



Arbitration Guide
IBA Arbitration Committee

FINLAND

(Updated January 2018)

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I. Background

(i) **How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?**

Arbitration is frequently used to settle business disputes in Finland. The principal advantages of arbitration are:

- Time/efficiency – Arbitration is usually faster than court proceedings because an arbitral award generally is final and non-appealable;
- Flexibility – The parties may agree on the applicable procedures;
- Expertise – The parties may affect the appointment of arbitrators in order to ensure that they have sufficient knowledge and expertise of the subject matter involved; and
- Confidentiality – Arbitral proceedings and awards generally are not public.

(ii) **Is most arbitration institutional or *ad hoc*? Domestic or international? Which institutions and/or rules are most commonly used?**

Both institutional arbitration and *ad hoc* arbitration are frequently used. There are no statistics on the number of *ad hoc* proceedings conducted in Finland, but institutional proceedings are likely somewhat more common. In the majority of proceedings, at least one of the parties is from Finland.

The Arbitration Institute of the Finland Chamber of Commerce (the “Arbitration Institute” or “FAI”) is the most important arbitration institution. Its arbitration rules (the “FAI Rules”) are also the rules that are most commonly used. The FAI Rules were amended in 2013 and reflect best international practices. The FAI Rules can be found in Finnish, English, Swedish, Russian and Spanish at www.arbitration.fi/en/indextemp.html.

Due to the fact that the FAI Rules are often applied in arbitration in Finland, they will be referred to in relevant parts below.

(iii) **What types of disputes are typically arbitrated?**

All types of business disputes are commonly settled through arbitration.

FAI provides statistics of the types of disputes settled under the FAI Rules. During recent years, the most common subject matters have related to M&A and

shareholders agreements. Other common subject matters relate to franchising, IT, delivery/supply, consulting and service agreements.

(iv) How long do arbitral proceedings usually last in your country?

If the arbitration is conducted in accordance with the FAI Rules, the time limit for rendering the arbitral award is nine months from the date on which the arbitral tribunal received the case file from the Arbitration Institute. The Arbitration Institute may extend the time limit by a reasoned request of the arbitral tribunal or, if deemed necessary, on its own motion. The median duration of arbitration under the FAI Rules is nevertheless about eight months.

There are no statistics for how long *ad hoc* arbitration proceedings last but they tend to follow the trends of proceedings under the FAI Rules. It may be assumed that *ad hoc* arbitrations last somewhat longer than arbitrations under the FAI Rules, but are nevertheless faster than proceedings in general courts.

In 2004 the Arbitration Institute introduced fast track rules, which were amended simultaneously with the regular FAI Rules in 2013. According to the Arbitration Institute's Rules for Expedited Arbitration, the arbitral award shall be rendered no later than three months from the date on which the sole arbitrator received the case file from the Arbitration Institute. The Arbitration Institute may extend this time limit upon a reasoned request by the sole arbitrator, or if deemed necessary, on its own motion.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

No. The Finnish Arbitration Act (967/1992, henceforth the "Arbitration Act") explicitly states that foreign nationals can act as arbitrators in Finland. Foreign nationals may also act as counsel in arbitrations seated in Finland.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

The current Arbitration Act came into force on 1 December 1992. It is largely compatible with the UNCITRAL Model Law, but like eg Sweden, Switzerland and France, Finland is not formally a model law country.

The Arbitration Act is applied without distinction to both domestic and international arbitration.

- (ii) **Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?**

Although the Arbitration Act is applied without distinction to domestic and international arbitration, the Arbitration Act does distinguish between arbitration within Finland and arbitration in foreign states. The Arbitration Act is divided into two parts the first of which applies to arbitrations that take place in Finland and the second to the effects in Finland of an arbitration agreement concerning arbitration in a foreign state. The second part also applies to the recognition and enforcement of an arbitral award rendered in a foreign state.

- (iii) **What international treaties relating to arbitration have been adopted (e.g., New York Convention, Geneva Convention, Washington Convention, Panama Convention)?**

Finland has adopted the following multilateral treaties relating to arbitration:

- Protocol on Arbitration Clauses (Geneva, 24 Sept. 1923);
- Convention on the Execution of Foreign Arbitral Awards (Geneva, 26 Sept. 1927);
- General Act of Arbitration (Pacific Settlement of International Disputes) (Geneva, 26 Sept. 1928);
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”) (10 June 1958);
- Convention on the settlement of investment disputes between States and nationals of other States (Washington, 18 March 1965);
- Convention on Conciliation and Arbitration within the CSCE (Stockholm, 15 Dec. 1992).

