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**LA RIFORMA DELLA LEGGE
ARBITRALE SVEDESE**

Estratto



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La riforma della Legge arbitrale svedese

Il 1° marzo 2019 è entrata in vigore in Svezia la riforma dello Swedish Arbitration Act (SAA 2019). Il testo riformato ha sostituito la precedente versione approvata nel 1999 (SAA 1999). La revisione apporta correttivi mirati, volti a colmare lacune del vecchio testo e ad accrescere l'attrattiva della Svezia come foro di elezione di arbitrati internazionali. Ne risulta confermata l'influenza della Legge Modello UNCITRAL e rafforzata la tendenza all'adeguamento della disciplina dell'arbitrato *ad hoc* in Svezia ai regolamenti delle principali istituzioni ed agli standard dell'arbitrato internazionale (velocità, trasparenza, razionalizzazione dei costi, *favor* verso l'esecuzione del lodo). Ai sensi delle disposizioni transitorie, lo SAA 2019 si applica a tutti gli arbitrati iniziati dopo l'entrata in vigore della riforma ed aventi sede in Svezia (al riguardo si segnala come la *Section 46* dello SAA 2019, con una rilevante chiarificazione terminologica, utilizzi la parola "*seated*" in luogo della formula "*take place*" di cui al testo previgente ⁽¹⁾), salvo che le parti non abbiano diversamente previsto in forza della convenzione di arbitrato (ad esempio mediante rinvio alle *arbitration rules* di istituzioni di arbitrato o di altri organismi).

Di seguito vengono sintetizzate le più significative novità dello SAA 2019:

a. Eccezione/questione di giurisdizione

La disciplina della eccezione/questione di giurisdizione è forse la principale novità dello SAA 2019. Lo SAA 1999 [*Section 2*] consentiva alle parti di sottoporre in ogni momento al giudice l'accertamento della giurisdizione del tribunale arbitrale. Lo SAA 2019, dopo aver ribadito che gli arbitri possono decidere sulla loro giurisdizione [*Section 2(1)*], ha notevolmente compresso la possibilità di intervento in materia da parte dell'autorità giudiziaria. Due gli interventi attuati in questa direzione:

- alle parti, pendente il procedimento arbitrale, è precluso il ricorso all'autorità giudiziaria affinché accerti la giurisdizione del tribunale arbitrale [*Section 4 a(1)*]. Una simile iniziativa è oggi consentita solo in un momento

⁽¹⁾ La chiarificazione non è di poco conto, viste e considerate le difficoltà interpretative che spesso le convenzioni di arbitrato pongono ai fini dell'individuazione della sede, con l'uso di espressioni talvolta ambigue quali "*to take place/to be held/ arbitration in X*".

anteriore all'avvio dell'arbitrato. La disposizione non trova applicazione negli arbitrati tra professionista e consumatore, secondo (e nei limiti di) quanto previsto dalla *Section 4 a(2)*;

- se gli arbitri hanno reso un lodo non definitivo, mediante il quale hanno affermato la loro giurisdizione, alle parti è consentito di impugnare autonomamente tale decisione dinanzi alla Corte d'Appello nel termine di trenta giorni dalla sua comunicazione [*Section 2(2)*];

- durante la pendenza del giudizio di impugnazione, il tribunale arbitrale può proseguire il procedimento arbitrale e anche pronunciare il lodo [*Section 2(2)*].

b. Indipendenza degli arbitri [*Section 8*]

È espressamente richiesto che l'arbitro sia imparziale ed indipendente (lo SAA 1999, diversamente, contemplava il solo requisito dell'imparzialità). Così le circostanze che, nella vigenza dello SAA 1999, potevano condurre alla revoca dell'arbitro perché idonee ad ingenerare dubbio sulla sua imparzialità, sono oggi estese *tout court* all'indipendenza.

c. Nomina degli arbitri negli arbitrati multi-parti [*Section 14(3)*]

È previsto che, in ipotesi di arbitrato multi-parti, qualora queste ultime non riescano ad accordarsi sulla nomina di un arbitro, il Tribunale Distrettuale, su richiesta di una parte resistente, nomina gli arbitri per conto di tutte le parti e, nel contempo, revoca gli arbitri già nominati.

d. Sostituzione degli arbitri per cause già note al momento della nomina [*Section 16(1)*]

In caso di dimissioni di un arbitro o se lo stesso è revocato per cause che erano note al momento della sua nomina, il Tribunale Distrettuale, su richiesta di una parte, nomina un nuovo arbitro. Tuttavia, se l'arbitro dimesso o revocato era stato designato da una parte, il tribunale distrettuale nomina nuovo arbitro la persona suggerita da questa parte, salvo che particolari ragioni depongano contro.

e. Riunione e separazione di più arbitrati [*Section 23 a)*]

Lo SAA 1999 non disciplinava la riunione di più arbitrati. Essa è ora espressamente consentita ⁽²⁾, ove ricorrano congiuntamente le seguenti condizioni:

- che tutte le parti vi acconsentano;
- che la riunione rechi beneficio alla conduzione degli arbitrati;
- che, negli arbitrati oggetto di riunione, siano stati nominati gli stessi arbitri.

