CHALLENGING AND ENFORCING ARBITRATION AWARDS GUIDE

THIRD EDITION

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Publisher's Note

Global Arbitration Review is delighted to publish this new edition of the *Challenging and Enforcing Arbitration Awards Guide*.

For those new to Global Arbitration Review, we are the online home for international arbitration specialists, telling them everything they need to know about all the developments that matter. We provide daily news and analysis, alongside more in-depth books and reviews. We also organise conferences and build workflow tools that help you to research arbitrators and enable you to read original arbitration awards. And we have an online 'academy' for those who are newer to international arbitration. Visit us at www.globalarbitrationreview.com to learn more.

As the unofficial 'official journal' of international arbitration, sometimes we are the first to spot gaps in the literature. This guide is a fine example. As J William Rowley KC observes in his excellent preface, it became obvious recently that the time spent on post-award matters had increased vastly compared with, say, 10 years ago, and a reference work focusing on this phase was overdue.

The *Challenging and Enforcing Arbitration Awards Guide* fills that gap. It is a practical know-how text covering both sides of the coin – challenging and enforcing – first at thematic level, and then country by country. We are delighted to have worked with so many leading firms and individuals to produce it.

If you find it useful, you may also like the other books in the GAR Guides series. They cover construction, energy, evidence, intellectual property, M&A, mining disputes and telecommunications in the same unique, practical way. We also have books on advocacy in international arbitration, the assessment of damages, and investment treaty protection and enforcement.

My thanks to the editors for their vision and energy in pursuing this project and to our authors and my colleagues in production for achieving such a polished work.

David Samuels
London
April 2023

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Preface

During the past two decades, the explosive and continuous growth in cross-border trade and investments that began after World War II has jet-propelled the growth of international arbitration. Today, arbitration (whether *ad hoc* or institutional) is the universal first choice over transnational litigation for the resolution of cross-border business disputes.

Why parties choose arbitration for international disputes

During the same period, forests have been destroyed to print the thousands of papers, pamphlets, scholarly treatises and texts that have analysed every aspect of arbitration as a dispute resolution tool. The eight or 10 reasons usually given for why arbitration is the best way to resolve cross-border disputes have remained pretty constant, but their comparative rankings have changed somewhat. At present, two reasons probably outweigh all others.

The first must be the widespread disinclination of those doing business internationally to entrust the resolution of prospective disputes to the national court systems of their foreign counterparties. This unwillingness to trust foreign courts (whether based on knowledge or simply uncertainty as to whether the counterparty's court system is worthy – in other words, efficient, experienced and impartial) leaves international arbitration as the only realistic alternative, assuming the parties have equal bargaining power.

The second is that, unlike court judgments, arbitral awards benefit from a series of international treaties that provide robust and effective means of enforcement. Unquestionably, the most important of these is the 1958 New York Convention, which enables the straightforward enforcement of arbitral awards in 169 countries (at the time of writing). When enforcement against a sovereign state is at issue, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1966 requires that ICSID awards are to be treated as final judgments of the courts of the relevant contracting state, of which there are currently 158.

Awards used to be honoured

International corporate counsel who responded to the 2008 Queen Mary/PricewaterhouseCoopers Survey on Corporate Attitudes and Practices in Relation to Investment Arbitration (the 2008 Queen Mary Survey) reported positive outcomes on the use of international arbitration to resolve disputes. A very high percentage (84 per cent) indicated that, in more than 76 per cent of arbitration proceedings, the non-prevailing party voluntarily complied with the arbitral award. Where enforcement was required, 57 per cent said that it took less than a year for awards to be recognised and enforced, 44 per cent received the full value of the award and 84 per cent received more than three-quarters of the award. Of those who experienced problems in enforcement,

most described them as complications rather than insurmountable difficulties. The survey results amounted to a stunning endorsement of international arbitration for the resolution of cross-border disputes.

Is the situation changing?