- (iv) **Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?**

If the parties have designated the law of a given state as applicable to the merits of the dispute, the arbitral tribunal shall base its award on that law. If the parties have not agreed on the applicable law, the tribunal shall apply the law determined by the conflict of laws rules it considers applicable.

The arbitral tribunal may base its award on what it finds reasonable (*ex aequo et bono*) only if the parties expressly have authorised it to do so.

III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

An arbitration agreement must be made in writing, normally a document duly signed by the parties. However, an arbitration agreement is also considered to be made in writing if the parties have agreed that a dispute is to be settled through arbitration in an exchange of letters, telegrams, telexes or other such documents. An arbitration agreement is further considered to be made in writing if it is referred to in an agreement which fulfils the requirements mentioned above.

Furthermore, an arbitration agreement must concern either an existing dispute or future disputes which may arise from a particular legal relationship specified in the agreement. In addition, it is recommended that the arbitration agreement contain provisions on the number of arbitrators and the manner in which they are to be appointed, the seat and the language of arbitration and a reference to the applicable institutional rules, if any. It is also advisable to consider agreeing on confidentiality if it is not covered by applicable institutional rules.

- (ii) **What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?**

Finnish state courts are considered 'arbitration friendly'. A valid arbitration agreement excludes the jurisdiction of the courts. If a valid arbitration agreement is invoked by a party before said party states its case on the merits, the court must enforce the arbitration agreement and dismiss the action.

Under exceptional circumstances, the arbitration agreement may be regarded as invalid – for example, if a natural person that entered into the arbitration agreement lacked legal capacity at the time of the agreement. The Supreme Court has also established that an arbitration agreement can, under limited circumstances, be set aside if it is found to be unreasonable. When the contracting parties are commercial entities, however, an agreement can be found unreasonable only under very exceptional circumstances. Arbitration agreements between a business and a consumer concluded before a dispute arises are not binding on the consumer.

- (iii) **Are multi-tier clauses (e.g., arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

Multi-tier clauses are fairly common in Finland and are generally respected and enforced. There is, however, no public case law on arbitration related multi-tier clauses, and in practice, parties rarely contest jurisdiction based on non-compliance with a multi-tier clause. Nevertheless, it has been argued in legal doctrine that disregarding an arbitration related multi-tier clause could either mean lack of jurisdiction or that a competent arbitral tribunal should dismiss the case as premature. In a case with close similarities to enforcement of multi-tier clauses, the Supreme Court found a claim to be premature when the parties had not first attempted to settle their accounts in a procedure stipulated in the agreement.

- (iv) **What are the requirements for a valid multi-party arbitration agreement?**

The provisions regarding the arbitration agreement in the Arbitration Act are also applied to multi-party arbitration agreements.

- (v) **Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?**

Such agreements are in principle enforceable but could, under exceptional circumstances, be regarded as unreasonable and set aside.

- (vi) **May arbitration agreements bind non-signatories? If so, under what circumstances?**

Yes. Arbitration agreements are generally binding for the successor in a situation where a valid assignment of rights and obligations has occurred. As such, an arbitration agreement is binding *inter alia* for the acquiring party in a general corporate succession. Correspondingly, in insolvency situations, the bankruptcy estate is generally bound by an arbitration agreement. The Supreme Court of Finland has also in a recent decision considered a third-party beneficiary to be bound by an arbitration clause contained in a shareholders' agreement.

IV. Arbitrability and Jurisdiction

- (i) **Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?**

Any dispute in a civil or commercial matter which can be settled by agreement between the parties may be referred to arbitration. Consequently, an arbitral tribunal cannot decide, for example, criminal matters or matters concerning the legal capacity of natural persons, divorce, adoption or child custody.

The arbitrators are to decide whether a matter is arbitrable or not. However, the arbitrator's decision is not binding for a court reviewing a claim that the dispute is non-arbitrable. An arbitral award concerning a non-arbitrable matter is null and void.

- (ii) **What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?**

If court proceedings are initiated despite an arbitration agreement, the court cannot take the matter into consideration and shall refer the matter to arbitration – provided that the opposing party invokes the arbitration agreement before it states its case on the merits in court. If the arbitration agreement is invoked in time, the court can only determine whether the arbitration agreement is valid, in force and applicable to the dispute.

The court cannot decline jurisdiction because of an arbitration agreement unless the arbitration agreement is invoked by a party. If a party does not object to the jurisdiction of the court in its first statement on the substance of the dispute, he or she loses the right to invoke the arbitration agreement.

