CHAPTER 2

The 2019 Changes in the Swedish Arbitration Act

Patrik Schöldström

§2.01 INTRODUCTION

On 1 March 2019, several changes in the Swedish Arbitration Act of 1999 (henceforth 'the Act') became operative. The purpose of this chapter is to present briefly some major changes. For each change the problem that the change aims to cure is first described and then the cure, followed by a comment.

Not all changes are covered. Changes that in particular might interest a practice oriented non-Swedish readership have been chosen.

The presentation is based on the Government Bill to the Swedish Parliament concerning the changes (henceforth 'the Bill').[1] The parliamentary process did not produce any further or different changes.

Finally, a few changes contemplated in the legislative process, but eventually not proposed in the Bill, are briefly discussed.

§2.02 COURT DETERMINATION OF THE ARBITRAL TRIBUNAL'S JURISDICTION

[A] The Problem

Under the former legislation, a court of law could determine the arbitral tribunal's jurisdiction in two separate cases pending simultaneously, which has happened a few times. First, the court could determine the arbitral tribunal's jurisdiction in an action

1. Government Bill (Swedish: *proposition*) 2017/18:257.

for a declaratory judgment – in regular civil proceedings – to the effect that the relevant arbitration clause is not binding on the plaintiff in the court action, who is the respondent in the ongoing arbitration. In the typical situation, the arbitration respondent has raised objections to the arbitral tribunal's jurisdiction, but the arbitral tribunal will have found that it does have jurisdiction and continued the proceedings. In that situation, the arbitral award may be made well before there is a final judgment in the declaratory action. Second, the court could determine the arbitral tribunal's jurisdiction in an action for the setting aside of the award on the ground that the arbitral tribunal lacked jurisdiction.

There were also some 'coordination' difficulties. The declaratory action was tried at first instance in a lower court, the district court, whereas the set aside action was tried at first instance in the relevant court of appeal.[2] The district court's judgment in the declaratory action could on appeal come before the same court of appeal. The latter court could therefore have the question of the arbitral tribunal's jurisdiction before it in two separate cases at the same time. Where that happened, the court of appeal stayed the set aside action until the declaratory action had ended.

[B] The Cure

The cure is essentially to let the court try, within a shorter time limit, a decision by the arbitral tribunal that it has jurisdiction and to prevent an action for declaratory judgment on the arbitral tribunal's jurisdiction while the arbitration is pending. In the typical case, the cure will work as follows. The claimant requests arbitration against the respondent, who timely objects to the arbitral tribunal's jurisdiction. The arbitral tribunal – exercising its competence to rule on its own jurisdiction – finds that it does have jurisdiction and decides to go on with the arbitration. The respondent challenges that decision by bringing an action against the claimant in the court of appeal to reverse the arbitral tribunal's decision. The request for arbitration bars the respondent in the arbitration from bringing an action against the claimant in the arbitration for declaratory judgment to the effect that the arbitral tribunal lacks jurisdiction.

A few details of the cure should be pointed out:

- There must be an express and formal 'challengeable' decision by the arbitral tribunal that it has jurisdiction, for example, a separate award on jurisdiction. The decision must not be taken in the final arbitral award. A final arbitral award with such a decision may be challenged in the same way as any arbitral award, i.e., under section 34.
- The action against the arbitral tribunal's decision must be brought within thirty days from the receipt by the respondent of the arbitral tribunal's decision.
- The respondent in the arbitration will be barred from bringing a declaratory action in court to the effect that the arbitral tribunal lacks jurisdiction if, and

2. Sweden has six courts of appeal, each covering a specific geographic area.

only if, the claimant in the arbitration so requests in the court action brought by the respondent in the arbitration. The idea is that such a declaratory action should be allowed if the claimant so wishes.

– The judgment in the action challenging the arbitral tribunal's decision that it has jurisdiction acquires res judicata effect. The matter of the arbitral tribunal's jurisdiction may therefore not be tried again in an action to set aside the arbitral award. In other words, the respondent in the arbitration may not then invoke lack of jurisdiction of the arbitral tribunal as a ground for setting aside the award.

