

# Arbitration

*Contributing editors*

Gerhard Wegen and Stephan Wilske



2019

GETTING THE  
DEAL THROUGH 

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# Arbitration 2019

*Contributing editors*

Gerhard Wegen and Stephan Wilske

Gleiss Lutz

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# Preface

## Arbitration 2019 Fourteenth edition

**Getting the Deal Through** is delighted to publish the fourteenth edition of *Arbitration*, which is available in print, as an e-book and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Armenia, Chile and Pakistan.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Gerhard Wegen and Stephan Wilske of Gleiss Lutz, for their continued assistance with this volume.

GETTING THE   
DEAL THROUGH 

London  
January 2019

# Finland

Antti Järvinen, Anna-Maria Tamminen, Helen Lehto and Matti Tynyniemi

Hannes Snellman Attorneys Ltd

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## Laws and institutions

### 1 Multilateral conventions relating to arbitration

**Is your jurisdiction a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?**

Finland has signed and ratified the New York Convention without making any declarations, reservations or notifications to it. The Convention has been in force since 1962.

Finland has signed and ratified the Washington Convention, which has been in force since 1969.

### 2 Bilateral investment treaties

**Do bilateral investment treaties exist with other countries?**

Finland is currently a party to 67 bilateral investment treaties (BITs).

### 3 Domestic arbitration law

**What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?**

Arbitration proceedings seated in Finland are governed by the Finnish Arbitration Act 967/1992 (FAA), which governs both domestic and international arbitrations.

Pursuant to the Enforcement Code, an arbitral award that has been validly made can be enforced similarly to a final court judgment subject to a court issuing an enforcement order.

### 4 Domestic arbitration and UNCITRAL

**Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?**

The FAA is compatible with the UNCITRAL Model Law but some differences regarding, for instance, the following exist: form requirements (written form is required); applicable law (no default provision); invalidity of an award (discussed below); and interim measures of protection (not recognised in the FAA).

Market players in Finland, including the Arbitration Institute of the Finland Chamber of Commerce (FAI), are currently lobbying for Finland to adopt the Model Law.

### 5 Mandatory provisions

**What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?**

There are only a few mandatory provisions in the FAA. Section 9 provides that parties cannot derogate from the requirements of impartiality and independence of an arbitrator. The general eligibility conditions of an arbitrator are also mandatory (see question 15). Pursuant to

section 22, the arbitral tribunal shall give the parties a sufficient opportunity to present their case.

### 6 Substantive law

**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?**

Pursuant to section 31 of the FAA, the arbitral tribunal shall decide the dispute in accordance with the law applicable to the substance of the dispute.

The FAA does not state how the applicable law is determined in international arbitration if the parties have not agreed on the applicable law. The FAA also leaves open whether a dispute can be decided under, for example, UNIDROIT Principles or *lex mercatoria*.

### 7 Arbitral institutions

**What are the most prominent arbitral institutions situated in your jurisdiction?**

The leading, and practically only, arbitration institute based in Finland is the FAI, which administers both domestic and international arbitrations governed by the FAI Rules. The FAI is also authorised to appoint arbitrators under the UNCITRAL Arbitration Rules and in ad hoc cases.

The FAI revised its Arbitration Rules and Expedited Arbitration Rules in 2013 to be in line with the best international practices. The FAI Rules conform in many respects to the rules of leading international arbitration institutes, including provisions on emergency arbitrators, confirmation of arbitrators, and joinder and consolidation. The fees of the arbitrators are determined by the FAI Board and they are, as a starting point, based on the value of the dispute. The FAI has both a Finnish and an international board. The international board is always in charge of measures related to international cases, such as confirmation and appointment of arbitrators, designation of the seat if one has not been determined by the parties and the determination of the arbitrators' fees.

More information on FAI and its rules can be found at: <https://arbitration.fi/the-arbitration-institute>.

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## Arbitration agreement

### 8 Arbitrability

**Are there any types of disputes that are not arbitrable?**

The FAA provides that commercial and civil disputes are generally arbitrable, but the matter must be capable of settlement by agreement between the parties. In general, the need to apply mandatory provisions of law does not prevent a dispute from being arbitrated.

Intellectual property infringement and licensing matters are generally arbitrable. Matters concerning the invalidity or cancellation of intellectual property rights cannot be resolved in arbitration as they are subject to the jurisdiction of national courts.