- (iii) **Can arbitrators decide on their own jurisdiction? Is the principle of *competence-competence* applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

It is commonly held that the arbitral tribunal can and should review its own jurisdiction in order to decide whether to continue or to stop the arbitral proceedings. However, the arbitrators do not have absolute *competence-competence* as the arbitral tribunal's decision on jurisdiction is not binding on the courts. A party may challenge the validity or applicability of the arbitration agreement in court. The arbitrators may, despite such a challenge, commence or

continue the arbitral proceedings and decide the matter at hand. If a court decision denying the arbitrator's jurisdiction has become final, the arbitrators should issue an order for the termination of the arbitral proceedings.

However, it is more common that parties will object to jurisdiction in the arbitration proceedings. If the objection is not accepted by the arbitral tribunal, the party may challenge the award as set out below under XII. A party that does not raise its objection in its first written statement could, depending on the circumstances of the case, be regarded as having silently accepted submission of the dispute to arbitration.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

According to the Arbitration Act, unless otherwise agreed by the parties, there shall be three arbitrators. The party initiating the arbitration shall appoint one arbitrator in its notice for arbitration and the other party shall appoint one arbitrator within 30 days thereof. The appointed arbitrators shall then appoint one more arbitrator to act as the chairman.

If the party fails to appoint an arbitrator in time, the appointment shall be made by the court upon request of a party. The same applies if the arbitrators appointed by the parties cannot agree on a chairman within 30 days of their appointment. If the dispute is to be decided by a sole arbitrator, the court shall, at the request of a party, appoint the arbitrator if the parties have not been able to agree on the arbitrator within 30 days of the commencement of the arbitration proceeding.

According to the FAI Rules the parties may agree on the number of arbitrators and the procedure for the appointment of the arbitral tribunal. If the parties have not agreed on the number of arbitrators, the arbitral tribunal shall be composed of a sole arbitrator. In a situation where the board of the Arbitration Institute determines it appropriate, taking into account the amount of the dispute, the complexity of the case, proposals made by the parties and any other relevant circumstances, the arbitral tribunal may be composed of three arbitrators.

When the dispute is referred to a sole arbitrator the parties can jointly nominate the arbitrator. If the parties fail to nominate the sole arbitrator in time, the arbitrator will be appointed by the board of the Arbitration Institute. In a situation where the arbitral tribunal shall be composed of three arbitrators the claimant and the respondent can both nominate one arbitrator. The parties can jointly nominate the third, presiding arbitrator to act as a chairman. If either party fails to nominate an arbitrator or the parties fail joint nomination of the third arbitrator, the board of the Arbitration Institute shall appoint the arbitrator. All nominations of an

arbitrator made by the parties are subject to confirmation by the Arbitration Institute

The appointment of arbitrators in multi-party arbitrations under the FAI Rules follow a similar procedure as mentioned above with the claimants and respondents respectively making joint nominations.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

An arbitrator must be impartial and independent. An arbitrator must, if he does not decline the appointment, immediately disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality and independence. An arbitrator has this obligation throughout the arbitral proceedings.

Pursuant to the *travaux préparatoires* of the Arbitration Act, an arbitrator is obliged to disclose such information which could raise a party's doubts as to his or her impartiality or independence even though the circumstance is not necessarily such which would eventually disqualify the arbitrator. The Supreme Court has established that the threshold for disclosure should be relatively low.

According to the Arbitration Act, an arbitrator may at the request of a party be disqualified if he would have been disqualified to handle the matter as a judge or if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. The Code of Judicial Procedure (4/1734) contains provisions on the disqualification of judges.

The parties may agree on a procedure for challenging an arbitrator. If the parties have not agreed on this point, a party who is challenging the arbitrator must do so within 15 days from when he became aware of the constitution of the arbitral tribunal or the circumstance which could provide grounds for disqualification. Challenges are made to the tribunal, but if a challenge duly made by a party has not been accepted before the arbitral award was made, the award may be set aside if the arbitrator should have been disqualified.

Under the FAI Rules, an arbitrator may be challenged if (i) circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, or (ii) if the arbitrator does not possess any requisite qualification on which the parties have agreed. The time limit for challenging an arbitrator is also 15 days from when the party received the notification of the confirmation or appointment of the arbitrator or from when the party became aware of the circumstance which could provide grounds for disqualification. The notice of challenge shall be made to the Arbitration Institute in writing and shall state the grounds for it and specify the date on which the party became aware of the

circumstances on which the challenge is based. If a party fails to comply with the above, the party shall be deemed to have waived its right to make a challenge.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

Under the Arbitration Act, anyone with full legal capacity may act as an arbitrator. As such, for example, judges may also act as arbitrators in Finland, as may foreign nationals. However, parties or their legal representatives are excluded from serving as arbitrators, because nobody can act as a judge in their own case.

