

# Kluwer Arbitration Blog

## New Arbitration Rules of the Finland Chamber of Commerce - more expeditious and effective proceedings

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The Finland Chamber of Commerce has recently revised its Arbitration Rules and the Rules for Expedited Arbitration to address the growing demands of the competitive world of commercial arbitration, as reported by the Arbitration Institute of the Finland Chamber of Commerce ( “**FAI**” or the “**Institute**”) in its [article](#) from December 2019. [The revised Rules](#), which entered into force on 1 January 2020 (the “**2020 Rules**”), seek to provide for more expeditious and effective proceedings.

While Finland is internationally not as well-known as an arbitration destination as its western neighbour, Sweden, it has recently been able to build its reputation as a neutral location for the resolution of international disputes. In terms of [FAI’s statistics for the last 5 years](#), its annual caseload has ranged between 52 and 79 new arbitration requests, of which 22-36 % of such cases have had an international element. In 2019, the exact number of cases was 67. Although already an arbitration-friendly state, Finland has also, in addition to the revision of the Rules, commenced efforts to renew the Finnish Arbitration Act from 1992, as discussed in [this](#) post. As for the revised 2020 Rules, the most important amendments will be covered below.

### Changes to the Rules adopted in 2013

#### *Compulsory advance on costs*

In comparison to the previous Arbitration Rules and the Rules of Expedited Arbitration (hereafter the “**2013 Rules**”), the Institute will now require an advance on costs in all arbitration proceedings, and not only in [international disputes](#). Previously, it was within the Institute’s discretion to order an advance to be paid in domestic disputes.

In the past and in arbitrations governed by the 2013 Rules, the parties were entitled to propose an advance to be fixed in domestic arbitrations as well, but the Institute was not bound by such a proposition (*cf.* [FAI’s Arbitrator’s Guidelines](#)). In practice, an advance was effectively only ordered in domestic cases when requested by all parties or under otherwise special circumstances, for example if it was clearly foreseeable that the parties would not be able to fulfil their payment obligations at the end of the

arbitration. The detailed rules concerning an advance were formerly found under Article 48 of the 2013 Rules (now covered under Article 50 of the 2020 Rules).

When no advance was fixed by the Institute, arbitral tribunals would nevertheless previously often request an advance from the parties to secure the payment of their fees and expenses. However, in these situations the advance would only cover the fees and expenses of the tribunal, but not the administrative fee of FAI. Consequently, the purpose of the modification is to ensure that in all arbitration proceedings (both domestic and international) all estimated costs of the arbitration are covered by the advance. The amendment also works to ensure a more equal treatment of arbitrators from different professional backgrounds, *i.e.* attorneys and other legal professionals, as previously attorneys working at law firms were mainly the only ones who had the opportunity to utilise designated client fund accounts as a means to retain advance payments.

### ***Electronic delivery***

Another key amendment with respect to the streamlining of the proceedings is a modification according to which case documents may be transmitted to the Institute by electronic means alone or by way of a single hard copy. Under the 2013 Rules, documents had to be delivered in multiple hard copies. Naturally, the Institute as well as the arbitral tribunals will still have the possibility to request transmissions in hard copies when this is considered necessary. Additionally, written statements, notices and other communications may be transmitted in any manner that provides a record of the transmission under the 2020 Rules. The wording, specifically found under Article 4 of the 2020 Rules, is intended to allow the adoption of new means of communication and other technologies and, by doing so, address future needs preemptively, without a need for further revisions to the 2020 Rules.