È, altresì, consentita la separazione dei procedimenti riuniti, se ritenuta del caso.

⁽²⁾ Simili disposizioni erano già presenti nelle recenti rivisitazioni delle regole di arbitrato di alcune delle principali istituzioni, quali, ad esempio, l'art. 10 delle *ICC Arbitration Rules*, l'art. 15 delle *Arbitration Rules* della Camera di Commercio di Stoccolma o l'art. 8 delle *DIS Arbitration Rules*. Si veda anche l'art. 12 del Regolamento Arbitrale della CAM.

f. Determinazione della legge sostanziale applicabile [Section 27 a)]

Lo SAA 1999 nulla disponeva al riguardo. È ora previsto che:

— il tribunale arbitrale applica la legge sostanziale scelta dalle parti, senza che siano intese come implicitamente richiamate le norme di diritto internazionale privato adottate dall'ordinamento prescelto [Section 27 a(1)];

— in mancanza di una tale scelta, il tribunale arbitrale determina la legge sostanziale applicabile [Section 27 a(2)];

— gli arbitri possono decidere la controversia secondo equità solo se espressamente autorizzati dalle parti [Section 27 a(3)].

g. Impugnazione del lodo arbitrale

Lo SAA 2019 contiene alcune rilevanti novità anche in tema di impugnazione del lodo arbitrale dinanzi alla Corte d'Appello e circa l'impugnazione delle decisioni di quest'ultima di fronte alla Corte Suprema, così riassumibili:

— l'impugnazione per eccesso di mandato degli arbitri è oggi ammessa con il preciso limite che il vizio abbia probabilmente influenzato l'esito del procedimento arbitrale [Section 34(1) 3.]. Occorre, dunque, che sia prospettato un nesso di probabilità causale tra il vizio e l'esito a cui è pervenuta la controversia;

— il termine per l'impugnazione del lodo è stato ridotto da tre a due mesi dalla sua ricezione [Section 34(3)];

— le decisioni della Corte d'Appello non sono impugnabili di fronte alla Corte Suprema, a meno che la Corte d'Appello non conceda il nulla osta all'impugnazione, ove ritenga la sua decisione di importanza tale in termini di precedente da dover essere sottoposta alla Corte Suprema [Section 43(2)];

— nei procedimenti dinanzi alla Corte d'Appello di cui alle Sections 2(2), 33, 34 o 36 e dinanzi alla Suprema Corte sono ammesse prove orali in lingua inglese senza necessità di traduzione in lingua svedese [Section 45 a)] ⁽³⁾.

[ALESSIO CAROSI]

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Si pubblica di seguito una traduzione non ufficiale dello SAA 2019 estratta dal sito internet dell'Arbitration Institute della Camera di Commercio di Stoccolma www.sccinstitute.com

The Swedish Arbitration Act (SFS 1999:116)

(updated as per SFS 2018:1954, entry into force 1 March 2019)

Unofficial translation prepared by Joel Dahlquist Cullborg on behalf of the Arbitration Institute of the Stockholm Chamber of Commerce.

⁽³⁾ La nuova Section 45 a) si applica, ai sensi delle disposizioni transitorie dello SAA 2019, anche se l'arbitrato ha avuto inizio prima dell'entrata in vigore del testo di riforma e, quindi, in epoca anteriore al 1° marzo 2019.

The Arbitration Agreement

Section 1

Disputes concerning matters in respect of which the parties may reach a settlement may, by agreement, be referred to one or several arbitrators for resolution. Such an agreement may relate to future disputes pertaining to a legal relationship specified in the agreement. The dispute may concern the existence of a particular fact.

In addition to interpreting agreements, the filling of gaps in contracts can also be referred to arbitrators.

Arbitrators may rule on the civil law effects of competition law as between the parties.

Section 2

The arbitrators may rule on their own jurisdiction to decide the dispute.

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

The provisions of Sections 34 and 36 apply in an action to challenge an arbitration award that includes a decision on jurisdiction.

