or because he or she was not impartial; or
- there has occurred another irregularity during the course of the proceedings, without fault of the party seeking to set aside the award, and that irregularity has possibly affected the outcome.

13 What is the effect of the decision on the setting-aside application in your jurisdiction? What challenges are available?

As a general rule, the court of appeal's decision is final with respect to the setting aside application and cannot be appealed. However, the court of appeal may permit that its judgment be appealed to the Supreme Court if it is of importance for the guidance of the application of law that the Supreme Court

considers the appeal. In addition, the case will only be considered by the Supreme Court if it grants leave to appeal.

14 Will courts take into consideration decisions rendered in relation to the same arbitral award in other jurisdictions or give effect to them (eg, in recognition or enforcement proceedings)?

Swedish courts may consider decisions rendered in relation to an arbitral award in other jurisdictions. However, the importance of such decisions and whether they should be given effect by the Swedish courts depend on the decision and has to be assessed on a case-by-case basis.

Applicable procedural law for recognition and enforcement of arbitral awards

15 What is the applicable procedural law for recognition and enforcement of an arbitral award in your jurisdiction? Is your jurisdiction party to treaties facilitating recognition and enforcement of arbitral awards?

Enforcement of domestic arbitral awards is mainly governed by the Swedish Enforcement Code and enforcement of international arbitral awards is governed by the Swedish Arbitration Act. Sweden is a party to several treaties facilitating recognition and enforcement of arbitral awards (eg, the New York Convention and ICSID).

16 Is the state a party to the 1958 New York Convention? If yes, what is the date of entry into force of the Convention? Was there any reservation made under article I(3) of the Convention?

The 1958 New York Convention entered into force in Sweden on 28 January 1972. Sweden has not made any reservations under article I(3) of the Convention.

Recognition proceedings

17 Is there a time limit for applying for the recognition and enforcement of an arbitral award?

In general, there is no time limit for applying for the recognition and enforcement of an arbitral award, assuming that no such time limit follows from the award itself.

18 Which court has jurisdiction over an application for recognition and enforcement of an arbitral award? Is there a specific court or chamber in place with specific sets of rules applicable to international arbitral awards?

The Swedish Enforcement Authority handles the enforcement of domestic arbitral awards. If the Swedish Enforcement Authority has reason to assume that an arbitral award that is subject to enforcement is invalid, it may order the applicant to bring an action against the defendant concerning the matter within one month.

According to the Swedish Arbitration Act, an application for the enforcement of an international arbitral award shall be made to the Svea Court of Appeal. If such an application is granted, the award can be enforced in Sweden in the same manner as a Swedish judgment.

19 What are the requirements for the court to have jurisdiction over an application for recognition and enforcement and for the application to be admissible? Must the applicant identify assets within the jurisdiction of the court that will be the subject of enforcement for the purpose of recognition proceedings?

An application for the enforcement of a domestic award is made to the Swedish Enforcement Authority. There is no requirement to identify assets in the application. However, identifying assets may render enforcement quicker rather than simply relying on the Authority's obligation to investigate the assets of the debtor.

An application for the enforcement of a foreign award shall be made at the Svea Court of Appeal. There is no requirement to identify assets within the jurisdiction of the court.

20 Are the recognition proceedings in your jurisdiction adversarial or ex parte? What are the different steps of the proceedings?

An application for the enforcement of an international award may not be granted unless the defendant has been afforded an opportunity to comment. In general, enforcement proceedings are decided based on the parties' submissions, without a hearing.

21 What documentation is required to obtain recognition?

An application to enforce an international arbitral award shall include the original award or one certified copy thereof.

22 If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with an application to obtain recognition? If yes, in what form must the translation be?

The application shall be made in Swedish. Unless otherwise determined by the court, the entire award shall be translated to Swedish (certified translation).

If the defendant objects that the parties had not concluded an arbitration agreement, the applicant must submit the arbitration agreement in original or a certified copy thereof and, unless otherwise decided by the court, a certified translation into the Swedish language, or otherwise show that an arbitration agreement was concluded.

23 What are the other practical requirements relating to recognition and enforcement? Are there any limitations on the language and length of the submissions and of the documentation filed by the parties?

A domestic award can be enforced by the Swedish Enforcement Authority directly upon application. The Swedish Enforcement Authority will, however, examine if the award meets certain formal requirements, namely that it is non-appealable and that it is in written form and has been signed by the arbitrator(s). Furthermore, if there are reasons to believe that an award that has been submitted for enforcement is invalid, the Enforcement Authority shall order the applicant to, within one month, bring an action against the defendant regarding the validity of the award.