In a competition law matter, the Helsinki District Court held that a follow-on damages claim could not be decided in arbitration, but there is no higher court ruling on the issue and it remains to be seen under what circumstances competition law matters can be arbitrated.

Intracompany disputes, including shareholder disputes, are arbitrable, and shareholder agreements typically contain arbitration clauses. As a result of the European Court of Justice's ruling in *Achmea*, C-284/16, intra-EU, BIT disputes are considered incompatible with EU law.

## 9 Requirements

### What formal and other requirements exist for an arbitration agreement?

Under the FAA, an arbitration agreement must be in writing. The requirement is fulfilled if the agreement is contained in a document signed by the parties, contained in an exchange of letters between the parties or when the parties have agreed to arbitrate their dispute by, for example, exchanging emails or documents produced in another such manner. Thus, it is sufficient that a written document refers to the general terms and conditions containing an arbitration clause.

The FAI Rules are more liberal as they recognise that under some laws, arbitration agreements that may have been entered into orally or through implicit conduct can be held valid. Under the FAI Rules, if no written arbitration agreement can be referred to, the identification of any contract, other legal instrument or relationship out of or in relation to which the dispute arises is sufficient to establish the existence of an arbitration agreement.

## 10 Enforceability

### In what circumstances is an arbitration agreement no longer enforceable?

The validity of an arbitration agreement is assessed separately from the main document or contract in which it is contained, and an arbitration agreement remains valid despite the avoidance, rescission or termination of the underlying agreement it is contained in. Generally, arbitration agreements are held to be valid if a party can demonstrate that the arbitration agreement exists in writing (see question 9) and that the party was authorised to enter into the agreement.

There are some examples in case law where an otherwise valid arbitration agreement has not been enforced. In very rare cases, the arbitration agreement has been considered unfair and unenforceable where one party was in a significantly weaker financial position than the other and could not afford to initiate an arbitration.

## 11 Third parties – bound by arbitration agreement

### In which instances can third parties or non-signatories be bound by an arbitration agreement?

There are three examples in Supreme Court case law where third parties have been considered bound by arbitration agreements. First, in universal succession cases, where the rights of a party under an arbitration agreement have been transferred to a third party. Second, the third party may have been granted explicit rights under the agreement containing the arbitration clause. Third, even in a case where the third party had not become party to a shareholders' agreement containing an arbitration clause but based its claim on that agreement, the Supreme Court found the arbitration clause to be binding. The Supreme Court has thus taken a permissive stance to binding third parties to arbitration agreements in a narrow subset of cases when there is a link between the third party's claimed rights and the arbitration agreement contained in the original agreement. In a fourth potential case dealing with whether a guarantor is bound by an arbitration clause, one party has sought leave to appeal to the Supreme Court.

## 12 Third parties – participation

### Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

The FAA does not contain any such provision. The FAI Rules include detailed provisions on joinder.

## 13 Groups of companies

### Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

The 'group of companies' doctrine is not recognised in Finland as such, and there is no case law to this effect. In considering whether a third party is bound by an arbitration agreement, the courts will focus on the material connection between the third party and the agreement containing the arbitration clause (see question 11).

## 14 Multiparty arbitration agreements

### What are the requirements for a valid multiparty arbitration agreement?

The FAA does not contain provisions on multiparty contracts, and there is no case law on the topic.

The FAI Rules contain provisions on multiparty proceedings, including joinder and consolidation. Article 12 of the FAI Rules provides that claims arising out of or in connection with different contracts or different arbitration agreements under the FAI Rules may be made in a single arbitration if the FAI Board is prima facie satisfied that the arbitration agreements do not contain provisions that contradict one another, and all parties may have agreed that the different claims can be determined together in one arbitration. The FAI Board's decision is not, however, binding on the arbitral tribunal, which ultimately has the power to decide the issue.

## Constitution of arbitral tribunal

## 15 Eligibility of arbitrators

### Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

Section 8 of the FAA only sets out three mandatory eligibility conditions to an arbitrator: an arbitrator must be 18 years of age, cannot be bankrupt, and his or her legal capacity should not have been restricted. Arbitrators are not required to have a law degree or be members of a bar. The FAA also sets forth that a person who is not a Finnish citizen can act as an arbitrator in arbitration proceedings in Finland. Any arbitrator is required to be impartial and independent, and should, in connection with possibly being appointed as an arbitrator, immediately disclose any circumstances giving rise to justifiable doubts as to his or her impartiality and independence.