Section 3

If the validity of an arbitration agreement which constitutes part of another agreement must be determined in conjunction with a determination of the jurisdiction of the arbitrators, the arbitration agreement shall be deemed to constitute a separate agreement.

Section 4

A court may not, over an objection of a party, rule on an issue which, pursuant to an arbitration agreement, shall be decided by arbitrators.

A party must invoke an arbitration agreement on the first occasion the party pleads its case on the merits in court. Invoking an arbitration agreement on a later occasion shall have no effect unless the party had a legal excuse and invoked the arbitration agreement as soon as the excuse ceased to exist. The invocation of an arbitration agreement shall be considered notwithstanding that the party who invoked the agreement has allowed an issue which is

covered by the arbitration agreement to be determined by the Swedish Enforcement Authority in a case concerning expedited collection procedures.

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

Section 4 a

A court may not, over the objections of a party, try the issue of the arbitrators' jurisdiction in a certain arbitration in a way other than as provided for in Section 2, if the request is brought after the commencement of the arbitration.

The first paragraph shall not apply to a dispute between a consumer and a business entity, if the consumer maintains that an arbitration agreement is invoked against him or her contrary to Section 6.

Section 5

A party shall forfeit its right to invoke the arbitration agreement as a bar to court proceedings if the party:

1. has opposed a request for arbitration;
2. fails to appoint an arbitrator in due time; or
3. fails, within due time, to provide its share of the requested security for compensation to the arbitrators.

Section 6

If a dispute between a business entity and a consumer concerns goods, services, or any other products supplied principally for private use, an arbitration agreement may not be invoked where such was entered into prior to the dispute. However, such agreements shall apply with respect to rental or lease relationships where, through the agreement, a regional rent tribunal or a regional tenancies tribunal is appointed as an arbitral tribunal and the provisions of Chapter 8, Section 28 or Chapter 12, Section 66 of the Land Code do not prescribe otherwise.

The first paragraph shall not apply where the dispute concerns an agreement between an insurer and a policy-holder concerning insurance based on a collective agreement or group agreement and handled by representatives of the group. Nor shall the first paragraph apply where Sweden's international obligations provide to the contrary.

The Arbitrators

Section 7

Any person who possesses full legal capacity in regard to his or her actions and property may act as an arbitrator.

Section 8

An arbitrator shall be impartial and independent.

If a party so requests, an arbitrator shall be released from appointment if there exists any circumstance that may diminish confidence in the arbitrator's impartiality or independence. Such a circumstance shall always be deemed to exist:

1. if the arbitrator or a person closely associated with the arbitrator is a party, or otherwise may expect noteworthy benefit or detriment as a result of the outcome of the dispute;
2. if the arbitrator or a person closely associated with the arbitrator is the director of a company or any other association which is a party, or otherwise represents a party or any other person who may expect noteworthy benefit or detriment as a result of the outcome of the dispute;
3. if the arbitrator, in the capacity of expert or otherwise, has taken a position in the dispute, or has assisted a party in the preparation or conduct of its case in the dispute; or
4. if the arbitrator has received or demanded compensation in violation of Section 39, second paragraph.

Section 9

A person who is asked to accept an appointment as arbitrator shall immediately disclose all circumstances which, pursuant to Sections 7 or 8, might be considered to prevent the person from serving as arbitrator. An arbitrator shall inform the parties and the other arbitrators of such circumstances as soon as all arbitrators have been appointed and thereafter in the course of the arbitral proceedings as soon as the arbitrator has learned of any new circumstance.

Section 10

A challenge of an arbitrator on account of a circumstance set forth in Section 8 shall be presented within fifteen days from the date on which the party became aware both of the appointment of the arbitrator and of the existence of the circumstance. The challenge shall be adjudicated by the

arbitrators, unless the parties have decided that it shall be determined by another party.

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

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

Section 11

The parties may agree that a challenge as referred to in Section 10, first paragraph, shall be conclusively determined by an arbitration institution.

Section 12

The parties may determine the number of arbitrators and the manner in which they shall be appointed.

Sections 13-16 shall apply unless the parties have agreed otherwise.

If the parties have so agreed, and any of the parties so requests, the District Court shall appoint arbitrators also in situations other than those stated in Sections 14-17.

Section 13

There shall be three arbitrators. Each party appoints one arbitrator, and the arbitrators so appointed appoint the third.