As an arbitrator, my job is done with the delivery of a timely and enforceable award. When the award is issued, my attention invariably turns to other cases, rather than to whether the award produces results. The question of enforcing the award (or challenging it) is for others. This has meant that, until relatively recently, I have not given much thought to whether the recipient of an award would be as sanguine today about its enforceability and payment as those who responded to the 2008 Queen Mary Survey.

My interest in the question of whether international business disputes are still being resolved effectively by the delivery of an award perked up a few years ago. This was a result of the frequency of media reports – pretty well daily – of awards being challenged (either on appeal or by applications to vacate) and of prevailing parties being required to bring enforcement proceedings (often in multiple jurisdictions).

Increasing press reports of awards under attack

In the year before the first edition of this guide, Global Arbitration Review's daily news reports contained hundreds of headlines that suggested that a repeat of the 2008 Queen Mary Survey today could well lead to a significantly different view as to the state of voluntary compliance with awards or the need to seek enforcement. Indeed, in the first three months of 2023, there has not been a day when the news reports have not headlined the attack on, survival of, or a successful or failed attempt to enforce an arbitral award.

A sprinkling of recent headlines on the subject are illustrative:

- Nigeria seeks to overturn US$11 billion award;
- Russia fails to quash jurisdictional awards in Crimea cases;
- Swiss court upholds multibillion-dollar Yukos award;
- Swedish courts annul intra-EU treaty awards;
- Indian court annuls billion-dollar award for 'fraud';
- Malaysia challenges mega-award in French court;
- GE pays out after losing corruption challenge in legacy case;
- Ukrainian bank's billion-dollar award against Russia reinstated;
- Burford wins enforcement against Kyrgyzstan;
- India loses Dutch appeal over treaty award;
- ECJ dismisses London award in oil spill saga;
- 'Fifteen years is long enough': US court enforces Conoco award;
- Pakistan fails to stay Tethyan award in US; and
- India fails to upend latest award in protracted oil and gas dispute.

Regrettably, no source of reliable data is available as yet to test the question of whether challenges to awards are on the increase or the ease of enforcement has changed materially since 2008. However, the importance of the subject (without effective enforcement, there really is no effective resolution), and my anecdote-based perception of increasing concerns, led me to raise the possibility of doing a book on the subject with David Samuels (Global

Arbitration Review's publisher). Ultimately, we became convinced that a practical, 'know-how' text that covered both sides of the coin – challenges and enforcement – would be a useful addition to the bookshelves of those who more frequently than in the past may have to deal with challenges to, and enforcement of, international arbitration awards. Being well equipped (and up to date) on how to deal with a client's post-award options is essential for counsel in today's increasingly disputatious environment.

David and I were obviously delighted when Gordon Kaiser and the late Emmanuel Gaillard agreed to become partners in the project. It was a dreadful shock to learn of Emmanuel's sudden death in April 2021. Emmanuel was an arbitration visionary. He was one of the first to recognise the revolutionary changes that were taking place in the world of international arbitration in the 1990s and the early years of the new century. From a tiny group defined principally by academic antiquity, we had become a thriving, multicultural global community, drawn from the youngest associate to the foremost practitioner. Emmanuel will be remembered for the enormous contribution he made to that remarkable evolution.

Editorial approach

As editors, we have not approached our work with a particular view on whether parties are currently making inappropriate use of mechanisms to challenge or resist the enforcement of awards. Any consideration of that question should be made against an understanding that not every tribunal delivers a flawless award. As Pierre Lalive said some 40 years ago:

> *an arbitral award is not always worthy of being respected and enforced; in consequence, appeals against awards [where permitted] or the refusal of enforcement can, in certain cases, be justified both in the general interest and in that of a better quality of arbitration.*

Nevertheless, the 2008 Queen Mary Survey, and the statistics kept by a number of the leading arbitral institutions, suggest that the great majority of awards come to conclusions that should normally be upheld and enforced.