[C] Comment

It remains to be seen to what extent the cure will have the desired effect of doing away with the court's determination of the arbitral tribunal's jurisdiction in two different cases at the same time; in a set aside action against the award and in a declaratory action concerning the arbitral tribunal's jurisdiction. One thing in particular may be a problem. The bar to a declaratory action is triggered by the respondent's receipt of the claimant's request for arbitration. So if the prospective respondent begins a declaratory action before receipt of the request for arbitration, then the bar is not triggered. Many requests for arbitration do not come unexpectedly. The prospective respondent may even have received a draft request for arbitration for consideration. In situations of that kind, the prospective respondent may wish to initiate a declaratory action involving the jurisdiction of the prospective arbitral tribunal before receipt of the request for arbitration proper.

However, this potential problem should not be overstated. A declaratory action, concerning the jurisdiction of the prospective arbitral tribunal, begun before receipt of a request for arbitration would seem in practice to be limited to the validity of the relevant arbitration clause. At that time, there would be little else to go on in practice.

Once the arbitration has begun, there may much more to go on for the respondent as the law stands now after a recent Supreme Court case, where the Court addressed the concept of an arbitral tribunal's 'jurisdiction'.[3] It was a case where the respondent in the arbitration sought a declaratory judgment by the court to the effect that the arbitral tribunal in question did not have jurisdiction. The Supreme Court held that the concept of jurisdiction involves a wide range of issues. These include, the Court said, whether a party is bound by the arbitration clause, whether the dispute is arbitrable, and whether there is any bar to the arbitral proceedings. The Court went on to say that the concept also includes such issues as whether the arbitration was initiated in the correct manner, and whether the correct number of arbitrators have been appointed or if the appointed arbitrators have the proper qualifications.

All such issues may thus be made determined by the arbitral tribunal and, if the arbitral tribunal has decided that it has jurisdiction, determined by the court of appeal

3. NJA 2016 p. 264 (*Elf Neftegaz S.A. v. Interneft 000 et al.*).

if the arbitral tribunal's decision is 'appealed', i.e., the arbitration respondent brings an action against it in the court of appeal.

A matter of particular practical importance should finally be addressed. Where the arbitral tribunal has made a formal decision that it does have jurisdiction, the respondent may wish not to appeal that decision in favour of later trying to have the award set aside on the ground that the arbitral tribunal lacked jurisdiction. In such cases, the respondent must take care to avoid later being held to have waived its right to invoke the arbitral tribunal's lack of jurisdiction as a ground for setting aside the award. A straightforward way of doing so would be for the respondent to state in the arbitration that it reserves the right to challenge the award on the ground that the arbitral tribunal lacks jurisdiction.

§2.03 IMPARTIALITY AND INDEPENDENCE OF THE ARBITRATOR

[A] The Problem

The Act expressly requires the arbitrator to be only 'impartial' (section 8), which concept however is widely held as a matter of Swedish law to include 'independence'. The absence of an express requirement of 'independence' of an arbitrator may be misleading by giving the false impression that Swedish law does not require an arbitrator also to be independent.

[B] The Cure

The problem is cured by providing expressly that an arbitrator shall be both 'impartial and independent'.

[C] Comment

This is a welcome and clarifying change.

§2.04 APPOINTMENT OF ARBITRATORS IN MULTIPARTY ARBITRATIONS

[A] The Problem

The Act does not expressly cater to multiparty arbitrations. As regards appointment of arbitrators in multiparty settings, there is, however, in particular, one existing provision that is relevant. It concerns the court's default appointment of an arbitrator. Where the claimant has requested arbitration against two (or more) respondents and these have not jointly appointed an arbitrator, the relevant provision (section 14(3)) has been taken to mean that the court (on the claimant's application) should appoint one single arbitrator for the respondents. It has however been suggested that this

would not be in line with the *Dutco* principle; it would be unfair that the claimant gets to appoint an arbitrator, and thus affect the composition of the arbitral tribunal, but the respondents do not.

[B] The Cure

The cure is to give the court power, on application by one of the respondents, to remove the arbitrator who has been appointed by the claimant and to appoint a new arbitrator for the claimant as well as one arbitrator for the respondents.

This mechanism is available only if the parties have not agreed otherwise on the appointment procedure (*see* section 12(2)). If the arbitration agreement, in itself or by incorporation of the rules of an arbitral institution (such as the SCC Rules), provides for another mechanism, then that mechanism shall apply.