For international awards, there are no fees to be paid to the Svea Court of Appeal concerning the declaration of enforceability. If the defendant opposes the application, it may be ordered to pay the costs of the proceedings should the opposition be unsuccessful.

The language of the court is Swedish, meaning that submissions shall be made in Swedish.

The Swedish Enforcement Authority charges a cost of 300 krona for handling an application for enforcement. Further, there is a charge of 600 krona for enforcement as such. Further, depending on what enforcement measures that are taken, the applicant may be ordered to pay the costs for the enforcement if these are not covered by the means brought in by the enforcement. For example, the costs for enforcement in tangible property is currently four percent of the sales price.

24 Do courts recognise and enforce partial or interim awards?

Partial awards can be recognised and enforced provided that they are final and binding in respect of the issues that they concern. As specifically regards enforcement, the operative part of the award must grant a request for specific relief in order that the award may be enforced.

25 What are the grounds on which an arbitral award may be refused recognition? Are the grounds applied by the courts different from those provided under article V of the New York Convention?

The grounds for refusing recognition and enforcement of an international arbitral award in Sweden correspond to the grounds set out in article V of the New York Convention. When assessing whether any of the grounds are at hand, the Swedish court should consider international case law relating to the application of the Convention.

26 What is the effect of a decision recognising an arbitral award in your jurisdiction?

If the Svea Court of Appeal has granted an application for a declaration of enforceability, the award is immediately enforceable, unless otherwise determined by the Supreme Court following an appeal.

27 What challenges are available against a decision refusing recognition in your jurisdiction?

A decision to refuse an application for a declaration of enforceability can be appealed to the Supreme Court.

28 What are the effects of annulment proceedings at the seat of the arbitration on recognition or enforcement proceedings in your jurisdiction?

If the defendant objects that an application has been made to set aside the award or a

motion for a stay of execution has been submitted to the competent authority, the court may postpone its decision. In general, postponement should require a certain degree of probability that the award is set aside.

If the formal prerequisites for postponement are at hand, the court shall make an assessment and balance the parties' interests. In this regard, the starting point should be that postponement should only be granted if the defendant asserts compelling reasons against enforcement. Also, the general public interest of facilitating enforcement of international arbitral awards has been considered by the Supreme Court and should carry some weight in the assessment.

29 If the courts adjourn the recognition or enforcement proceedings pending annulment proceedings, will the defendant to the recognition or enforcement proceedings be ordered to post security?

Upon the applicant's request, the court may order the defendant to provide security in default of which enforcement might otherwise be ordered. The security shall be reasonable, meaning that the security should correspond to the value of the award and that it should be reasonably accessible.

30 Is it possible to obtain the recognition and enforcement of an award that has been fully or partly set aside at the seat of the arbitration? If an arbitral award is set aside after the decision recognising the award has been issued, what challenges are available?

A foreign award shall not be recognised and enforced in Sweden if the party against whom the award is invoked proves that the award has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.

The Svea Court of Appeal's decision to grant an application for a declaration of enforceability can, subject to applicable procedural law, be appealed to the Supreme Court. Depending on the circumstances, it ought to be possible to assert a decision to set aside an award against a decision to grant an application for a declaration of enforceability even if the time for appealing the decision has expired.

Service

31 What is the procedure for service of extrajudicial and judicial documents to a defendant in your jurisdiction? If the extrajudicial and judicial documents are drafted in a language other than the official language of your jurisdiction, is it necessary to serve these documents with a translation?

Service of documents is regulated in the Service of Process Act (Sw. delgivningslag (2010:1932)). Pursuant to the act and depending on the type of document to be served, there are several means to perform service. For example, documents may be served orally, through post, by a judicial officer or through publication in the Official Swedish Gazette (Sw. Post- och Inrikes Tidningar). If the defendant is a legal entity, it may be possible to serve documents to the entity by sending the documents to the entity's address registered with the Swedish Companies Registration Office (Sw. Bolagsverket).

In conjunction with assistance with service in Sweden, service of a document written in, or translated into a language other than Swedish, or a language that follows from an international agreement that is binding on Sweden, may only be made with the consent of the recipient of service where it is unclear whether or not he or she understands the other language.

32 What is the procedure for service of extrajudicial and judicial documents to a defendant outside your jurisdiction? Is it necessary to serve these documents with a translation in the language of this jurisdiction? Is your jurisdiction a party to the 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention)? Is your jurisdiction a party to other treaties on the same subject matter?

