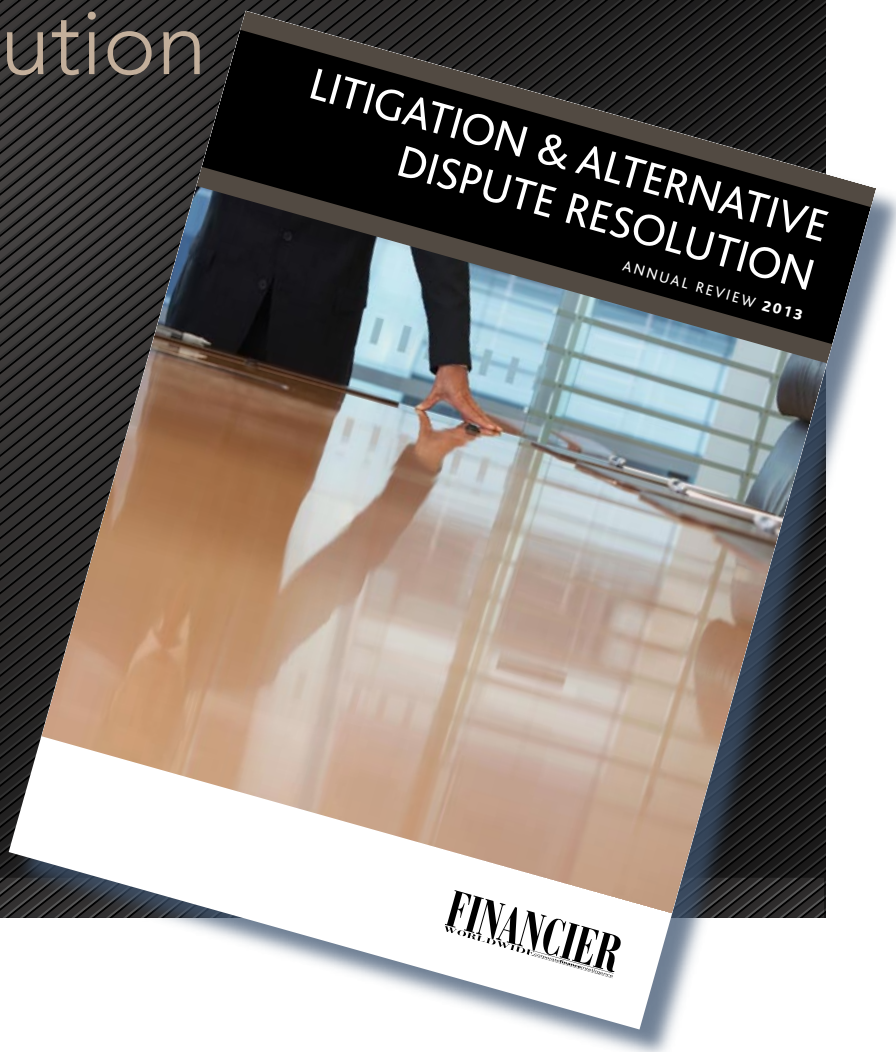
ANNUAL REVIEW

Litigation & Alternative Dispute Resolution



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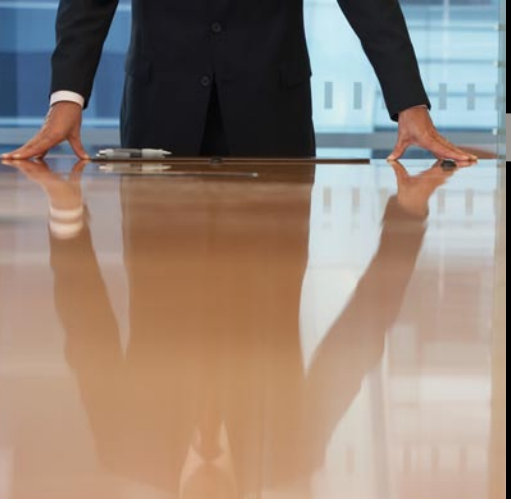

SWEDEN

KRISTER AZELIUS
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Q ARE YOU SEEING ANY RECURRING THEMES IN COMMERCIAL DISPUTES IN SWEDEN? DO ANY PARTICULAR INDUSTRIES OR SECTORS SEEM TO BE PLAYING HOST TO A SIGNIFICANT NUMBER OF DISPUTES?

AZELIUS: The number of commercial disputes is increasing following what I would say is an international trend. Swedish companies nowadays consider disputes to be a normal part of conducting business and have developed a more modern view on this by trying to deal with the dispute separately from normal business relations with the counterparty. This trend is true for more or less all industries and sectors. However, we have seen a growing number of disputes concerning auditors, lawyers and other consultants, where the claimant alleges that the consultant has been reckless in giving advice. This is also the case for board members.