[C] Comment

There may be some practical difficulties in the operation of the cure as designed. The difficulties have to do with the interplay between section 14(2) and section 14(3). Subsection (2) provides that the court *on the claimant's application* should appoint an arbitrator if the respondent has not done so in time. Subsection (3) provides that the court *on application by one of the respondents* should remove the arbitrator appointed by the claimant and should appoint the arbitrators for all of the parties. The problem is that the initiative to default appointment by the court is on the claimant in subsection (2), whereas it is on one of the respondents in subsection (3). This makes room for dilatory tactics by the respondents. What should the claimant, who has requested arbitration against two respondents, do if none of them applies to the court for the mechanism in subsection (3)? The mechanism in subsection (2) would not according to its wording – speaking of 'the respondent', in singular form – be available to the claimant. Nor would the mechanism in subsection (3) seem available to the claimant since it expressly refers only to applications by one of the respondents.

However, it is said in the Bill that the mechanism in subsection (2) is available to the claimant even if there are two or more respondents. Thus, if the respondents do not appoint an arbitrator jointly and none of them applies to the court under subsection (3), then the claimant may apply to the court under subsection (2) for the appointment of an arbitrator for the respondents, without the removal of the arbitrator appointed by the claimant. This is sensible, but not fully in line with the clear wording of the provision.

§2.05 APPOINTMENT OF A REPLACEMENT ARBITRATOR

[A] The Problem

The present main rule is that the court shall appoint a replacement arbitrator where the arbitrator has resigned or has been removed. If, however, the cause for the resignation

or removal has arisen after the appointment, then the 'original appointer' shall appoint also the replacement arbitrator. The main rule and the exception are designed to prevent repeated appointments of arbitrators who cannot or will not serve.

Two related problems have been identified. First, it seems unfair that the 'original appointer' should not be able to appoint the replacement arbitrator even if the 'original appointer' neither was nor should have been aware of the cause for the arbitrator's resignation or removal that existed when the arbitrator was appointed. Second, a replacement appointment by the court is slower and more cumbersome than a replacement appointment by the 'original appointer'. It calls for an application to the court and the court's handling of and eventually deciding on the application.

[B] The Cure

The new rule gives the 'original appointer' more influence than the old rule over the court's replacement appointment. The new rule provides that, where the resigned or removed arbitrator had been appointed by a party (thus not by party-appointed arbitrators) the court shall appoint as arbitrator the person proposed to the court by that party, unless there are special reasons not to do so. Special reasons are in the discretion of the court. It is said in the Bill that the court should focus on whether the arbitrator replacement is part of dilatory tactics or if the party did not take enough care when making the original appointment, which may include checking what the 'original appointer' did or did not do before making the original appointment.

[C] Comment

The old rule's main advantage is simplicity; it is irrelevant whether the 'original appointer' was or should have been aware of the circumstance causing the arbitrator's resignation or removal. The new rule's main advantage is, as intended, that it gives the 'original appointer' a greater influence over the replacement appointment. But it does so at the expense of a potentially more cumbersome and time-consuming process before the court, since court will have to determine whether there are 'special reasons' with the meaning of provision for not appointing the replacement arbitrator proposed by the 'original appointer'. Time will tell if the new rule overall is better than the old one.

Regardless of how that may turn out, it should be emphasized that the parties, as before, ultimately are in charge of a replacement appointment. The new rule, as the old one, come into operation only if the parties have not agreed otherwise (*see* section 12(2)). They need not have done so beforehand. So, for example, where an arbitrator has resigned for (potentially) biasing circumstances of which the 'original appointer' perhaps was or should have been aware, then the other party may agree that the 'original appointer' nonetheless shall be allowed to make a replacement appointment. This has happened in practice.

§2.06 THE SEAT OF THE ARBITRATION

[A] The Problem

The 'place of arbitration' – an expression appearing in several provisions in the Act – is not in line with modern international standards, in that it suggests that the place of arbitration is or must be a geographical location. The terminology is outdated since case law has settled that that expression instead refers to the legal seat of an arbitration.[4]

[B] The Cure

The cure is simple: Replacing the words 'the place of arbitration' with 'the seat of arbitration' in the entire Act. The seat of the arbitration is to be indicated as a geographical location in Sweden, for example, 'Stockholm' or 'Gothenburg'.

[C] Comment

This change is welcome.

§2.07 CONSOLIDATION OF ARBITRATIONS

[A] The Problem

The Act does not deal with consolidation of arbitrations.

[B] The Cure

The cure is a mild one. It is the insertion of a new provision saying that an arbitration may be consolidated with another arbitration on three cumulative conditions: (1) that the parties agree; (2) that it is advantageous to the proceedings; and (3) that the same arbitrators have been appointed in both arbitrations.

The provision also states that the two arbitrations, once consolidated, may be separated if there are reasons therefor.

