CHAPTER 15

Squeeze-Out Arbitration: A Comparative Analysis Between Finland and Sweden

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§15.01 INTRODUCTION

Squeeze-out (or buyout) is a commonly recognized technique allowing the majority (or controlling) shareholder, after reaching a predetermined ownership threshold, to gain ownership of the remaining shares in that company.[1] For example, section 253 of the Delaware General Corporation Law (Title 8, Chapter 1 of the Delaware Code) provides that any entity holding more than 90% of a company may decide to take over the remaining shares by means of a short-form merger procedure. Also, the EU Takeover Directive[2] requires Member States to implement rules regarding the rights relating to squeeze-out and sell-out—laid down in Articles 15 and 16. Although the Directive concerns only listed companies, some Member States, such as Denmark, Finland and Sweden, have provided similar rights in their domestic Companies Acts that cover all types of companies including listed, "public" companies (market squeeze-out/sell-out) as well as non-listed, "closed" companies (off-market squeeze-out/sell-out).[3]

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1. A squeeze-out may be executed through various strategies such as a cash-out merger, reverse stock split, two-step merger, or compulsory acquisition, which—at least in Europe—is the most commonly utilized strategy. *See*, e.g., Hyeok-Joon Rho, *New Squeeze-Out Devices as a Part of Corporate Law Reform in Korea: What Type of Device Is Required for a Developing Economy* 29 Boston University International Law Journal 41, 44 (2011).
2. Directive 2004/25/EC of the European Parliament and of the Council of April 21, 2004 on takeover bids.
3. *See* sections 69–73 of the Danish Companies Act 470/2009 (Dan. "lov om aktie- og anpartsselskaber"; DCA), Chapter 18 of the Finnish Companies Act 624/2006 (Fi. "osakeyhtiölaki"; FCA) and Chapter 22 of the Swedish Companies Act 2005:551 (Swe. "aktiebolagslag"; SCA).

Squeeze-out is a practical and multifaceted research topic; hence, it is no surprise that it has raised much interest among legal scholars.[4] For example, in 2007, Gustaf Sjöberg defended a 504-page-long doctoral thesis on "Compulsory Redemption."[5] Later in 2015, the author of this chapter published an 883-page-long post-doctoral monograph titled "Redemption of Shares. A Company Law and Contract Law Study."[6] These thick books illustrate that even if one focuses solely on an individual jurisdiction (Sjöberg on Swedish law and I on Finnish law), it is virtually impossible to discuss all squeeze-out-related issues in one paper. Therefore, the topic of this chapter has been narrowed down to focus on the similarities and differences of squeeze-out proceedings in Finland and Sweden while paying special attention to the advantages and disadvantages related to different legal solutions.

The laws of Finland and Sweden have been selected as study subjects for three reasons. First, squeeze-out proceedings in Finland and Sweden have many normative and structural similarities, but the systems are far from being identical. Hence, they provide a well-defined context for comparing how different legal solutions function under fairly similar conditions.[7] Second, the Finnish and Swedish systems are unique in the sense that squeeze-out disputes are always decided by arbitrators, not, for example, by judges or expert evaluators. Later we will call such statutory arbitration *squeeze-out arbitration*.[8] Third, in Finland and Sweden, squeeze-out proceedings are relatively common and compared to Continental European countries, takeovers of listed companies are not a rare phenomenon.[9] Furthermore, it is important to note that according to Chapter 18, section 9(2) of the Finnish Companies Act 624/2006 (FCA) arbitral awards concerning squeeze-out disputes ("squeeze-out awards") must be registered which means that plenty of information is available on squeeze-out practices.[10]

4. Squeeze-out is also a multidisciplinary topic in the sense that the determination of the squeeze-out price (i.e., the valuation of shares) is a matter of business economics and accounting, not legal dogmatics.
5. Gustaf Sjöberg, *Tvångsinlösen* (Jure 2007) (Eng. "Compulsory Redemption").
6. Ville Pönkä, *Osakkeen lunastaminen. Osakeyhtiö- ja sopimusoikeudellinen tutkimus* (Talentum 2015) (Eng. "Redemption of Shares. A Company Law and Contract Law Study").
7. The FCA and the SCA, as well as the Finnish Arbitration Act 967/1992 (Fi. "laki välimiesmenettelystä"; FAA) and the Swedish Arbitration Act 1999:116 (Swe. "lag om skiljeförfarande"; SAA) contain rather specific rules regarding the squeeze-out procedure. That said, there are jurisdictions—such as the U.K.—which lack explicit procedures for buying out minority shareholders. Reiner Kraakman et al., *The Anatomy of Corporate Law. A Comparative and Functional Approach*, 191 (3rd edn., Oxford University Press 2017).
8. To the knowledge of the author of this article, there are no other jurisdictions in which the law requires squeeze-out disputes to be decided by arbitrators. For example, in Denmark, a dispute regarding the squeeze-out price is determined by a court-appointed expert and later the expert's opinion may be brought before the court. *See* section 67(3) of the DCA.
9. *See*, e.g., Sergio Gilotta, *EU Takeover Law and the Powerful Anti-takeover Force of Supermajority* 26 Columbia Journal of European Law 1 (2019) and Erik Nerep, Per Samuelsson & Jan Andersson, *Aktiebolagslagen. En kommentar. Kapitel 17–24*, 325 (Karnov Group 2019) (Eng. "Company Law. A Commentary").
10. For example, the author of this article has analyzed all squeeze-out awards registered since 2000. A listing of these awards for the past ten years can be found at https://kauppakamari.fi/palvelut/lunastuslautakunta/lunastusmenettelyt/ (accessed September 2020). As for legal scholarship, there is one Finnish doctoral thesis concerning the valuation of minority shares

The analysis below is structured so that it will begin with a brief discussion regarding the realization of the majority shareholder's desire to redeem the minority's shares—and vice versa, the minority shareholder's desire to force the majority shareholder to acquire her/his shares (section §15.02). In other words, this section will explain why there is a need for a statutory squeeze-out (and sell-out) right as well as what the preconditions to commence squeeze-out arbitration are. Then the focus shifts to the Finnish and Swedish squeeze-out proceedings so that the legal framework, as well as each stage of the arbitration process, is explained in a comparative manner (section §15.03). Here the chapter also seeks to contest the perception of squeeze-out arbitration as being merely expert determination and not arbitration in the true meaning of the word.[11] Although squeeze-out arbitration is based on mandatory law, not on agreement, and although the tribunal's authority does not extend beyond determining the existence of the squeeze-out right and the squeeze-out price,[12] we are nevertheless talking about arbitration as the Finnish and Swedish Arbitration Acts (FAA/SAA) apply to the arbitrators as well as the proceedings before them.[13] Finally, the analysis is concluded by a brief pro et contra overview regarding the Finnish and Swedish rules including some thoughts *de lege ferenda* (section §15.04). The laws and legal practices of other countries will also be introduced, since squeeze-out is a genuinely international topic and since foreign models have influenced the development of the Finnish and Swedish buyout rules.