Court judges can act as sole or presiding arbitrators subject to obtaining a special permission to do so from the judiciary authorities.

The FAA does not contain any reference to a list of arbitrators, and FAI arbitrators are not selected from a list. There is also no case law challenging the identity or appointment of an arbitrator on the basis of non-discrimination legislation or the like. Generally, however, the parties' choice should be respected.

## 16 Background of arbitrators

### Who regularly sit as arbitrators in your jurisdiction?

The active pool of arbitrators consists mainly of attorneys, law professors or scholars, and court judges (exclusively as sole or presiding arbitrators).

There has been a strong push in Finland to diversify the pool of arbitrators over the past few years. In particular, the FAI Board has recently appointed younger members of the bar and academia in lower value cases, increased the number of female appointments and widened the pool of nationalities of the persons appointed as arbitrators. In international cases, most of the arbitrators are attorneys as opposed to academics or judges.

**17 Default appointment of arbitrators****Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?**

Section 7 of the FAA provides that, unless otherwise agreed by the parties, the number of arbitrators shall be three. Under article 16 of the FAI Rules, where the parties have not agreed on the number of arbitrators, the arbitral tribunal shall be composed of a sole arbitrator unless the FAI Board determines that an arbitral tribunal composed of three arbitrators is appropriate as a result of, for instance, the complexity of the case.

In ad hoc cases, the courts can appoint an arbitrator. An appointment by a court only occurs where parties to an ad hoc arbitration cannot agree on an arbitrator, the party-appointed arbitrators cannot agree on a chair or the claimant seeks the assistance of the courts as a result of a defaulting respondent.

**18 Challenge and replacement of arbitrators****On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?**

Under the FAA, an arbitrator may be challenged by a party if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality and independence. In ad hoc proceedings, any challenge of an arbitrator is first dealt with by the tribunal and ultimately decided by the court in connection with a claim for setting aside the arbitral award. An arbitrator can be replaced, for instance, if an arbitrator dies, resigns or is removed. The appointment of the substitute arbitrator is made in accordance with the provisions of the FAA.

In institutional arbitration under the FAI Rules, an arbitrator can be challenged for lack of independence or impartiality. The FAI Board, which decides challenges in arbitrations governed by the FAI Rules, normally seeks guidance from the IBA Guidelines.

Under the FAI Rules, a substitute arbitrator shall be appointed if an arbitrator has been released or if an arbitrator has died. The FAI Board shall release an arbitrator from appointment, where, for instance, the FAI Board accepts the withdrawal of the arbitrator or where the arbitrator is prevented de jure or de facto from fulfilling his or her duties. In cases of withdrawal, the Board will accept justifiable reasons for withdrawal, such as serious illness.

**19 Relationship between parties and arbitrators****What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration and expenses of arbitrators.**

The relationship between an arbitrator and parties is considered contractual in nature. This has been determined by the Supreme Court in connection with finding an arbitrator liable for failure to disclose issues giving rise to justifiable doubts about his or her independence.

Party-appointed arbitrators are subject to the same requirements of impartiality and independence from the parties as sole and presiding arbitrators, and should be neutral in relation to the parties or appointing counsel.

In ad hoc arbitrations, arbitrators may determine their own fees. The parties can, however, always subject the arbitrators' fees to a review by the national court.

In FAI arbitrations, the fees of the arbitrators are determined on an ad valorem basis, taking into account the complexity of the case, the time spent and the efficiency of the arbitrators. Also, in FAI arbitrations, the parties can eventually subject the fees of the arbitrators to the review of a court.

**20 Immunity of arbitrators from liability****To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?**

The FAA is silent on the liability of an arbitrator, but arbitrators can become liable to pay damages to the parties under certain conditions. In the Supreme Court precedent *KKO 2005:14*, the Court awarded damages to the party who claimed that the arbitrator had breached his duty of disclosure, as a result of which the arbitrator's impartiality and independence were compromised, and the ensuing award was set aside. The arbitrator was held liable for the costs of the arbitration on a contractual basis. Liability ensues only in exceptional and restrictive circumstances if an arbitrator has acted with clear negligence.

