



ARBITRATION INSTITUTE
OF THE STOCKHOLM CHAMBER OF COMMERCE

ARBITRATOR'S GUIDELINES

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Efficiently facilitating arbitral proceedings in international disputes since 1917

INTRODUCTORY NOTE

The principal purpose of the SCC Guidelines (the “Guidelines”) is to serve as a practical tool and source of information for arbitrators when conducting arbitrations under the SCC Rules.

The Guidelines contain essential information on the calculation of the arbitrator’s fees, compensation for expenses and VAT issues. The SCC Model Award is also attached as Appendix I.

The Guidelines are not intended and shall not be treated as additional rules of procedure.

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THE SCC

The Arbitration Institute of the Stockholm Chamber of Commerce (SCC) was established in 1917 and is a division of the Stockholm Chamber of Commerce. The SCC is not a legal person but has an independent board with authority to decide on appointments of arbitrators, challenges to arbitrators, jurisdiction, advance on costs, seat of the arbitration and other decisions within its mandate as provided pursuant to the SCC Rules. Decisions by the SCC Board are, with a few exceptions, final. The SCC Board Members are appointed for a period of three years by the Board of Directors of the Stockholm Chamber of Commerce.

The day-to-day operations are managed by a Secretariat headed by the Secretary General. All cases administered by the SCC are allotted to one of three divisions, each headed by counsel.

The SCC has adopted the following rules:

SCC Rules

- Arbitration Rules
- Rules for Expedited Arbitrations

Other rules

- Insurance Arbitration Rules
- SCC Procedures and Services under the UNCITRAL Arbitration Rules
- Mediation Rules

For more information related to the rules, model arbitration clauses and these Guidelines may be found on the web page of the SCC at www.sccinstitute.com.

ADMINISTRATIVE GUIDELINES

Documents to be submitted to the SCC

- Timetable
- Statement of Claim
- Statement of Defence
- Decisions and procedural orders
- Awards (final and any separate) – preferably also in Word format

The Statement of Claim and the Statement of Defence may be sent directly to the SCC by the parties. Other correspondence between the tribunal and the parties shall not be submitted to the SCC.

Archive

The Arbitral Tribunal is advised to save all documents relating to the case for at least one year after the award has been made.

Administrative Secretary

If the Arbitral Tribunal wishes to appoint an administrative secretary, the SCC shall be informed thereof. The SCC will ask the parties whether they agree to the appointment. If any of the parties disagrees, the Arbitral Tribunal may not appoint a secretary.

The fee of the secretary shall be borne by the Arbitral Tribunal. The tribunal decides how the fee shall be allocated. Any expenses that the secretary has had shall be borne by the parties. The same applies for any social security contributions. The fee of the secretary shall be stated in the final award. For further information on tax liability, see the relevant sections below.

ARBITRATION COSTS

General Principles

The Arbitration Costs include:

- Arbitrator's fee
- Administrative Fee
- Expenses

Before making the final award, the Arbitral Tribunal shall request the SCC to make a final determine as to the Costs of the Arbitration. Please allow at least one week for this procedure. The decision on arbitration costs shall be included in the decision of the final award.

The arbitrator's fees and the Administrative Fee are calculated on the basis of the amount in dispute¹ in accordance with the schedule of costs found in Appendix III of the SCC Rules. A calculator can be found on the web page of the SCC.

Arbitrator's fee

As a general rule, the fee of a Chairperson or a sole arbitrator is determined at the median value, in accordance with the schedule of costs applicable for the amount in dispute. The following factors may influence the size of the fees:

- The complexity of the subject matter
- The parties' positions, respectively
- The number of parties
- Procedural aspects
- The number of arbitrators
- Award without ruling on the merits of the case

In exceptional circumstances, the SCC may deviate from the schedule of costs.

The fees of the co-arbitrators are, as a general rule, determined at 60 % of the Chairperson's fee. The Arbitral Tribunal shall inform the SCC if it considers that another percentage shall apply.

Regarding VAT, see below under Liability to invoice.

¹ Read more about the amount in dispute below.