Structure of the guide

The guide is structured to include, in Part I, coverage of general issues that will always need to be considered by parties, wherever situate, when faced with the need to enforce or to challenge an award. In this third edition, the 15 chapters in Part I deal with subjects that include initial strategic considerations in relation to prospective proceedings; how best to achieve an enforceable award; challenges generally and a variety of specific types of challenges; enforcement generally and enforcement against sovereigns; enforcement of interim measures; how to prevent asset stripping; grounds to refuse enforcement; and admissibility of new evidence.

Part II of the guide is designed to provide answers to more specific questions that practitioners will need to consider when reaching decisions concerning the use (or avoidance) of a particular national jurisdiction – whether this concerns the choice of that jurisdiction as a seat of an arbitration, as a physical venue for the hearing, as a place for enforcement, or as a place in which to challenge an award. This edition includes reports on 29 national

jurisdictions. The author, or authors, of each chapter have been asked to address the same 58 questions. All relate to essential, practical information about the local approach and requirements relating to challenging or seeking to enforce awards. Obviously, the answers to a common set of questions will provide readers with a straightforward way in which to assess the comparative advantages and disadvantages of competing jurisdictions.

With this approach, we have tried to produce a coherent and comprehensive coverage of many of the most obvious, recurring or new issues that are now faced by parties who find that they will need to take steps to enforce these awards or, conversely, find themselves with an award that ought not to have been made and should not be enforced.

Quality control and future editions

Having taken on the task, my aim as general editor has been to achieve a substantive quality consistent with the *Challenging and Enforcing Arbitration Awards Guide* being seen as an essential desktop reference work in our field. To ensure content of high quality, I agreed to go forward only if we could attract as contributors those colleagues who were some of the internationally recognised leaders in the field. My fellow editors and I have felt blessed to have been able to enlist the support of such an extraordinarily capable list of contributors.

In future editions, we hope to fill in important omissions. In Part I, these could include chapters on successful cross-border asset tracing, the new role of funders at the enforcement stage, and the special skill sets required by successful enforcement counsel. In Part II, we plan to expand the geographical reach even further.

Without the tireless efforts of the Global Arbitration Review team at Law Business Research, this work never would have been completed within the very tight schedule we allowed ourselves; David Samuels and I are greatly indebted to them. Finally, I am enormously grateful to Doris Hutton Smith (my long-suffering PA), who has managed endless correspondence with our contributors with skill, grace and patience.

I hope that all my friends and colleagues who have helped with this project have saved us from error – but it is I alone who should be charged with the responsibility for such errors as may appear.

Although it should go without saying, this edition of the publication will obviously benefit from the thoughts and suggestions of our readers on how we might be able to improve the next edition, for which we will be extremely grateful.

J William Rowley KC
London
April 2023

CHAPTER 37

Sweden

Björn Tude, Daniel Waerme, Oscar Nyrén and Martin Bengtsson[1]

Applicable requirements as to the form of arbitral awards

Applicable legislation as to the form of awards

1 Must an award take any particular form?

An award must be made in writing and must state the date of the award and the seat of the arbitration. It must be signed by the arbitrators, or the majority of the arbitrators provided the reason why not all the arbitrators have signed the award is stated in the award.

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

Applicable legislation governing recourse against an award

2 Are there provisions governing modification, clarification or correction of an award? Are there provisions governing retractation 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.

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 that case, a correction or clarification shall be made within 30 days of the receipt of the request. If the arbitrators decide to supplement an award, it must take place within 60 days of the request.

1 Björn Tude and Daniel Waerme are partners and Oscar Nyrén and Martin Bengtsson are senior associates at Gernandt & Danielsson Advokatbyrå.

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 aside of an award has been initiated, the court seized may stay the proceedings for a certain period 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 (1) the court holds that the claim in the case shall be accepted and either of the parties requests a stay or (2) both parties request a stay; in other words, the case may be referred back to the arbitrators. There are no formal restrictions regarding what measures the arbitrators may take following a remittal.