The FAI Rules contain a limitation of liability, according to which, arbitrators are not liable for any act or omission in connection with the arbitration unless such limitation is expressly prohibited by applicable law.

**Jurisdiction and competence of arbitral tribunal****21 Court proceedings contrary to arbitration agreements****What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?**

The main rule under the FAA provides that a valid arbitration agreement precludes an action before a state court if the defendant to such action invokes the arbitration agreement before responding to the main claim. A court will not decline jurisdiction ex officio.

**22 Jurisdiction of arbitral tribunal****What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated, and what time limits exist for jurisdictional objections?**

The arbitral tribunal may rule on its own jurisdiction. Despite this power, arbitrators do not have final competence-competence, because their decision can be challenged in set-aside proceedings in the national courts. An arbitral tribunal's decision on jurisdiction can only be challenged once the final award in the case has been issued.

**Arbitral proceedings****23 Place and language of arbitration****Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?**

Section 24 of the FAA sets forth that if the parties have not agreed on the place of arbitration, the arbitrators decide the matter. Under section 26 of the FAA, if the parties have not agreed on the language, the arbitrators can also determine the language of the proceedings having regard to, for example, the language of the agreement.

If the arbitration is governed by the FAI Rules, the FAI Board shall determine the seat of arbitration where the parties have not agreed on the seat. If the FAI Board finds it appropriate, it can leave the determination to the arbitral tribunal. The FAI Rules provide that the arbitral tribunal shall decide the language in the absence of an agreement between the parties.

**24 Commencement of arbitration****How are arbitral proceedings initiated?**

The FAA provides that if a party wishes for a dispute to be determined in arbitration, the party must give written notice thereof to the opposing party. The arbitration has been initiated when the other party has received the notice referring to arbitration, wherein the claimant has, for example, appointed his or her arbitrator or arbitrators.

Under the FAI Rules, an arbitration is initiated by filing the request for arbitration. The arbitration is deemed to have commenced on the date on which the request is received by the FAI. The information in the request should include, for example, a preliminary statement of the

relief sought, the name and contact details of the respondent, an estimate of the amount in dispute and a copy of the document containing the arbitration agreement (or identification of such document). A party must file a sufficient number of physical copies of the request for arbitration for the FAI to distribute one to each party, one to the FAI and one to each prospective arbitrator.

## 25 Hearing

### Is a hearing required and what rules apply?

The FAA does not contain any mandatory provision regarding oral hearings. The parties have the freedom to decide whether any hearings are held as well as to determine the manner in which any hearings are conducted. In most cases, hearings are held to hear oral evidence, although a dispute can be determined without an oral hearing.

The FAI Rules provide that an arbitral tribunal may hold hearings for the presentation of evidence or for oral argument by the parties. Under the FAI Rules for Expedited Arbitration, the parties may agree that the dispute is decided solely on the basis of documentary evidence.

## 26 Evidence

### By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

Arbitration proceedings are generally adversarial in nature, and the evidence is presented by the parties. The FAA provisions on the presentation of evidence are limited in number. Arbitrators can ask the parties to submit all the documents that can be relevant in the case. Under the FAA, the arbitrators have a duty to promote the resolution of the dispute, and for this purpose they have a right to ask a party, witness or third party to appear to be heard in the proceedings.

In FAI arbitrations, the arbitral tribunal may order a party to produce any documents or other evidence that the arbitral tribunal may consider relevant. The arbitral tribunal may also appoint experts to report on specific issues to be determined by the tribunal.

Witness evidence is common, although written witness statements are usually limited to international arbitration proceedings. The FAA does not distinguish between party representatives and witnesses; however, in practice, party representatives are often heard prior to other witnesses. Experts are generally appointed by the parties, although tribunals are authorised to appoint an expert, if necessary. The IBA Guidelines on the Taking of Evidence in International Arbitration are usually only referred to in international proceedings where they can be either a source of guidance or the parties can agree to their use.

Arbitrators rarely take an active role in the taking of evidence in arbitration in Finland – their task is, rather, to examine the evidence presented to them by the parties. However, at oral hearings, some arbitrators take a more active role than others.