[C] Comment

It has been argued that the cure is superfluous since the parties anyway can consolidate their arbitrations if they so wish. This is recognized in the Bill, but it is said that the cure nevertheless clarifies the position of the law.

4. NJA 2010 p. 508 (*Ryska federationen [the Russian Federation] v. RosInvestCo UK Ltd)*.

The relevance of the new provision is only to serve as a reminder to the parties of the possibility to consolidate arbitrations.

§2.08 TERMINATION DECISION BY THE ARBITRAL TRIBUNAL

[A] The Problem

Arbitrations are sometimes not carried through to an award on the merits. The arbitral tribunal may have found that it lacks jurisdiction. Advances on the remuneration requested by the arbitrators may not have been paid. The claimant may have withdrawn its claim. For such cases, the existing legislation requires that the arbitral tribunal's decision to terminate the proceedings be made in the form of an arbitral award. This does not accord with international standards. Various difficulties have arisen in practice. For example, it is not in keeping with the ICC Rules or the UNCITRAL Rules to call a termination decision an 'arbitral award'.

[B] The Cure

The cure is to edit the existing provision to state that where the arbitrators terminate the arbitration without deciding the submitted issues on the merits, then they shall do so in a 'decision'.

As before, such a decision may be set aside or changed by the court under section 36.

[C] Comment

When adopted in 1999, the Act introduced as a novelty the requirement that also termination decisions be in the form of an arbitral award. It was not a good idea, as it turned out. The situation is now rectified and brought in line with international standards.

§2.09 APPLICABLE SUBSTANTIVE LAW

[A] The Problem

The Act does not have any provisions concerning the law applicable to the substantive issues in the arbitration. The result is uncertainty, even though the position of Swedish law is clear: the arbitral tribunal shall apply the substantive law that the parties have chosen.

[B] The Cure

The cure is a new provision stating that the dispute shall be decided according to the law or the set of rules agreed by the parties.

[C] Comment

The legislator's ambition is to make clear that the law is what it has been believed to be for a long time: Where the parties have chosen the national law applicable to the substantive issues, then the arbitrators shall apply that law.

The legislator also introduces a novelty, which in the Bill is said to be line with contemporary arbitral practice: That the parties instead of or in addition to a national law may choose a 'set of rules' applicable to the substantive issues. Examples of such sets of rules given in the Bill are the Principles of European Contract Law and the UNIDROIT Principles of International Commercial Contracts.

§2.10 GROUNDS FOR SETTING ASIDE ARBITRAL AWARDS

[A] The Problem

Excess of mandate by the arbitral tribunal is frequently invoked as a ground for setting aside an arbitral award. According to the wording of the relevant provision (section 34(1) item 2), excess of mandate is in itself sufficient reason to set aside the award; there is no explicit additional requirement that the excess of mandate has affected the outcome in the arbitration, i.e., the award. It does not, it is said in the Bill, seem a sensible state of affairs that an excess of mandate that has not affected the outcome should lead to the setting aside of the award.

[B] The Cure

The cure is to add the 'missing' requirement. The new provision requires that the award shall be set aside if 'the arbitrators have exceeded their mandate *in a way that probably has affected the outcome*' (emphasis added).

[C] Comment

The reason why an excess of mandate in itself should suffice for setting aside an arbitral award – which was a feature also of the former Arbitration Act of 1929 – is perhaps the idea that an excess of mandate always affects the outcome. An additional requirement that the excess of mandate had affected the outcome would then be superfluous.

The phrase 'probably has affected the outcome' is the same as in the new version of section 34(1) item 7 (previously item 6), which provision lays down that it is a

ground for setting aside an arbitral award that there in the arbitration has occurred a procedural wrong that probably has affected the outcome.

§2.11 TIME LIMIT FOR NOTABLY SET ASIDE ACTIONS

[A] The Problem

Allowing, as the Act does, three months to bring a set aside action against the arbitral award seems too generous, even if that accords with, for example, the Model Law.

[B] The Cure

The time limit for set aside actions against arbitral awards is cut down to two months (from the party's receipt of the award).

The time limit for actions against termination decisions (section 36) and against the arbitrators' decision on their own remuneration (section 41) is also shortened to two months.

[C] Comment

One can argue about the proper time limit to challenge an award. Two months does not seem too short for most cases.

§2.12 ENGLISH LANGUAGE IN COURT PROCEEDINGS

[A] The Problem

Most of the major set aside cases in Swedish courts arise from arbitrations with English as the language of the proceedings and the award. It is time consuming and costly to make translations back and forth between English and Swedish in set aside actions. The same goes for hearing witnesses via interpreters before the court.

