THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE

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1. INTRODUCTION

1.1 Establishment, Development and Structure

The Arbitration Institute of the Stockholm Chamber of Commerce (SCC Institute) was established already in 1917 and has since then been active in both domestic and international arbitration. While at the outset the SCC Institute mainly administered domestic arbitrations, the international activities have increased significantly over the past twenty-five years. Out of the about 160 cases in 2004, roughly half the number is international. Although the international cases involve parties from virtually all parts of the world, east-west arbitration plays a predominant role. On the eastern side there are parties from the Russian Federation and other republics of the former Soviet Union, as well as from China, and on the western side US and western European corporations.

The SCC Institute is an entity within the Stockholm Chamber of Commerce. It is, however, functionally independent and decisions of the Board of the Institute are final and not subject to review by the Chamber. The present Chairman of the Board is Dr. Leif Thorsson, Justice of the Supreme Court.

The day-to-day activities of SCC are handled by its secretariat headed by a secretary general. The present secretary general is Mr Ulf Franke who has held this position since 1980. Apart from the secretary general there is an assistant secretary general and three other lawyers, as well as four assistants. The lawyers and assistants are organised in three divisions, each handling one third of the cases.

1.2 Activities

Apart from resolving disputes, which, of course, is the main activity and will be dealt with more fully below, SCC publishes twice a year a Newsletter and a book, *Stockholm Arbitration Report*. The latter includes articles on topical issues in international arbitration. Emphasis is placed on publishing extracts from arbitral awards and court decisions, with in-depth commentaries by scholars and practitioners.