## 27 Court involvement

### In what instances can the arbitral tribunal request assistance from a court, and in what instances may courts intervene?

Courts can assist in arbitration proceedings, but usually it is the parties who request the assistance of the courts. Courts have, for example, the power to order interim measures before or during the arbitration proceedings. This is an alternative often used in Finnish arbitration, or in arbitrations where the party subject to the interim relief is located in Finland. This is all the more common in cases where *ex parte* interim relief is sought.

More rare instances include the taking of evidence (eg, from a witness who refuses to be heard in the arbitration), the taking of evidence under affirmation or an order to obtain documents from a third party to the arbitration over which the arbitral tribunal does not have jurisdiction.

## 28 Confidentiality

### Is confidentiality ensured?

The FAA does not contain any statutory provisions regarding confidentiality in arbitration. The mandate of the arbitrators is generally perceived to require that the arbitration, any documents submitted by the parties in the arbitration and the resulting award are kept confidential by the arbitrators. Parties are not bound by an obligation of confidentiality under the law, but any confidentiality obligations in the underlying agreement must be considered. It is advisable for parties to conclude a confidentiality agreement regarding the dispute itself, the proceedings and any material submitted in the course of the proceedings, as well as keeping the award confidential.

Article 49 of the FAI Rules provides that FAI and the arbitral tribunal shall maintain the confidentiality of the arbitration and the award. Unless otherwise agreed by the parties, each party undertakes to keep confidential all awards, orders and other decisions of the arbitral tribunal, correspondence from the arbitral tribunal to the parties, as well as documents and other materials submitted by another party in connection with the arbitration. The provision also makes reference to some exceptions, taking into account, for example, that information that is publicly known or available does not breach this confidentiality obligation. The deliberations of the arbitral tribunal shall be confidential.

In enforcement proceedings before Finnish courts, the parties can and should request the courts to treat the award as confidential.

## Interim measures and sanctioning powers

### 29 Interim measures by the courts

#### What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Courts have the power to order interim measures despite any arbitration agreement, and the court may grant interim measures to a party prior to the commencement of an arbitration and thereafter. The benefit of court-ordered interim measures is that they can be obtained extremely quickly and are immediately enforceable. The power of the courts to order interim measures does not affect the arbitral tribunal's ability to order interim measures.

Under the FAI Rules, parties are entitled to seek interim measures from both the arbitral tribunal and the national courts. The FAI Rules also contain a provision on emergency arbitrator-ordered interim measures.

### 30 Interim measures by an emergency arbitrator

#### Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

The FAA does not contain any provisions on the use of an emergency arbitrator.

Under the FAI Rules, a party in need of urgent interim measures of protection that cannot await the constitution of an arbitral tribunal may apply for the appointment of an emergency arbitrator.

### 31 Interim measures by the arbitral tribunal

#### What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

The FAA is silent on the arbitral tribunal's powers to issue interim measures, but expressly forbids arbitrators from imposing the threat of a fine or issuing orders regarding other coercive measures.

In an arbitration between Finnish parties, or where the party or assets subject to the interim measures are located in Finland or within the European Union, interim relief will be sought from the courts (see above).

Under the FAI Rules, the arbitral tribunal may grant the interim measures of protection that a party has requested and that the tribunal deems appropriate. An arbitral tribunal operating under the FAI Rules cannot order interim relief on an *ex parte* basis.

### 32 Sanctioning powers of the arbitral tribunal

**Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration? May counsel be subject to sanctions by the arbitral tribunal or domestic arbitral institutions?**

Under the FAA, arbitrators may, unless otherwise agreed by the parties, order a party to compensate the other party's costs in relation to the arbitration proceeding, in accordance, as appropriate, with the provisions of the Code of Judicial Procedure on the compensation of legal costs. In accordance with said provisions, in awarding legal costs the arbitrators can take into account the conduct of the parties (including either intentionally or negligently initiating an unnecessary arbitration), obstructing the proceedings through non-appearance, making unfounded claims, refusing to follow the orders issued or by other similar means.

In FAI arbitration practice, the arbitral tribunal or FAI cannot order sanctions against counsel, but the arbitral tribunal can take into account the parties' conduct in its decision on the allocation of costs between the parties.