An arbitrator's ethical duties derive from the requirements of impartiality and independence and the requirement that an arbitrator is obliged to provide the parties with sufficient opportunity to present their case. An arbitrator should adopt best practices and decide the case with sufficient professionalism, but there are no separate ethical guidelines in this regard.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

As stated above, the Arbitration Act and the Code of Judicial Procedure contain specific rules on conflict of interest. The circumstances that lead to disqualification provided for in the Code of Judicial Procedure are to a large extent the same as the circumstances mentioned in the IBA Guidelines on Conflicts of Interest in International Arbitration ("IBA Guidelines").

In addition, in its arbitrator's guidelines the FAI explicitly instructs arbitrators that they may follow the IBA Guidelines in determining whether to disclose a given circumstance and in practice arbitrators tend to turn to the IBA Guidelines when assessing possible conflicts of interest.

VI. Interim Measures

(i) Can arbitrators enter interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

The FAI Rules expressly state that an arbitral tribunal may grant any interim measures of protection it deems appropriate. The arbitral tribunal's decision shall take the form of an order. The FAI Rules also provide a party in need of urgent interim measures of protection that cannot await the constitution of an arbitral tribunal the possibility to apply for the appointment of an Emergency Arbitrator.

The Arbitration Act does not contain provisions on the arbitral tribunal's powers to order interim measures. Nevertheless, it is generally held that an arbitral tribunal may do so when the parties have so agreed.

Interim measures ordered by an arbitral tribunal are not enforceable in Finland and the Arbitration Act specifically prohibits the arbitral tribunal from imposing any penalty or using other means of constraint. Nevertheless, parties often comply voluntarily with interim measures ordered by arbitral tribunal. One reason for this being that the arbitral tribunal may draw adverse inferences from a party's failure to comply with arbitrator ordered interim measures. The right to draw adverse inferences is, however, debatable in respect of non-compliance with other than evidentiary-related orders.

- (ii) **Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following constitution of the arbitral tribunal?**

A court or another authority may, before or during the arbitral proceedings and notwithstanding the arbitration agreement, grant such interim measures that the authority in question has the power to grant. A party may at any time during the arbitral proceedings request that the court grant an interim measure.

The FAI Rules specifically state that the parties may apply to any competent judicial authority for interim measures of protection, before and also after the case file has been transmitted to the arbitral tribunal, without this being considered as an infringement or a waiver of the arbitration agreement.

- (iii) **To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?**

A party may request court assistance if he wishes to have a witness heard under oath, a witness or an expert examined in court or a document or other evidence produced. The request is subject to the consent of the arbitrators.

VII. Disclosure/Discovery

- (i) **What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?**

A party may request that the arbitral tribunal order the other party to produce a document or other object. Based on the request of a party or on its own initiative, the arbitral tribunal may request that a party or any other person in possession of a document (or other object) produce the document (or object).

An arbitrator may not, however, impose sanctions in case a party disregards such a request, but may take the disregard into consideration and draw all necessary inferences thereof when determining what shall be deemed proven in the matter. Hence, arbitrators' requests to produce evidence are usually respected. An arbitrator may also direct a party to seek court assistance, if the arbitrator deems it necessary that a witness or an expert shall be examined in court, that a party shall be examined on truth affirmation or that a party or any other person shall be ordered to produce a written document or other object which may be of relevance as evidence.

The Finnish legal system is unfamiliar with USA style discovery, but it is not excluded in arbitration if the parties so agree.

In practice, the IBA Rules on the Taking of Evidence in International Arbitration are often used as guidance when disclosure is requested.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

For an arbitrator to request production of a document, the document must be relevant, in the possession, custody or control of the person to whom the order is directed and sufficiently identified.

A party's obligation to produce evidence does not extend to documents and objects for which the party has a legal right not to produce (for example, if they are privileged or contain trade secrets).

(iii) Are there special rules for handling electronically stored information?

No.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

An arbitral proceeding is not public. Arbitral proceedings are, however, not automatically confidential. Confidentiality in arbitral proceedings can be based on the arbitration agreement, a separate agreement between the parties or on institutional rules providing for confidentiality.