Section 14

If each party is required to appoint an arbitrator and one party has notified the opposing party of its choice of arbitrator in a request for arbitration pursuant to Section 19, the opposing party must, within thirty days of receipt of the notice, notify the first party in writing of its choice of arbitrator. A party who has notified the opposing party of its choice of arbitrator in this manner may not revoke the choice without the consent of the opposing party.

If the opposing party fails to appoint an arbitrator within the specified time, the District Court shall appoint an arbitrator upon the request of the first party.

If arbitration has been requested against several parties and these parties are unable to jointly appoint an arbitrator, the District Court shall, upon the request of a respondent party within the time specified in the first paragraph,

appoint arbitrators on behalf of all parties, and simultaneously also release any arbitrator already appointed.

Section 15

If an arbitrator shall be appointed by other arbitrators, but they fail to do so within thirty days from the date on which the last arbitrator was appointed, the District Court shall appoint the arbitrator upon the request of a party.

If an arbitrator shall be appointed by someone other than a party or arbitrators, but this is not done within thirty days of the date when the party desiring the appointment of an arbitrator requested that the person responsible for the appointment make such appointment, the District Court shall, upon the request of a party, appoint the arbitrator. The same shall apply if an arbitrator shall be appointed by the parties jointly, but they have failed to agree within thirty days from the date on which the question was raised through receipt by one party of notice from the opposing party.

Section 16

If an arbitrator resigns or is released due to circumstances which were known at the time of appointment, the District Court shall, upon the request of a party, appoint a new arbitrator. If the arbitrator was appointed by a party, the District Court shall appoint the person suggested by that party, unless there are special reasons speaking against it.

If an arbitrator cannot complete the assignment due to circumstances which arise after his or her appointment, the person who originally was required to make the appointment shall instead appoint a new arbitrator. Section 14, first and second paragraphs, and Section 15 shall apply to such an appointment. The time-limit of thirty days for the appointment of a new arbitrator applies also to the party who requested the arbitration, and is calculated in respect to all parties from the date on which the person who shall appoint the arbitrator became aware thereof.

Section 17

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

Section 18

If a party has requested that the District Court appoint an arbitrator pursuant to Section 12, third paragraph, or Sections 14-17, the Court may

reject the request only if it is manifestly obvious that the arbitration is not legally permissible.

The Proceedings

Section 19

Unless otherwise agreed by the parties, the arbitral proceedings are initiated when a party receives a request for arbitration in accordance with the second paragraph hereof.

A request for arbitration must be in writing and include:

1. an express and unconditional request for arbitration;
2. a statement of the issue which is covered by the arbitration agreement and which is to be resolved by the arbitrators; and
3. a statement of the party's choice of arbitrator if the party is required to appoint an arbitrator.

Section 20

If there is more than one arbitrator, one of them shall be appointed chairman. Unless the parties or the arbitrators have decided otherwise, the chairman shall be the arbitrator appointed by the other arbitrators or by the District Court.

Section 21

The arbitrators shall handle the dispute in an impartial, practical, and speedy manner. They shall act in accordance with the decisions of the parties, unless they are impeded from doing so.

Section 22

The parties determine which location in Sweden shall be the seat of arbitration. If the parties have not done so, the arbitrators shall determine the seat of arbitration.

The arbitrators may hold hearings and other meetings elsewhere in Sweden or abroad, unless otherwise agreed by the parties.

Section 23

Within the period of time determined by the arbitrators, the claimant shall state its claims in respect of the issue stated in the request for arbitration, as well as the circumstances invoked by the claimant in support thereof. Thereafter, within the period of time determined by the arbitrators, the

respondent shall state its position in relation to the claims, and the circumstances invoked by the respondent in support thereof.

The claimant may submit new claims, and the respondent may submit its own claims, provided that the claims fall within the scope of the arbitration agreement and, taking into consideration the time at which they are submitted or other circumstances, the arbitrators do not consider it inappropriate to adjudicate such claims. Subject to the same conditions, during the proceedings, each party may amend or supplement previously presented claims and may invoke new circumstances in support of its case.

The first and second paragraphs hereof shall not apply if the parties have decided otherwise.

Section 23 a

An arbitration may be consolidated with another arbitration, if the parties agree to such consolidation, if it benefits the administration of the arbitration, and if the same arbitrators have been appointed in both cases. The arbitrations may be separated, if there are reasons for it.

Section 24

The arbitrators shall afford the parties, to the extent necessary, an opportunity to present their respective cases in writing or orally. If a party so requests, and provided that the parties have not otherwise agreed, an oral hearing shall be held prior to the determination of an issue referred to the arbitrators for resolution.

