# The Swedish Supreme Court Emphasizes International Arbitration Law Principles

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Clear tendencies towards an arbitration-friendly approach have been demonstrated by the Swedish Supreme Court during the latter part of 2010. During this term the Supreme Court has repeatedly taken an arbitration-friendly stance and emphasized that Swedish arbitration law and practice ought to be in line with international best practice in arbitration.

Sweden has a long-standing tradition as a seat for international arbitration and the Swedish legal framework has generally been perceived as arbitration friendly. In 2005 that perception was somewhat damaged when the Svea Court of Appeal, in Case No. RH 2005:1 (*The Titan Corporation v. Alcatel CIT SA*), held that the arbitral award in question could not be challenged before the Swedish courts. The seat of arbitration was in Sweden and the Swedish Arbitration Act was applicable, but apart from these elements the arbitration had no further connection to Sweden. The Svea Court of Appeal considered the challenge proceedings to lack Swedish judicial interest.

The court's decision was appealed, but unfortunately, the dispute was settled between the parties before potentially reaching the Supreme Court. Commentators heavily criticized the Svea Court of Appeal's judgment under both Swedish and international legal doctrine – we have ourselves criticized the Svea Court of Appeal's judgment in an article in a Swedish law review (*Juridisk Tidskrift*) – *inter alia* because the judgment lacks conformity with international arbitration law.

In November 2010 (Case No. NJA 2010 p 508; *The Russian Federation v. RosInvestCo UK Ltd*) the Supreme Court emphasized – with reference to the internationally recognized arbitration principle of party autonomy – that the parties to an arbitration agreement are free to select the applicable law to be applied in arbitral proceedings. The applicable law is usually derived from the seat of arbitration, which is typically stated in the arbitration agreement. If the parties have agreed that the seat of arbitration is in Sweden, the Swedish Arbitration Act applies. Consequently, the Supreme Court held that when the seat of arbitration is in Sweden and the Swedish Arbitration Act applies, Swedish courts are deemed to have judicial interest in the case and are therefore competent to try a challenge against an arbitral award. Thus the *Titan Case* no longer represents good law.

The Supreme Court's judgment was welcomed and well received by the Swedish arbitration community. Several other 2010 Supreme Court judgments further accentuated the international perspective in arbitration cases.

Supreme Court Case No. NJA 2010 p 317 (*Korsnäs AB v. AB Fortum Värme*) concerned a dispute over the potential disqualification of a party-appointed arbitrator due to the fact that he had been

appointed as arbitrator on numerous occasions by the law firm acting as counsel for one of the parties. Both the Svea Court of Appeal and the Supreme Court relied upon (among other sources of law) the IBA Guidelines on Conflicts of Interest in International Arbitration, notwithstanding that these guidelines had not been previously agreed upon by the parties. A similar determination had earlier been made by the Supreme Court in Case No. NJA 2007 p 841.

In *Korsnäs*, the Supreme Court held that appointment of the same person as arbitrator on numerous occasions by the same law firm can constitute a circumstance that may diminish confidence in the arbitrator's impartiality. As a result, the arbitrator might be disqualified. However, the court must also consider the extent to which the person has been appointed as arbitrator by other law firms. Pursuant to the legal framework, an arbitrator's failure to disclose circumstances that might have constituted disqualification is not an independent ground for challenge of an arbitral award; neither the Swedish Arbitration Act nor the IBA Guidelines contain any remedies in respect to an arbitrator's failure to disclose this fact. Instead, in cases where the impartiality of an arbitrator is particularly difficult to ascertain, the effect ought to be that the arbitrator's failure to disclose certain circumstances may lead to the disqualification of the arbitrator. This was, however, not the case in Case No. NJA 2010 p 317.

In addition, certain statements made by the Supreme Court in Case No. Ö 2782-10 (*Tupperware Nordic A/S v. The Bankruptcy Estate of Facht Distribution AB*) must be perceived as arbitration friendly. The case concerned an agreement designating a certain court to settle disputes between the contracting parties. The Supreme Court concluded that the legal principles regarding such agreements are equivalent to the principles applicable to arbitration agreements. An arbitration clause included in a main contract is considered to cover any dispute in relation to the main contract. The scope of the arbitration clause may however be limited by its wording. A standard arbitration clause gives the arbitral tribunal the right to try any invalidity of the main contract as long as the invalidity rests upon a contractual basis.

These 2010 judgments clearly illustrate that the Swedish Supreme Court considers it to be of great importance for the courts to accentuate the existence and applicability of international arbitration law principles. This generous approach towards both national and international arbitrations will further establish Sweden as an attractive forum for international arbitrations.

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