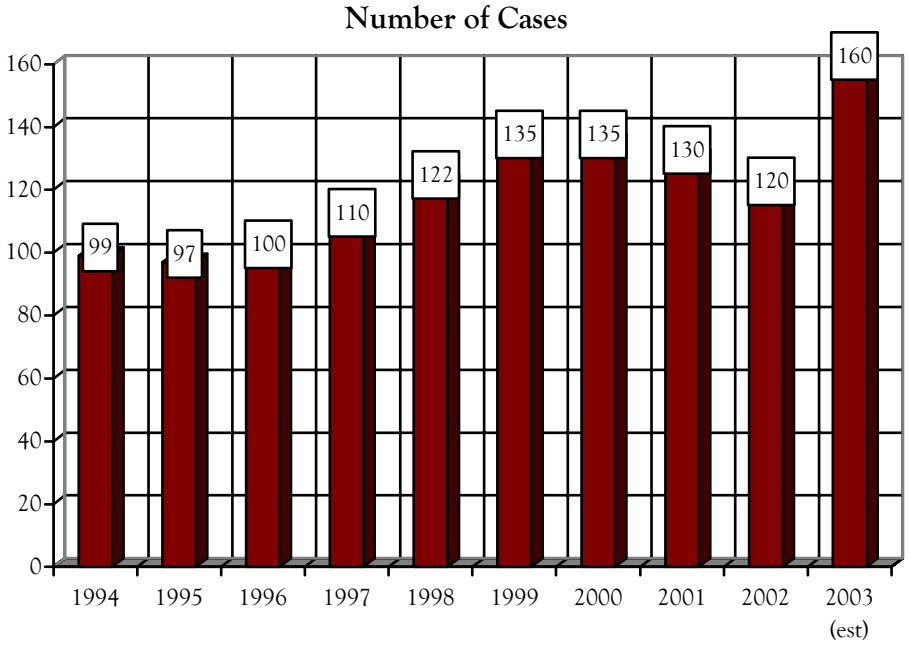
1.3 Rules and Model Arbitration Clause

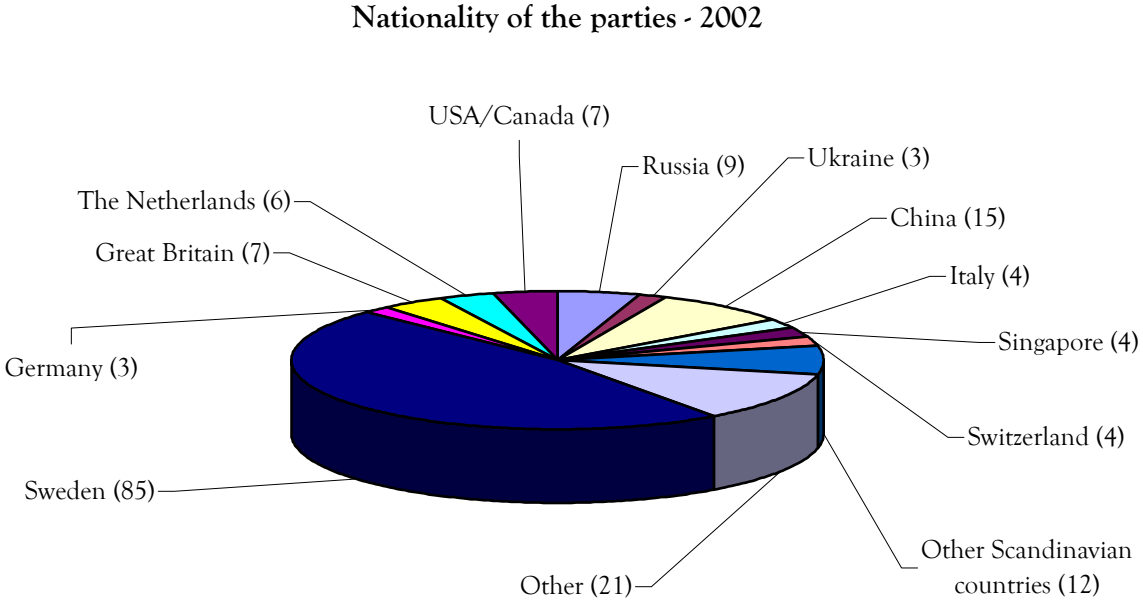
The present SCC Rules came into force in 1999 and are available in Chinese, English, French, German, Russian, Spanish and Swedish. The SCC Institute also has adopted *Rules for Expedited Arbitrations*, which are mainly aimed at minor disputes, *Insurance Arbitration Rules*, which are specifically designed for insurance disputes, as well as Procedures and Services offered by the SCC Institute when applying the UNCITRAL Arbitration Rules. In 1999 SCC set up a Mediation Institute.

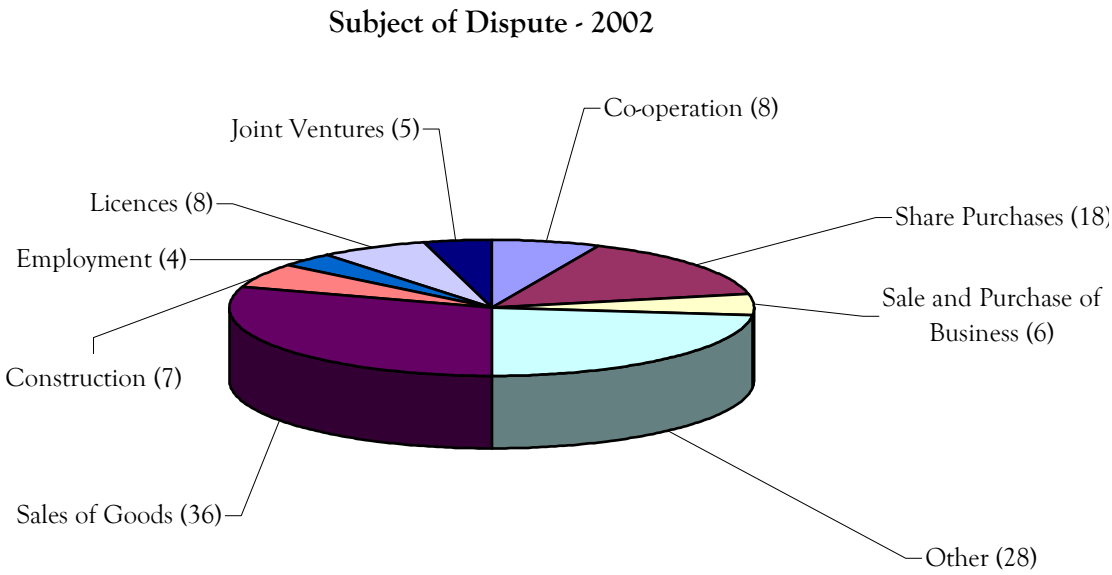
The model arbitration clause recommended by the SCC Institute reads as follows.

