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Enforcement of Judgments 2022

Sweden: Law & Practice
and
Sewden: Trends & Developments

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SWEDEN

Law and Practice

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1. IDENTIFYING ASSETS IN THE JURISDICTION

1.1 Options to Identify Another Party's Asset Position

In Sweden, there is no direct way to identify the full asset position of another party, prior to a judgment. However, there are several ways to get a good indication of a company's or an individual's assets.

One option is to contact the Swedish Tax Agency (*Skatteverket*) and request tax returns of the other party, where information regarding declared income and expenses could be found. Tax returns submitted to the Swedish Tax Agency are publicly available and can generally be given to anyone upon request. This applies to all legal entities, sole traders and private individuals.

If the other party is required to keep accounts, such as in limited companies, the annual report can also give a good description of the company's asset position. In Sweden, all annual reports are publicly available. The Swedish Companies Registration Office (*Bolagsverket*) is the authority where companies' annual reports are filed and registered. On payment of a small fee, anyone can obtain annual reports.

The Swedish authority responsible for property registration, *Lantmäteriet*, could answer the question regarding whether the other party owns any real estate in Sweden. This applies provided that the other party has a Swedish registration number or a Swedish social security number. Similarly, by contacting the Swedish Transport Agency (*Transportstyrelsen*), one could acquire information as to whether the other party owns any vehicles, civil aircraft, trains or boats over 15 metres in length.

It is also sometimes possible to review a credit report of the other party from a credit reference agency. Every company and everyone over the age of 15 is registered at the major credit reference agencies. In the credit report, information such as credit score, debts and previous credits can be found. There are no special requirements for requesting a credit report regarding a company, but according to Swedish law, if the report contains information about a private individual the report must have a necessary purpose (eg, the party requesting the report has entered into, or is about to enter into, a credit agreement with the person to whom the credit information pertains, or the requesting party otherwise has grounds to make a financial risk assessment).

If the parties are in a litigation (civil case), the court can, upon demand from a party, subpoena for production of documents if the documents can be assumed to have significance as evidence (*editionsföreläggande*). The obligation also applies to third parties and is thus not limited to the parties to the proceedings. Consequently, depending on the type of case, information about the person's or company's assets position can be gathered through the subpoena, if the documents have relevance as evidence.

Moreover, where there is a risk that the other party could withhold or disappear with the money or property, a claimant can also request that the court issue a freezing order (*kvarstad*). If ordered by the court, the Enforcement Authority (*Kronofogdemyndigheten*) will temporarily take possession of the money or property until judgment or final order.

2. DOMESTIC JUDGMENTS

2.1 Types of Domestic Judgments

In Sweden, there are six different types of domestic judgments:

- declaratory judgment (*fastställelsedom*);

- judgment for specific performance (*fullgörelsedom*);
- intermediate judgment (*mellandom*);
- default judgment (*tredskodom*);
- interim judgment (*interimistiskt beslut*);
- decision (*beslut*); and
- confirmed settlement (*stadfäst förlikning*).

2.2 Enforcement of Domestic Judgments

If the domestic judgment holds that an individual or a company (ie, the other party) is in debt or finds that the claimant is entitled to a specific asset, it is possible to apply for enforcement at the Enforcement Authority (*ansökan om verkställighet*). The authority can then compulsively attach and sell the debtor's property or attach the specific asset in question and give possession or, where the other party is a natural person, force the judgment debtor's employer to deduct money from the salary. The money obtained goes towards paying the debt. The same procedure is applicable if a third party's debt, such as a guarantor's liability, has been adjudged by a domestic judgment.

As a second option where the enforcement from the Enforcement Authority did not result in a payment of the debt, an application for bankruptcy of the other party could be filed at the district court. A trustee will then handle the bankruptcy estate and decide in what order all the creditors get paid accordingly to Swedish law. The trustee will publish a notice to unknown creditors, and other parties may therefore claim their rights to the assets. This means that, even with a domestic judgment, another creditor may get paid before the creditor that filed for bankruptcy. The order depends on several factors, such as the origin of the claim, when the claim first arose, and the size of the claim.