Q WHAT IS YOUR ADVICE TO COMPANIES ON IMPLEMENTING AN EFFECTIVE DISPUTE RESOLUTION STRATEGY TO DEAL WITH CONFLICT, TAKING IN THE PROS AND CONS OF MEDIATION, ARBITRATION, LITIGATION AND OTHER METHODS?

AZELIUS: Companies should generally include an arbitration clause in their contracts. Arbitration is always quicker and often cheaper than litigation. This is because the award cannot be challenged – other than on formal grounds. Proceedings in one instance are not only quicker but normally also cheaper, even taking the costs for the arbitrators into consideration. Additionally, companies could include a mediation clause. A successful mediation is the quickest and cheapest form of dispute resolution, although you should make sure that the mediation clause cannot be used to prevent a party from taking legal measures. Often, it is better to decide on mediation once the dispute is a fact.

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Q IN YOUR EXPERIENCE, ARE MORE COMPANIES IN SWEDEN MORE LIKELY TO EXPLORE ALTERNATIVE DISPUTE RESOLUTION (ADR) OPTIONS BEFORE ENGAGING IN LITIGATION? ARE THERE ANY LEGAL OR PROCEDURAL OBSTACLES TO A SUCCESSFUL ADR PROCESS?

AZELIUS: Typically, the companies are not more likely to explore the ADR alternatives – at least not yet – but the legal system as such has changed in this respect. The mediation system in the courts has improved over the last few years. The opportunity to have an independent judge as a mediator is taken frequently nowadays. The Stockholm Chamber of Commerce (SCC) has – in addition to its well reputed Arbitration Institute – a Mediation Institute that has developed a structured model for mediation. An agreement reached through mediation can, if the parties agree, be rendered enforceable by the court. The effect of those changes will probably be that mediation in the near future will be considered as a more viable alternative and perhaps move ADR from a lawyer-to-lawyer discussion into structured mediation proceedings.

Q HOW WOULD YOU DESCRIBE ARBITRATION FACILITIES AND PROCESSES IN YOUR PARTICULAR REGION OF FOCUS? TO WHAT EXTENT IS ARBITRATION BECOMING THE DOMINANT METHOD OF RESOLVING INTERNATIONAL DISPUTES?

AZELIUS: Arbitration, without doubt, is the dominant method of resolving international as well as domestic disputes. In *ad hoc* arbitrations the arbitration panel has the full responsibility for administrating the proceedings, which makes the facilities and processes rather individual. However, the SCC provides – via its Arbitration Institute – the whole administration for the proceedings. Normally the arbitration panel or the parties provide premises and the requisite technology for a hearing, but there is also an international hearing centre in Stockholm – the SIHC – that can provide everything required for a hearing.

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Q IN YOUR EXPERIENCE, WHAT STEPS SHOULD COMPANIES TAKE AT THE OUTSET OF A COMMERCIAL AGREEMENT TO MANAGE DISPUTES THAT MAY ARISE IN THE FUTURE? IS ENOUGH ATTENTION PAID TO DISPUTE RESOLUTION CLAUSES IN COMMERCIAL AGREEMENTS, FOR EXAMPLE?

AZELIUS: First of all, it is very important that the possibility of a dispute is recognised by the parties when entering into an agreement. The dispute resolution clause should not be viewed as a boiler plate provision. On the contrary, it should be negotiated and agreed between the parties. This certainly must be the case when there are elements of multi-party or 'final and binding' valuations involved. In the long run, none of the parties are helped by a dispute resolution clause that provides scope for formality battles. Such battles only give rise to consumption of costs and time. More time must be spent on those matters in the future. Litigation lawyers must educate the transaction and corporate lawyers in this respect.

Q TO WHAT EXTENT CAN COMPANIES AVOID DISPUTES BY BEING MORE DILIGENT IN THEIR DEALINGS WITH POTENTIAL BUSINESS PARTNERS?

AZELIUS: The point is normally not the dealings, as such, with potential business partners. Of course, there should be a degree of common sense involved and one should avoid doing business with partners that can not be expected to act in a professional manner. However, it is worth remembering that disputes also regularly occur between large and well reputed companies. The most important thing is to be careful and clear in the negotiations of a transaction and the drafting of a contract. This includes the effort to find a well-drafted dispute resolution clause which takes the possibilities of executing the award into consideration. Also the execution question militates in favour of an arbitration clause in view of the applicability and reach of the New York Convention.

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Krister Azelius has been a partner of Vinge since 1996 and heads the firm's litigation and arbitration team in Southern Sweden. He has extensive experience of international and national arbitration, as well as national litigation. He heads the team in several ongoing arbitral proceedings including an ongoing MUSD 120 insurance dispute. Furthermore, he has lead the firm's team in several widely publicised multi-party cases in the Swedish courts of general jurisdiction including a multi-party action on behalf of 160 private investors against two insurance companies, as well as a dispute involving many well-known rock bands. He regularly publishes papers on dispute resolution issues in English and Swedish.

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