> "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."

2. FACTS AND FIGURES







3. HOW PROCEEDINGS ARE COMMENCED

3.1 Request for Arbitration

The SCC Rules provide in article 5 for a simplified initial procedure consisting of a brief request for arbitration rather than a full demand coupled with documentary evidence. Apart from the names and addresses of the parties, the request should contain a summary of the dispute and a preliminary statement of the relief claimed. The arbitrator appointed by the claimant should also be named at the time of the request.

A Claimant is, of course, free to file a more extensive document at the outset, equivalent to the statement of claim provided for in article 21, which the Claimant is expected to file when the case has been referred to the arbitrators. Usually, however, requests for arbitration are very brief and do not include more than the basic requirements mentioned above.

After having received the request for arbitration the SCC Institute will, as a preliminary matter, determine whether there is a *prima facie* agreement to arbitrate. However, only if it is clear that the Institute lacks competence over the dispute the request will be dismissed. For example, a request may be dismissed if the arbitration clause refers to some other arbitration institution than the SCC Institute, or clearly provide for *ad hoc* arbitration.

3.2 The Respondent's Reply

If the SCC Institute determines that it has competence over the dispute, the request for arbitration will be communicated to the respondent, who will be asked to submit a reply within the time fixed by the Institute.

The reply is meant to mirror the request for arbitration and is envisaged to be correspondingly brief. It should comment on the request for arbitration and name the arbitrator appointed by the respondent.

If the respondent wants to make a counterclaim or plead a set-off, a statement to that effect shall also be made in the reply. If the Respondent wishes to object to the jurisdiction of the SCC Institute, this is the time when such objection shall be filed. A reason for such objection may be an ambiguously drafted arbitration clause, but it also happens that a party holds that the arbitration clause is invalid for other reasons, or that he is not a party to the contract containing the arbitration clause.

Sometimes objections are filed in an obvious attempt to delay or disrupt the arbitration. Such attempts are seldom successful but underline the importance of clear-cut arbitration clauses. There are also arbitrations where the respondent tries to avoid the arbitration by not submitting any reply at all or otherwise communicate with the SCC Institute. This will, however, not stop the arbitration from proceeding.

3.3 Decisions of the SCC Institute

In practice, it is often necessary for the SCC Institute to engage in further correspondence with the parties to clarify points in the initial stages of proceedings.

When the exchange of written submission has been concluded the SCC Institute will make another *prima facie* determination of its jurisdiction if the respondent has filed an objection. [2] If it is not clear that jurisdiction is lacking, the Institute will proceed to appoint the third arbitrator who will be the chairman of the arbitral tribunal.
The SCC Institute will also determine the place of arbitration unless the parties have done so, and fix the advance on costs.

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.

Referral of a case to the arbitral tribunal normally marks the end of involvement on the part of the SCC Institute in proceedings and the beginning of the six-month-period within which the arbitrators must render their award. There are instances also in such later stage, however, when decisions by the SCC Institute may be called for. One such instance may be if a party challenge an arbitrator. Another is if there is a need for an extension of the time for rendering the award. As will be described below the SCC Institute also decides on the fees and costs of the arbitrators at the end of the arbitration.

[2] A report on *prima facie* decisions on jurisdiction taken by SCC is included in the Stockholm Arbitration Report 2000:2.

4. COMPOSITION OF THE ARBITRAL TRIBUNAL

4.1 Appointment of Arbitrators

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 example a fairly low amount in dispute or a clearly uncomplicated dispute.

The main advantages of referring a dispute to a sole arbitrator rather than a three-member-tribunal are speed and economy. A sole arbitrator needs only to make up his own mind and will not have to spend time in consultation with colleagues. Also meetings and hearings can be more easily arranged.