An advantage of placing the party into bankruptcy is that a bankruptcy trustee investigates. The bankruptcy trustee has the opportunity to apply for recovery to the estate and thus the money can be received for the estate.

The party petitioning for bankruptcy must show that the other party is insolvent. An application for bankruptcy is therefore often the second alternative to an application for enforcement at the Enforcement Authority.

A victim of crime, on the other hand, will always be entitled to the damages awarded by the court. If the perpetrator is not able to pay the full damages and the incident is not covered by insurance, it is possible for the victim to receive criminal injuries compensation for the remaining part from the Swedish state. An application can be sent to the Crime Victim Compensation and Support Authority (*Brottsoffermyndigheten*). The perpetrator will then be in debt to the authority, and not the victim.

2.3 Costs and Time Taken to Enforce Domestic Judgments

An application for enforcement at the Enforcement Authority costs SEK600 (approximately EUR58) per year. It is the debtor who shall be pay this fee, but if the debtor cannot pay, the creditor will receive the invoice instead. If the enforcement is successful, the creditor will be reimbursed.

Provided that the debtor has cash or cash equivalents, the time from the day of the application to the day the creditor is fully repaid is approximately 45 working days. However, the processing time may vary depending on the subject of the enforcement, the debtor's solvency and the kind of assets attached.

The application fee for applying at the district court to place another party in bankruptcy is SEK2,800 (approximately EUR267), not including legal fees. This process is both time-con-

suming and more expensive than an application at the Enforcement Authority, and the process can take years.

2.4 Post-judgment Procedures for Determining Defendants' Assets

As part of the execution process, the Enforcement Authority investigates whether the debtor has assets they can seize and the location thereof.

2.5 Challenging Enforcement of Domestic Judgments

A defendant may challenge enforcement on the basis of a failure to validly serve proceedings on them, seeking to set aside the judgment or appeal the judgment.

If the judgment has not yet become final (eg, the appeal period is still running), the other party may lodge an appeal to a higher court (the Court of Appeal or the Supreme Court) to challenge the obligation to pay. After the judgment becomes final, the obligation itself cannot be challenged, other than for procedural irregularities.

A higher court can however also rule to inhibit the enforcement until the judgment is delivered. The inhibition can only be ruled upon demand from a party. For the person/company filing the appeal, it is therefore important to remember to state the demand for inhibition.

However, the other party may challenge the Enforcement Authority's decision to attach and sell assets. The appeal shall be sent to the authority within three weeks from the date of service (*delgivning*). If the decision relates to an enforcement of a person's wage, there is no time limit for the appeal. The appeal is then sent to a district court.

After the appeal, the Enforcement Agency can however still execute the enforcement until the court has made its judgment. Thus, the appeal is not an obstacle to enforcement. If the court rules in the debtor's favour, the property, or the equivalent amount, is given back to the defendant. The court can however also rule to inhibit the enforcement until the judgment is delivered.

2.6 Unenforceable Domestic Judgments

In Sweden, all types of court judgments can, in principle, be enforced.

2.7 Register of Domestic Judgments

Although there is no searchable register of all judgments, all court judgments are official in Sweden. To request a judgment regarding a specific company or person, it is possible to call the district court in the jurisdiction of the party's registered office or residence. The information that can be received concerns whether an application for bankruptcy has been filed or if there are any ongoing or closed proceedings that confirm/impose a debt. Other domestic judgments are not available here, such as decisions from the Enforcement Authority.

However, by contacting a credit reference agency, a credit report of a person or a company can easily be obtained. Unpaid debts, granted credits and credit scores will be shown. Payment defaults are usually visible in the report for three years.

3. FOREIGN JUDGMENTS

3.1 Legal Issues Concerning Enforcement of Foreign Judgments

Only judgments from foreign courts from areas that are covered by relevant international conventions to which Sweden has acceded, or agreements that Sweden has entered into with other countries, or are covered by certain EU regulations, can be enforced in Sweden. In spe-

cial situations, a foreign judgment may also be enforced and recognised based on case law.