Reduced fee in certain cases

In certain cases, fees are determined at a percentage of the fee calculated in accordance with the schedules of costs. This applies, *inter alia*, to fees when a final award is made without ruling on the merits, or when an arbitrator is released during the course of the proceedings.

a) Final award made without ruling on the merits

If the Arbitral Tribunal makes an award without ruling on the merits of the dispute, the fees are determined at a percentage of the fees calculated in accordance with the schedule of costs. This applies, *inter alia*, if the dispute is settled, if the Claimant withdraws its claim or if the case is dismissed due to a lack of jurisdiction. Factors such as when the case was concluded and the work put in by the Arbitral Tribunal are taken into consideration. The SCC follows its well-developed practice in this regard.

The Arbitral Tribunal shall inform the SCC of work completed, for example hearings held, the extent of the communications and decisions made.

b) Released arbitrator

The question of whether a fee shall be paid to an arbitrator who is released is decided on a case-by-case basis.

Expenses

When requesting that the Arbitration Costs shall be finally determined, the Arbitral Tribunal shall also inform the SCC of any incurred expenses. Expenses that the arbitrator has reported VAT for shall be stated exclusive of VAT.

The expenses must be *reasonable*.

The following costs are reimbursed as expenses:

- Travel (air or train fare, airport taxi);
- Hotel accommodation (including breakfast only. Not mini-bar, telephone, room service etc.);
- Hearing costs (rental of hearing rooms, equipment, telephone and video conferences etc);
- Interpreter, court reporter, and translation services;
- Courier; and
- Expert (fee and expenses) appointed by the Arbitral Tribunal.

Other costs are at the Arbitral Tribunal's own expense.

Regular office expenses (fax, postage, telephone and clerical assistance) are not compensated for separately.

Regarding VAT, see below under Liability to invoice.

Regarding costs for hearings

The main rule is that the arbitrators pay their own expenses during the procedure and are reimbursed when the final award has been made. With the approval of the SCC, the costs of services related to hearings may, by special agreement with the Secretariat, be invoiced to the Stockholm Chamber of Commerce instead of the Arbitral Tribunal. The Arbitral Tribunal must obtain approval in advance.

The service provider shall be instructed to make out the invoice to
Stockholms Handelskammars Service AB
VAT No. SE 556095795201

and shall indicate Arbitration and the relevant case number on the invoice.

Per diem allowance

Allowance of EUR 500² per day can be obtained for each day of hearings requiring an overnight stay.

Such allowance is intended to cover costs for:

- hotel;
- meals; and
- inter city taxi fares.

Costs exceeding the allowance are not reimbursed separately.

Per diem allowance will be given upon the request of the arbitrator. The arbitrator shall state the purpose of the stay (preparatory hearing, main hearing etc.) and the number of days spent for the hearing.

The allowance is not subject to VAT.

The same principles are applied as regards any Secretary appointed.

Administrative Fee

The Administrative Fee is determined in accordance with the schedule of costs applicable for the amount in dispute.³

VAT of 25 % shall be added to the Administrative Fee and any expenses of the SCC if the party finally liable for the Arbitration Costs shall pay VAT in Sweden.

Those liable to pay VAT on the Administrative Fee are:

- a) Swedish parties, legal as well as private persons; and

² This amount is applied in cases referred on or after 1 November 2008. In cases referred before such date an allowance of EUR 150 per day is applied.

³ See footnote 1.

- b) parties seated in other EU-countries not registered for VAT; private individuals, organisations and states.

Those not liable to pay VAT on the Administrative Fee are:

- a) parties registered for VAT in a EU member state other than Sweden; and
- b) parties seated outside the EU.

A party registered for VAT within the EU excluding Sweden shall prove its status by submitting its VAT No.

Amount in dispute

The amount in dispute includes claims, counterclaims and set-offs.

Where the amount in dispute cannot be ascertained, the fees will be determined by taking all relevant circumstances into account, for example the size and complexity of the dispute.

If the amount in dispute changes during the course of the proceedings, the SCC shall immediately be notified.

Advance on Costs

Before the case is referred to the Arbitral Tribunal, the SCC determines the Advance on Costs. The advance shall correspond to the estimated Arbitration Costs and includes an estimated amount for expenses and any VAT. Social security contributions are normally not included.

