



The European Arbitration Review

2021

Finland

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The European Arbitration Review, across 15 chapters, and 97 pages, is part invaluable retrospective and part primer on the characteristics of different seats, with a little crystal-ball gazing thrown in for good measure. All contributors are vetted for their standing and knowledge before being invited to take part.

Together, they capture and interpret the most substantial recent international arbitration events of the year just gone, with footnotes and statistics. This edition covers Austria, Finland, France, Italy, the Netherlands, Norway, Portugal, Russia, Spain, Sweden and Ukraine, and has overviews on econometrics; the direction of travel for construction disputes in Europe; and on the use (and non-use) of multiples for valuating things in investment treaty disputes, among other topics.

Generated: February 8, 2024

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IN SUMMARY

This chapter explains the current arbitration landscape in Finland. The Arbitration Institute of the Finland Chamber of Commerce (FAI) launched revised Arbitration Rules and Expedited Rules on 1 January 2020.^[84] The revisions to the Rules constitute largely fine-tuning updates aimed at further improving the overall efficiency of the arbitral proceedings. The previous 2013 Arbitration Rules marked a major overhaul of the FAI arbitration procedures and brought the Rules in line with the best international arbitration norms and practices.^[85] The FAI also has Mediation Rules that have been in force since 1 June 2016 and cater for a simple, cost-efficient, flexible and user-friendly mediation framework.^[86] Another significant development is the reform process of the current 1992 Arbitration Act, which has been underway since January 2019. The Ministry has set up a working committee that is currently investigating various options for the reform. The FAI has proposed that Finland implements the UNCITRAL Model Law in full to increase the attractiveness of Finland as a venue for international arbitration. This proposal has received substantial support from the Finnish and international arbitration communities.

DISCUSSION POINTS

- Introduction to arbitration under the FAI Rules 2020
- Key revisions of the Arbitration Rules 2020
- FAI Mediation Rules 2016
- Reform of the Finnish Arbitration Act
- FAI Statistics and recent trends
- Highlights of published decisions of the FAI Board and FAI Arbitral Awards

REFERENCED IN THIS ARTICLE

- FAI Arbitration Rules 2020
- FAI Arbitration Rules 2013
- FAI Mediation Rules 2016
- FAI Statistics 2019 and FAI commentary on the statistics
- Finnish Arbitration Act
- Announcement from the Ministry of Justice regarding the reform of the Arbitration Act, January 2019
- Published decisions of the FAI Board and FAI Arbitral Awards

THE 2020 FAI RULES OPERATE AT THE CUTTING EDGE OF INTERNATIONAL ARBITRATION PRACTICE

The 109-year-old FAI, established in 1911, has a long and distinguished pedigree in arbitration.^[1] However, it was not until the overhaul of the Arbitration Rules in 2013 that Finland was put on the International Arbitration map as an attractive venue. The 2013 FAI

Rules comprised a combination of the amendments to the 2012 ICC Rules, 2010 UNCITRAL Arbitration Rules and Swiss Rules of International Arbitration 2012. Accordingly, the 2013 FAI Rules established a comprehensive, expeditious and cost-efficient procedural framework for international and domestic arbitration, while respecting party autonomy and preserving the necessary flexibility to the proceedings.

The new 2020 FAI Rules introduce a number of updates to the 2013 Rules that seek to increase flexibility and further expedite the proceedings. In view of increasing the flexibility of the proceedings, the Rules enable parties to agree to change standard proceedings into expedited proceedings and vice versa prior to the confirmation of the arbitrators.^[2] The institute may at its own motion also request the parties to consider changing the type of proceedings, where circumstances of the case support expedited or standard proceedings.^[3] In this respect, the FAI also offers a new model arbitration clause, which leaves the choice between expedited and standard proceedings to the discretion of the FAI.^[4]