The most important treaties are listed below. There are also a number of other EU regulations concerning the recognition and enforcement of private law judgments. The regulations regulate specific areas and have a more limited scope than the 2000 and 2012 Brussels I Regulations. There are also judgments that can be enforced in Sweden according to agreements that Sweden has entered into with other countries, for example Nordic conventions.

- Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast);
- 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters;
- Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000;
- Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations;
- Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Lugano Convention).

3.2 Variations in Approach to Enforcement of Foreign Judgments

Some judgments from other EU member states or other Nordic countries are directly enforceable. For other judgments, it might be necessary to apply to a specific district court to have the judgment declared enforceable, which is called exequatur.

3.3 Categories of Foreign Judgments Not Enforced

Normally all judgments can be enforced, such as default judgments, interim, summary, etc. Judgments which are in not in conformity with the basic principles of the Swedish legal system might be declared unenforceable with reference to *ordre public*. This is, however, not common.

3.4 Process of Enforcing Foreign Judgments

Anyone who can demand that the judgment be enforced in the country of origin may also make an application for exequatur in Sweden. The documents that must be submitted in connection thereto depends on which regulation or convention the application is based. As a general rule, the following documents need to be submitted:

- a certified copy of the judgment and, in some cases, documents proving that the judgment is enforceable in the state in which it was given, such as proof of legality;
- an address or information about a representative in Sweden or within the EEA area for service of process;
- authorisation documents in their original for a possible representative; and
- a certificate pursuant to a regulation or convention from the court which delivered the judgment.

The court may request the applicant to submit an authorised translation of the documents. If the application is not complete, the district court will order the applicant to complete the application.

The district court does not reconsider the substantive aspect of the foreign judgment, although

it does perform formal checks and thereafter declares the judgment enforceable. After the district court has declared the judgment enforceable, it can be enforced in the same way as a Swedish judgment.

3.5 Costs and Time Taken to Enforce Foreign Judgments

The application to the court itself is free of charge, but there may be costs when hiring a representative and translating documents.

For the further processing of enforcement, costs arise in the same way as for the enforcement of a domestic judgment.

However, in Sweden, the "loser pays" principle applies as a general rule, meaning that the losing party must pay all costs (eg, costs for the counterparties' legal counsel).

Simple cases take a couple of weeks to enforce but more complicated cases can take several months or even years to enforce.

3.6 Challenging Enforcement of Foreign Judgments

In cases where the district court has approved an application for a declaration of enforceability, the counterparty shall be notified of the decision. The counterparty has the opportunity to apply for an amendment of the decision. If the counterparty is resident in Sweden, the application for change must be made within one month of receiving the decision. If the other party is resident in another state, the application must be made within two months of receiving the decision.

After an application for amendment has been made, the court must consider whether enforcement should be refused. The court shall refuse enforcement if there are obstacles to enforcement. Obstacles may, for example, be that the judgment is contrary to the grounds of the Swedish legal system, the defendant in a third-party judgment or equivalent has not been served with the summons in the right way or in sufficient time to prepare his defence, or the judgment is contrary to a judgment between the same parties in Sweden.

4. ARBITRAL AWARDS

4.1 Legal Issues Concerning Enforcement of Arbitral Awards

As a general rule, a foreign arbitration award based on an arbitration agreement is recognised and enforced in Sweden. However, there are a couple of exceptions, corresponding to the exceptions in the New York Convention. A foreign award shall not be recognised and enforced in Sweden if the party against whom the award is invoked proves:

- 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 rendered;
- that the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings, or was otherwise unable to present its case;
- 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 recognised and enforced;
- 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
- 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 rendered.

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

- that the award includes determination of an issue which, in accordance with Swedish law, may not be decided by arbitrators; or
- that it would clearly be incompatible with the basic principles of the Swedish legal system to recognise and enforce the award (ordre public).