Service on a person domiciled abroad may be made, provided it is permitted by the state in which service is to be made. When servicing a person domiciled abroad, the law of the foreign state shall apply, provided that it would not contravene general principles of Swedish law. The law of the foreign state regulates whether or not translations will be required.

Sweden is a party to the Hague Service Convention.

Since Sweden is a member state of the European Union, it is bound by several EU regulations regarding service of documents, for example, Regulation (EC) No. 1393/2007 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters. Furthermore, Sweden is a party to the Nordic Agreement regarding judicial assistance through service of process and taking of evidence that regulates inter alias service of process in the Nordic countries.

Identification of assets

33 Are there any databases or publicly available registers allowing the identification of an award debtor's assets within your jurisdiction? Are there any databases or publicly available registers providing information on award debtors' interests in other companies?

There are certain publicly available sources for identifying an award debtor's assets. For example, annual accounts, information regarding who owns real estate and information regarding ownership of certain intellectual properties, are publicly available.

34 Are there any proceedings allowing for the disclosure of information about an award debtor within your jurisdiction?

According to the Swedish constitution, all documents that are submitted to a governmental authority (eg, a court) becomes public and will be disclosed upon request unless there is a statutory ground for secrecy (eg, trade secrets). This so-called freedom of information may be used to identify assets.

When enforcing an award, the Swedish Enforcement Authority shall, to the extent necessary, investigate the debtor's employment and income and whether the debtor has assets that may be subject to attachment.

If a debtor enters into bankruptcy, the receiver in bankruptcy shall investigate the debtor's assets. In this regard, the debtor is obligated to provide information regarding its assets in Sweden and abroad.

Enforcement proceedings

35 What kinds of assets can be attached within your jurisdiction?

Principally all assets may be attached. Certain exceptions to this are set out in Chapter 5 of the Swedish Enforcement Code (Sw. utsökningsbalk). For example, if the debtor is a person, assets that are necessary for the debtor's subsistence are excluded from attachment.

36 Are interim measures against assets available in your jurisdiction?

Yes. An application for interim measures should be made to the court.

37 What is the procedure to apply interim measures against assets in your jurisdiction?

An application for interim measures is made to a competent court of general jurisdiction. Prior court authorisation is not necessary. As a starting point, the proceedings are not ex parte. However, the court may, if a delay places the applicant's claim at risk, immediately impose a security measure, to remain effective until otherwise ordered.

Pursuant to the Swedish Code of Judicial Procedure, the following interim measures are available:

- provisional attachment of so much of the debtor's property that the claim may be assumed to be secured on execution;

- provisional attachment of specific property if the applicant shows probable cause to believe that he or she has a superior right to certain property; and
- an order for other measures suitable to secure the applicant's right, for example a prohibition, subject to a default fine, of carrying on a certain activity or performing a certain act.

Interim measures may not be granted unless the applicant deposits with the court security for the loss that the opposing party may suffer. If the applicant lacks the means to furnish security, however, and if he or she has shown extraordinary reasons for his or her claim, the court may waive the security requirement. The state, municipalities, county councils and local community organisations are not required to deposit security. Tendered security shall be examined by the court if it has not been accepted by the opposing party.

Interim measures are executed by the Swedish Enforcement Authority.

38 What is the procedure for interim measures against immovable property within your jurisdiction?

An application for interim measures is made to a competent court of general jurisdiction. Prior court authorisation is not necessary. As a starting point, the proceedings are not ex parte. However, the court may, if a delay places the applicant's claim at risk, immediately impose a security measure, to remain effective until otherwise ordered. Interim measures may not be granted unless the applicant deposits with the court security for the loss that the opposing party may suffer. If the applicant lacks means to furnish security, however, and if he or she has shown extraordinary reasons for his or her claim, the court may waive the security requirement. The state, municipalities, county councils and local community organisations are not required to deposit security. Tendered security shall be examined by the court if it has not been accepted by the opposing party.

39 What is the procedure for interim measures against movable property within your jurisdiction?

An application for interim measures are made to a competent court of general jurisdiction. Prior court authorisation is not necessary. As a starting point, the proceedings are not ex parte. However, the court may, if a delay places the applicant's claim at risk, immediately impose a security measure, to remain effective until otherwise ordered. Interim measures may not be granted unless the applicant deposits with the court security for the loss that the opposing party may suffer. If the applicant lacks means to furnish security, however, and if he or she has shown extraordinary reasons for his claim, the court may waive the security requirement. The state, municipalities, county councils and local community organisations are not required to deposit security. Tendered security shall be examined by the court if it has not been accepted by the opposing party.