§15.02 SQUEEZE-OUT RIGHT AND THE PRECONDITIONS TO COMMENCE SQUEEZE-OUT ARBITRATION

International surveys indicate that the typical threshold for squeeze-out is 90% or 95% of the shares of the target company.[14] In enterprises with such concentrated ownership structures there is an evident risk of conflict of interest between the majority shareholder and the minority shareholders escalating and even becoming unbearable. Therefore, the law must provide an efficient exit mechanism, which makes it possible

published after Sjöberg's and Pönkä's books. *See* Hanna Savolainen, *Noteeraamattoman yhtiön vähemmistöosakkeen lunastushinnan määrittäminen osakeyhtiölain 18 luvun mukaisissa lunastuksissa* (Publications of the University of Eastern Finland. Dissertations in Social Sciences and Business Studies 2018) (Eng. "Determining the Redemption Price of a Minority Share of a Private Company in Redemptions Complying with Ch. 18 of the FCA"). In addition, squeeze-out arbitration has been discussed in a few Finnish and Swedish articles, i.e., there is not much recently-published research on the topic.

11. *See*, e.g., Gustaf Möller, *Välimiesmenettelyn perusteet*, 3 (Lakimiesliiton kustannus 1997) (Eng. "Fundamentals of Arbitration"), who argues that squeeze-out arbitration is not arbitration at all.
12. Chapter 18, section 3(1) of the FCA and Chapter 22, section 5(2) of the SCA.
13. Chapter 18, section 3(2) of the FCA and Chapter 22, section 5(1) of the SCA explicate that unless otherwise prescribed by the provisions of this chapter, the provisions of the Arbitration Act (i.e., the FAA and the SAA) apply in so far as appropriate.
14. *See*, e.g., the International Bar Association's (IBA) Squeeze-out Guides, which are maintained and updated by its Corporate and M&A Law Committee. www.ibanet.org/LPD/Corporate_Law_Section/Corporate_MA_Law_Committee/squeezeout.aspx (accessed September 2020). *See also* Christoph Van der Elst & Lientje Van den Steen, *Balancing the Interests of Minority and Majority Shareholders: A Comparative Analysis of Squeeze-Out and Sell-Out Right* 6 European Company and Financial Law Review 391, 404–414 (2009).

for the majority shareholder to redeem the minority's shares. However, as courts have traditionally viewed shares as "vested rights" that cannot be taken without the owner's consent, in many jurisdictions it used to be difficult—even impossible—to force a shareholder to leave the company. The lack of an efficient buyout mechanism thus created so-called freezeout situations in which minority shareholders were able to obstruct important transactions (such as mergers), even misuse their position to harm the majority shareholder and eventually extort excessive considerations for their holdings. Therefore, jurisdictions all over the world began to develop rules allowing the majority shareholder—under certain conditions—to buy minority shareholders out.[15,16]

Even though it is often in the majority shareholder's interest to gain full ownership of the enterprise, there are situations in which the controlling entity has absolutely no reason to acquire more shares. Particularly in non-listed companies—the shares of which typically have no efficient markets[17]—minority shareholders may find themselves deadlocked in an arrangement which they cannot leave, within which they have no influence and in which they lack the protection of certain crucial minority rights that can only be utilized if one holds at least 10% of the shares of the company.[18] Hence, to protect minority shareholders from being stranded in such a position, many countries have introduced the sell-out right, which is sometimes perceived as an *ex ante* defense mechanism against possible abuses of authority.[19] That said, there are also jurisdictions in which the squeeze-out right is not "compensated" with a sell-out right. For example, this is the case in Japan where the sell-out rule was intentionally

15. *See*, e.g., Frank H. Easterbrook & Daniel R. Fischel, *The Economic Structure of Corporate Law*, 134–135 (Harvard University Press 1991) and Elliot J. Weiss, *The Law of Take Out Mergers: A Historical Perspective* 56 NYU Law Review, 624 (1981). When making references to U.S. literature it is necessary to emphasize that today the policy goals related to squeeze-out rules are quite different in the U.S. and e.g., in the EU. *See*, e.g., Gilotta, *supra* n. 9, 8–9.
16. In 1929 the U.K. was the first European country to allow a squeeze-out following a takeover offer. As for civil law jurisdictions, Sweden was among the first countries to introduce squeeze-out rules when the institution was enacted through the adaptation of the 1944 Companies Act. *See* Sjöberg, *supra* n. 5, 180–190. In Finland similar rules were introduced over three decades later in the Companies Act of 1978.
17. *See*, e.g., Mette Neville, *A Statutory Buy-Out Right in SMEs: An Important Corporate Governance Mechanism and Minority Protection?* in Mette Neville & Karsten Engsig Sørensen (eds.), *Company Law and SMEs*, 289 (Thomson Reuters 2010), who argues that shares in small- and medium-sized enterprises (SMEs) are often effectively non-transferrable and particularly in companies with incompetent management.
18. For example, according to Chapter 5, section 4 of the FCA and Chapter 7, section 13(2) of the SCA only a shareholder (or shareholders together) who owns at least 10% of all shares in the company may require an extraordinary general meeting to be held to address a specified matter.
19. *See*, e.g., Nerep, Samuelsson & Andersson, *supra* n. 9, 325 and Van der Elst & Van den Steen, *supra* n. 14, 434. Especially in SMEs a sell-out right is also necessary as shares cannot be abandoned or otherwise renounced by their holder; i.e., the shareholder is bound to her/his shares until someone (i.e., the company or another person) either takes (purchases, inherits, redeems etc.) them or the company ceases to exist. *See*, e.g., Ville Pönkä, *The Legal Nature of Cooperative Membership* 7 Journal of Entrepreneurial and Organizational Diversity 39, 46–47 (2019). In this regard a share with no markets (i.e., potential buyers) may be perceived as a perpetual, non-terminable commitment from the perspective of a minority shareholder.

discarded when the Companies Act was revised in 2014.[20] Although this may seem unfair to the minority shareholders, Sjöberg is quite right when pointing out that there is no evidence regarding the efficiency of the sell-out right. For example, in Finland and Sweden, it is highly uncommon for a minority shareholder of a listed company to commence squeeze-out arbitration, which naturally suggests that they often have no desire to exit the company.[21] In Finland this applies to non-listed companies as well; however, in Sweden during the past few years sell-out requests have become more common in private companies with one or a few minority shareholders.