During the proceedings in the Svea Court of Appeal in Stockholm (as described below) for recognition and enforcement of the foreign arbitral award, documents which are filed will, as a general rule, become public. However, certain information in submitted documents may be subject to limitations on publicity by the Public Access to Information and Secrecy Act. For example, information about a party's business or management conditions will be kept confidential if it can be assumed that its disclosure would cause that party considerable harm. It is common for arbitral awards to be considered confidential.

Furthermore, normally, there are no hearings on recognition and enforcement. If a hearing takes place, general Swedish rules on judicial procedure would apply. As a general rule, court hearings are open to the public. However, a party may request that the hearing be held in camera and thus not be public. The court may grant such a request insofar as it relates to the information qualifying for protection under the Public Access to Information and Secrecy Act and the court deems it to be of extraordinary importance that such information should not be disclosed.

4.2 Variations in Approach to Enforcement of Arbitral Awards

Generally, Sweden's approach to enforcement does not vary for different types of arbitral awards, as long as they are enforceable according to the requirements described in **4.1 Legal Issues Concerning Enforcement of Arbitral Awards**.

Through the implementation of the Washington Convention of 1965 on the Recognition and Enforcement of Arbitration Judgments in Certain International Investment Disputes, an arbitration award in certain of such disputes can, under certain conditions, be enforced directly as a Swedish court's final judgment. However, the Court of Justice of the EU's Achmea decision from 2018 might pose an obstacle to enforcement in such cases.

4.3 Categories of Arbitral Awards Not Enforced

Under Swedish law, an arbitral award is considered to have been rendered in the country where the proceedings have their seat of arbitration. Swedish law recognises an award as either domestic or foreign and therefore does not recognise the concept of a non-domestic award. The Swedish court will try to establish a country, but in the event that this is not possible, it will not be possible to enforce the arbitral award.

Recognition and enforcement of a foreign award shall also be refused if a court finds non-compliance with the requirements referred to above.

Furthermore, certain interim decisions are not considered judgments under the New York Convention and are therefore not enforceable.

4.4 Process of Enforcing Arbitral Awards

An application must be made for recognition and enforcement of the foreign arbitral award. This shall be filed with the Svea Court of Appeal in Stockholm. This court's examination of the application only covers the status of the arbitral award. The Court of Appeal's review thus does not include such objections to the judgment that can be made in the actual enforcement.

The arbitral award must be attached to the application in an original or certified copy. The judgment must also be certified and translated in its entirety into Swedish, unless the Svea Court of Appeal decides otherwise. It is rarely necessary to translate documents in English, Danish, and Norwegian into Swedish. Between the Nordic countries, there is a language convention which prescribes that, as far as possible, they shall be entitled to communicate in their own language when in contact with Swedish authorities.

The opposing party must be given an opportunity by the Court of Appeal to comment before the court can approve the application.

If the opposing party objects to the existence of an arbitration agreement, the agreement shall also be submitted in an original or certified copy to the Court of Appeal. The same translation rules apply as for the award in relation hereto. In this context, it should be noted that within the framework of Swedish law there is no requirement that the arbitration agreement must be in writing.

If the opposing party objects and submits a request for annulment of the arbitral award or for suspension of its enforcement, the Court of Appeal may postpone the decision and, if the applicant so requests, order the other party to provide reasonable security in the event that a decision on enforcement may otherwise be issued.

When the Svea Court of Appeal grants an application for recognition and enforcement of a foreign award, the award is enforceable as a final Swedish court judgment, unless the Supreme Court orders a stay of execution. Decisions by the Svea Court of Appeal can be appealed to the Supreme Court.

The enforcement of the arbitral award may, after the decision, be made on the same terms as a domestic judgment.

4.5 Costs and Time Taken to Enforce Arbitral Awards

The time it takes to enforce an arbitral award depends on a number of different factors such as the number of parties, whether communication is needed before a decision, case type, etc. The time may vary from a couple of months to over a year.

