

GWA ARTICLES

Title: Arbitration in Sweden

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The Arbitration Institute of the Stockholm Chamber of Commerce (“SCC Institute”) was established in 1917. Over the past few decades the SCC Institute has emerged as one of the leading international arbitral institutions in the world. In most cases handled by the SCC Institute both parties are from other countries than Sweden.

In the 1960's and early 1970's parties to an international contract started to provide for arbitration in a third country instead of the country of either party. In this relation Sweden has been a favoured location, and indeed the SCC Institute a favoured arbitral institution.

In many important Chinese contracts today we find arbitration clauses providing that any disputes that may arise shall be referred to arbitration in Sweden under the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the “SCC Rules”).

The number of cases with Chinese parties handled by the SCC Institute has increased. The subject-matters of the disputes include joint ventures, know how agreement, shipping, construction projects as well as sales of goods.

The present SCC Rules came into force in 1999 and are available in Chinese, English, French, German, Russian and Swedish. The SCC Institute also has adopted Rules for expedited arbitrations aimed at minor disputes as well as mediation rules.



The main function of the SCC Rules is to assist the parties in establishing an arbitral tribunal as soon as possible after a request for arbitration has been filed. The SCC Rules are designed to achieve a rapid and inexpensive procedure, without administrative superstructure.

The drafting of arbitration clauses has always been a problem in international arbitration.

The reason is probably that many contract negotiators have limited or no knowledge or experience in international arbitration. Lawyers are seldom consulted at the time of the drafting of the clause and hardly any time is devoted to reflection on the contents of the arbitration clause. This practice has resulted in many poorly drafted arbitration clauses.

The SCC Institute recommends the following model arbitration clause.

“Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.”

Furthermore, it is recommended to insert clauses regarding **i)** the number of arbitrators, should the parties want the case to be decided by any number of arbitrators other than three, **ii)** the place of arbitration, **iii)** the language(s) to be used in the proceedings.



The SCC Institute recommends the following wording:

“The Arbitral tribunal shall be composed of ... arbitrators (a sole arbitrator).”

The place of arbitration shall be ...

The language to be used in the arbitral proceedings shall be ...”

The Institute also recommends a governing law clause which reads as follows.

“This contract shall be governed by the substantive law of ...”

If not agreed upon by the parties the place of arbitration is decided by the SCC Institute and the language is decided by the arbitrators.

As stated above, the SCC Rules provide for an arbitral tribunal of three arbitrators, unless the parties have agreed otherwise. However, if the parties have not specified the number of arbitrators the SCC Institute may decide on a sole arbitrator, if the circumstances so warrant, for instance a fairly low amount in dispute or a less complicated dispute.

If the dispute is to be decided by a three arbitrators each party appoints one arbitrator and the SCC Institute the third arbitrator, unless the parties have agreed otherwise.



All arbitrators are required to be independent. They are not regarded nor should they act as agents of the parties.

The SCC Rules provide for a simplified initial procedure consisting of a brief request for arbitration rather than a detailed statement together with documentary evidence.

If the SCC Institute finds that it has competence the request for arbitration will be served with the respondent, who will be asked to submit a reply within a fixed time.

The respondent has the opportunity to make a counterclaim or plead a set-off. A statement to that effect can be made in the reply.

When the reply has been submitted the SCC Institute will proceed to appoint the third arbitrator, who will be the chairman of the arbitral tribunal. Furthermore, the SCC Institute will fix the advance on costs, equivalent to the estimated amount of the arbitration costs. The arbitrators' fees are fixed by the SCC Institute according to the amount in dispute. A table of costs for determining the amount of the advance is included in the SCC Rules.

As soon as the chairman of the arbitral tribunal has been appointed and the advance been provided, the SCC Institute will refer the case to the arbitral tribunal.

The referral of the case to the arbitral tribunal normally marks the end of the SCC Institute involvement in the proceedings and the beginning of the six-month-period within which the arbitrators must render their award.

There is an option for the parties as well as the arbitrators to decide the procedure they consider best adapted to present the case. The SCC Rules deal with the procedure very summarily and in general terms.



The proceedings include oral parts; one or several preparatory (preliminary) meetings and a main hearing (final hearing).

When the case is sufficiently prepared the parties will be convened to the main hearing. The principal object of that hearing is to enable the parties to present their case in its entirety including the evidence invoked, whether in the form of documents or testimonies, and finally to plead their case, in facts and in law.

Both written and oral evidence may be submitted and there are in principle no restrictions upon the admissibility of evidence in Swedish arbitration proceedings.

It is common practice in international arbitration that failure of a party to appear at a hearing or otherwise to comply with an order of the arbitral tribunal will not stop the proceedings. This principle is laid down also in the SCC Rules.

If the dispute is not settled amicably in the course of the proceedings, which is very common, the arbitrators will render an award not later than six months after the case has been referred to the arbitrators. This period may be extended by the SCC Institute.