The interest of economy is served, since the parties will only have to bear the fees and expenses of one arbitrator rather than three.

Still there seems to be a preference in international arbitration for three arbitrators. The reasons are obvious. Several arbitrators can be expected to make a more thorough analysis than a sole arbitrator. It is also a matter of confidence. With three arbitrators each party will have the opportunity to nominate one arbitrator. This is particularly important in international arbitration where there may be differences of language, tradition and culture between the parties and, indeed, among the members of the arbitral tribunal. An arbitrator nominated by a party will be able to ensure that the party's case is properly understood by the arbitral tribunal. This is the reason why there is a preference for three arbitrators.

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.

Although the third arbitrator thus is most often appointed by the SCC Institute, the parties may have an influence on the choice in so far as a common wish by the parties on the individual to be appointed will be respected by the Institute. The parties may also agree on any other way to appoint the chairman of the arbitral tribunal, for example by the party-appointed arbitrators.

If a party fails to appoint an arbitrator within the time specified by the SCC Institute, then the Institute will make the appointment.

4.2 Qualifications and Disclosure

There are no restrictions, as to nationality or otherwise, regarding the identity of the arbitrators. Nor are there any lists from which the arbitrators must be picked. The parties are thus free to appoint anyone as arbitrators and very often they appoint nationals of their own respective countries.

It is important to note, however, that all arbitrators, including those appointed by the parties, are required to be independent. They are not regarded nor should they act as agents of the parties.

The SCC Rules contain a disclosure rule requiring every prospective arbitrator to disclose to

those who approach him in connection with a possible appointment "any circumstances likely to give rise to justifiable doubts as to his impartiality or independence". These circumstances include, to give some examples, a family or business tie with a party or the fact that he has served as a party's lawyer or advisor, or, more commonly, that a colleague of his has served in such capacity.

This disclosure requirement is continuous in so far as an arbitrator must immediately disclose any disqualifying circumstances that he becomes aware of in the course of the arbitral proceedings. In such case he shall inform both the parties and his co-arbitrators.

4.3 Challenge of Arbitrators

An arbitrator may be challenged before the SCC Institute if there exist justifiable doubts as to his impartiality or independence. A challenge shall be made within 15 days of the date on which the allegedly disqualifying circumstances became known to the party. Failure to notify a challenge within the prescribed time is deemed to constitute a waiver of the right to make such challenge.

The challenge shall be notified to the SCC Institute, which will provide the arbitrators and each party an opportunity to comment on the challenge.

Decisions on challenges are made by the SCC Institute, which may discharge an arbitrator on the ground of disqualification. The most common ground, as indicated earlier, is that the arbitrator, or another lawyer at the arbitrator's law firm, has had previous contacts with one of the parties, for example assisted such in a legal matter. Such circumstances have in some cases resulted in an arbitrator being discharged. Other reasons for filing a challenge have been, for example, that the arbitrator has been arbitrator in another case where one of the parties was involved, a person associated with the arbitrator mazy have expected a benefit as a result of the outcome of the dispute, or he arbitrator have worked with a colleague of counsel for one of the parties. [3]

If an arbitrator is discharged the SCC Institute shall appoint new arbitrator. This is the case whether or not the discharged arbitrator was appointed by the SCC Institute or a party. However, if the arbitrator was originally appointed by a party, such party shall be consulted by the SCC Institute before the appointment.

5. PRESENTATION OF THE CASE BEFORE THE ARBITRATORS

5.1 Basic issues: Place, Language and Representation

The parties may agree on any place of arbitration within or outside Sweden. Although most arbitrations under the SCC Rules are conducted in Sweden, the SCC Institute may also administer cases where the place of arbitration is situated in another country. Hence, the SCC Institute has handled cases which have taken place in, for example, England, Denmark and Hong Kong.

[3] A report on decisions by the SCC Institute on challenges to arbitrators are included in the Stockholm Arbitration Report 2000:1.

Even if the place of arbitration is in Sweden, hearings and other meetings may be held abroad. If, for example, there are several witnesses to be heard in a certain country it may be cost-effective to hold a hearing in such country.