Appeals from an award

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 (i.e., reassessed on the merits); however, an award may, under certain circumstances, which are enumerated in the 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

Time limit

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 of 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 challenging the award. An application for a declaration that an award is invalid is not time limited.

Award

5 What kind of arbitral decision can be set aside in your jurisdiction? What are the criteria to distinguish between arbitral awards and procedural orders in your jurisdiction? Can courts set aside partial or interim awards?

All awards can be set aside. The issues that are referred to the arbitrators are decided in an award. The termination of the arbitral proceedings by the arbitrators without making a decision on the issues is also made through an award, although it may be designated as a decision. Other determinations, which are not decided in an award, are designated as decisions. This includes procedural orders.

In addition, issues that are of significance to the resolution of a dispute may be decided through a separate award.

Competent court

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 are 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. If the seat of arbitration is located in Sweden, the Arbitration Act applies. There are no specific sets of rules applicable to international awards.

Form of application and required documentation

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; therefore, the application must state a distinct request for relief (e.g., 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 on 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.

There is no legal requirement that the original award or a duly certified copy thereof be submitted. In practice, however, a copy of the award will have to be submitted as evidence in the proceedings.

Translation of required documentation

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 must be made in Swedish and that the hearing will be carried out in Swedish; therefore, translations may be required. The court may permit the evidence, whether documentary or oral, to be submitted in English.

Other practical requirements

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 must be paid to the court.

Furthermore, according to the Constitution, all documents that are submitted to a government authority (e.g., a court) will become public and will be disclosed on request unless there is a statutory ground for secrecy (e.g., trade secrets).

There are no limitations on the length of the submissions or the documentation that may be filed by the parties. Regarding language, the parties' submissions must be in Swedish; however, the court may permit the evidence, whether documentary or oral, to be submitted in English.

Form of the setting-aside proceedings

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 time-table for the setting-aside proceedings. In more complex cases, the court may also hold a preparatory hearing to clarify the case and the parties' positions. The parties may also 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.

Suspensive effect

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, what are the different steps of the proceedings, and what are the criteria to be met?

An application for the setting aside or invalidation of an award does not have suspensive effect; however, the court seized with the application (i.e., the competent court of appeal or the Supreme Court following appeal) may, upon a party's request, suspend enforcement pending the setting-aside proceedings.

A request to suspend enforcement may be made at any stage of the setting-aside proceedings. Enforcement of an award will be suspended if there are reasons to assume that there are grounds to set aside the award. The assessment will also include a balancing of the parties' interests.

Grounds for setting aside an arbitral award

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. There is no time limit for seeking a declaration that an award is invalid.

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

- it includes determination of an issue that, in accordance with Swedish law, may not be decided by arbitrators;
- the award, or the manner in which it arose, is clearly incompatible with the basic principles of the Swedish legal system; or
- the award does not fulfil the requirements with regard to written form and signature in accordance with the 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 was 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 Arbitration Act;
- an arbitrator has been appointed contrary to the parties' agreement or the 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
- another irregularity occurred during the proceedings through no fault of the party seeking to set aside the award, and that irregularity has possibly affected the outcome.

Scope of power of the setting-aside judge

13 When assessing the grounds for setting aside, may the judge conduct a full review and reconsider factual or legal findings from the arbitral tribunal in the award? Is the judge bound by the tribunal's findings? If not, what degree of deference will the judge give to the tribunal's findings?

The grounds for setting aside an award concern procedural issues, and an award should not be set aside owing to incorrect assessments of the merits; therefore, a setting-aside judge should generally not need to reconsider the factual or legal findings unless those findings somehow constitute the ground for the challenge.

The tribunal is considered to have the best preconditions for assessing the dispute and the procedural issues; therefore, the starting point for the setting-aside judge is assessing whether the tribunal's interpretation and evaluation of evidence is correct. This main rule applies, for example, to the tribunal's assessment of its competence.

For strictly legal findings (e.g., how public policy should be construed in a particular aspect), the court will make a more independent assessment.