A party shall be given an opportunity to review all documents and all other materials pertaining to the dispute which are supplied to the arbitrators by the opposing party or another person.

If one of the parties, without valid cause, fails to appear at a hearing or otherwise fails to comply with an order of the arbitrators, such failure shall not prevent a continuation of the proceedings and a resolution of the dispute on the basis of the existing materials.

Section 25

The parties shall supply the evidence. However, the arbitrators may appoint experts, unless both parties are opposed thereto.

The arbitrators may refuse to admit evidence presented if it is manifestly irrelevant to the dispute or if such refusal is justified having regard to the time at which the evidence is invoked.

The arbitrators may not administer oaths or truth affirmations. Nor may they impose conditional fines or otherwise use compulsory measures in order to obtain requested evidence.

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

Section 26

If a party wishes a witness or an expert to testify under oath, or a party to be examined under truth affirmation, the party may, after obtaining the consent of the arbitrators, submit an application to such effect to the District Court. The aforementioned shall apply if a party wishes that a party or other person be ordered to produce as evidence a document or an object. If the arbitrators consider that the measure is justified having regard to the evidence in the case, they shall approve the request. If the measure may lawfully be taken, the District Court shall grant the application.

The provisions of the Code of Judicial Procedure shall apply with respect to a measure as referred to in the first paragraph. The arbitrators shall be summoned to hear the testimony of a witness, an expert, or a party, and be afforded the opportunity to ask questions. The absence of an arbitrator from the giving of testimony shall not prevent the hearing from taking place.

The Award

Section 27

The issues referred to the arbitrators shall be decided in an award. If the arbitrators terminate the arbitral proceedings without deciding such issues, this shall also be done through an award, except for cases referred to in the third paragraph.

If the parties enter into a settlement agreement, the arbitrators may, at the request of the parties, confirm the settlement in an award.

Other determinations, which are not decided in an award, are designated as decisions. The dismissal of an arbitration is also designated as a decision. The provisions of this Act that concern arbitral awards also apply to such decisions, to the extent applicable.

The assignment of the arbitrators shall be deemed complete when they have delivered a final award, unless otherwise provided in Sections 32 or 35.

Section 27 a

The dispute shall be determined with application of the law or rules

agreed to by the parties. Unless otherwise agreed by the parties, a reference to the application of a certain state's law shall be deemed to include that state's substantive law and not its rules of private international law.

If the parties have not come to an agreement in accordance with the first paragraph, the arbitrators shall determine the applicable law.

The arbitrators may base the award on *ex aequo et bono* considerations only if the parties have authorized them to do so.

Section 28

If a party withdraws a claim, the arbitrators shall dismiss that part of the dispute, unless the opposing party requests that the arbitrators rule on the claim.

Section 29

A part of the dispute, or a certain issue which is of significance to the resolution of the dispute, may be decided through a separate award, unless opposed by both parties. However, a claim invoked as a defence by way of set off shall be adjudicated in the same award as the main claim.

If a party has admitted a claim, in whole or in part, a separate award may be rendered in respect of that which has been admitted.

Section 30

If an arbitrator fails, without valid cause, to participate in the determination of an issue by the arbitral tribunal, such failure will not prevent the other arbitrators from ruling on the matter.

Unless the parties have decided otherwise, the opinion agreed upon by the majority of the arbitrators participating in the determination shall prevail. If no majority is attained for any opinion, the opinion of the chairman shall prevail.

Section 31

An award shall be made in writing and be signed by the arbitrators. It suffices that the award is signed by a majority of the arbitrators, provided that the reason why all of the arbitrators have not signed the award is noted therein. The parties may decide that the chairman of the arbitral tribunal alone shall sign the award.

The award shall state the seat of the arbitration and the date when the award is made.

The award shall be delivered or sent to the parties immediately.

Section 32

If the arbitrators find that an award contains any obvious inaccuracy as a consequence of a typographical, computational, or other similar mistake by the arbitrators or any another person, or if the arbitrators by oversight have failed to decide an issue which should have been dealt with in the award, they may, within thirty days of the date of the announcement of the award, decide to correct or supplement the award. They may also correct or supplement an award, or interpret the decision in an award, if any of the parties so requests within thirty days of receipt of the award by that party.

If, upon the request of any of the parties, the arbitrators decide to correct an award or interpret the decision in an award, such shall take place within thirty days from the date of receipt by the arbitrators of the party's request. If the arbitrators decide to supplement the award, such shall take place within sixty days.

Before any decision is made pursuant to this Section, the parties should be afforded an opportunity to express their views with respect to the measure.