When the parties have paid the Advance on Costs, the case is referred to the Arbitral Tribunal. The Arbitral Tribunal and the parties are informed of the estimated amounts of the arbitration costs.

The aim is that the Advance on Costs shall cover the Costs of the Arbitration as finally determined.

Additional advances

Upon a request from the Arbitral Tribunal or if otherwise deemed necessary, the SCC may order the parties to pay additional advances. Such a request shall include reasons.

Reasons to increase the Advance on Costs maybe:

1. Increase of the amount in dispute:
 - a) A party submits a new claim; or
 - b) other circumstance that affects the amount in dispute.
2. Increasing expenses:
 - a) The Arbitral Tribunal has appointed an expert; or
 - b) the amount allocated for expenses is otherwise insufficient.

3. New circumstances in the case:
 - a) The case has required, or can be expected to require, more work than what could initially be expected; or
 - b) exceptional circumstances.

GETTING PAID

a) General rule – payment when the award has been made

When the final award has been made, the accounts are settled and the fees, any compensation for expenses and any per diem allowance are paid from the Advance on Costs. An arbitrator registered for VAT shall draw up a reference invoice and send it to the liable party (see Liability to Invoice below).

b) The exception – advance payment

In cases where the expenses are significant, the arbitrators may receive compensation for expenses from the Stockholm Chamber of Commerce during the course of the proceedings, i.e. in advance. As a rule, advance payments of fees are not made.

The arbitrator's request for advance payment is considered by the SCC. Approved expenses shall be invoiced to Stockholms Handelskammares Service AB. Payment is made only against an invoice. This applies also to arbitrators not registered for VAT. See below under Invoice for advance payments for further information.

EU-ARBITRATORS LIABLE FOR VAT

The guidelines below are based on the EU VAT Directive but reflects primarily the laws of Sweden. Please note that the application of the EU VAT Directive may vary between EU countries, arbitrators are therefore advised to consult the national Tax Authority in their home country for guidance.

Liability to invoice

Pursuant to the Swedish VAT legislation, which is based on the EU Directive on VAT, liability to pay VAT arises upon payment of fees and reimbursement for expenses. This means that each arbitrator who is registered for VAT shall make an invoice every time he/she is paid regardless whether VAT applies or not, e.i. not only when payments are made subsequent to the making of the final award but also when compensation for expenses is paid in advance.

When accepting the appointment, the arbitrator shall inform the SCC whether he/she is registered for VAT, whether any of the parties involved shall pay VAT on the arbitrator's fee and if so, what percentage shall apply.

Which party shall be invoiced?

Buyer of the arbitration service is for VAT purposes the party(-ies) which is finally liable to pay the arbitration costs according to the final award. Actual payment of the arbitration costs is not relevant. Thus, the Arbitrator shall make an invoice and address it to the finally liable party. Should two or more parties be finally liable, an invoice shall be made to each of the parties reflecting their individual burden.

Which parties shall pay VAT?

These are the basic principles in the EU Directive 2008/8/EG;

Parties seated in the same EU-country as the arbitrator

Parties seated in the same country as the arbitrator shall always pay VAT on the arbitrator's fee.

Parties seated outside the EU

Parties seated outside the EU shall not pay VAT on the fee of a EU-arbitrator.

Parties seated in another EU-country than the arbitrator

If a party seated in another EU-country than the arbitrator it shall not pay VAT on the arbitrator's fee in the country of the arbitrator if it is registered for VAT. The principle of reverse charge applies and the party shall therefore pay VAT in the country where it is seated. A party registered for VAT within the EU shall prove its status by submitting its VAT No.

Parties not registered for VAT shall always pay VAT on the arbitrator's fee in the country of the arbitrator.

References to be included in the invoice

Invoices to parties within the EU not liable to pay VAT shall include the following reference:

- Parties in other EU-countries with VAT No.
 "Reverse charge procedure under Articles 44 and 196 of the VAT Directive"
- Parties outside the EU
 "Export sales of services – outside the scope of the [...] VAT Act"

All cost elements, in other words both fees and compensation for expenses, shall be included in the taxable amount. In other words, for VAT purposes, compensation for expenses is regarded as part of the fee.