Waiver of grounds for setting aside

14 Is it possible for an applicant in setting-aside proceedings to be considered to have waived its right to invoke a particular ground for setting aside? Under what conditions?

An applicant may lose its right to invoke a particular ground for setting aside explicitly or implicitly through its acts or omissions. For example, an applicant may not rely on a procedural decision it considers incorrect as a ground for setting aside an award if the applicant has failed to object to the decision. The same applies if the applicant participates in the arbitration without objection to the tribunal's jurisdiction or performs in accordance with an award without objection.

Decision on the setting-aside application

15 What is the effect of the decision on the setting-aside application in your jurisdiction? What challenges or appeals 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 important 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.

Effects of decisions rendered in other jurisdictions

16 Will courts take into consideration decisions rendered in relation to the same arbitral award in other jurisdictions or give effect to them?

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

Applicable procedural law for recognition and enforcement of arbitral awards

Applicable legislation for recognition and enforcement

17 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 Enforcement Code, and enforcement of international arbitral awards is governed by the Arbitration Act. Sweden is a party to several treaties facilitating recognition and enforcement of arbitral awards, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and the Convention on the Settlement of Disputes between States and Nationals of Other States.

The New York Convention

18 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 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

Time limit

19 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 time limit follows from the award itself.

Competent court

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

Jurisdictional and admissibility issues

21 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.

Form of the recognition proceedings

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

There are no separate proceedings for recognition of arbitral awards; however, a request for recognition is typically implicit in a request for enforcement, although an applicant may request and obtain only recognition if the granting of the request fulfils a practical purpose.

An isolated assessment of recognition of an award will usually occur within the scope of proceedings where a question of recognition arises (e.g., if a party invokes an arbitral award in support of a matter being *res judicata*). An application for the enforcement or recognition 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.

Form of application and required documentation

23 What documentation is required to obtain recognition?

An application for enforcement or recognition of an international arbitral award must include the original award or one certified copy thereof.

Translation of required documentation

24 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 must be made in Swedish. Unless otherwise determined by the court, the entire award must be translated into Swedish (certified translation).

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

Other practical requirements

25 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 Authority will examine whether 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 arbitrators. If there are reasons to believe that an award that has been submitted for enforcement is invalid, the Authority will order the applicant to bring an action against the defendant regarding the validity of the award within one month.

For international awards, no fees need 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 must be made in Swedish.

There is a charge of 600 krona for enforcement. Further, depending on the 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 by the enforcement. For example, the cost for enforcement regarding tangible property is currently 4 per cent of the sales price.

There are no limitations on the length of the submissions or the documentation that may be filed by the parties. Regarding language, the parties' submissions must be in Swedish; however, the court may permit the evidence, whether documentary or oral, to be submitted in English. Specifically regarding the award, unless otherwise determined by the court, the entire award must be translated into Swedish, and the translation must be certified.

Recognition of interim or partial awards

26 Do courts recognise and enforce partial or interim awards?

Both partial and separate awards can be recognised and enforced, provided that they are final and binding in respect of the issues that they concern. Specifically regarding enforcement, the operative part of the award must grant a request for specific relief for the award to be enforced.

As a general rule, interim awards are not enforceable.

Grounds for refusing recognition of an arbitral award

27 What are the grounds on which an arbitral award may be refused recognition? Are the grounds applied by the courts different from the ones 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 present, the Swedish court considers international case law relating to the application of the Convention.

Scope of power of the recognition judge

28 When assessing the grounds for refusing recognition, may the recognition judge conduct a full review and reconsider factual or legal findings from the arbitral tribunal in the award? Is the judge bound by the tribunal's findings? If not, what degree of deference will the judge give to the tribunal's findings?

According to a judgment by the Supreme Court, in setting-aside proceedings, there is a presumption that the tribunal's assessment of evidence is correct. The tribunal is considered to have the best preconditions for assessing the dispute and the procedural issues.