#### Awards

### 33 Decisions by the arbitral tribunal

**Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?**

Under the FAA, the arbitral award shall be made by majority decision if the arbitrators disagree on the award or its contents. Where any of the opinions has not attained a majority, the opinion of the presiding arbitrator shall prevail unless otherwise agreed by the parties.

The FAI Rules also provide that an award will be made by majority decision. Any dissent will become part of the award but not its operative part.

### 34 Dissenting opinions

**How does your domestic arbitration law deal with dissenting opinions?**

Neither the FAA nor the FAI Rules contain a provision regarding the submission of dissenting opinions. The FAA only provides that an award is reached by a majority decision (see question 33).

In accordance with the FAI Arbitrator's Guidelines, any dissenting arbitrator may submit his or her dissenting opinion to the award and have it included in the award.

### 35 Form and content requirements

**What form and content requirements exist for an award?**

The FAA sets forth that the arbitral award shall be made in writing and be signed by all the arbitrators. If these requirements are not fulfilled, the award shall be null and void, except where the majority of the arbitrators participating in the arbitration have signed the award and have provided an explanation as to why one has not signed it.

Under the FAI Rules, an award shall be made in writing and be signed by the arbitrators. The award must also contain a mention of the seat of arbitration and the date of the award. The tribunal shall state the reasons upon which the award has been decided. In expedited FAI arbitrations, where the parties have not requested any reasoning, a tribunal can issue a decision without reasons.

### 36 Time limit for award

**Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?**

The FAA does not set forth a time limit for the issuance of an arbitral award.

The FAI Rules provide that the final award shall be made no later than nine months from the date on which the arbitral tribunal received the case file. This time limit may be extended by the FAI Board if the tribunal issues a reasoned request after having consulted with the parties.

In expedited FAI arbitrations, the time limit for the issuance of the award is three months.

The parties can always agree to deviate from the time limit contained in the FAI Rules.

### 37 Date of award

**For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?**

The date of delivery of the award is the decisive date in the following respect: clarification or correction of the award (within 30 days of receipt), appeal on the decision on costs (within 60 days of receipt) or setting aside of an award (within three months from receipt). Under the FAA, arbitrators must either provide the award to the parties in person, or retain proof of delivery of an award sent by mail.

### 38 Types of awards

**What types of awards are possible and what types of relief may the arbitral tribunal grant?**

In addition to final awards, the FAA also recognises separate awards, consent awards and additional awards. The FAA is silent on interim relief.

### 39 Termination of proceedings

**By what other means than an award can proceedings be terminated?**

Under the FAA, if the parties agree on the termination of the proceedings or if the arbitrators find that the proceedings cannot be continued, the arbitrators shall decide to terminate the arbitration proceedings. The most common reasons for termination are that the claimant withdraws its claim, or the parties reach a settlement. These same grounds are recognised under article 44 of the FAI Rules.

If the claimant withdraws his or her claim, the respondent requests an award and the arbitrators recognise a legitimate interest on their part in obtaining a final resolution of the dispute, the proceedings may be continued and the dispute decided by an arbitral award.

### 40 Cost allocation and recovery

**How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?**

Under the FAA, and unless otherwise agreed, the parties are jointly and severally liable to pay compensation to the arbitrators for their work and other expenses. An arbitral tribunal may order a party to compensate, in whole or in part, the other party for its legal costs in accordance with the provisions of the Code of Judicial Procedure.

As a main rule, this means that the losing party is obliged to pay all the reasonable costs that have resulted from necessary measures undertaken by the prevailing party. Costs can also be split between the parties if they prevailed on different issues.

Under the FAI Rules, costs are, in principle, to be borne by the losing party. The arbitral tribunal may allocate the costs as it sees appropriate considering the circumstances of the case.

It is standard practice in arbitration that administrative fees payable to arbitral institutions, attorneys' fees and the fees payable to arbitrators are recoverable costs. The fees of in-house counsel can sometimes be considered legal costs.

### 41 Interest

**May interest be awarded for principal claims and for costs, and at what rate?**

Interest may be awarded on both principal claims and costs.

Annual delay interest is payable in accordance with the statutory rate set forth under the Finnish Interest Act, which is the reference rate plus 8 per cent. For legal costs, this is usually sought and awarded as of one month after the issuance of the award.