40 What is the procedure for interim measures against intangible property within your jurisdiction?

An application for interim measures are made to a competent court of general jurisdiction. Prior court authorisation is not necessary. As a starting point, the proceedings are not ex parte. However, the court may, if a delay places the applicant's claim at risk, immediately impose a security measure, to remain effective until otherwise ordered. Interim measures may not be granted unless the applicant deposits with the court security for the loss that the opposing party may suffer. If the applicant lacks means to furnish security, however, and if he or she has shown extraordinary reasons for his or her claim, the court may waive the security requirement. The state, municipalities, county councils and local community organisations are not required to deposit security. Tendered security shall be examined by the court if it has not been accepted by the opposing party.

41 What is the procedure to attach assets in your jurisdiction?

Attachment of assets is executed by the Swedish Enforcement Authority. Attachment may be executed if there is a writ of execution (for example a judgment or an award) and if the amount that may be expected to be received, after deduction of costs that arise after attachment, yields a surplus that justifies the measure. Further, only assets that belong to the debtor may be attached.

There is no requirement to obtain prior court authorisation before attaching assets. Before attachment takes place, notification of the case shall be sent to the debtor by post or given in an appropriate manner. The notification shall take place within such time as the debtor can be expected to have sufficient time to protect his or her rights. However, the debtor need not be notified if there is a risk that the debtor will conceal or destroy property, if the matter is otherwise urgent, or the debtor does not have a known domicile or it has not been possible to establish where the debtor is staying. Attachment may take place notwithstanding the absence of the debtor, if it is not necessary to afford it an opportunity to comment on the administration. When attachment has been decided, the debtor may not to the detriment of the applicant control the property by a transfer or in any other way, unless the Swedish Enforcement Authority after hearing the applicant allows this for special reasons.

42 What is the procedure for enforcement measures against immovable property within your jurisdiction?

Attachment is executed by the Swedish Enforcement Authority. Attachment may be executed if there is a writ of execution (for example, a judgment or an award) and if the amount that may be expected to be received, after deduction of costs that arise after attachment, yields a surplus that justifies the measure.

Immovable property is often sold by public auction. However, it may be sold privately, if such sale is considered more suitable for the purpose.

43 What is the procedure for enforcement measures against movable property within your jurisdiction?

Attachment is executed by the Swedish Enforcement Authority. Attachment may be executed if there is a writ of execution (for example a judgment or an award) and if the amount that may be expected to be received, after deduction of costs that arise after attachment, yields a surplus that justifies the measure.

Attached movable property is sold by public auction or privately. Attached property may be sold privately, if it is probable that a greater purchase price may thereby be achieved and such sale is also otherwise suitable for the purpose.

44 What is the procedure for enforcement measures against intangible property within your jurisdiction?

Attachment is executed by the Swedish Enforcement Authority. Attachment may be executed if there is a writ of execution (for example a judgment or an award) and if the amount that may be expected to be received, after deduction of costs that arise after attachment, yields a surplus that justifies the measure.

Attached intangible property is, subject to certain exceptions, sold by public auction or privately. Attached property may be sold privately, if it is probable that a greater purchase price may thereby be achieved and such sale is also otherwise suitable for the purpose. A notable exception is that attached claims shall not be sold but collected unless they may not be collected within a reasonable time. If an attached claim is due, the Swedish Enforcement Authority shall, without delay, demand that the debtor pays the debt to the authority. If the attached claim is not due, the Swedish Enforcement Authority may

conclude a contract with the debtor for advance payment of the claim. Such contract may include a reduction of the claim.

45 Are there specific rules applicable to the attachment of assets held by banks? Is it possible to attach in your jurisdiction sums deposited in bank accounts opened in a branch or subsidiary of a foreign bank located in your jurisdiction or abroad? Is it possible to attach in your jurisdiction the bank accounts opened in a branch or subsidiary of a domestic bank located abroad?

Attachment is executed by the Swedish Enforcement Authority. Attachment may be executed if there is a writ of execution (for example, a judgment or an award) and if the amount that may be expected to be received, after deduction of costs that arise after attachment, yields a surplus that justifies the measure.

There are no specific rules applicable to the attachment of assets held by banks; what rules will apply depends on the assets to be attached. As specifically regards sums deposited in a bank account, the asset of the debtor that may be attached is the debtor's claim vis-à-vis the bank to receive a certain sum. The Swedish Enforcement Authority may only attach bank accounts (or rather the debtor's claim vis-à-vis the bank) if the bank has its seat in Sweden.