In accordance with this judgment, it is likely that the recognition judge will presume that the tribunal's interpretation and evaluation of evidence is correct. This main rule would likely apply, for example, to the tribunal's assessment of its competence. For strictly legal findings (e.g., how public policy should be construed in a particular aspect), the court will likely make a more independent assessment.

Waiver of grounds for refusing recognition

29 Is it possible for a party to be considered to have waived its right to invoke a particular ground for refusing recognition of an arbitral award?

Setting aside the fact that several grounds for refusing enforcement are based on the law applicable to the arbitration (i.e., not Swedish law), and that the matter of waivers may be subject to those foreign laws, the Supreme Court has stated that a party, through its actions during the arbitration, may lose its right to invoke a circumstance as a ground for refusing enforcement.

Effect of a decision recognising an arbitral award

30 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. The fact that an award is recognised in Sweden has two important consequences: first, it constitutes *res judicata* and, second, it may be enforced in Sweden.

Decisions refusing to recognise an arbitral award

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

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

Recognition or enforcement proceedings pending annulment proceedings

32 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 will be set aside.

If the formal prerequisites for postponement are present, the court will 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. Further, 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.

Security

33 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?

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

With regard to form, there is no uniform definition of what constitutes security under Swedish law. In practice, Swedish courts will typically accept a bank guarantee or pledged account.

Recognition or enforcement of an award set aside at the seat

34 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 will 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 should 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

Service in your jurisdiction

35 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 together with a translation? When is a document considered to be served to the opposite party?

Service of documents is regulated by the Service of Process Act. 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, by post, by a judicial officer or through publication in the Official Gazette. 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 as registered with the Swedish Companies Registration Office.

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 if it is unclear whether he or she understands the other language.

In general, a document is considered to be served on receipt, but several exceptions exist depending on how service is made. A signed confirmation of receipt is usually sufficient evidence of receipt, but it can be rebutted (i.e., shown that service was completed at an earlier or later date).

Service out of your jurisdiction

36 What is the procedure for service of extrajudicial and judicial documents to a defendant outside your jurisdiction? Is it necessary to serve these documents together 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 (the Hague Service Convention)? Is your jurisdiction a party to other treaties on the same subject matter? When is a document considered to be served to the opposite party?

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

Sweden is a party to the Hague Service Convention.

Since Sweden is an EU Member State, it is bound by several EU regulations regarding service of documents, such as 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, among other things, service of process in the Nordic countries.

When a document is considered to be served to the opposite party depends on whether this is assessed under Swedish law, an international instrument to which Sweden is a signatory or foreign law. If this point is assessed under Swedish law, a document is, in general, considered to be served on receipt.

Identification of assets

Asset databases

37 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.

Information available through judicial proceedings

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

According to the Constitution, all documents that are submitted to a government authority (e.g., a court) will become public and will be disclosed on request unless there is a statutory ground for secrecy (e.g., trade secrets). This freedom of information may be used to identify assets.

When enforcing an award, the Swedish Enforcement Authority, to the extent necessary, investigates 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 investigates the debtor's assets. In this regard, the debtor must provide information regarding its assets in Sweden and abroad.

Enforcement proceedings

Attachable property

39 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 Enforcement Code. For example, if the debtor is a person, assets that are necessary for the debtor's subsistence are excluded from attachment.

Availability of interim measures

40 Are interim measures against assets available in your jurisdiction? Is it possible to apply for interim measures under an arbitral award before requesting recognition? Under what conditions?

If a request for recognition and enforcement has been made, an application for interim measures may be made within the scope of the proceedings prior to the court's decision on recognition and enforcement being rendered.

The Supreme Court has also held (in a setting-aside case) that interim measures may be granted before the arbitral award has been recognised (NJA 1979, p. 698). The legislator has, with reference to that judgment, stated in more general terms that interim measures should be available based on an international arbitral award (Government Bill 1998/99:35, p. 185 et seq.).

This implies that interim measures should be available also before a request for enforcement and recognition has been filed. If interim measures are requested before proceedings for recognition and enforcement are commenced, the application must be made to a competent court of general jurisdiction.