Invalidity of Awards and Setting Aside Awards

Section 33

An award is invalid:

1. if it includes determination of an issue which, in accordance with Swedish law, may not be decided by arbitrators;
2. if the award, or the manner in which the award arose, is clearly incompatible with the basic principles of the Swedish legal system; or
3. if the award does not fulfil the requirements with regard to the written form and signature in accordance with Section 31, first paragraph.

The invalidity may apply to a certain part of the award.

Section 34

An award that may not be challenged under Section 36 shall, following an application, be wholly or partially set aside upon the request of a party:

1. if it is not covered by a valid arbitration agreement between the parties;
2. if the arbitrators have made the award after the expiration of the time limit set by the parties;
3. if the arbitrators have exceeded their mandate, in a manner that probably influenced the outcome;
4. if the arbitration, according to Section 47, should not have taken place in Sweden;

5. if an arbitrator was appointed in a manner that violates the parties' agreement or this Act;

6. if an arbitrator was unauthorized to adjudicate the dispute due to any circumstance set forth in Sections 7 or 8; or

7. if, without fault of the party, there otherwise occurred an irregularity in the course of the proceedings which probably influenced the outcome of the case.

A party shall not be entitled to rely upon a circumstance which, through participation in the proceedings without objection, or in any other manner, the party may be deemed to have waived. A party shall not be regarded as having accepted the arbitrators' jurisdiction to determine the issue referred to arbitration solely by having appointed an arbitrator. It follows from Sections 10 and 11 that a party may lose the right under sub-section 6, first paragraph, to rely upon a circumstance as set forth in Section 8.

An action must be brought within two months from the date upon which the party received the award or, if correction, supplementation, or interpretation has taken place pursuant to Section 32, within a period of two months from the date when the party received the award in its final wording. Following the expiration of the time limit, a party may not invoke a new ground of objection in support of its claim.

Section 35

A court may stay proceedings concerning the invalidity or setting aside of an award for a certain period of time in order to provide the arbitrators with an opportunity to resume the arbitral proceedings or to take some other measure which, in the opinion of the arbitrators, will eliminate the ground for the invalidity or setting aside:

1. provided 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.

If the arbitrators make a new award, a party may, within the period of time determined by the court and without issuing a writ of summons, challenge the award insofar as it was based upon the resumed arbitral proceedings or an amendment to the first award.

Section 36

An award whereby the arbitrators concluded the proceedings without ruling on the issues submitted to them for resolution may be amended, in whole or in part, upon the application of a party. An action must be brought within two months from the date upon which the party received the award or, if correction, supplementation, or interpretation has taken place in accordance with Section 32, within a period of two months from the date upon which the

party received the award in its final wording. The award shall contain clear instructions as to what must be done by a party who wants to challenge the award.

An action in accordance with the first paragraph that only concerns an issue referred to in Section 42 is permissible if, in the award, the arbitrators have considered themselves to lack jurisdiction to adjudicate the dispute. If the award concerns another matter, a party who desires to challenge the award may do so in accordance with the provisions of Section 34.

Costs of Arbitration

Section 37

The parties shall be jointly and severally liable to pay reasonable compensation to the arbitrators for work and expenses. However, if the arbitrators have stated in the award that they lack jurisdiction to determine the dispute, the party that did not request arbitration shall be liable to make payment only insofar as required due to special circumstances.

In a final award, the arbitrators may order the parties to pay compensation to them, together with interest from the date occurring one month following the date of the announcement of the award. The compensation shall be stated separately for each arbitrator.

Section 38

The arbitrators may request security for the compensation. They may fix separate security for individual claims. If a party fails to provide its share of the requested security within the period specified by the arbitrators, the opposing party may provide the entire security. If the requested security is not provided, the arbitrators may terminate the proceedings, in whole or in part.

During the proceedings, the arbitrators may decide to realize security in order to cover expenses. Following the determination of the arbitrators' compensation in a final award and if the award in that respect has become enforceable, the arbitrators may realize their payment from the security, in the event the parties fail to fulfil their payment obligations in accordance with the award. The right to security also includes income from the property.

Section 39

The provisions of Sections 37 and 38 shall apply unless otherwise jointly decided by the parties in a manner that is binding upon the arbitrators.

An agreement regarding compensation to the arbitrators that is not entered into jointly by the parties is void. If one of the parties has provided the entire security, such party may, however, solely consent to the realisation of

the security by the arbitrators in order to cover the compensation for work expended.

Section 40

The arbitrators may not withhold the award pending the payment of compensation.