### Update and trends

The Ministry of Justice is currently investigating whether the FAA should be reformed. The Finnish Chamber of Commerce as well as several law firms and lawyers have issued statements in support of such a reform. Many of the statements favour a reform in accordance with the UNCITRAL Model Law.

Finland is not a party to any pending cases or recently rendered awards in the field of investment arbitration. No BITs have recently been terminated or entered into.

## Proceedings subsequent to issuance of award

### 42 Interpretation and correction of awards

**Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?**

Pursuant to the FAA, a party may request the arbitrators to correct any clerical, typographical or computational error in the award within 30 days from the date of receipt of the award. The arbitral tribunal may correct an error on its own motion within 30 days of the date of an award.

The provisions on correcting an award in the FAI Rules reflect the above principles. The FAI Rules provide that a party can request, or the tribunal may of its own motion correct, an omission to state in the award the seat of arbitration or the date on which the award was made, or an omission of an arbitrator to sign the award. The parties may also request the arbitral tribunal to interpret a specific point or part of the award.

### 43 Challenge of awards

**How and on what grounds can awards be challenged and set aside?**

There are two different grounds for challenge of an award: invalidity and set aside.

Under the FAA, an arbitral award is considered null and void as follows:

- to the extent that the arbitrators have resolved an issue that under Finnish law cannot be decided by arbitration and is thus not arbitrable;
- to the extent that the recognition of the award would be contrary to public policy in Finland;
- if the award is so obscure or incomplete that it does not indicate how the award has been decided; or
- if the award has not been made in writing or it is not signed by the arbitrators.

The FAA does not require that a party initiates a challenge to seek to have the award declared null and void. In practice, however, only such declaration would confirm that an award is null and void.

The award may be set aside if:

- the arbitrators have exceeded their authority;
- an arbitrator has not been properly appointed;
- an arbitrator's impartiality and independence could have been challenged, but a challenge properly made by a party had not been accepted before the arbitration award was made, or if a party has become aware of the grounds for a challenge so late that he or she could not have been able to challenge the arbitrator before the arbitration award was made; or
- the arbitrators had not given a party sufficient opportunity to present its case.

A party who wishes to challenge an award shall bring its action for setting aside within three months of the date of receipt of an award.

### 44 Levels of appeal

**How many levels of appeal are there? How long does it generally take until a challenge is decided at each level?**

**Approximately what costs are incurred at each level? How are costs apportioned among the parties?**

Any challenge to an arbitral award shall be brought in the court of first instance of the place where the award was made (ie, in the district court). The judgment of a district court can usually be challenged before

a court of appeal, although in order to appeal, a party must seek and obtain leave to appeal. The final instance is the Supreme Court, where the decision of a court of appeal may be challenged if leave of appeal to the Supreme Court is granted.

Depending on the size and extent of a case, it generally takes eight to 12 months for a set-aside case to be heard by the competent district court, and 12 to 16 months for a judgment to be issued. It takes approximately the same time for the court of appeal to hear and decide a set-aside case. The Supreme Court will not grant leave to appeal in a set-aside case unless there is, for example, a legal question of a procedural nature that requires clarification. The costs of such proceedings vary in relation to the size and significance of the case. The legal costs in relation to such proceedings are allocated in accordance with the Code of Judicial Procedure (see question 40).

### 45 Recognition and enforcement

**What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?**

In order to enforce a national or foreign award, the party seeking enforcement must apply for an enforcement order from the competent district court. The application for enforcement must include a copy of the arbitration agreement and an original or certified copy of the award. If the award has not been rendered in Finnish or Swedish, a certified translation must be attached to the application unless the court grants the applicant an exception from this requirement. A court will hear the counterparty before issuing the enforcement order. Unless witnesses or other persons are heard, the matter will be dealt with by the court in chambers.

In international cases, if a party resists enforcement on the grounds that it is seeking to invalidate or set the award aside at the seat of the arbitration, a court may order a temporary ban on enforcement, and upon application, also order the applicant to provide a security.

A foreign award is recognised as valid, subject to the underlying arbitration agreement fulfilling the writing requirement. Thus, a district court can only deny an application for enforcement if the award is invalid or has been set aside, or a court has banned enforcement pending invalidity or set-aside proceedings. The grounds for invalidity and set-aside set out in the FAA (see question 43) are exhaustive.