The application to the Svea Court of Appeal itself is free of charge, but there may be costs when hiring a representative and translating documents.

For the further processing of enforcement, costs arise in the same way as for the enforcement of a domestic judgment. However, in Sweden, the "loser pays" principle applies as a general rule, meaning that the losing party must pay all costs (for example costs for the counterparties' legal counsel).

4.6 Challenging Enforcement of Arbitral Awards

An arbitral award that is not final will not be recognised and enforced in Sweden. The party

against whom the award is invoked has the burden of proof in relation thereto.

Questions in the arbitral award, such as regarding limitation and other substantive objections, are not reconsidered in the context of the enforcement procedure.

Advokatfirman Vinge KB is a full-service business law firm with offices in Stockholm, Gothenburg, Malmö, Helsingborg and Brussels. The firm's dispute resolution group, which consists of more than 50 lawyers, is highly regarded as a world-leading team and is one of the largest groups in Scandinavia for dispute resolution. Vinge's dispute resolution specialists focus specifically on international arbitration and commercial disputes at all levels in the Swedish court system. Vinge handles arbitral proceedings, eg, before the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA). Several of Vinge's specialists are regularly appointed as arbitrators. The firm's full-service concept often results in the dispute resolution team working closely with Vinge's other experts in EU and competition law, IP and life sciences, among other areas.

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Trends and Developments

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Introduction

When making the decision to initiate a legal proceeding, perhaps the most important practical question to take into account is the enforcement of the future judgment. If the judgment will not be enforceable, it will not matter that you have the best legal grounds ever heard of supporting your claim, or excellent evidence.

A judgment that cannot be enforced means in practice that the process has been in vain in many ways, except maybe in a moral one. If an examination of the available assets reveals that enforcement is to take place, partly or fully, in another country, it is important that the judgment will be enforceable there as well – which can give rise to tricky situations in some cases.

If it turns out that Sweden is the country where enforcement is to take place, that is in many ways a positive discovery.

Enforcement in Sweden via the Swedish Enforcement Agency

The Swedish Enforcement Agency helps with enforcement. They can help collect a debt, carry out evictions, repossess or remove property, sell real estate and property to collect debts, etc. The application is easily made and can also be done by a representative. In urgent cases, the public authority can act quickly. When applying, the process is expedited if information about the person to whom the claim is directed at, such as personal information, contact information for employers, assets in real estate, etc, is stated in the application. In more complicated cases, it is advisable to contact the Enforcement Agency before submitting your application in order to give them advance notice and time to make practical preparations. Typically, in complex cases where, for example, large assets of a company are seized, the applicant will be assigned a specific contact person – a senior enforcement officer who is assisted by a team of executors – to conduct the enforcement.

In most cases, the party against whom the claim for enforcement is directed is allowed to comment. Thereafter, the Swedish Enforcement Agency conducts an asset investigation. With the support of the asset investigation, the public authority then seizes cash, financial instruments, both movable and fixed assets, etc, and, to the extent necessary, monthly wage garnishment takes place. The public authority works with the case until the entire claim has been executed.

Recent Trends in the Swedish Legal System Affecting Enforceability – Virtual Hearings

General courts

As in most jurisdictions, the COVID-19 pandemic has affected the legal system in many practical respects. However, in Sweden, the courts have remained open (with certain restrictions) and hearings have taken place in person despite the pandemic. In the authors' experience during the pandemic, the possibility to be present as a party, counsel or witness via video link has been used more frequently than before. Sweden adopted the possibility to participate in a hearing via video link during 2008, and this has since been deemed as legally equivalent to being present in person. Indeed, in the authors' experience, the pandemic has rendered users more willing to use these technical tools. Consequently, the use of digital tools does not per

se pose an issue when it comes to enforceability of judgments in Sweden.