Recognition and enforcement against foreign states

46 Are there any rules in your jurisdiction that specifically govern recognition and enforcement of arbitral awards against foreign states?

Sweden has ratified the Convention on Jurisdictional Immunities of States and Their Property as of 2 December 2004, which has also been incorporated into Swedish legislation (the Act on Immunity for States and Their Property (Sw. lag (2009:1514) om immunitet för stater och deras egendom). Further, Sweden is a party to the Vienna Convention on Diplomatic Relations of 18 April 1961 and the Vienna Convention on Consular Relations of 24 April 1963, which have been incorporated as Swedish law (the Act on Immunity and Privileges in certain cases (Sw. lag (1976:661) om immunitet och privilegier i vissa fall).

47 What is the procedure for service of extrajudicial and judicial documents to a foreign state? Is it necessary to serve extrajudicial and judicial documents with a translation in the language of the foreign state?

Service to a foreign state may be made, provided it is permitted by the state in which service is to be made. The law of the foreign state shall apply for the service of documents, provided this would not contravene general principles of Swedish law. The law of the foreign state regulates whether or not translations will be required.

Sweden is a party to several international agreements regulating service of documents, inter alia the 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

48 May a foreign state invoke sovereign immunity (immunity from jurisdiction) to object to the recognition or enforcement of arbitral awards?

A foreign state may invoke immunity from jurisdiction. In recent case law, the Supreme Court has found that as a starting point, immunity may only be invoked in disputes concerning acts constituting exercise of state authority (*jure imperii*) but not in disputes relating to actions taken by a state that

are of a commercial or private nature (*jure gestionis*) (see NJA 1999 p. 821 and NJA 2009 p. 905). As regards the distinction between these two categories of acts, the Supreme Court has stated that the method employed in the Convention on Jurisdictional Immunities of States and Their Property of 2 December 2004 shall be applied (see NJA 2009 p. 905).

49 May award creditors apply interim measures against assets owned by a sovereign state?

There is no recent case law regarding interim measures against assets owned by a sovereign state. However, in older case law, state immunity has been successfully invoked in cases concerning interim measures (see NJA 1942 p. 65 and NJA 1942 p. 342).

In case law regarding enforcement against a sovereign state, the Supreme Court has found that state immunity does not bar enforcement if it is the question of enforcement in property that is used for something else than governmental non-commercial purposes (NJA 2011 p. 475 and the Supreme Court's decision of 18 November 2021 in case No. Ö 3828-20). Similarly, the Supreme Court has found that immunity from jurisdiction may only be invoked in disputes concerning acts constituting exercise of state authority (*jure imperii*) but not in disputes relating to actions taken by a state that are of a commercial or private nature (*jure gestionis*) (see NJA 1999 p. 821 and NJA 2009 p. 905). Both the cases regarding enforcement and jurisdiction have been resolved by reference to the Convention on Jurisdictional Immunities of States and Their Property of 2 December 2004 (the Convention). Accordingly, it is not yet clear if the question of whether state immunity may be invoked against interim measures may be resolved by reference to the Convention.

50 Are assets belonging to a foreign state immune from enforcement in your jurisdiction? Are there exceptions to immunity?

There are no rules of Swedish law that grants a foreign state immunity from enforcement in Sweden. However, Swedish courts are considered to be obligated to respect the immunity that follows under international customary law. In this regard, it should be noted that Sweden has ratified the Convention on Jurisdictional Immunities of States and Their Property of 2 December 2004. The Convention has also been incorporated into Swedish legislation. However neither the Convention nor the law incorporating the Convention has entered into force yet (the Convention will enter into force the thirtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations). Regardless, the Supreme Court has found that certain articles of the Convention are to be taken into account when assessing whether state immunity is at hand. Thus, the court has stated that enforcement in property belonging to a state may occur if it is the question of property that is used for something else than governmental non-commercial purposes (cf. article 19(c) of the Convention). As regards this expression, the Supreme Court has stated that it should be interpreted to include property that is used for a state's official functions. However, the expression should not be interpreted to mean that immunity against enforcement is at hand solely because the property is owned by a state and used for a non-commercial purpose. A bar against enforcement due to state immunity should, however, be at hand if the purpose of owning the property is of a qualified nature, such as when the property is used by the state to exercise its state authority and similar tasks of an official character or when it is property of the kind referred to in article 21 of the Convention. (See NJA 2011 p. 475 and the Supreme Court's decision of 18 November 2021 in case No. Ö 3828-20.)