Procedure for interim measures

41 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, which remains effective until otherwise ordered.

Pursuant to the 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, such as a prohibition on carrying on a certain activity or performing a certain act, subject to a fine.

Interim measures may not be granted unless the applicant deposits security with the court for the loss that the opposing party may suffer. If the applicant lacks the means to provide security, 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 is examined by the court if it has not been accepted by the opposing party.

Interim measures are enforced by the Swedish Enforcement Authority.

Interim measures against immovable property

42 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, which remains effective until otherwise ordered.

Interim measures may not be granted unless the applicant deposits security with the court for the loss that the opposing party may suffer. If the applicant lacks the means to provide security, 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 is examined by the court if it has not been accepted by the opposing party.

Interim measures against movable property

43 What is the procedure for interim measures against movable 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, which remains effective until otherwise ordered.

Interim measures may not be granted unless the applicant deposits security with the court for the loss that the opposing party may suffer. If the applicant lacks the means to provide security, 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 is examined by the court if it has not been accepted by the opposing party.

Interim measures against intangible property

44 What is the procedure for interim measures against intangible 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, which remains effective until otherwise ordered.

Interim measures may not be granted unless the applicant deposits security with the court for the loss that the opposing party may suffer. If the applicant lacks the means to provide security, 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 is examined by the court if it has not been accepted by the opposing party.

Attachment proceedings

45 What is the procedure to attach assets in your jurisdiction? Who are the stakeholders in the process?

Attachment of assets is executed by the Swedish Enforcement Authority. Attachment may be executed if there is a writ of execution (e.g., 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. 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.

Attachment against immovable property

46 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 (e.g., 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 a private sale is considered more suitable for the purpose.

Attachment against movable property

47 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 (e.g., 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 likely that a greater purchase price may be achieved thereby, and a private sale is also suitable for the purpose.

Attachment against intangible property

48 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 (e.g., 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 likely that a greater purchase price may be achieved thereby, and a private sale is also suitable for the purpose. A notable exception is that attached claims cannot be sold but can be collected unless they may not be collected within a reasonable time.

If an attached claim is due, the Swedish Enforcement Authority will demand, without delay, that the debtor pays the debt to the authority. If the attached claim is not due, the Authority may conclude a contract with the debtor for advance payment of the claim. The contract may include a reduction of the claim.

Attachments against sums deposited in bank accounts or other assets held by banks

49 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?

There are no specific rules applicable to the attachment of assets held by banks; the rules that will apply depend on the assets to be attached.

Specifically regarding sums deposited in a bank account, the asset of the debtor that may be attached is the debtor's claim with regard to the bank to receive a certain sum. The Swedish Enforcement Authority may only attach bank accounts (or the debtor's claim in relation to the bank) if the bank has its seat in Sweden.

Piercing the corporate veil and alter ego

50 May a creditor of an award rendered against a private debtor attach assets held by another person on the grounds of piercing the corporate veil or alter ego? What are the criteria, and how may a party demonstrate that they are met?

As a general rule, an award is only binding to the parties and can only be enforced against the party against which an order has been rendered. Moreover, to be successful with a request for attachment, the creditor must show that he or she has a claim against the debtor. Although some examples exist, Swedish law is very restrictive on piercing the corporate veil.

Recognition and enforcement against foreign states

Applicable law

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

Sweden ratified the Convention on Jurisdictional Immunities of States and Their Property on 2 December 2004. The Convention has also been incorporated into Swedish legislation (the Act on Immunity for States and Their Property).

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).

Service of documents to a foreign state

52 What is the procedure for service of extrajudicial and judicial documents to a foreign state? Should they be served through diplomatic channels? Is it necessary to serve extrajudicial and judicial documents together with a translation in the language of the foreign state? When is a document considered to be served to a foreign state?

Sweden is a party to several international agreements regulating service of documents, two important ones being Regulation (EU) 2020/1784 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and the Hague Service Convention. Service to a foreign state may be made pursuant to those instruments.