Arbitration

During the pandemic, parties to arbitral proceedings have also agreed to conduct final hearings virtually. Furthermore, there have been cases where the arbitrator has decided to hold the hearing digitally despite the objection of a party. In Sweden, the question debated in this context is whether the right prescribed in Section 24 of the Swedish Arbitration Act to an "oral hearing" has been fulfilled in the event of a digital hearing. In this context, it has also been argued that a party's right to an oral hearing has been violated in a virtual final hearing and that the party has thus not been given a fair trial in accordance with Article 6 of the European Convention on Human Rights (ECHR).

In Swedish law, there is no established legal status of what the term "oral hearings" implies. The focus in the Swedish debate centres on whether the right to an oral hearing is upheld when conducting a digital hearing in cases where a party has requested an oral hearing.

Arguments advanced in favour of digital hearings are, inter alia, that digital hearings were not a technical possibility and were thus not considered when the Swedish law was enacted. The legislative history in fact lacks guidance as to what was meant by oral hearings. However, an openness to technological developments is expressed in the preparatory works, and it is stated that the outermost limits are not set by any legal rules but rather by the available technology. It is also stated that if the parties cannot agree, the timing and details of a hearing should be determined by the arbitrators. In Sweden, generally a pragmatic approach is adopted in relation to such questions, and there are many examples of courts applying a technology-neutral approach when interpreting various concepts.

One argument for those in favour of a stricter interpretation of the term "oral hearing" is that digital hearings do not fulfil one of the fundamental purposes of the right to oral hearings, which is to build confidence among parties to arbitration as a model for resolving legal disputes. This argument relies on the assumption that there are technical aspects that make videoconferencing an inferior alternative to a hearing in person. However, the recent evaluation conducted among Swedish general courts found mostly positive views on the use of video hearings and, as mentioned, legislators have even extended the possibilities for conducting hearings by video and audio transmission.

Even if one were to accept the view of virtual hearings as an inferior alternative to physical ones, it is not uncommon for the parties' right to oral hearings to be limited in arbitral proceedings when deemed appropriate by the arbitrators. For example, arbitrators may review evidence by video if the parties request a hearing under oath in court, the arbitral tribunal may order the party to submit written statements in advance, which may then be supplemented only by a brief main hearing, and the arbitral tribunal may limit the time available to the party for presentation of the facts and closing arguments. None of these constraints have led to court decisions that the procedure would be contrary to the right to an oral hearing.

Moreover, one party's view of what is needed to ensure a fair trial must be weighed against another interest typically held by the other party, namely that the proceedings should lead to a decision within a reasonable time. Section 21 of the Swedish Arbitration Act provides that the arbitral tribunal shall conduct its proceedings impartially, effectively and expeditiously. The

need for an expeditious and effective procedure also follows from Article 6 of the ECHR and is usually highlighted as one of the advantages of arbitration. It is therefore arguable that the objective of the right to a fair trial and to an oral hearing is also served by the possibility of holding the hearing digitally if this is a prerequisite for ensuring that it can be held within a reasonable time, which was often the case during the COVID-19 pandemic.

Finally, it may be noted that the international trend is moving towards allowing virtual hearings. The ICC Rules as well as the UNCITRAL Model Law on International Commercial Arbitration contain rules that allow virtual hearings, and in July 2020 a ruling of the Austrian Supreme Court of Justice concluded that a virtual hearing against a party's objection did not violate the ECHR. In the preparatory works pertaining to the Swedish Arbitration Act, a desire was expressed to follow international developments regarding the increased possibilities for oral hearings and, given the prevalence of international arbitrations, it is likely that Sweden would continue to have an interest in doing so.

Current developments

A number of arbitral awards are currently being examined at the Svea Court of Appeal. One of the awards concerns a dispute between two companies regarding purchases and complaints where the final hearing in the arbitration was held with counsel and witnesses present through video links. In support of its appeal, the losing party claimed that the arbitral tribunal committed a procedural error that is likely to have affected the outcome of the arbitration by, inter alia, refusing to hold an oral hearing in violation of Section 24(2) of the Swedish Arbitration Act, despite that company's many objections.