The FAI Rules contain explicit provisions regarding confidentiality. According to the FAI Rules, unless otherwise agreed by the parties, the Arbitration Institute and the arbitral tribunal shall maintain the confidentiality of the arbitration and the award. However, the Arbitration Institute may publish excerpts or summaries of selected awards, orders and other decisions provided that all references to the parties' names and other identifying details are deleted. Unless otherwise agreed, also each party undertakes to keep confidential, with some exceptions, all awards, orders and other decisions of the tribunal, correspondence from the tribunal to the parties, as well as documents and other materials submitted by another party in connection with the arbitration.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

No.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

The Arbitration Act does not contain specific provisions on privilege, but it is generally held that rules of privilege apply in arbitration. The Advocates Act (496/1958) also states that an advocate (an attorney who is a member of the Finnish Bar Association) may not disclose secrets or professional secrets that have come to the advocate's knowledge in the course of his or her professional activity. According to the rules of proper professional conduct for advocates, an advocate is further obligated to observe confidentiality with respect to everything that, by virtue of the client relationship, the advocate has learned concerning the client and the client's circumstances.

If court assistance is required, the provisions on privilege in the Code of Judicial Procedure will apply.

IX. Evidence and hearings

- (i) **Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

The IBA Rules on the Taking of Evidence in International Arbitration are broadly recognised in Finland and it is often agreed that the arbitral tribunal shall be guided, although not bound, by said rules.

- (ii) **Are there any limits to arbitral tribunals' discretion to govern the hearings?**

The Arbitration Act does not contain any limitations regarding the discretion of an arbitral tribunal except that hearings must be conducted in accordance with the parties' agreements and must comport with due process. The parties must be treated with equality and the arbitrators must give each of the parties a sufficient opportunity to present their case.

To the extent the parties have not agreed on the procedures applicable to the hearings, the arbitral tribunal is free to govern the hearings as it sees fit – taking into consideration the provisions of the Arbitration Act and taking into account the requirements of impartiality and speed.

According to the FAI Rules, the arbitral tribunal shall conduct the arbitration in such manner as it considers appropriate, subject to the FAI Rules and any agreement by the parties. In all cases, the arbitral tribunal shall ensure that the parties are treated with equality and that each party is given a reasonable opportunity to present its case. The arbitral tribunal shall pursuant to the FAI Rules as a rule arrange a preparatory conference with the parties at an early stage of the arbitration for the purpose of organising and scheduling the subsequent proceedings. The arbitral tribunal must also prepare a procedural timetable, which it shall communicate to each of the parties and the Institute without delay, taking into consideration, for example, that the final award as a rule shall be made no later than nine months from the date on which the arbitral tribunal received the case file from the Institute. The arbitral tribunal shall also close the proceedings as soon as possible after the last hearing date and inform the parties of the date by which it expects to issue the final award.

The FAI Rules also impose an obligation on all participants in the arbitral proceedings to act in good faith and make every effort to contribute to the efficient conduct of the proceedings in order to avoid unnecessary costs and delays. By agreeing to arbitration under the Rules, the parties undertake to comply with any order or other direction of the arbitral tribunal without delay.

- (iii) **How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?**

In international arbitrations, written witness statements are frequently used. In such cases, the witness must present him- or herself for oral cross-examination, if required by the counterparty or ordered by the tribunal. If a written witness statement has been presented, the oral direct examination will generally be kept short.

In purely domestic cases, witness testimony is usually presented orally during the hearings. Normally a direct examination of the witness is conducted by the party who has appointed the witness after which the other party may cross-examine the witness. Arbitrators may also present questions to the witnesses.

- (iv) **Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

There are no separate rules in the Arbitration Act on who can or cannot appear as witness in an arbitration. However, other legislation may prevent certain people such as doctors, priests and attorneys from giving testimony about issues that are confidential.

According to the Arbitration Act, the arbitral tribunal may not administer oaths or equivalent affirmations. If a party insists on hearing a witness under oath he may request court assistance.

- (v) **Are there any differences between the testimony of a witness specially connected with one of the parties (eg. a legal representative) and the testimony of unrelated witnesses?**

The Arbitration Act does not contain any rules which would distinguish between different witnesses. However, a witness's position, for example, as a legal representative of a party, may be taken into account when evaluating the evidential value of the testimony.

- (vi) **How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

Expert witness testimony can be presented either in writing, orally or both.

The parties are free to appoint expert witnesses. The arbitrators are then to evaluate the credibility of the expert witness testimony when determining what has been proven.

The arbitral tribunal may also appoint one or more experts on its own accord, taking into consideration the requirement of impartiality. Each party must then be given the opportunity to comment upon the findings of the tribunal-appointed expert. However, the parties may agree that the arbitral tribunal may not appoint expert witnesses.