51 Is it possible for a foreign state to waive immunity from enforcement in your jurisdiction? What are the requirements of waiver?

There is as of yet no rules in force regarding if and under what circumstances a foreign state may waive immunity from enforcement in Sweden. However, Sweden has ratified the Convention on Jurisdictional Immunities of States and Their Property of 2 December 2004. The Convention has also been incorporated into Swedish legislation. However neither the Convention nor the law incorporating the Convention has entered into force yet (the Convention will enter into force the thirtieth day following the date of deposit of the 30th instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations).

The Convention contains rules regarding when a state may be deemed to have waived immunity from enforcement (see article 19). Naturally, these rules will be applied should the Convention enter into force. However, the Supreme Court has resolved questions of immunity from jurisdiction and immunity from enforcement by reference to the Convention regardless of it not having entered into force (see NJA 2009 p. 905, NJA 2011 p. 475 and the Supreme Court's decision of 18 November 2021 in case No. Ö 3828-20). In line with these cases, it may be that the Supreme Court would resolve the issue of whether immunity from enforcement may be waived and under what circumstances by reference to the Convention.

52 Is it possible for a creditor of an award rendered against a foreign state to attach the assets held by an alter ego of the foreign state within your jurisdiction?

This issue has not been addressed in Swedish case law. Accordingly, it is not clear whether an award rendered against a foreign state to attach the assets held by an alter ego of the foreign state is possible.



Björn Tude

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Head of department with 37 years' experience, he offers a broad base of dispute resolution expertise in matters involving share transfer agreements, joint-venture agreements, patent licence agreements, television channel distribution rights, manufacturing agreements and purchase agreements, impermissible dividends and recovery under the Swedish Bankruptcy Act, contractual and non-contractual damages.

He is a highly active counsel in both domestic and international disputes and regularly leads some of the market's most principal disputes. He also frequently acts as an arbitrator.



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Oscar Nyrén has 10 years' experience practising in the areas of commercial litigation, domestic and international arbitration as well as equity capital markets and securities law. He advises clients from a wide range of sectors, including energy, banking and real estate. His dispute resolution practice includes representing clients before arbitral tribunals, courts of general jurisdiction, disciplinary committees, for example, stock exchange committees, and regulatory authorities.



Daniel Waerme

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Daniel Waerme has more than 10 years' of experience. He specialises in dispute resolution and acts as counsel in commercial litigations as well as domestic and international arbitrations. He has acted as counsel for Swedish, foreign and multinational corporations in disputes within a wide range of areas and industry sectors, including infrastructure and construction, joint ventures, cooperation and shareholders' agreements, supply of industrial works and mechanical equipment, telecom, agency and distribution agreements, public transportation, licensing and trade secrets, insurance, professional liability, M&A, financing and financial services. His experience also covers proceedings before disciplinary committees (for example, before the Disciplinary Committee of Nasdaq OMX Stockholm) and other forms of alternative dispute resolution, as well as proceedings before administrative authorities and administrative courts regarding public law matters, for example, concerning sanctions and investigations within the financial sector.



Martin Bengtsson

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Martin Bengtsson has seven years' experience. He represents clients in national as well as international arbitrations, litigation and disputes before administrative courts. He has advised Swedish, foreign and multinational corporations including state owned entities within a broad spectrum of business sectors including energy,

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Gernandt & Danielsson Advokatbyrå

We have extensive experience of successfully assisting both Swedish and international clients. With passion for our clients, we use law as a tool to find new ways forward. Our first-class advice is based on three important parts.

Broad legal advice

Our lawyers have a broad legal education. Through the broad funding, they have an understanding of the entire client's business and are also used to collaborating across groups. Regardless of the case our clients have, we can therefore assist with seamless advice.

High business acumen

We see every case from a commercial perspective and use law as a tool to achieve new goals. In a dispute, we ensure that our clients feel safe throughout the process and in transactions we put the law in its proper context. Our understanding of the business beyond law is the reason why we are often hired in project management roles in large cases. As part of our business acumen, we also believe that it is important to dare to offer the client concrete advice in every situation, taking into account the whole picture and not just the legal issues.

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The business law craft is based on extensive experience. To ensure a fast, safe and high-quality execution of each assignment, our partners and senior lawyers are involved throughout the case. Thanks to the broad experience of our lawyers, our clients feel secure with our advice.

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