As implied above, the universal justification of the squeeze-out regime is built on the assumption that a properly designed exit-mechanism facilitates efficiency-oriented societal goals: On the one hand, it ensures that dissenting minority shareholders cannot prevent companies from growing and developing and on the other, that resources will be ultimately allocated to those who value them the most. This justification is founded on another assumption suggesting that the interests of the minority shareholders (i.e., shareholders with a less than 10% or 5% holding in the company) are usually purely economic in nature (i.e., that they are merely anonymous investors) while the majority shareholder has a vested interest in the company meaning that she/he must have the option to determine its operations, strategy and future.[22]

Even though most scholars agree on this theory, there seems to be some doubt whether buyouts infringe certain constitutional rights—the protection of property rights in particular.[23] European constitutional courts have often reviewed this issue and systematically confirmed the legality of the squeeze-out regime.[24] For example, in 2007, the Federal Constitutional Court of Germany tested the principle of proportionality (Ger. "Grundsatz der Verhältnismäßigkeit") and held that it was satisfied by the squeeze-out rules.[25] More recently, in 2018 the Austrian Constitutional Court ruled that while squeeze-outs primarily serve the interests of majority shareholders, there is also a clear public interest in allowing businesses to react efficiently in a rapidly changing national and international environment.[26] All in all, it seems to be rather difficult to establish a claim against a majority shareholder's squeeze-out right on constitutional grounds and one may even argue that buyouts are not constitution-sensitive measures as long as the rules are clear and the minority shareholders are compensated fairly.[27]

20. *See*, e.g., Eiji Takahashi, *Squeeze-Out of Minority Shareholders: The Constitutionality Question* 41 Journal of Japanese Law 77, 80 (2016).
21. Pönkä, *supra* n. 6, 148 and Sjöberg, *supra* n. 5, 294–295.
22. This assumption only applies to large companies with a dispersed ownership structure. In SMEs, on the other hand, the minority shareholders may also have vested interests if they are employed by the firm, for example.
23. In Finland and Sweden this discussion has been explained thoroughly by Pönkä, *supra* n. 6, 165–183 and Sjöberg, *supra* n. 5, 245–295.
24. *See*, e.g., Christoph Van der Elst & Lientje Van den Steen, *Opportunities in the Merger and Acquisition Aftermarket: Squeezing Out and Selling Out* in Greg N. Gregoriou & Luc Renneboog (eds.), *Corporate Governance and Regulatory Impact on Mergers and Acquisitions. Research and Analysis on Activity Worldwide Since 1990*, 207 (Elsevier 2007).
25. BVerfG, NZG 2007, 587.
26. VfGH 27.6.2018, G30/2017.
27. In fact, the right to squeeze-out minority shareholders may be approached from a contractual point of view so that the squeeze-out rules are understood merely as a set of predetermined

That said, in certain situations, constitutional rights may impact the valuation of shares and particularly if the minority shareholder can show that she/he has a vested interest in the company.[28]

In Finland and Sweden, squeeze-out arbitration may be commenced if a shareholder owns—directly or indirectly (e.g., together with one or more subsidiaries)—over 90% of the shares of a company.[29] In addition, the FCA requires the majority shareholder to hold over 90% of all votes meaning that if a company has issued different classes of shares, it may not be enough that the redeemer's ownership quota exceeds 90%. In practice, this rule must be followed carefully as many Finnish listed and non-listed companies utilize non-voting and multiple-voting shares.[30]

When the preconditions for squeeze-out have been met, a shareholder may immediately request the matter be resolved by arbitrators. In other words, no pre-arbitration negotiations are required[31] and if there is doubt whether the parties can reach an agreement in a timely manner, the majority shareholder naturally has no interest in trying to settle the issue before commencing the arbitration.[32] To speed up the process further, the FCA and the Swedish Companies Act 1999:116 (SCA) provide a mechanism known as advance vesting of title which we will get back to in section §15.03[C].[33]

Rules regarding the right of squeeze-out and sell-out as well as squeeze-out arbitration are mandatory, meaning that it is not possible to adjust them in the company's by-laws.[34] As explained in section §15.01, squeeze-out proceedings in

"contract terms" which become applicable when certain conditions are met. Hence, buyout is a risk that a minority shareholder can—and should—consider before purchasing shares.

28. *See*, e.g., Finnish Supreme Court decision KKO 2012:64. Also in BVerfG, NZG 2007, 587 the court left open the question of whether it would be sufficient in a family-owned company for the law to provide only for the compensation of the property interest.
29. Chapter 18, section 1(1) of the SCA and Chapter 22, section 1(1) of the SCA.
30. This dual requirement has been criticized in the Finnish legal literature. Pönkä, *supra* n. 6, 155. On the other hand, Sjöberg is quite right when pointing out that due to non-voting and multiple-voting shares, the Swedish rules may result in an "extreme" situation in which a shareholder, whose ownership quota exceeds 90%, may not hold even the majority of the votes in that company. Sjöberg, *supra* n. 5, 466.
31. *See*, e.g., Nerep, Samuelsson & Andersson, *supra* n. 9, 348, who argue that it is enough that the majority shareholder merely explores the possibility for voluntary share acquisition.
32. As for listed companies, the squeeze-out proceeding is typically preceded by a public offer to purchase all shares of the target company. In such a situation the majority shareholder has no reason to commence post-offer negotiations with the remaining shareholders.
33. Also, it is necessary to point out that in Finland and Sweden the majority shareholder may choose which minority shareholders to squeeze-out. In other words, there is no obligation to redeem all existing shares, however, if the majority shareholder chooses to buy out only a particular shareholder, all the shares of that person must be acquired. *See*, e.g., Sten Andersson, Svante Johansson & Rolf Skog, *Aktiebolagslagen (2005:551)*, 22:6 (digital version, Norstedts Juridik 2019) (Eng. "Company Law") and Pönkä, *supra* n. 6, 579–580. In practice, it is highly uncommon to buyout only certain shareholders. Nerep, Samuelsson & Andersson, *supra* n. 9, 327.
34. *See*, e.g., Andersson, Johansson & Skog, *supra* n. 33, 22:1 and Nerep, Samuelsson & Andersson, *supra* n. 9, 326. In Sweden there has been some discussion about whether the shareholders should be allowed to agree in the company's by-laws that a squeeze-out dispute is decided by a court. This possibility was rejected as it was believed it would make the system too complicated. *See* Regeringens proposition 2004/05:85. Ny aktiebolagslag, 458–459 (Prop. 2004/05:85) (Eng. "Governmental proposal. New Companies Act"). Since then Sjöberg has revisited this problem

Finland and Sweden are always decided by arbitrators, who are appointed according to the rules laid down in the FCA and the SCA. That said, there are some instances in which the transaction resulting in the squeeze-out threshold being exceeded may be brought before judges. For example, in Finland there is a case in which a minority shareholder of a private waste management company objected to a directed share issue after which the subject of the issue—the majority shareholder—decided to commence squeeze-out arbitration. Since it was the directed share issue that had increased the majority shareholder's ownership and vote quota beyond 90%, the sole arbitrator had no choice but to suspend the arbitration proceeding until the minority shareholder's objection was decided. Eventually, five years later, the Finnish Supreme Court found the claim against the directed share issue groundless[35] after which the squeeze-out dispute could be decided.[36]

Furthermore, there has been some discussion on whether squeeze-out rules can be adjusted, even ruled out *ex ante*, in a shareholders' agreement. This question concerns small- and medium-sized enterprises (SMEs) in particular since their shareholders sometimes agree not to commence squeeze-out arbitration in any situation. In Finland and Sweden there is a mutual understanding that although such contractual arrangements are valid and binding between the parties, they have no legal effect at the company level.[37] This rule has also been explicated by the Swedish Supreme Court in 2011 when it ruled that a majority shareholder had the right to buyout the minority shareholder although it had promised in a joint venture agreement not to do so.[38] Then again, it is important to note that even though agreements prohibiting the right of squeeze-out and sell-out are not binding at the company level, they are legally enforceable in the sense that incompliance with them constitutes a breach of contract that may result in contractual liability.[39]

In Finland and Sweden, the right of squeeze-out and sell-out cover both natural persons and legal persons regardless of the shareholder's nationality.[40] Also, when commencing squeeze-out arbitration it is irrelevant how and why the squeeze-out threshold was exceeded. Then again, later during the arbitral proceeding, the minority

and proposed that in private companies the shareholders should have the freedom to decide how squeeze-out disputes are resolved. Gustaf Sjöberg, *Tvångsinlösenreglerna tvingande* Juridisk tidskrift vid Stockholms Universitet, 149 (2011–2012) (Eng. "Mandatory Nature of Compulsory Redemption").