Invoice examples are attached as appendixes.

Invoicing

a) Invoice after the award has been made

An arbitrator shall make out an invoice, or invoices, covering the fee and compensation for expenses, when payment has been received. The invoice(s) shall be made out to the party, or parties, which is (are) *finally liable for the arbitration costs* according to the award. If more than one party is finally liable according to the award, an invoice shall be made out to each one of them in following the distribution of costs. The invoice(s) issued by the arbitrator must align with the settlement of accounts and the final award.

The fact that payment has been made must be clear from the invoice(s). The rate of exchange, should the VAT need to be converted, shall be of the day the award was made. Invoice(s) shall, if possible, be issued in the same period, in other words the same month, as the fee has been paid. The settlement of accounts and the invoice are accounting documents.

b) Invoice for advance payments

Compensation for expenses during the course of the proceedings are, for tax purposes, regarded as advance payment of fees. Such payment entails tax liability according to Swedish VAT legislation and, accordingly, an obligation to invoice.

Considering that the question of final liability for the arbitration costs is not decided when payment is made in advance, the invoice shall be made out to the Stockholm Chamber of Commerce. This procedure is the result of an agreement between the SCC and the Swedish Taxation Agency. Advance payments are paid by the Chamber and will be regarded as expenses of the SCC when the arbitration costs are finally determined.

Invoices concerning advance payments shall be made out to:

Stockholms Handelskammars Service AB

VAT No. SE 556095795201

Please indicate Arbitration and the relevant case number on the invoice.

SWEDISH TAXES FOR EMPLOYED ARBITRATORS

Arbitrators not registered for VAT, residing in Sweden shall pay income taxes on their fees. The parties are in relation to such persons regarded employers and shall, if one or more of the parties are seated in Sweden, leave an income statement and pay social security fees.

Income tax for Swedish Arbitrators

a) Swedish party finally liable for costs

In cases where the party finally liable for the arbitration costs is Swedish, the Stockholm Chamber withholds 30 %⁴ as preliminary income tax of any fee of an arbitrator who, for tax purposes, is regarded an employee. The withheld amount is paid to the Swedish Tax Agency.

The arbitrator shall file an income tax return with the Swedish Tax Agency. The finally liable party, in other words the employer, shall complete a Swedish income statement (*kontrolluppgift*), which specifies wages and preliminary tax paid.

If the Tax Agency should not credit the transferred amount to the arbitrator, the Statement of tax and social security contributions (*Skatte- och avgiftsunderlag*) from the SCC shall be submitted to the Tax Agency. The tax payment will then, according to an agreement between the SCC and the Tax Agency, be credited with the arbitrator. This applies regardless of whether a Swedish income statement (*kontrolluppgift*) has been submitted by the employer to the Tax Agency or not.

b) Foreign party finally liable for costs

In cases where the party finally liable for the arbitration costs is foreign the arbitrator shall pay preliminary tax. The Stockholm Chamber of Commerce does not withhold any preliminary income tax.

The arbitrator shall file an income tax return with the Swedish Tax Agency. The finally liable party, eg. the employer, shall complete a Swedish income statement (*kontrolluppgift*), which specifies wages and preliminary tax paid.

⁴ Unless the arbitrator requests that a different percentage shall be withheld.

Social security fees

a) All parties are Swedish

Swedish parties shall (with a few exceptions) make social security contributions on fees to Swedish arbitrators who, for tax purposes, are regarded as employees. The social security contributions shall be paid by the party finally liable for costs. The SCC provides the party with the relevant documentation for payment of social security contributions.

The Arbitral Tribunal shall, when making the award, inform the parties of their liability to make social security contributions.

b) All parties are foreign

If all parties in the proceedings are foreign no social security contributions shall be made (Chapter 2, Section 20 of the Swedish Act on Social Security Contributions).

c) Mixed cases

Please note, that the exception from liability to make social security contributions does not apply to cases including both Swedish and foreign parties ("mixed cases"). When the award is made, the tribunal shall inform the paying party that of its liability in this regard.