- (vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

It is not very common that arbitrators appoint experts in addition to experts appointed by the parties. If the arbitral tribunal finds it necessary to hear an expert, it is more common that the arbitrators ask the parties to agree on an independent expert.

There is no particular list from which experts are to be selected.

- (viii) Is witness conferencing (“hot-tubbing”) used? If so, how is it typically handled?**

Witness conferencing is not frequently applied, but is nevertheless used from time to time when deemed expedient. Witness conferencing is more common with respect to experts than witnesses of fact.

The manner in which witness conferencing is carried out varies depending on the parties and the arbitrators. However, the arbitral tribunal will typically have a more active role in presenting questions to the witnesses. When appropriate, it can be beneficial to allow the witnesses to give an account on the issues they agree and disagree on, before the witness questioning is commenced.

- (ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

The Arbitration Act contains no specific provisions on the use of arbitral secretaries, but they are frequently appointed in larger disputes. The FAI Rules expressly allow the arbitral tribunal, when it deems appropriate and after consulting with the parties, to appoint a secretary. The Arbitration Institute has also published a note on the use of a secretary.

X. Awards

- (i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?**

The award shall be made in writing and signed by the arbitrators. The arbitral award shall state its date and the place of arbitration as agreed or determined. The FAI Rules also require that the arbitral tribunal state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

The Arbitration Act does not contain any provisions limiting the types of relief that are permissible. The award must be based on law, unless the parties explicitly have authorised the arbitral tribunal to base its award *ex aequo et bono*.

- (ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?**

Arbitrators cannot, under Finnish law, award punitive or exemplary damages. Indeed, it has been discussed in legal doctrine that punitive damages could be considered as being against Finnish public policy. However, there is no precedent on the issue.

Arbitrators can award interest. Compound interest is not frequently awarded, but it is not excluded.

- (iii) Are interim or partial awards enforceable?**

Certain interim and partial awards are enforceable. According to the Arbitration Act, an independent claim may be decided by a separate award where several independent claims have been made. An arbitral tribunal may also, by a separate award, decide part of a claim that has been admitted by the respondent. Furthermore, if the parties have so agreed, an arbitral tribunal may decide, by a separate award, a certain issue which is relevant for the resolution of the dispute.

For interim measures, see section VI.

- (iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?**

Yes, dissenting opinions are allowed. There are no separate formal requirements regarding dissenting opinions.

- (v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?**

If, during the arbitral proceedings, the parties settle the dispute, the arbitral tribunal may record the settlement in the form of an arbitral award.

Arbitral proceedings may also be terminated by an order of termination. The arbitral tribunal shall issue an order for the termination if the parties agree on the termination or if it finds that the continuation of the proceedings would be impossible or unnecessary. The arbitral tribunal shall also issue an order for the termination if the claimant withdraws its claim and the respondent does not object thereto.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

In *ad hoc* arbitrations as well as arbitrations under the FAI Rules, a party may request that the arbitral tribunal correct errors in computation, any clerical or typographical errors and any other errors of a similar nature. A party shall, after having notified the other party thereof, request the correction within 30 days of receipt of a copy of the award, unless some other period of time has been agreed upon by the parties. According to the FAI Rules, the arbitral tribunal shall give the other parties an opportunity to submit comments on the request.

The arbitral tribunal may also, on its own initiative, within 30 days of the date of the award, correct any of the aforementioned errors. Before such a correction is made, the parties shall, where necessary, be given an opportunity to give their comments with regard to the correction.

Unless otherwise agreed by the parties, the arbitrators do not, however, have the right to interpret the award after it has been given. If the award is so obscure or incomplete that it does not appear in it how the dispute has been decided, the award will be null and void. When the parties have agreed to apply the FAI Rules, the arbitrators can on the request of party provide an interpretation of a specific point or part of the award.

In both *ad hoc* arbitrations and arbitrations under the FAI Rules, the arbitral tribunal can, at the request of a party, and after having given the other party an opportunity to submit comments on the request, provide an additional award as to claims presented in the arbitration but not determined in the award, provided that the arbitral tribunal finds the request justified.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

The costs of the arbitration will generally be borne by the losing party, unless otherwise agreed by the parties. However, the arbitral tribunal may also allocate

any of the costs of the arbitration between the parties, taking into consideration the circumstances of the case.

Unless the parties have otherwise agreed, the parties are jointly and severally liable to pay the arbitrators for their work and expenses. However, the losing party will normally be ordered to compensate the winning party for any part of the fees or costs the winning party has had to pay the arbitrators.

(ii) What are the elements of costs that are typically awarded?