35. KKO 2018:19.
36. In practice these situations are uncommon since the minority shareholders usually question the transaction leading to the squeeze-out threshold being exceeded during the arbitration proceeding, not before it.
37. *See*, e.g., Niklas Arvidsson, *Aktieägaravtal. Särskilt om besluts-och överlåtelsebindningar* (Thomson Reuters 2011) (Eng. "Shareholders' Agreement. Particularly on Decision-making and Share Transfer Commitments"), Ville Pönkä, *Osakassopimuksen tavoitteet ja voimassaolon hallinta* (Edita 2008) (Eng. "Objectives and Management of Validity of Shareholders' Agreements") and Christina Ramberg, *Aktieägaravtal i praktiken* (Norstedts Juridik 2011) (Eng. "Shareholders' Agreements in Practice").
38. NJA 2011 s. 429.
39. *See*, e.g., Andersson, Johansson & Skog, *supra* n. 33, 22:1.
40. *See*, e.g., Andersson, Johansson & Skog, *supra* n. 33, 22:5, Nerep, Samuelsson & Adestam, *supra* n. 9, 328 and Pönkä, *supra* n. 6, 577–578.

shareholders may bring up this matter and contest the majority shareholder's squeeze-out right, arguing that the squeeze-out threshold was not exceeded in a legally binding manner. For example, minority shareholders may assert that they were not offered the opportunity to redeem the transferred shares as provided in the company's by-laws or that the share transfer was forbidden in a shareholders' agreement. In addition, the transactions leading to the squeeze-out threshold being exceeded may be relevant when determining the redemption price. This issue will be discussed in section §15.03[C].

§15.03 THE SQUEEZE-OUT PROCEEDING

[A] Introduction

In Finland, squeeze-out proceedings are governed by Chapter 18 of the FCA and in Sweden by Chapter 22 of the SCA. In addition, domestic Arbitration Acts supplement these rules; however, since squeeze-out arbitration has many peculiarities vis-à-vis normal arbitration it is a bit unclear as to how far the FAA and the SAA are applicable when it comes to squeeze-out proceedings. The question of which provisions of the Arbitration Acts are relevant and which are overridden by squeeze-out-specific rules is ultimately a matter of statutory interpretation and something that cannot be addressed further here.[41]

Squeeze-out arbitration may be approached by dividing the process into three phases. (1) The first phase concerns the appointment of arbitrators and the so-called trustee ("appointment phase"). (2) The second phase covers the actual arbitration proceeding, which typically begins when the arbitral tribunal first contacts the parties and concludes in rendering an award ("proceeding phase"). (3) The last phase includes some miscellaneous topics such as the right to appeal against an arbitral award and the implementation of the redemption ("post-arbitration phase"). Next we will take a closer look at these phases utilizing a comparative approach.

[B] Appointment Phase

The most significant difference between the Finnish and Swedish systems concerns the appointment of arbitrators. In Finland, squeeze-out proceedings are administered by the Redemption Board (Fi. "lunastuslautakunta") of the Finland Chamber of Commerce (FCC),[42] the main task of which is to appoint impartial and independent

41. For example, the provisions of the FCA/SCA and FAA/SAA concerning the right to appeal against an arbitral award overlap one another.
42. The Redemption Board is regulated by the Chamber of Commerce Act 878/2002 (Fi. "kauppakamarilaki"; FCCA) and Chapter 18, section 4(1) of the FCA. In addition, the FCC has issued rules (Fi. "Keskuskauppakamarin lunastuslautakunnan säännöt"), which explicate how, in practice, the Redemption Board functions. *See* https://kauppakamari.fi/palvelut/lunastuslautakunta/ (accessed September 2020). The Arbitration Rules of the FCC (2020; FAI Rules) are not applicable in squeeze-out proceedings and there has been some discussion if the Redemption Board should create its own procedural instructions. According to section 5(2) of

arbitrators with the expertise needed for the task. In addition, if several arbitrators are appointed, the Redemption Board designates a chairperson for the tribunal. Furthermore, it makes a petition for the appointment of a trustee to the district court which has jurisdiction in the area where the target company has its registered office.[43] According to Chapter 18, section 5(1) of the FCA, the Redemption Board may choose not to ask for the appointment of a trustee if it decides that the minority shareholders do not need a special representative or if the parties have agreed so. In practice, a trustee is involved in more than 90% of all squeeze-out proceedings.[44]

The work of the Redemption Board is divided into several stages. First, as soon as it has received the request to commence arbitration (i.e., to appoint arbitrators), the other parties involved (usually the minority shareholders) are given the opportunity to be heard. Next, the Redemption Board decides whether to ask for the appointment of a trustee or to proceed without one. This is an important decision since the trustee has a significant role in the squeeze-out proceeding.[45] That said, as the appointment process always takes some time[46] and as there are situations in which the minority shareholders have no genuine need for a special representative, it is appropriate for the appointment rules to allow some flexibility.

If a trustee is appointed, the Redemption Board gives her/him the opportunity to express her/his opinion regarding the appointment of arbitrators. Only then does the Redemption Board decide on the number of arbitrators and chooses suitable people for the task. As for the number of arbitrators, the main rule is three,[47] but today, it is typical for squeeze-out disputes to be decided by sole arbitrators meaning that on many occasions, the Redemption Board (and perhaps also the parties and the trustee) considers the dispute to be so simple that it can be decided by one person. However, in disputes involving many minority shareholders, significant economic interests and complex legal issues, a panel of three is often prioritized. Typically experienced attorneys, law professors and judges (including Supreme Court justices) are appointed

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the FCCA the Redemption Board must have a secretariat, a chairperson, a vice-chairperson and five to seven other members, which all must be familiar with the "economic environment." Currently the author of this article is the chairperson of the Board.

43. The system works so that the Redemption Board proposes a particular person to be appointed as a trustee and the district court only decides whether this person is suitable for the task or not.
44. All decisions made by the Redemption Board are final; i.e., the parties have no right to appeal against the decisions it makes. Hallituksen esitys 71/2013 eduskunnalle laeiksi osakeyhtiölain 18 luvun ja kauppakamarilain 5 ja 6 §:n muuttamisesta, 11–13 (HE 71/2013) (Eng. "Governmental proposal concerning the amendment of Chapter 18 of the FCA and sections 5 and 6 of the FCCA"). That is if a decision made by the Board is appealed against, the court may not address it. KKO 2010:30.
45. In fact, a recent statistical analysis suggests that there is a relation between the appointment of a trustee and the outcome of the arbitration proceeding; i.e., the absence of a trustee may reduce the redemption price paid to the minority shareholders. Hanna Savolainen & Jani Saastamoinen, *Uskottu mies vähemmistön edunvalvojana OYL 18 luvun mukaisessa välimiesmenettelyssä* Lakimies, 931 (2016) (Eng. "Trustee of Minority Shareholders in Arbitration Proceedings Under Ch. 18 of the FCA").
46. Typically it takes a district court about twenty days to appoint a trustee. HE 71/2013, *supra* n. 44, 5.
47. Section 7 of the FAA.

as arbitrators and trustees,[48] but there has been some discussion whether also a non-lawyer could be chosen as one.[49] In practice, this is not a good idea as there is always a significant risk involved when delegating legal decision-making authority to people other than lawyers. Arbitrators and trustees often face complex procedural questions that only legal professionals have the expertise to address.