[B] The Cure

A reading of the Bill shows that much thought was devoted to the problem. Various contemplated solutions spawned new problems. In the end, the cure settled for is to provide in the Act (section 45a) that the court of appeal may, on party request, take oral evidence in English without interpretation to Swedish.

That may be done in all cases before the court of appeal under the Act (i.e., actions under sections 2(2), 33, 34 and 36), and before the Supreme Court.

[C] Comment

In view of the difficulties associated with a more far-reaching solution – such as providing that the whole case and the court's judgment may be done in English – the cure goes some way towards solving the problem.

§2.13 LEAVE TO APPEAL TO THE SUPREME COURT

[A] The Problem

The present system has three elements. The first is that the court of appeal itself decides if leave to appeal to the Supreme Court shall be given. If not given, then that is that; the Supreme Court cannot then give leave to appeal. The second is that where the court of appeal does give leave to appeal to the Supreme Court, the Supreme Court must try the case; the Supreme Court cannot decline. The third element is that the leave to appeal is an all-or-nothing matter. Neither the court of appeal nor the Supreme Court can limit the appeal, for example, to a certain part of the case or to a particular issue.

All three elements have attracted criticism. Concerning the first, it has been argued that notably the Svea Court of Appeal has been too restrictive in giving leave to appeal.[5] As for the second element, it has been said that there is no reason why the Supreme Court should not, as it may in other cases, be able to deny trying the case even if the court of appeal has given leave to appeal. The criticism of the third element is in the same vein; the Supreme Court should in the usual manner be able to limit the scope of the case before it.

[B] The Cure

The cure is directed to the second and third element: Even if the court of appeal has given leave to appeal, the Supreme Court decides whether and to what extent the Court will try the case if an appeal is made (which almost always happens if leave to appeal is given).

[C] Comment

The cure rectifies what most probably was an oversight during the drafting of the Act.

Although the cure directly concerns only the second and third elements, it might indirectly affect the first element too. The courts of appeal, notably the Svea Court of Appeal, may feel inclined to give leave to appeal more generously knowing that the Supreme Court has the power to turn down the case, completely or in part. If so, then the cure will have consequences for all three elements in practice.

5. Over the years, the Svea Court has handled around 85% of all set aside actions in Sweden.

§2.14 COURT ASSESSMENT OF THE ARBITRATOR'S REMUNERATION

[A] The Problem

Under the Act, the arbitrators may in the final award order the parties to remunerate them (section 37(2)). Such an order may, however, be challenged in court. If not challenged, the order may be executed against the parties or one of them on application by the arbitrators. The order may thus be regarded as an invoice from the arbitrators to the parties, which invoice is transformed into an enforceable order if not challenged.

Various problems have been associated with this mechanism. The legislative process has singled out only one of them for curing. That is the court's handling of a challenge against the arbitrator's order: Should the court handle such an action as a regular civil dispute or in a more simplified manner?

[B] The Cure

The answer is: In a more simplified manner, as explicitly provided in the new version of section 41(1).

[C] Comment

Challenges against the arbitrators' orders regarding their own remuneration are very rare. The more simplified manner in which such challenges henceforth will be handled by the court essentially means that it as a rule will be a documents-only procedure.

§2.15 TRANSITIONAL ISSUES

The changes in the Act became operative since 1 March 2019. That does not mean, however, that the Act as changed will apply to every situation as per that day. The transitional provisions state that the 'old' provisions still apply if the arbitration was begun before that day, but with two exceptions.[6] The first concerns challenges against the arbitrators' order regarding their own remuneration (section 41). Such challenges are handled by the court in the more simplified manner described above even if the arbitration was begun before 1 March 2019. The second exception – of much greater practical importance – concerns the possibility to take oral evidence directly in English (section 45a). That possibility is available in all actions before the court that are brought after 1 March 2019.

It is also of considerable practical importance that the new order concerning leave to appeal from the court of appeal will apply to all judgments and decisions by the court of appeal given after 1 March 2019.

6. Section 19 provides that an arbitration is begun when a party receives a request for arbitration.

Three moments in time may thus be relevant for transitional purposes: (1) When the arbitration was begun; (2) when the arbitral award was challenged; and (3) when the court of appeal rendered its judgment or decision in a set aside action.