In mixed cases, any social security contributions are included in the Advance on Costs. The SCC transfers the money to the Swedish Tax Agency on behalf of a foreign party finally liable for costs. The Swedish party shall by its own motion make social security contributions.

Social security contributions shall not be made by foreign parties if the arbitrator has been working in a country other than Sweden.

FINAL AWARD

The case is concluded by the making of an award

A case that has been referred to an Arbitral Tribunal shall be concluded by the making of an award. This applies also when the Arbitral Tribunal concludes the case without ruling on the merits, for example when the case is dismissed due to lack of jurisdiction, in whole or in part, or when a claim in the case is withdrawn. If only part of the case is concluded, a separate award shall be made.

Extending the time limit for making the final award

The time limit for making the final award is decided by the SCC in accordance with the applicable rules. The SCC may extend the time limit upon a reasoned request from the Arbitral Tribunal, or if otherwise deemed necessary.

Unless all parties agree otherwise, or special circumstances are at hand, extensions longer than two months will not be granted.⁵

The time limit for the final award cannot be extended if the time has expired. Failure to make an award within the time limit can constitute grounds for challenge of the award.

SCC Model Award

When drafting the award, the Arbitral Tribunal is encouraged to use the SCC Model Award (Appendix 1).

For purposes of enforcement, the decision of the award shall include the decision on arbitration costs made by the SCC. Fees, any expenses, any per diem allowance and any VAT shall be specified for each arbitrator, respectively, and for the SCC. It is not sufficient that the decision of the award contains a reference to a specification set forth in the reasons of the award.

The parties' organisation numbers shall be stated in the award.

Instructions on how to appeal

If the Swedish Arbitration Act (SFS 1999:116) is applicable, the following applies.

Pursuant to Section 36 of the Act, an award whereby the arbitrators have concluded the proceedings without ruling on the issues submitted to them for resolution may be amended, in

⁵ Or one month if the Rules for Expedited Arbitration are applied.

whole or in part, upon the application of a party. The award shall contain clear instructions as to what must be done by a party who wishes to challenge the award.

Pursuant to Section 41 of the Act a party may bring an action against the award regarding the payment of compensation to arbitrators. The Swedish Supreme Court has decided that Section 41 is applicable also when an arbitral institution has made the decision on fees.⁶ Accordingly, the award shall contain clear instructions as to what must be done by a party who wishes to challenge the award in such part.

If applicable, a party liable to pay arbitration costs shall be informed, by reference in decision of the final award, that it shall pay social security contributions (see above).

Distribution of the award

The Arbitral Tribunal shall without delay distribute the award to the parties. The Arbitral Tribunal is recommended to request a proof of the receipt from the parties.

An original copy of the award shall be submitted to the SCC – preferably also in Word format.

Correction of award

In order to ensure that all awards are legally enforceable (Article 47 of the SCC Rules), the Secretariat will point out any errors in the award to the Arbitral Tribunal. Such errors may regard the contact and identification details of the parties, respectively, and the decision on arbitration costs.

Any corrections shall be made within 30 days and signed by all arbitrators.

⁶ Decision by the Supreme Court dated 3 December 2008 (Case No Ö 4227-06), NJA 2008 p. 1118.

APPENDIX 1 SCC MODEL AWARD



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FINAL AWARD

Made on [Date]

The seat of arbitration is [Country/City]

Arbitration No.: [Number/Year]

Claimant: [Name, address and organisation No.]

Claimant's counsel: [Name, firm and address]

Respondent: [Name, address and organisation No.]

Respondent's counsel: [Name, firm and address]

Arbitral Tribunal: [Name of Chairperson/Sole arbitrator, firm and address]
[Name of Co-arbitrator, firm and address]
[Name of Co-arbitrator, firm and address]

DECISION

[...]

The parties are jointly and severally liable to pay the arbitration costs. The arbitration costs have been determined as follows.

The Fee of [Chairperson/Sole arbitrator] amounts to EUR [...] and compensation for expenses EUR [...], in total EUR [...], to plus VAT of EUR [...].

The Fee of [Co-arbitrator 1] amounts to EUR [...] and compensation for expenses EUR [...], in total EUR [...], to plus VAT of EUR [...].