Finally, the Redemption Board reviews squeeze-out awards and thereby keeps track of squeeze-out practices. However, it does not gather feedback from the parties nor give feedback to the arbitrators unless asked. Furthermore, it must be noted that the Redemption Board has no authority vis-à-vis the arbitrators or the trustee, in other words, it cannot intervene in arbitral proceedings nor does it decide on the costs of arbitration. Hence, the legal authority of the Redemption Board is rather limited compared to the authority of the Arbitration Institute of the FCC (FAI), for example.

In Sweden, squeeze-out disputes are always decided by three arbitrators.[50] This rule is mandatory meaning that it is not possible to stipulate in the company's by-laws of the appointment of a sole arbitrator.[51] Similar to the Finnish system, the Swedish appointment process has several stages, which vary depending on who is commencing the arbitration.

The provisions of the SCA focus primarily on the situation when the majority shareholder is the party initiating the procedure. According to Chapter 22, section 6 of the SCA, if the majority shareholder wants to redeem the minority shares, she/he must submit a written request to the target company's board of directors and state her/his arbitrator. Immediately after the board has received the request it must notify the shareholders against whom a buyout claim is being brought and offer them the opportunity to choose their arbitrator (Chapter 22, section 7 of the SCA).[52] In practice, the minority shareholders are often confused by this notification as they have no knowledge of squeeze-outs or arbitration in general. Also, as most redemption proceedings involve several minority shareholders, it may be virtually impossible for them to agree on an arbitrator.[53] Therefore, it is stipulated in Chapter 22, section 8 of the SCA that if the minority shareholders do not appoint an arbitrator, the target

48. The parties (and minority shareholders in particular) quite often propose an arbitrator or argue that a particular person should not be chosen as one. The Redemption Board does not take such requests into account, and there are also situations where the parties agree on the arbitrator. In that case there is usually no reason why the Redemption Board should refuse the request.
49. *See* Ville Pönkä, *Keskuskauppakamarin lunastuslautakunnan organisaatio ja tehtävät* Defensor Legis, 158 (2016) (Eng. "The Organization and Duties of the Redemption Board"). For example, business school professors and other valuation experts have sometimes been appointed as "wingmen" to panels of three arbitrators. In Sweden there has been no practice for a long time of appointing non-lawyers as arbitrators in squeeze-out proceedings although there are no legal restrictions to do so.
50. Chapter 22, section 5 of the SCA.
51. *See*, e.g., Andersson, Johansson & Skog, *supra* n. 33, 22:5 and Nerep, Samuelsson & Andersson, *supra* n. 9, 345.
52. The notification must be published as stipulated in Chapter 22, section 7(2) of the SCA and in addition sent to those shareholders whose postal address is known to the company. The minority shareholders have two weeks to inform the company in writing whom they have chosen as their arbitrator.
53. Rolf Skog, *Rodhes Aktiebolagsrätt*, 259 (24th edn., Norstedts Juridik 2014) (Eng. "Rodhe's Company Law").

company's board must ask the Swedish Companies Registration Office (Swe. "Bolagsverket") to appoint a trustee.[54] The trustee will then choose an arbitrator on behalf of the minority shareholders (Chapter 22, section 10(1) of the SCA) and finally, the two arbitrators will choose the third member of the panel who will also act as its chair (section 13 of the SAA).

In the uncommon event that a minority shareholder decides to use her/his right of sell-out, the request to commence arbitration must be addressed directly to the majority shareholder as stipulated in section 19 of the SAA. Following this request, both parties choose one arbitrator and then the two arbitrators choose the third member of the panel who will also act as the chairperson. If for some reason a party fails to choose an arbitrator, one will be appointed by the district court upon request by a party (sections 14–15 of the SAA). In practice, this appointment system may turn out to be quite problematic if several minority shareholders request sell-out independently from one another. The Swedish law includes no rules governing such a situation, hence, it has been argued that if the parties do not agree on a joint proceeding, each claim must be addressed separately.[55] This is something that the parties should avoid since there is no point in deciding virtually identical disputes in separate proceedings. In fact, separate proceedings would only lead to unnecessary expense (which the majority shareholder is liable for[56]) and more importantly, there is a risk that the different arbitral tribunals would determine different values for the minority shares.[57]

[C] Proceeding Phase

The proceeding phase begins immediately after the appointment of the arbitral tribunal and the trustee. This phase has many similarities with normal arbitration; for example, it typically has a preliminary hearing and information exchanging stage, a hearing stage (at which the parties submit written documents and may meet in person) and concludes in rendering an award. Due to these similarities, there is no reason to explain further the structure of squeeze-out arbitration; hence, we will next focus on the features that distinguish it from normal arbitration.

First, the number of parties has a major impact on the nature of the arbitration proceeding. It is different to administer a proceeding where the number of minority shareholders is counted in hundreds—even in thousands—compared to a squeeze-out involving only a few respondents. Squeeze-out proceedings also vary depending on the

54. The target company may propose a particular person to be appointed as a trustee, but the Companies Registration Office is not bound by the proposal. Also, as opposed to the Finnish system, the Companies Registration Office's decision may be appealed to the Stockholm District Court within three weeks after the decision was made (Chapter 31, section 3 of the SCA).
55. *See*, e.g., Andersson, Johansson & Skog, *supra* n. 33, 22:6.
56. *See* section §15.03[D].
57. In Finland there have been situations in which the minority shareholders have commenced arbitration independently of one another. For example, in 2017–2018 nine minority shareholders of a golf company (Gumböle Golf ry) decided to use their right of sell-out and as the Redemption Board did not have the authority to consolidate the proceedings, it appointed the same arbitrator to decide each case. After being appointed, the arbitrator—referring to the rules laid down in the Finnish Code of Judicial Procedure (4/1734)—chose to consolidate the proceedings.

level of activity of the parties. Sometimes the minority shareholders become highly engaged in the process,[58] and it is typical for at least some of them to be represented by lawyers and share valuation experts.[59] Such proceedings may have lengthy hearings and require a huge amount of procedural coordination. On the other hand, there are also situations in which the minority shareholders remain relatively passive and rely on the trustee to bring forth arguments supporting their claims. As for oral hearings, the Swedish custom seems to be that the parties do not meet in person; in other words, there are no preliminary or main hearings meaning that the whole process is written. In Finland, on the other hand, the arbitral tribunal typically decides to hold at least a main hearing;[60] however, there are also arbitrators who prefer the "Swedish style." For example, in 2014 when the Swedish company SSAB AB (publ) bought out the minority shareholders of the Finnish company Rautaruukki Oyj, the whole process was administered remotely even though it involved about 6,200 respondents including several active ones.