The parties may also agree on any language or languages for the proceedings. If the parties cannot agree in this respect, the question will be decided by the arbitrators. If needed, interpretation will be arranged.

The parties may be represented or assisted by any person of any nationality. No specific legal or other qualifications are required. Parties are often represented by counsel from their own respective countries, which seldom cause any problem as the procedure is very international. If a party desires to obtain the assistance of a Swedish lawyer, there is normally no difficulty in finding one who is experienced in international matters and fluent in the language or languages concerned.

5.2 Statements of Claim and Defence

The parties and arbitrators have a considerable freedom to adopt the procedure they consider best suited to the circumstances of the case so long as each party is given a sufficient opportunity to present his case. The SCC Rules contain in article 20 a general rule providing that the arbitrators shall conduct the case in an impartial, practical and expeditious manner.

The arbitrators will begin by requesting the claimant to submit a statement of claim setting out the specific relief sought, the material facts and circumstances relied on, and a preliminary statement of evidence.

When this has been received, the respondent will be invited to submit a defence stating whether and to what extent the respondent accepts or denies the relief sought by the claimant, the material facts and circumstances on which the Respondent relies, any counterclaim or set-off claim and the grounds on which it is based, and, finally, a preliminary statement of evidence.

The statements of claim and defence are the basic documents in the arbitration. The arbitrators may, however, and usually will, decide on the submission of additional written statements.

A party may amend his claim and defence in the course of the proceedings under two conditions, namely that his case, as amended, is still comprised by the arbitration agreement and that the arbitral tribunal does not consider the amendment inappropriate having regard to the point of time at which the request is made and the prejudice that may be caused to the other party.

5.3 Applicable law

The parties are free to agree on the law to be applied to the substance of the case and it is wise to do so. The SCC Institute recommends a governing law clause, which reads as follows.

> "This contract shall be governed by the substantive law of ..."

It is, of course, not always possible for the parties to agree on the law to be applied, and in such event it will be decided by the arbitrators. The SCC Rules contain a provision on the applicable law, which reads as follows:

> "Article 24 Applicable Law
>
> (1) The Arbitral Tribunal shall decide the merits of the dispute on the basis of the law or rules of law agreed by the parties. In the absence of such an agreement, the Arbitral Tribunal shall apply the law or rules of law, which it considers to be most appropriate.
>
> (2) Any designation made by the parties of the law of a given state shall be construed as directly referring to the substantive law of that state and not to its conflict of laws rules.
>
> (3) The Arbitral Tribunal shall decide the dispute *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so."

If the applicable law has been agreed upon already by the time the arbitration starts, that will, no doubt, save time. Prior agreement also enables the parties to avoid any uncertainty as to the outcome of arbitrators' decisions thereon, and they will accordingly be in a better position to prepare their case.[4]

5.4 Failure of party to appear

It occurs in international arbitration that a party chooses not to participate in the proceedings, neither in writing nor orally. Probably such party believes that he, by not taking part in the proceedings, will not be affected of the result thereof, i.e. the arbitral award. This is of course not correct. It is common practice in international arbitration, however, 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.

A good piece of advice is that it is always better to appear and file a defence than not.

5.4 Waiver of procedural irregularities

The SCC Rules also contain a waiver-rule to the effect that a party shall be deemed to have waived his right to invoke any deviation from the arbitration agreement or other rules applicable to the proceedings if he fails to object within a reasonable time to such irregularity.

6. EVIDENCE

Unless otherwise agreed, both written and oral evidence may be submitted and there are in principle no restrictions upon the admissibility of evidence in arbitrations under the SCC Rules. However, the arbitrators may not subpoena witnesses to attend or administer oaths. This may, however, be arranged with the assistance by the courts.

[4] An article on applicable law issues, which includes an analysis of various awards rendered by Arbitral Tribunals adjudicating under the SCC Rules, is included in the Stockholm Arbitration Report 2003:1.