The issues currently examined by the Svea Court of Appeal are whether the proceedings shall be deemed to have been conducted in an appropriate manner regarding the parties' right to a fair trial, and if the losing party has been able to present their case in a legally secure manner through the means of a virtual hearing. The appellant has claimed, inter alia, that they, due to the digital form of the hearing, were unable to question the counterparty's witnesses adequately, that the arbitral tribunal does not appear to have taken into account several crucial witness testimonies, and that representatives of the counterparty, as well as certain witnesses of that party, sat together with its counsel during the hearing which constitutes a breach of the principle of equal treatment. On the opposing side, it is stated that the hearing was conducted digitally rather than in person due to the appellant's inability, without a valid reason, to attend the physical hearing and that at the time of the final hearing it was mandatory and, in any event, permissible to conduct arbitral proceedings using digital solutions in light of COVID-19 restrictions.

In our opinion, it is most likely that the Court of Appeal will deem a virtual hearing to be equivalent to a hearing in person. Apart from that, the outcome of the case depends on whether the Court of Appeal deems that in other respects the proceedings have been conducted in accordance with due process.

Recent Trends in the Swedish Legal System Affecting Enforceability – Mediation

In 2011, Sweden adopted a new law related to mediation; the Mediation Act (2011:860). The Mediation Act is based upon EU Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters (the "EU Mediation Directive"). The purpose of the Mediation Act is to promote mediation as a dispute resolution method. By virtue of the Act, the parties to a mediation agreement can apply for enforceability of the agreement at court.

The Mediation Act applies to both domestic and certain foreign mediation procedures. Domestic mediation is mediation carried out in Sweden. The Mediation Act does not cover mediation that takes place within the framework of a case or matter before a court, other authority or arbitral tribunal.

Only certain foreign mediation agreements can be declared enforceable in accordance with the Mediation Act. A mediation agreement is referred to as a foreign mediation agreement if it has been entered into outside Sweden. Foreign mediation agreements can only be declared enforceable in cases where the parties at the time of commencement of mediation had their domicile or habitual residence in Sweden, or if one of the parties had its domicile or habitual residence in another EU member state (with the exception of Denmark).

In order to be able to enforce a mediation agreement in accordance with the Mediation Act, it is required that the parties reach a mediation agreement, but also that all parties agree to the application for a declaration of enforceability. The requirement for consent is a prerequisite for the application for a declaration of enforceability. In cases where a party has agreed to a declaration of enforceability in connection with the mediation agreement but does not agree in connection with the application for a declaration of enforceability, it may also be a question of a breach of contract.

An application for a declaration of enforceability is made to the district court where one of the parties is domiciled. In cases where the parties are not domiciled in Sweden, Värmland District Court is the competent forum.

The UN Convention on International Settlement Agreements Resulting from Mediation, also known as the “Singapore Convention on Mediation”, governs cross-border enforcement of mediated settlements. The Convention has not been signed by Sweden, notwithstanding that mediation is a form of alternative dispute resolution that the Swedish government considers important. However, creating a system that means that mediation agreements from countries outside the EU can be implemented in Sweden has been viewed as a reform that is too far-reaching. The Convention imposes other requirements for enforceability on mediation in certain civil disputes and the EU Mediation Directive. For example, the grounds for refusal in the Convention involve an examination of the validity of the agreement. Furthermore, there is no requirement for consent from the parties in connection with the application.

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Advokatfirman Vinge KB is a full-service business law firm with offices in Stockholm, Gothenburg, Malmö, Helsingborg and Brussels. The firm's dispute resolution group, which consists of more than 50 lawyers, is highly regarded as a world-leading team and is one of the largest groups in Scandinavia for dispute resolution. Vinge's dispute resolution specialists focus specifically on international arbitration and commercial disputes at all levels in the Swedish court system. Vinge handles arbitral proceedings, eg, before the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA). Several of Vinge's specialists are regularly appointed as arbitrators. The firm's full-service concept often results in the dispute resolution team working closely with Vinge's other experts in EU and competition law, IP and life sciences, among other areas.

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