Section 41

A party or an arbitrator may file an application with the District Court concerning amendment of the award as regards the payment of compensation to the arbitrators. Such application must be filed within two months from the date upon which the party received the award and, in the case of an arbitrator, within the same period from the announcement of the award. If correction, supplementation, or interpretation has taken place in accordance with Section 32, the application must be filed by a party within two months from the date upon which the party received the award in its final wording and, in the case of an arbitrator, within the same period from the date when the award was announced in its final wording. The award shall contain clear instructions as to what must be done by a party who wants to challenge the award in this respect. The procedure will be administered in accordance with the Court Matters Act (1996: 242).

A decision pursuant to which the compensation to an arbitrator is reduced shall also apply to the party who did not bring the action.

Section 42

Unless otherwise agreed by the parties, the arbitrators may, upon the request of a party, order the opposing party to pay compensation for the party's costs and determine the manner in which the compensation to the arbitrators shall be finally allocated between the parties. The arbitrators' order may also include interest, if a party has so requested.

Forum and Limitation Periods, etc.

Section 43

An action pursuant to Sections 2, second paragraph, or 33, 34, and 36 shall be considered by the Court of Appeal within the jurisdiction of which the arbitration had its seat. If the seat of arbitration is not determined, or not stated in the award, the action may be brought in the Svea Court of Appeal.

The determination of the Court of Appeal may not be appealed. However, the Court of Appeal may grant leave to appeal its determination if it is

of importance as a matter of precedent that the appeal be considered by the Supreme Court. For the Supreme Court to review the Court of Appeal's determination, leave of appeal by the Supreme Court is required. This does not apply, however, to the appeal of a decision by which the Court of Appeal has dismissed an appeal of a determination made by the Court of Appeal.

An application pursuant to Section 41 shall be considered by the District Court at the seat of arbitration. If the seat of arbitration is not stated in the award, the action may be brought before the Stockholm District Court.

Section 44

Applications to appoint or release an arbitrator shall be considered by the District Court at the place where one of the parties is domiciled or by the District Court at the seat of arbitration. The application may also be considered by the Stockholm District Court. If possible, the opposing party shall be afforded the opportunity to express its opinion upon the application before it is granted. If the application concerns the removal of an arbitrator, the arbitrator should also be heard.

Applications concerning the taking of evidence in accordance with Section 26 shall be considered by the District Court determined by the arbitrators. In the absence of such decision, the application shall be considered by the Stockholm District Court.

If the District Court has granted an application to appoint or release an arbitrator, such decision may not be appealed. Neither may a determination of the District Court in accordance with Section 10, third paragraph, otherwise be appealed.

Section 45

If, according to law or by agreement, an action by a party must be brought within a certain period, but the action is covered by an arbitration agreement, the party must request arbitration in accordance with Section 19 within the stated period.

If arbitration has been requested in due time but the arbitral proceedings are terminated without a legal determination of the issue which was submitted to the arbitrators, and this is not due to the negligence of the party, the action shall be deemed to have been initiated in due time if a party requests arbitration or initiates court proceedings within thirty days of receipt of the award, or if the award has been set aside or declared invalid or an action against the award in accordance with Section 36 has been dismissed, from the time that this decision becomes final.

Section 45 a

In cases brought under Section 2, second paragraph, or 33, 34 or 36, the Court of Appeal may, upon the request of a party, accept oral evidence in English without interpretation into Swedish.

The first paragraph applies also to the procedure in the Supreme Court.

International Matters

Section 46

This Act shall apply to arbitral proceedings seated in Sweden even if the dispute has an international connection.

Section 47

Arbitral proceedings in accordance with this Act may be commenced in Sweden, if the arbitration agreement provides that the arbitration shall have its seat in Sweden, or if the arbitrators or an arbitration institution pursuant to the agreement have determined that the proceedings shall be seated in Sweden, or if the opposing party otherwise consents thereto.

Arbitral proceedings in accordance with this Act may also be commenced in Sweden against a party which is domiciled in Sweden or is otherwise subject to the jurisdiction of the Swedish courts with regard to the matter in dispute, unless the arbitration agreement provides that the proceedings shall be seated abroad.

In other cases, arbitral proceedings in accordance with this Act may not take place in Sweden.

Section 48

If an arbitration agreement has an international connection, the agreement shall be governed by the law agreed upon by the parties. If the parties have not reached such an agreement, the arbitration agreement shall be governed by the law of the country where, in accordance with the parties' agreement, the arbitration had or shall have its seat.

The first paragraph shall not apply to the issue of whether a party was authorized to enter into an arbitration agreement or was duly represented.