Regarding the procedure, Swedish courts and the Swedish Enforcement Agency may make an application directly to the relevant authorities of another EU Member State regarding service of documents if service of documents is necessary. A private party may also, under certain circumstances (e.g., if there are no possibilities for the private party to directly request assistance with service in the foreign state) request the Stockholm County Administrative Board to assist with service of documents. In accordance with the foregoing, service need not necessarily be made through diplomatic channels.

Regarding translations, pursuant to the Hague Service Convention, the receiving authority in the foreign state may require that the document be translated into the official language or one of the languages of the state addressed. Pursuant to Regulation (EU) 2020/1784, the document to be served must be in a language that the addressee understands or an official language of the receiving EU Member State.

Regarding when a document is considered to be served, this is, with certain exceptions, established in accordance with the law of the state addressed.

Immunity from jurisdiction

53 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*) (NJA 1999, p. 821; NJA 2009, p. 905).

Regarding 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 shall be applied (NJA 2009, p. 905).

Availability of interim measures

54 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 (NJA 1942, p. 65; 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 concerns enforcement regarding property that is used for something other than non-commercial government purposes (NJA 2011, p. 475; NJA 2021 p. 850).

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*) (NJA 1999, p. 821; NJA 2009, p. 905). Both cases regarding enforcement and jurisdiction have been resolved by reference to the Convention on Jurisdictional Immunities of States and Their Property. 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.

Immunity from enforcement

55 Are assets belonging to a foreign state immune from enforcement in your jurisdiction? Which classes of assets belonging to states are immune from enforcement as a matter of principle? Are there exceptions to immunity? How can it be proven whether an asset is immune from enforcement? Provide practical examples of assets belonging to states that were successfully attached in your jurisdiction.

There are no rules of Swedish law that grant a foreign state immunity from enforcement in Sweden; however, Swedish courts are considered to be obliged to respect the immunity that follows under customary international law.

In this regard, Sweden has ratified the Convention on Jurisdictional Immunities of States and Their Property. The Convention has also been incorporated into Swedish legislation; however, neither the Convention nor the law incorporating the Convention has entered into force yet.

Nevertheless, 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. It has stated that enforcement in property belonging to a state may occur if it is property that is used for something other than non-commercial government purposes (Convention, Article 19(c)).

Regarding 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 available solely because the property is owned by a state and used for a non-commercial purpose.

A bar against enforcement owing to state immunity should be available, however, 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 (NJA 2011, p. 475; NJA 2021 p. 850).

Waiver of immunity from enforcement

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

There are no rules regarding if and under what circumstances a foreign state may waive immunity from enforcement in Sweden.

Sweden has ratified the Convention on Jurisdictional Immunities of States and Their Property. The Convention has also been incorporated into Swedish legislation. However, neither the Convention nor the law incorporating the Convention have entered into force yet.

The Convention contains rules regarding when a state may be deemed to have waived immunity from enforcement (Article 19). These rules will be applied should the Convention enter into force.

The Supreme Court has resolved questions of immunity from jurisdiction and immunity from enforcement by reference to the Convention, despite it not having entered into force (NJA 2009, p. 905; NJA 2011, p. 475; NJA 2021, p. 850). In line with those cases, the Supreme Court may refer to the Convention to resolve the issue of whether immunity from enforcement may be waived and under what circumstances.

Piercing the corporate veil and alter ego

57 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? What are the criteria, and how may a party demonstrate that they are met? Provide practical examples of assets held by alter egos that were successfully attached by a state's creditor in your jurisdictions.

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.

Sanctions

58 May property belonging to persons subject to national or international sanctions be attached? Under what conditions? Is there a specific procedure?

Depending on the type of sanction and the interests it intends to protect, property belonging to persons subject to national or international sanctions may be excluded from attachment. In relation to some sanctions, frozen assets may be released and subject to attachment or enforcement on application. These matters are usually handled by the National Board of Trade.

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