The Finnish courts can be said to look favourably on enforcing awards.

### 46 Time limits for enforcement of arbitral awards

**Is there a limitation period for the enforcement of arbitral awards?**

According to the Enforcement Code, an arbitral award can as a main rule be enforced for 15 years counted from the date on which the award was rendered, if the award imposes a payment liability on a natural person. This limitation period can in some cases be extended upon application, provided that certain preconditions are met.

The statute of limitations should be observed in cases concerning both natural and legal persons.

### 47 Enforcement of foreign awards

**What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?**

In principle, courts are arbitration-friendly and will uphold international arbitral awards.

The Supreme Court is yet to decide on a case where an arbitral award has been set aside at the seat.

### 48 Enforcement of orders by emergency arbitrators

**Does your domestic arbitration legislation, case law or the rules of domestic arbitration institutions provide for the enforcement of orders by emergency arbitrators?**

Only arbitral awards are enforceable under the FAA. The FAA does not contain any provisions on enforcement of orders issued by emergency arbitrators or arbitrators.

**49 Cost of enforcement****What costs are incurred in enforcing awards?**

A party will generally incur costs in relation to translations required for the purposes of enforcement. In addition to such costs, a party must pay the application fee and its legal costs. If the opposing party resists enforcement but loses and the award is enforced, any such costs are recoverable. If the party is successful in resisting enforcement, the applicant may become liable for the costs of the enforcement proceedings and the opposing party's legal costs.

**Other****50 Judicial system influence****What dominant features of your judicial system might exert an influence on an arbitrator from your jurisdiction?**

Finland can generally be qualified as a civil law country where document production exists, but tribunals will only grant narrow and specific requests. Written witness statements are common in international arbitration practice but not in domestic arbitration proceedings. Party officers may be heard in arbitration as witnesses.

Finnish arbitrators are permissive of cross-examination as such, and will accept internationally recognised techniques to a certain extent, but may feel irritated or uncomfortable with cross-examinations they perceive as being aggressive. Regarding attitudes towards witness evidence, for example, or the role of the tribunal in ascertaining the facts, Finnish arbitrators may be found somewhere in the middle compared to what is perceived typical of common law arbitrators on the one hand and civil law arbitrators on the other.

**51 Professional or ethical rules applicable to counsel**

**Are specific professional or ethical rules applicable to counsel in international arbitration in your jurisdiction?  
Does best practice in your jurisdiction reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?**

No separate ethical rules bind counsel acting in international arbitration proceedings. Arbitrators and counsel in arbitral proceedings are usually lawyers and members of the Finnish Bar Association or the bar association of their home jurisdiction. Members of the Finnish Bar Association are bound by its ethical code.

The IBA Guidelines on Party Representation can be used in international arbitrations to agree on a common standard, but they are not automatically applicable in international arbitrations seated in Finland.

**52 Third-party funding****Is third-party funding of arbitral claims in your jurisdiction subject to regulatory restrictions?**

Third-party funding is available but not common in Finnish arbitrations. No regulatory restrictions exist for funded claims.

**53 Regulation of activities****What particularities exist in your jurisdiction that a foreign practitioner should be aware of?**

The most relevant particularities regarding arbitration proceedings relate to the taking of evidence and the provision on invalidity of awards contained in the FAA.

In arbitrations involving Finnish parties or arbitrators, the proceedings will be adversarial, tribunals will likely only grant narrow and specific document production requests and often require that parties identify what they plan to demonstrate with certain evidence. Opening statements are still common in arbitration proceedings, and arbitrators and parties often prefer oral closing submissions to post-hearing briefs.

There are no restrictions on foreigners appearing as counsel in international arbitrations. Visas will only be required from those who come from countries from which Finland generally requires a visa for entry into the country. A foreign person does not require a work permit to act as an arbitrator in international arbitration proceedings, but each individual should check whether special circumstances apply to his or her case.

VAT is payable on the services of the arbitrator in accordance with the country of origin of the arbitrator, unless a party is exempted from paying VAT. Thus, parties are generally liable to pay VAT on the services of a Finnish arbitrator unless exceptions apply.

Foreign arbitrators should be aware of the fact that arbitrators can be held liable for damages under Finnish law, although the threshold for liability is quite high and the FAI Rules contain a limitation of liability provision.

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