Section 49

If foreign law is applicable to the arbitration agreement, Section 4 shall apply to issues which are covered by the agreement, except when:

1. in accordance with the applicable law, the agreement is invalid, inoperative, or incapable of being performed; or
2. in accordance with Swedish law, the dispute may not be determined by arbitrators.

The jurisdiction of a court to issue such decisions regarding security measures as the court is entitled to issue in accordance with law, notwithstanding the arbitration agreement, is set forth in Section 4, third paragraph.

Section 50

The provisions of Sections 26 and 44 regarding the taking of evidence during the arbitral proceedings in Sweden shall also apply in arbitral proceedings seated abroad, if the proceedings are based upon an arbitration agreement and, pursuant to Swedish law, the issues referred to the arbitrators may be resolved through arbitration.

Section 51

If none of the parties is domiciled or has its place of business in Sweden, such parties may in a commercial relationship through an express written agreement exclude or limit the application of the grounds for setting aside an award as are set forth in Section 34.

An award which is subject to such an agreement shall be recognized and enforced in Sweden in accordance with the rules applicable to a foreign award.

Recognition and Enforcement of Foreign Awards, etc.

Section 52

An award rendered abroad shall be deemed to be a foreign award.

In conjunction with the application of this Act, an award shall be deemed to have been rendered in the country where the arbitration had its seat.

Section 53

Unless otherwise stated in Sections 54-60, a foreign award which is based on an arbitration agreement shall be recognized and enforced in Sweden.

Section 54

A foreign award shall not be recognized and enforced in Sweden if the party against whom the award is invoked proves:

1. that the parties to the arbitration agreement, pursuant to the law applicable to them, lacked capacity to enter into the agreement or were not

properly represented, or that the arbitration agreement was not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;

2. that the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present its case;

3. that the award deals with a dispute not contemplated by, or not falling within, the terms of the submission to arbitration, or contains decisions on matters which are beyond the scope of the arbitration agreement, provided that, if the decision on a matter which falls within the mandate can be separated from those which fall outside the mandate, that part of the award which contains decisions on matters falling within the mandate may be recognized and enforced;

4. that the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration was seated; or

5. that the award has not yet become binding on the parties, or 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.

Section 55

Recognition and enforcement of a foreign award shall also be refused if a court finds:

1. that the award includes determination of an issue which, in accordance with Swedish law, may not be decided by arbitrators; or

2. that it would be clearly incompatible with the basic principles of the Swedish legal system to recognize and enforce the award.

Section 56

An application for the enforcement of a foreign award shall be lodged with the Svea Court of Appeal.

The original award or a certified copy of the award must be appended to the application. Unless the Court of Appeal decides otherwise, a certified translation into the Swedish language of the entire award must also be submitted.

Section 57

An application for enforcement shall not be granted unless the opposing party has been afforded an opportunity to express its opinion upon the application.

Section 58

If the opposing party objects that an arbitration agreement was not entered into, the applicant must submit the arbitration agreement in an original or a certified copy and, unless otherwise decided by the Court of Appeal, must submit a certified translation into the Swedish language, or in some other manner prove that an arbitration agreement was entered into.

If the opposing party objects that a petition has been lodged to set aside the award or a motion for a stay of execution has been submitted to the competent authority as referred to in Section 54, sub-section 5, the Court of Appeal may postpone its decision and, upon the request of the applicant, order the opposing party to provide reasonable security in default of which enforcement might otherwise be ordered.

Section 59

If the Court of Appeal grants the application, the award shall be enforced as a final judgment of a Swedish court, unless otherwise determined by the Supreme Court following an appeal of the Court of Appeal's decision.

Section 60

If a security measure has been granted in accordance with Chapter 15 of the Code of Judicial Procedure, in conjunction with the application of Section 7 of the same Chapter, a request for arbitration abroad which might result in an award which is recognized and may be enforced in Sweden shall be equated with the commencement of an action.

If an application for the enforcement of a foreign award has been lodged, the Court of Appeal shall examine a request for a security measure or a request to set aside such decision.

Provisional Regulations

1. This Act shall enter into force on 1 March 2019.
2. Older provisions still apply to arbitral proceedings which have been commenced prior to the entry into force. Despite this, the following new provisions shall still apply:
 - (a) the applicable procedural order in Section 41 and the possibility to allow for oral evidence in English in Section 45 a in procedures initiated after the entry into force, and
 - (b) the requirement of leave to appeal in Section 43, second paragraph, for appeals of Court of Appeal determinations that are rendered after the entry into force.