Costs typically include: legal fees and costs; witness and party costs; the costs and fees of the arbitrators; and institutional costs, where applicable.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

Yes. Unless otherwise provided in a manner binding on the arbitrators, for example in institutional rules, the arbitral tribunal may in its award fix the compensation due to each arbitrator and order the parties to pay the arbitrators accordingly. The arbitrators are entitled to reasonable compensation, taking into account the time spent, the complexity of the subject matter and other relevant circumstances.

When the FAI Rules are applied, the Arbitration Institute will determine the fees and expenses of the arbitral tribunal, costs of expert advice and of other assistance required by the arbitral tribunal and the Administrative Fee and expenses of the Institute. When determining the fees and costs mentioned above, the Arbitration Institute shall apply a schedule of arbitration fees and costs, which is found in an appendix to the FAI Rules. The schedule was updated in June 2017.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

An arbitral tribunal is free to apportion the costs between the parties in such a manner as it considers appropriate having regard to the circumstances of the case (*eg*, if both parties have won in part on the merits).

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

A party may, within 60 days of the date on which he received a copy of the arbitral award, appeal the arbitrator's decision on the amount of compensation due to them. Before the court decides such an appeal, it shall give the other party and those arbitrators whose fees are concerned an opportunity to be heard.

In the award, parties should be informed of what they have to do if they want to appeal the costs of the arbitrators.

XII. Challenges to Awards

- (i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?**

An award is null and void if: the arbitral tribunal has decided an issue not capable of settlement by arbitration under Finnish law; recognition of the award would be against Finnish public policy; the arbitral award is so obscure or incomplete that it does not appear in it how the dispute has been decided; or the arbitral award has not been made in writing or signed by the arbitrators. There is no time limit to challenge an award as null and void.

A court may also set aside an award if: the arbitral tribunal exceeded its authority; an arbitrator had not been properly appointed; an arbitrator could have been disqualified but a challenge duly made by a party had not been accepted before the arbitral award was made; a party was not aware of the ground for disqualification and was not able to challenge the arbitrator before the arbitral award was made; or the arbitral tribunal did not give a party a sufficient opportunity to present its case.

An action for setting aside an award must be brought within three months of the date on which the party received a copy of the award. If a request has been made for the correction of the award, the action for setting aside the award must be brought within three months of the date on which the party received a copy of the decision of the arbitral tribunal regarding such a request.

An action for declaring an award null and void or for setting aside an award must be brought before the court of first instance in the place where the award was made. The decision may be appealed to the Court of Appeal. A final decision of the Court of Appeal may be appealed to the Supreme Court, if leave of appeal is granted.

The duration of challenge proceedings depends on the complexity of the issue (the amount of evidence presented, etc.) and on whether the decision is appealed. Thus, a challenge procedure could take between six months and four years.

A challenge does not automatically stay an enforcement proceeding. However, the court before which an action for challenging the award is pending may order that the award cannot be enforced during the challenge proceedings.

- (ii) **May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?**

A party cannot waive its right to challenge an award before the award has been rendered.

- (iii) **Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?**

No. Awards cannot be appealed. An award can only be challenged on the grounds mentioned above.

- (iv) **May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?**

Courts may not remand an award to the arbitral tribunal. Nevertheless, if a party requests that the court declare an award null and void or set it aside, the court may suspend its proceedings in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings and eliminate the ground for declaring the award null and void or for setting it aside. The arbitral tribunal, however, is not required to act.

XIII. Recognition and Enforcement of Awards

- (i) **What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

In order for an award to be enforceable, a decision on enforcement of the arbitral award must be made by a court of first instance. The decision on enforcement may be appealed. The appeals process is the same as when challenging an award.

An application for the enforcement of an arbitral award, the original arbitration agreement and the original arbitral award, or certified copies thereof, must be submitted to the court of first instance. A document drawn up in any language other than Finnish or Swedish shall be accompanied by a certified translation into either of these languages, unless the court grants an exemption.

Before *exequatur* is granted, the party against whom enforcement is sought shall be given an opportunity to be heard, unless there is a special reason. Unless a witness or another person is to be heard in person, the court of first instance shall deal with the matter in chambers.

A court may refuse an application for the enforcement of an award only if it finds that the award is null and void, if the award has been set aside by a court, or if a court has ordered that enforcement of the award shall be interrupted or suspended.

A foreign award shall not be recognised in Finland against a party that can prove that (i) arbitration agreement was not valid, (ii) that the party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present its case, (iii) the arbitral tribunal has exceeded its authority, (iv) the composition of the arbitral tribunal or the arbitral proceedings substantially deviated from the agreement or the *lex arbitri*, or (v) the arbitral award has not yet become binding on the parties or it has been declared null and void or set aside or suspended in the state in which, or under the law of which, that award was made.