As noted in 5.2 above the statements of claim and defence should be accompanied by preliminary statements of evidence. Frequently the statements of claim and defence will be accompanied by the documentary evidence on which the party wishes to rely. If they are not, the arbitrators will determine a period of time within which such evidence should be submitted. The oral evidence will be normally be presented at the final hearing.

The arbitrators may appoint an expert unless both parties agree to the contrary. Although it is not laid down in the SCC Rules it is the practice to draw up terms of reference for an expert with the agreement of the parties and to allow parties to cross-examine the expert engaged by the arbitral tribunal.

Parties also often invoke expert evidence.

7. HEARINGS

The SCC rules also deal with oral hearings and state, *inter alia*, that an oral hearing shall be arranged if requested by either party, or if the arbitral tribunal considers it appropriate.

The oral part of the proceedings could take the form of one or several preparatory (preliminary) meetings and a main hearing, sometimes also called final hearing.

The preparatory hearing is normally held for the purpose of clarifying the parties' positions on the various issues. The preparatory hearing may in some cases also offer an opportunity for the tribunal to find out whether there may be a possibility of reconciling the parties and have them settle the dispute, wholly or in part, by an amicable settlement.

If the parties are from different parts of the world the preparatory part of the proceedings are, for cost-reasons, frequently conducted in writing.

When the case has been sufficiently prepared either orally or in writing the arbitral tribunal will normally convene the parties to the main hearing. The principal object of that hearing is to enable the parties to present their case in its entirety, to introduce and lay before the tribunal all the evidence they have invoked, whether in the form of documents or testimonies, and finally to plead their case, in facts and in law.

8. THE AWARD

Quite many cases, generally more than twenty five per cent of the total number, are settled amicably in the course of the proceedings, or otherwise terminated in the course of the arbitration.

In all other cases the arbitrators will give an award.

The award shall be made not later than six months after the case has been referred to the arbitrators. The SCC Institute may, however, extend such period.

The award must be in writing and signed by at least a majority of the arbitrators. It must also be

accompanied by reasons. Apart from the final award the arbitrators may also, at the request of a party, render separate awards. A separate issue or part of a matter in dispute may be decided in such an award. Where a party has partially admitted a claim, a separate award, based on such admission may also be rendered.

Most awards are decided unanimously. The award may, however, be decided by a majority, or in the case of an equality of votes, by the chairman alone. A decision could therefore always be obtained.

All arbitrators are expected to sign the award even if one arbitrator does not agree with the decision reached by the majority. An arbitrator is, however, entitled to attach a dissenting opinion to the award. In practice such arbitrator usually fully states the reasons for his dissent.

Arbitral awards rendered in Sweden are final and without appeal as regards the merits of the case. Accordingly, awards may be challenged only for procedural defects and in such cases only if basic minimum standards of a fair procedure have not been met.

9. COST OF ARBITRATION

The arbitrators' fees, which are the main cost of arbitration, are decided by the SCC Institute according to the amount in dispute.

At the outset of the arbitration both parties will be asked to pay a deposit, or advance on costs as it is called in the SCC Rules, to cover the estimated costs of arbitration, including the arbitrators' fees and expenses and the administrative fee of the SCC Institute. A table of costs for determining the amount of the advance is included in the SCC Rules. The amount is normally calculated between maximum and minimum and is in most cases equivalent to the final cost of arbitration.

The arbitration costs, and their apportionment between the parties, shall be fixed in the award or other order by which the arbitral proceedings are terminated.

10. CONCLUSION

This article has focused on the SCC Institute. Equally important as institutional rules and practice are the law and practice of the country where the arbitration takes place or will take place. As most SCC arbitrations are conducted in Sweden, Swedish arbitration law and practice should be taken into account. To give an account also on the Swedish arbitration law and practice would, however, fall outside the scope of this article.

Very briefly, however, it should be mentioned that a new Swedish Arbitration Act came into force on 1 April 1999. The Act applies equally to domestic and international arbitration. Although the new Swedish Arbitration Act is not identical with the UNCITRAL Model Law on International Commercial Arbitration the utmost attention was given to each provision of the Model Law when drafting the Act and there are in substance few differences between the Act and the Model Law.