Another distinctive feature of squeeze-out arbitration is the involvement of a trustee. In practice, the primary role of the trustee is to represent the minority shareholders and to ensure that their rights are not infringed. Here the Finnish and Swedish systems differ from one another in the sense that in Finland, the trustee represents all minority shareholders regardless of their activity during the process.[61] In Sweden, on the other hand, the trustee protects the rights of "absent shareholders" (Chapter 22, section 10(1) of the SCA), hence, if a minority shareholder decides to become active during the process, she/he is no longer considered absent and her/his actions are not supervised by the trustee.[62] In practice, the Finnish system has proved to be quite complicated since trustees often find it impossible to represent active

58. Particularly in SMEs, where the shareholders often know one another and maybe even work together, the disputes may get rather personal in nature and involve matters that are not present in companies with wide and dispersed ownership structures. Furthermore, in Finland and Sweden there are certain "professional" minority shareholders, who are actively involved in many squeeze-out proceedings (and particularly those involving a listed company), who systematically make different kinds of claims and who try to have the majority shareholder cover their expenses. *See*, e.g., Swedish Supreme Court decision HD 17.3.2020 Ö 1082-19. It is likely that the minority-favoring rules regarding the liability for the costs of arbitration (which are discussed later in this section) provoke such opportunistic behavior.
59. In Finland and Sweden there are no registers or other listings of share valuation experts such as there are, e.g., in the U.K. Typically the parties buy valuation services from consulting firms and business professors.
60. According to section 30 of the FAI Rules, the arbitral tribunal must hold a case management conference and only in "exceptional situations" it may refrain from arranging one. Therefore, it is quite surprising that in most squeeze-out proceedings there is no such conference and after hearing the majority shareholder and the trustee (and in some cases also the active minority shareholders) the arbitrators merely issue a so-called instruction letter (Fi. "ohjekirje") confirming the conduct and timetable of the proceeding.
61. According to Chapter 18, section 5(3) a trustee "shall have the right and the obligation to make a case on behalf of the minority shareholders and to present evidence in support thereof in the arbitration proceedings".
62. *See*, e.g., HD 17.3.2020 Ö 1082-19. According to the legal preparatory materials of the SCA, the trustee (Swe. "god man") is comparable to a legal counsellor (Swe. "rättegångsombud") vis-à-vis the absent minority shareholders. Prop. 2004/05:85, *supra* n. 34, 818–819. *See also* NJA 2013 s. 1203 and NJA 2018 s. 994. In Finland, on the other hand, the trustee (Fi. "uskottu mies") is perceived as a special representative, a kind of a "minority-favoring referee."

minority shareholders whose claims are utterly unrealistic: As Chapter 18, section 5(3) of the FCA forbids all measures that are contrary to the measures taken by the minority shareholders, there are situations in which the trustee has to take a relatively passive role and merely stand by as the respondents plead their case.

As explained in section §15.01, the arbitral tribunal's authority does not extend beyond determining the existence of the squeeze-out right and the squeeze-out price. Share valuation is often a lengthy process and therefore, the FCA and the SCA allow so-called advance vesting of title meaning that (a) if the parties agree on the existence of a buyout right or it is otherwise clear that such a right exists and (b) if the majority shareholder provides sufficient security for the future payment of the squeeze-out price, she/he may be permitted to take possession of the minority's shares before the beginning of the actual valuation phase.[63] In most squeeze-out disputes the majority shareholder utilizes this right and if the above-mentioned conditions are met, the arbitrators typically accept her/his petition. That said, there must be virtually complete certainty over exceeding the squeeze-out threshold, since if it later turns out that the majority shareholder did not have the right to buy out the minority shareholders, it may be impossible to restore their ownership status. In Finland, the decision regarding advanced vesting of the title is made in the form of a procedural order (Fi. "käsittelyratkaisu") which may not be challenged.[64] In Sweden, on the other hand, the decision must be made in the form of a separate award which may be appealed before the Stockholm District Court.[65]

Next, the arbitral tribunal decides the squeeze-out price and the interest to be paid on it[66] as stipulated in Chapter 18, section 7 of the FCA and Chapter 22, sections 2 and 3 of the SCA. At this stage, the legal form of the target company (e.g., whether it is listed or non-listed), the transactions leading to exceeding the squeeze-out threshold and other case-specific factors play an important role. In Finland, the main rule is that the "fair price" of the share before the initiation of the arbitration proceeding serves as the basis for the determination of the redemption price. However, if the squeeze-out proceeding was preceded by a mandatory or a voluntary bid—as referred to in the Finnish Securities Markets Act 746/2012—the redemption price is determined on the basis of the offer, unless there is a "special reason" to decide otherwise.[67]

The primary valuation rule in Sweden is quite different as it requires the redemption price to correspond to the price of the share which might be expected on a

63. Chapter 18, section 6 of the FCA and Chapter 22, sections 12–14 of the SCA.
64. Pönkä, *supra* n. 6, 638.
65. Prop. 2004/05:85, *supra* n. 34, 820. Such an appeal could delay the squeeze-out proceeding, but there are no data suggesting that minority shareholders would file frivolous appeals to harm the redeemer. In fact, appeals against decisions concerning advance vesting of title are highly uncommon.
66. The rules concerning interest paid to the redemption price are nearly identical in Finland and Sweden. In Sweden interest must be paid from the date on which a party requested that the dispute be decided by arbitrators and in Finland from three weeks after the request to appoint arbitrators.
67. As for voluntary bids the rule mentioned above is applied only if the offer was accepted by holders of more than 90% of the shares to which it relates. In practice, there have been only two cases in which the arbitral tribunal found a special reason to deviate from a mandatory or voluntary bid.

sale under "normal circumstances."[68] However, if the share is traded on a Swedish or foreign exchange or other regulated markets, its redemption price must be fixed to the listed value (i.e., market price), unless "special grounds" otherwise dictate. Furthermore, if the squeeze-out proceeding was preceded by a public offer (a) to acquire all shares of the target company and (b) the offer was accepted by holders of more than 90% of the shares to which it relates, the purchase price must correspond to the offer, unless there is a special reason to decide otherwise. It needs to be emphasized that this "special rule" (Swe. "särregel") is applied only when the above-mentioned conditions are met, meaning that the redemption price of a listed share is normally determined according to the market price rule.[69] That said, the outcome of the valuation process is usually the same regardless of which rule is applied.

On many occasions share valuation is not only a lengthy process but also a highly complicated one requiring the use of a range of valuation methods that need to be adjusted to the circumstances at hand. Particularly in SMEs, share valuation involves much discretion as the "fair value" and the "value which might be expected upon a sale under normal circumstances" are rather vague objectives. Also, it is typical for the parties to establish their claims on expert opinions suggesting completely different outcomes, meaning that the arbitrators must have the expertise to assess appraisal reports critically. If the target company is listed, the dispute typically comes down to the question of whether the redemption price should be established according to the market price (or the bid price) or if there is a special reason to decide otherwise. Also, this question can turn out to be complicated if a minority shareholder or the trustee shows that the market price may not reflect the true value of the redeemed shares.