The Fee of [Co-arbitrator 2] amounts to EUR [...] and compensation for expenses EUR [...], in total EUR [...], to plus VAT of EUR [...].

The Administrative Fee of the SCC amounts to EUR [...] and compensation for expenses EUR [...], in total EUR [...], to plus VAT of EUR [...].

As between the parties [Party ...] shall pay the entire arbitration costs.*

[[Party ...] is reminded that it shall make social security contributions and file an income tax return to the Swedish Tax Agency.]

[Instructions for actions against the award]

Section 36 of the Swedish Arbitration Act –award without ruling on the substantive issues]

A party may bring an action for the amendment of the award within three months from the date upon which the party received the award. Such action shall be brought before the Svea Court of Appeal in Stockholm.

[Section 41 of the Swedish Arbitration Act – final award]

A party may bring an action against the award regarding the decision on the fee(s) of the arbitrator(s) within three months from the date upon which the party received the award. Such action shall be brought before the District Court of Stockholm.

Signature Chairperson/Sole arbitrator

Signature arbitrator

Signature arbitrator

* Or any other apportionment between the parties due to the outcome of the case and other relevant circumstances, see Article 43 (5) of the Arbitration Rules.

APPENDIX 2 EXAMPLE INVOICE FOR EU-ARBITRATORS

Used for reference for arbitrators within the EU, for invoices to EU business customers, registered for VAT in a country other than the arbitrator's

DESCRIPTION	AMOUNT EUR
INVOICE	
	NUMBER [REDACTED]
[Name, address and reg. no of party]	DATE [REDACTED]
	OUR REFERENCE [REDACTED]
	YOUR REFERENCE [REDACTED]
Non-payable invoice, for reference purposes only	
<i>Reverse charge of services under Articles 44 and 196 of the VAT Directive</i>	
[Arbitrator's] fee in arbitration [case no]	[REDACTED]
[Arbitrator's] expenses	[REDACTED]
NUMBER [REDACTED]	AMOUNT, VAT EXCL. [REDACTED]
	VAT [] % [REDACTED]
Rate [REDACTED] [Date of making award]	0 0 0 0

APPENDIX 3 EXAMPLE INVOICE FOR EU-ARBITRATORS

Used for reference for arbitrators within the EU, for invoices to EU customers in the country of the arbitrator and to EU customers not registered for VAT in a country other than the arbitrator's

<h2 style="margin: 0;">INVOICE</h2> <p style="margin: 5px 0;">NUMBER [REDACTED]</p> <p style="margin: 5px 0;">DATE [REDACTED]</p> <p style="margin: 5px 0;">OUR REFERENCE [REDACTED]</p> <p style="margin: 5px 0;">YOUR REFERENCE [REDACTED]</p>		<p>[Name, address and reg. no of party] [REDACTED]</p>
DESCRIPTION	AMOUNT EUR	
Non-payable invoice, for reference purposes only		
[Arbitrator's] fee in arbitration [case no] [REDACTED]	[REDACTED]	
[Arbitrator's] expenses [REDACTED]	[REDACTED]	
NUMBER [REDACTED]	AMOUNT, VAT EXCL. [REDACTED] 0 VAT [] % [REDACTED] 0 VAT [own currency] [REDACTED] 0 AMOUNT, INCL VAT [REDACTED] 0	
Rate [REDACTED] [Date of making award]		

APPENDIX 4 EXAMPLE INVOICE FOR EU-ARBITRATORS

Used for reference for arbitrators within the EU, for invoices to customers seated outside the EU

INVOICE	
[Name, address and reg. no of party]	NUMBER [REDACTED]
	DATE [REDACTED]
	OUR REFERENCE [REDACTED]
	YOUR REFERENCE [REDACTED]
DESCRIPTION	AMOUNT EUR
Non-payable invoice, for reference purposes only	
<i>Export sales of services – outside the scope of the EU VAT Directive</i>	
[Arbitrator's] fee in arbitration [case no]	[REDACTED]
[Arbitrator's] expenses	[REDACTED]
NUMBER [REDACTED]	AMOUNT, VAT EXCL. [REDACTED]
Rate [REDACTED] [Date of making award]	VAT [] % [REDACTED]
	0 0 0 0