(ii) If an *exequatur* is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

When *exequatur* is obtained, the enforcement of the award is governed by the provisions in the Enforcement Code (705/2007), which provide that an arbitral award is enforced in the same manner as a court judgment. As such, the enforcement request shall be filed with the enforcement authority in the district where the respondent resides or is domiciled.

When a final and binding *exequatur* is obtained, there is no recourse available to challenge it. The actual enforcement may be contested, for example, based on the fact that payment has already been made or based on the statute of limitations, but the *exequatur* itself cannot be challenged.

(iii) Are conservatory measures available pending enforcement of the award?

There are no separate provisions on conservatory measures pending enforcement of an award. As such, a court or another authority may, grant such interim measures that the authority in question has the power to grant.

A bailiff may also order and carry out conservatory measures if the applicant has a ground for enforcement but his or her application for enforcement cannot be accepted immediately.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

A court may not enter into the merits of the dispute and can only refuse an application for the enforcement of an award on the grounds set out in the

Arbitration Act. As previously mentioned, the courts of Finland are generally considered to be ‘arbitration-friendly’.

According to the Arbitration Act, a foreign arbitral award will not be recognised in Finland against a party who furnishes proof that the arbitral award has been set aside in the state in which, or under the law of which, that award was issued.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

If an enforcement procedure is not challenged, a decision on enforcement will normally be given quite quickly. It will normally take one to two months before a decision on enforcement is given.

If an arbitral award issued in Finland is not enforced within five years from the date of the award, the claim will become statute barred. There has been some disagreement on whether the limitation period applicable to enforcement of court judgments under Finnish law also applies to foreign arbitral awards. However, the general view is that the limitation period is calculated pursuant to the law of the location where the award was issued.

XIV. Sovereign Immunity

(i) Do State parties enjoy immunities in your jurisdiction? Under what conditions?

States can be parties to arbitration agreements in Finland. By doing so states are generally considered to have waived their right to invoke immunity.

(ii) Are there any special rules that apply to the enforcement of an award against a State or State entity?

The Arbitration Act does not contain any special provisions on enforcement of awards against States or State entities.

XV. Investment Treaty Arbitration

(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?

Finland is a party to the Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States.

- (ii) **Has your country entered into Bilateral Investment Treaties with other countries?**

Finland has entered into Bilateral Investment Treaties (Treaties on the Promotion and Protection of Investments) with more than 60 states.

XVI. Resources

- (i) **What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

In 2004, the Finnish Arbitration Association published a booklet entitled, 'Law and Practice of Arbitration in Finland'. Young Arbitration Club Finland has published a book entitled 'Arbitration in Finland in October 2017'. There are also articles in English in various journals which cover issues relating to arbitration in Finland.

A guide to the FAI Rules has also been published in English in 2015.

- (ii) **Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

The Helsinki International Arbitration Day is a major annual international arbitration seminar arranged by the FAI. The Helsinki International Arbitration Day is normally held in late spring or early summer. The seminar features both international and domestic leading arbitration practitioners and scholars. Information about the seminar can be found on the Arbitration Institute's homepage.

The FAI, the Finnish Arbitration Association and the Young Arbitration Club Finland also regularly arrange seminars with international speakers.

XVII. Trends and Developments

- (i) **Do you think that arbitration has become a real alternative to court proceedings in your country?**

Yes. In commercial disputes between business entities, arbitration is the rule, rather than the exception.

- (ii) **What are the trends in relation to other ADR procedures, such as mediation?**

Compared to arbitration, other ADR procedures are not as popular in Finland. However, mediation is being actively promoted and has become more popular

over the past few years. Arbitration is nevertheless the most frequently used form of non-governmental dispute resolution.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

As stated, the Arbitration Institute revised the FAI Rules in 2013. The revision aimed to promote (i) speed and cost-efficiency in arbitration proceedings, (ii) effective administration of multiparty arbitration, (iii) the parties' access to interim relief both before and during the arbitral proceedings and (iv) confidentiality.

The FAI also launched new mediation rules in June 2016, which provide a framework for conducting facilitative mediation. The rules adopt best international standards and ensure the confidentiality, fairness, and credibility of the mediation process, while simultaneously leaving enough room for the process to be tailored to the needs of each particular situation.

A revision of the Finnish Arbitration Act is being discussed within the Finnish arbitration community. It remains to be seen when and to what extent any revision will take place.