§2.16 SOME CHANGES CONTEMPLATED BUT NOT PROPOSED

[A] Method for the Arbitrators' Determination of the Law Applicable to the Substance

The Act does not say anything about how the arbitrators, failing party agreement, should go about determining the law applicable to the substance of the dispute. The traditional alternatives are mentioned in the Bill, one being the solution in the Model Law that the arbitrators shall apply the law determined by the conflict of laws rules that it considers applicable (Article 28(2)). Another is the *voie directe*, that the arbitrators can take a shortcut and determine the applicable law directly, not via conflict of laws rules.

One reason given in the Bill against introducing such a rule is that it might limit the arbitrators' freedom in choosing the method for determining the applicable law.

[B] Enforceable Interim Measures by Arbitrators

Section 25(4) of the Act provides that the arbitrators, absent party agreement to the contrary and on party request, may order the other party to take a certain interim measure. Such an order is not, however, enforceable by the Swedish execution authorities. The Bill offers several reasons for not giving the arbitrators the power to make enforceable orders for interim measures. Somewhat simplified, the main reason seems to be a feeling that that would be like opening Pandora's box: The practical consequences are difficult to foresee and might be far reaching as well as unwanted. It is safer to maintain the status quo.

[C] Abolishment of the Difference Between Invalid Awards (Section 33) and Challengeable Awards (Section 34)

The Act provides for two different kinds of actions against arbitral awards, but both may be – and usually are – tried in the same case. The first is an invalidity action under section 33. If successful – which has never happened – the court will declare that the award is invalid. Violation of public policy is one of the three cases of invalidity of awards under the section. The second is a set aside action under section 34. If successful, the court will set aside the award.

The difference between the two actions may be said to be based on the concept that certain purported arbitral awards should not in law count as arbitral awards at all. In these circumstances, the court should declare the award invalid under section 33. There is no time limit for bringing such an action. However, where an arbitral award is not questioned as an arbitral award in law, but it is alleged that some wrong in the

arbitral procedure warrants it being set aside – such as arbitrator bias or an award in excess of the claim – then the court should do so under section 34. Section 33 of the Act serves to safeguard the public interest and third parties. Section 34 of the Act serves to safeguard the parties to the arbitration.

The two categories of actions are unfamiliar to those used to other legal systems and the Model Law. The concept of invalid awards has been reported to give rise to the question whether a Swedish arbitral award ever becomes final. An idea raised in the legislative process was to eliminate 'invalid awards' by combining the two categories into one category: Challengeable awards. In the end, however, it was decided to maintain the two categories. The main reason given in the Bill may be described as follows: Many other legal systems and the Model Law permit a renewed assessment of the award by a court of law at the enforcement stage and thus after the expiration of the time limit for challenging the award. Such an assessment may involve, as does an action under section 33, the arbitrability of the arbitrated dispute and the question whether enforcement of the award would be contrary to the public policy of the country in question. In Sweden, however, awards are directly enforceable by the enforcement authority; a court of law does not have to permit enforcement. To put it briefly: The assessment of an award's invalidity under section 33 seems similar to the assessment of an award at the enforcement stage in other legal systems; that mechanism should therefore be kept.

As mentioned above there has yet been no successful action against an arbitral award under section 33. The provision is intended only for very exceptional situations, notably violations of public policy. Two Supreme Court cases on recognition and enforcement under the New York Convention give an indication of what might be considered a very exceptional case caught by section 33 for violation of public policy.[7] In both cases, the court drew the conclusion that the arbitral award in all likelihood was, to put it bluntly, a fraud; there had been no real arbitration and there was no real arbitral award. Recognition and enforcement of the purported award would therefore be contrary to public policy.

[D] Express Ban on Court Intervention in Arbitration Unless Explicitly Permitted

Article 5 of the Model Law provides that in 'matters governed by this Law, no court shall intervene except where so provided in this Law'. The Act has no such provision. The position in the Bill is that a provision of that kind should not be introduced into the Act because the effect is unpredictable.

7. NJA 2002 C 45 (*Robert Grizila v. Johnny Letth*) and NJA 2015 s. 433 (*Finants Collect OÜ v. ATB Tjänst*). The Supreme Court sent the latter case back for further consideration to the Svea Court of Appeal; the Svea Court subsequently refused enforcement on public policy grounds (Case No. Ö 7419-15).

It is mentioned in the Bill that the lack of such a provision has been said to be a cause for concern abroad. There is, however, no foundation for that concern. No Swedish court will intervene in an arbitration without explicit legislative support, in practice the Act.