In Finland, arbitral awards play a significant role in the development of the share valuation doctrine, and it is no surprise that arbitrators often justify their decisions by referring to previous awards in similar cases. In fact, there are even awards that enjoy a type of precedent value. In Sweden, where squeeze-out awards are not published, they are nevertheless followed closely by scholars and legal practitioners.[70] Recently some awards have also raised critical debate whether certain valuation principles explicated in Swedish case[71] law are still valid and binding.[72] There are many other interesting share valuation-related topics—such as can the redemption price be

68. Similar as in Finland, the purchase price must be determined paying attention to the circumstances pertaining at the time a request for arbitration was made. However, also previous circumstances may be taken into account if there is a sound reason to do so.
69. *See*, e.g., Karl-Erik Danielsson, *Vad är det för särskilt med särregeln?* In Marianne Lundius, Ragnar Boman & Rolf Skog (eds.), *Aktie, aktiebolag, aktiemarknad: en vänbok till Johan Munck*, 104 (Corporate Governance Forum 2013) (Eng. "What is so Special about the Special Rule") and Gustaf Sjöberg, *Tvångsinlösen—särregelns tillämplighet* Juridisk tidskrift vid Stockholms Universitet 892, 902 (2011–2012) (Eng. "Compulsory Redemption—Applying the Special Rule").
70. Sjöberg, *supra* n. 5, 359.
71. *See*, e.g., NJA 1967 s. 1 ("Gimo"—case), NJA 1992 s. 872 and NJA 1996 s. 293 ("Balken I & II"—cases) and NJA 2011 s. 932 ("Old Mutual"—case).
72. *See*, e.g., Danielsson, *supra* n. 69 and Bo Svensson, *Lösenbeloppet vid tvångsinlösen av minoritetsaktier* 1 Ny Juridik 49 (2019) (Eng. "Redemption Price in Compulsory Redemption of Minority Shares").

negative so that the minority shareholders pay the redeemer[73]—but due to the demarcations of this chapter, these questions cannot be discussed further here.

Rules regarding the liability for the costs of arbitration are another peculiarity that distinguishes squeeze-out arbitration from normal arbitration. The main rule in Finland and Sweden is that the majority shareholder is liable for these costs regardless of the outcome of the dispute. Only in exceptional circumstances can the arbitrators order another shareholder to bear them in whole or in part.[74] However, the Finnish and Swedish rules differ from one another, as in Sweden, the costs of arbitration include the remuneration to the arbitrators and the trustee (i.e., the costs of the arbitration proceeding itself) as well as the costs of the other shareholder.[75] In Finland, on the other hand, the costs of arbitration refer only to procedural costs, and in most cases the arbitrators decide that the minority shareholders are liable for their own expenses.

In Sweden there is no published information regarding the costs of squeeze-out arbitration. In Finland, on the other hand, a rather comprehensive study shows that the arithmetic mean of the arbitrators' remuneration is EUR 25,000 (median EUR 13,000) when the target company is non-listed and EUR 40,000 (median EUR 27,500) when the target company is listed.[76] In both countries the arbitrators decide on the amount of their remuneration as stipulated in section 46 of the FAA and section 37 of the SAA. In addition, the arbitrators decide on the trustee's remuneration based on her/his invoice.[77]

Finally, the proceeding phase concludes in rendering an award. The award must state clearly the redemption price per share and meet the requirements laid down in the FAA and the SAA. The award must be delivered to the majority shareholder, the active/known minority shareholders and the trustee.[78] As explained above, squeeze-out awards in Finland are registered; however, there is some ambiguity whether decisions merely confirming a settlement or discontinuance are covered by this requirement.[79] In Sweden, squeeze-out awards are not public—in other words, squeeze-out awards are confidential in the same way as other arbitral

73. The Supreme Court of Finland is currently considering this option.
74. Chapter 18, section 8 of the FCA and Chapter 22, section 23 of the SCA. If the arbitrators decide that the majority shareholder alone should bear the costs of the arbitration, the minority shareholders cannot be held liable for any procedural costs even if the majority shareholder has become insolvent. *See*, e.g., NJA 2013 s. 1203.
75. The majority shareholder is always liable for her/his own costs. *See* Regeringens proposition 2006:07:70. Några aktiebolagsrättsliga frågor, 107 and 199 (Eng. "Governmental proposal. Some company law questions").
76. Ville Pönkä, *Välimiesmenettelyn kustannukset vähemmistöosakkeiden lunastusriidassa*. In Ulla-Maija Mylly, Patrik Nystörm & Tuija Viinikka (eds.), *Oikeuden ja talouden rajapinnassa. Juhlakirja Matti J. Sillanpää 60 vuotta*, 203 (Edita 2016) (Eng. "Costs of Arbitration in Squeeze-out Disputes"). As for listed companies, the arbitrators' renumerations have been increasing significantly during the past few years.
77. At least in Finland, the arbitrators sometimes disagree with the trustee on the amount of fair compensation and adjust it. *See*, e.g., Pönkä, *supra* n. 76, 206–207.
78. In addition, the arbitral award must be delivered to a passive minority shareholder if she/he requests it. Hallituksen esitys 109/2005 Eduskunnalle uudeksi osakeyhtiölainsäädännöksi, 175 (Eng. "Governmental proposal for new company legislation").
79. Then again, the law does not require squeeze-out awards to be delivered to the Redemption Board. Most arbitrators nevertheless do so.

awards—however, in practice they spread easily among those few involved in the business.[80] This may sound questionable, but squeeze-out arbitration does not involve a similar interest of confidentiality as would flow from normal arbitration.

[D] Post-arbitration Phase

The post-arbitration phase begins after the arbitral award has been rendered. This phase covers several important actions such as surrendering the shares to the majority shareholder and registering the majority shareholder as the new owner of the shares, payment (or deposition) of the purchase price and furthermore, in Finland the trustee must notify a report of his or her activities to be registered, without delay.[81]

According to Chapter 18, section 10 of the FCA, a party and the trustee may appeal against a squeeze-out award before the district court which has jurisdiction in the area where the target company has its registered office. In turn, the decision of the district court is open to appeal directly before the Supreme Court. In Sweden, a party and the trustee may commence proceedings before the Stockholm District Court and its decision is open to appeal before the Svea Court of Appeal (Chapter 22, section 24 of the SCA).