### ***Added flexibility between standard and expedited rules***

Another tool with which the 2020 Rules add flexibility is the possibility to refer a case under the FAI Arbitration Rules to the FAI Expedited Arbitration Rules and *vice versa*. This referral, enabled under Article 10 of the 2020 Rules, will be possible prior to the confirmation of any arbitrator, is subject to the approval of the parties and is not dependent on any specific financial thresholds as is the case with, for example, the ICC's expedited procedure (*cf.* Art. 30 of [ICC's Rules of Arbitration](#)). The parties can even utilise a new model arbitration clause called "the combined clause", which leaves the ultimate choice of the applicable Rules to the discretion of the Institute. This makes a clear distinction between the 2020 Rules and the 2013 Rules under which the Expedited Arbitration Rules could only be applied if the parties had specifically agreed to their application. Under the 2013 Rules, it was also not possible to refer an ongoing arbitration proceeding to be conducted under the Expedited Rules. The purpose of this addition is to increase the use of the Expedited Arbitration Rules in small and simple cases wherein a full-fledged procedure would not necessarily be the most practical

decision. In the aforementioned article, FAI has reasoned the revision as follows:

*“When drafting an arbitration clause, parties are often unable to foresee the type of dispute that may potentially arise out of their agreement. For this reason, parties opt for proceedings under the FAI Arbitration Rules more often than expedited proceedings. This means that the FAI Expedited Arbitration Rules, which provide for a procedural framework that is particularly appropriate for small and simple disputes, have remained underutilized. The 2020 Rules aim to encourage the use of expedited proceedings by adding flexibility to the choice between the two sets of Rules”.*

In comparison to standard proceedings, in expedited arbitration proceedings the dispute is decided by a sole arbitrator and the arbitral award is rendered within three months from the date on which the sole arbitrator received the case file from the Institute. Another key feature of expedited proceedings under the 2020 Rules is the absence of oral hearings unless one of the parties specifically requests that oral hearings take place and the sole arbitrator deems them necessary. Moreover, the arbitral award shall not contain the reasoning of the sole arbitrator unless a party has requested a reasoned award within the time limit set by the sole arbitrator. The costs of expedited proceedings are also generally lower than those of standard proceedings. It is, however, worth noting that expedited proceedings have, to this date, been relatively rare (only a few cases each year). This is most likely the case due to the fact that disputes governed by the standard Arbitration Rules are generally resolved within 8-9 months after the case file has been transferred to the respective arbitral tribunal.

### ***Shortening of time limits and added procedural control under standard proceedings***

The 2020 Rules look to expedite the arbitration proceedings by shortening the default time limits for the appointment of a three-member tribunal from 15 days to 10 days. Arbitral tribunals will now also be required to hold the case management conference in principle within 21 days (14 days for expedited proceedings) from the date on which the arbitral tribunal received the case file from the Institute. These changes can be found under Articles 19 and 30 of the 2020 Rules.

With respect to the efficiency of the proceedings, the 2020 Rules also explicitly state under Article 49 that where a party has failed to comply with the orders or other directions of the arbitral tribunal, the tribunal may take such failure into account in its allocation of the costs of the arbitration. To be clear, tribunals also had the option to do this under the 2013 Rules, but this ability was not specifically mentioned in the rules. By way of this amendment, the 2020 Rules work to encourage the parties to act in a manner which promotes the expedience and efficiency of the proceedings.

## **Confidentiality orders**

Lastly, the 2020 Rules explicitly provide arbitral tribunals with the power to issue confidentiality orders. Although the 2013 Rules required the parties to keep confidential the documentation related to the proceedings, subject to certain exceptions, the powers of the arbitral tribunal to issue confidentiality orders were not previously explicitly regulated. Comparatively, under Article 51 of the 2020 Rules, arbitral tribunals now have explicit jurisdiction to render such orders, should this prove to be necessary.

## **Conclusion**

In a nutshell, the 2020 Rules continue in the footsteps of the 2013 Rules by creating a more attractive option for the resolution of both international and domestic commercial disputes. The FAI Arbitration Rules and the FAI Rules for Expedited Arbitration have proven to be very competitive in an international comparison in terms of speed and cost-efficiency. According to [FAI's statistics](#), the average duration of arbitration proceedings under the FAI Arbitration Rules was 9 months in 2018. The modifications made in the 2020 Rules will certainly further improve the efficiency and speed of FAI arbitrations.

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