

Joining third parties to the pending arbitration proceedings

Innovations in the 2017 SCC Rules

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Before the 2017 SCC Rules

- ▶ Joinder requires consent of all parties affected: of those joined and of those already parties to the arbitration.
- ▶ In a reported SCC case from 2001 the SCC Board was asked to order joinder. The SCC Board held that, under Swedish law and the SCC rules, joinder was not to be allowed. The same was also repeated by the sole arbitrator in a procedural order and in the final award. (*X v. Y Holdings AG and Y AG*, arbitral award rendered in SCC case no 9/2001, Stockholm Arbitration Report 2002, 125.)

Article 13 Joinder of additional parties

- ▶ (1) A party to the arbitration may request that the Board join one or more additional parties to the arbitration.
 - ▶ (2) The Request for Joinder shall be made as early as possible. A Request for Joinder made after the submission of the Answer will not be considered, unless the Board decides otherwise. Articles 6 and 7 shall apply *mutatis mutandis* to the Request for Joinder.
 - ▶ (3) Arbitration against the additional party shall be deemed to commence on the date the SCC receives the Request for Joinder.
 - ▶ (4) The Secretariat shall set a time period within which the additional party shall submit an Answer to the Request for Joinder. Article 9 shall apply *mutatis mutandis* to the Answer to the Request for Joinder.
 - ▶ (5) The Board may decide to join one or more additional parties provided that the SCC does not manifestly lack jurisdiction over the dispute between the parties, including any additional party requested to be joined to the arbitration, pursuant to Article 12 (i).
 - ▶ (6) In deciding whether to grant the Request for Joinder where claims are made under more than one arbitration agreement, the Board shall consult with the parties and shall have regard to Article 14 (3) (i)-(iv).
 - ▶ (7) In all cases where the Board decides to grant the Request for Joinder any decision as to the Arbitral Tribunal's jurisdiction over any party joined to the arbitration shall be made by the Arbitral Tribunal.
 - ▶ (8) Where the Board decides to grant the Request for Joinder and the additional party does not agree to any arbitrator already appointed, the Board may release the arbitrators and appoint the entire Arbitral Tribunal, unless all parties, including the additional party, agree on a different procedure for the appointment of the Arbitral Tribunal.
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Main takeaways

- ▶ Joinder (Art. 13)
 - Request from existing party, not from additional party
 - Not later than submission of answer
 - A claim has to be made against the additional party
 - SCC may appoint the entire tribunal, unless all parties agree otherwise