In both countries a squeeze-out award may be challenged on formal and material grounds meaning that if a party or the trustee is dissatisfied with the redemption price (for example), the matter may be reviewed by judges.[82] The justification of such a broad right to appeal is founded on the interpretation of Article 6 of the European Convention on Human Rights (ECHR).[83] However, this interpretation is somewhat problematic in the sense that a right to appeal on material grounds means that judges, who may have no expertise in company law and share valuation, have the authority to override an arbitral award rendered by carefully selected arbitrators.[84] Finally, it must be noted that in Finland, it is unclear whether a court's ruling affects only the parties who have challenged the squeeze-out award or all minority shareholders whose shares

80. Sjöberg, *supra* n. 5, 359.
81. This registration obligation is sometimes neglected by trustees and the problem is that there is no sanction for such misconduct.
82. In practice, such appeals are relatively uncommon. *See*, e.g., HE 71/2013, *supra* n. 44, 6. Here it is important to note that in Finland and Sweden the "loser-pays" rule is applied if a minority shareholder or the trustee challenges the arbitral award and loses in court. *See*, e.g., HD 17.3.2020 Ö 1082-19. This may—at least in part—explain why such challenges are uncommon.
83. *See* HE 71/2013, *supra* n. 44, 11–12 and Regeringens proposition 1983/84:184 om ändring i aktiebolagslagen (1975:1385) m.m., 9 (Eng. "Governmental proposal on amending the Companies Act"). As for Art. 6(1) of the ECHR a distinction is made between voluntary and compulsory arbitration. *See* Guide on Article 6 of the European Convention on Human Rights (European Court of Human Rights 2019), 31. In principle, no issue is raised in the case of voluntary arbitration since it is entered into freely. However, in the case of compulsory arbitration—such as squeeze-out arbitration—the parties have no opportunity to remove their dispute from the jurisdiction of an arbitral tribunal, which consequently must afford special "guarantees"—in the case of squeeze-out arbitration a right to appeal on material grounds.
84. It may be reasonable to narrow down the right to appeal so that the court primarily examines whether the share valuation was carried out carefully and only if there are signs of negligence, the valuation could be opened up for reconsideration.

have been redeemed.[85] In Sweden the court's ruling affects all minority shareholders, but the case is most probably different in Finland—unless it is the trustee, who has appealed against the award.[86]

§15.04 CONCLUSIONS: A PRO ET CONTRA OVERVIEW

The preconditions to commence squeeze-out arbitration as well as the different phases of the proceeding have been explained above in sections §15.02 and §15.03. Based on this analysis, it seems that in Sweden, squeeze-out arbitration bears more resemblance to normal arbitration than it does in Finland. For example, in Sweden, there is no administrative organ similar to the Redemption Board, the trustee has no role vis-à-vis the active minority shareholders and arbitral awards are not public. However, the Finnish and Swedish systems have many structural similarities when it comes to the authority of the arbitrators, rules regarding advance vesting of title and the right to appeal against an arbitral award. Also, the price determination rules have the same objective—to establish the true value of the redeemed shares—even though the wordings of the FCA and the SCA are seemingly different.[87]

It is impossible to determine which squeeze-out regime outperforms the other. However, since the Finnish and Swedish rules are applied under similar conditions, some general observations can be made. First, in Finland the pre-arbitration phase is made very easy for the parties as it is administered entirely by a third party. This means the target company has no role in the buyout process and that the parties do not need to concern themselves with finding competent and impartial arbitrators. Also, it is important to point out that squeeze-out arbitration in Finland is open to public scrutiny in the sense that decisions regarding the appointment of arbitrators, arbitral awards, and trustees' reports are always disclosed through registration.[88] Such transparency lifts the "veil of mystery" over squeeze-out arbitration (e.g., it eliminates concerns relating to the independence and impartiality of arbitrators) and facilitates the development of fair and efficient buyout practices. Furthermore, the Finnish appointment rules are more flexible as they allow the appointment of sole arbitrators. As mentioned above in section §15.03[B], the Redemption Board often takes advantage of this option and even the minority shareholders and the trustee sometimes agree that there is no need for a panel of three arbitrators.

85. Pönkä, *supra* n. 6, 722–723.
86. Manne Airaksinen, Pekka Pulkkinen & Vesa Rasinaho, *Osakeyhtiölaki II*, 637 (Alma Talent 2018) ("Companies Act II").
87. The reason for the similarities between the Finnish and Swedish systems can be traced back to Nordic legislative cooperation, which virtually ceased to exist in the early years of the 1970s. *See*, e.g., Jan Andersson, *The Making of Company Law in Scandinavia and Europe* in Holger Fleischer, Jesper Lau Hansen & Wolf-Georg Ringe (eds.), *German and Nordic Perspectives on Company Law and Capital Markets Law*, 27 (Mohr Siebeck 2016). Although company law in the Nordic countries has diverged from one another, it is still possible for a Finn to understand Swedish company law—and, of course, vice versa.
88. Although the names of the arbitrators and the trustees as well as the parties involved are published, the Redemption Board does not share information regarding the contents of its meetings. Only the minutes are disclosed.

Then again, the Swedish system is evidently more desirable when it comes to the role of the trustee. As explained in section §15.03[C], in Finland, the trustee may find her/himself in a difficult position if the minority shareholders decide to take an active role in safeguarding their own interests.[89] This issue could be fixed simply by ruling that the trustee represents absent shareholders, in other words, only those who are not reachable ("unknown shareholders") and those who choose not to take part in the proceeding. The Finnish system is also unreasonably cumbersome when it comes to the appointment of the trustee. As the court that is responsible for making the appointment decision has virtually no discretion in the matter and as the decision cannot be contested, there is no point in involving judges in the process. Therefore, the trustee should be appointed by the Redemption Board or by an authority similar to the Swedish Companies Registration Office.

Furthermore, the Swedish squeeze-out regime is more rational in the sense that all buyout-related matters involving the judicial system are concentrated in one district court (i.e., the Stockholm District Court). This may seem to be a trivial issue, but in Finland, where the FCA was amended in 2013 so that the District Court of Helsinki no longer has exclusive authority in squeeze-out matters, the number of problems related to trustee appointments has increased. These experiences suggest that the district court which has jurisdiction in the area where the target company has its registered office may not have the best knowledge of company law and arbitration.

There are also several material matters in which the Finnish and Swedish squeeze-out rules differ from one another. For example, in Sweden, the squeeze-out right covers both shares as well as warrants and convertible instruments.[90] In Finland, it depends on the terms of the instrument potentially carrying voting rights if it may be redeemed or not. As the aim of the squeeze-out right is to grant the majority shareholder the right to acquire full ownership of the target company, it would make sense to apply the threshold to all types of equity-related instruments.[91] Another difference concerns the question of whether the squeeze-out threshold should be fixed to the amount of the redeemer's shareholding (the Swedish system) or to the number of votes as well (the Finnish system). This question was addressed in section §15.02 and therefore it will not be discussed further here.

Finally, the question remains on whether arbitration is the most appropriate means of resolving squeeze-out disputes. On the one hand, arbitration offers the opportunity to determine the redemption price and to deal with questions of legal nature in the same proceeding. On the other hand, squeeze-out arbitration is a multi-phased, lengthy and a relatively expensive process and there is no doubt that in many buyouts it would make more sense to utilize independent expert determination under judicial supervision instead of full-scale arbitration. In light of the purposes of the squeeze-out (and the sell-out) right, it is virtually impossible to argue that a buyout dispute should always be decided in a particular manner.[92] However, judging by the

89. *See supra* n. 62.
90. Chapter 22, section 26 of the SCA.
91. Van der Elst & Van den Steen, *supra* n. 14, 438.
92. *Ibid*.

positive experiences in Finland and Sweden it is safe to say that arbitration is a viable alternative[93] and when taking into account the increasing popularity of alternative dispute resolution, it is a bit surprising that squeeze-out arbitration has remained such an unknown phenomenon.

93. *See* differently Sjöberg, *supra* n. 5, 470–473, who argues *de lege ferenda* that squeeze-out disputes should be decided by judges instead of arbitrators.