With a view to expediting the proceedings, the new Rules slightly shorten the time limit for the appointment of a three-member tribunal: the parties are required to nominate the presiding arbitrator within 10 days from the confirmation of the second arbitrator, while this time limit was 15 days under the 2013 Rules.^[5] Similarly, where the institute has decided on the number of arbitrators, the time limit for the parties' respective nomination of arbitrators has been reduced from 15 days to 10 days.^[6]

While the 2013 Rules did not set any time limit for an early case management conference to agree on the conduct and timing of the proceedings, the new Rules require the tribunal to arrange a case management conference within 21 days from receipt of the case file.^[7]

The 2013 Rules introduced, for the first time in Finnish arbitration, an express obligation on the parties, tribunal and the FAI to maintain confidentiality of the arbitration and the award.^[8] However, the 2013 Rules were silent on a tribunal's power to issue orders concerning the confidentiality of the arbitration.^[9] The new Rules now expressly authorise the tribunal to issue confidentiality orders upon the request of any party.^[10]

In line with the Swiss Rules, the 2013 Rules introduced an overall good faith obligation on parties and tribunals 'to make every effort to contribute to the efficient conduct of the proceedings in order to avoid unnecessary costs and delays'.^[11] This obligation remains unchanged in the new Rules.^[12] However, the new Rules add a further express obligation on parties to comply with the tribunal's orders without any delay.^[13] The 2013 Rules already authorised the tribunal to order cost sanctions on a party that had failed to comply with the overall duty to ensure efficient and expeditious conduct of the arbitration proceedings.^[14] The new Rules now also expressly authorise the tribunal to order cost sanctions on a party that fails to comply with the tribunal's orders promptly.^[15]

Other revisions to the FAI Rules comprise minor amendments to the procedures for transmitting case documents, including transmission by electronic means,^[16] updates on the filing fees^[17] and a requirement on the institute to fix an advance on costs in all arbitrations, irrespective of whether the proceedings are domestic or International.^[18] The following key features of the FAI arbitration remain unchanged in the new Rules. In the spirit of the overall duty to conduct the proceedings expeditiously and cost-efficiently, the FAI Rules require tribunals to: establish a procedural timetable at the outset of the proceedings,^[19] as soon as possible after the last hearing date or the date on which the tribunal receives the last authorised written submission, declare the proceedings closed and inform the parties and

the FAI of the date by which it expects to issue the final award;^[20] and render the final award within nine months of receipt of the case file.^[21] The FAI may nevertheless extend this limit 'upon a reasoned request of the arbitral tribunal'.^[22]

The FAI Rules also enable the tribunal to control the length of the proceedings in a number of ways, such as:

- by setting cut-off dates for the presentation of new claims, arguments or evidence or the introduction of new witnesses,^[23] or
- by ordering any party at any time to identify the documentary evidence that the party intends to rely on, specify the circumstances that the party intends to prove by such evidence and to produce any documents or other evidence that the tribunal may consider relevant to the outcome of the case.^[24]

The FAI Rules further provide for effective administration of multiparty and multi-contract arbitrations^[25] and allow the parties access to the emergency arbitrator procedure prior to the appointment of the tribunal,^[26] as well as for arbitrator-oriented interim relief after the tribunal's appointment.^[27]

THE UPWARD TREND OF ARBITRATION IN FINLAND

The FAI had an all-time record of 79 requests for arbitration filed in 2013, following the launch of the FAI's 2013 Arbitration Rules.^[28] In 2019, the number of filed requests for arbitration increased from 62 in 2018 to 67 requests.^[29] Interestingly, the number of expedited arbitrations seems to be on the rise: 10 per cent of arbitrations in 2019 were conducted under the Expedited Rules, while in 2018 only 3 per cent of arbitrations were expedited.^[30]

The median duration of FAI arbitrations has typically ranged between eight and nine months in recent years.^[31] In 2019, the FAI arbitration proceedings lasted for eight months on average.^[32] In fact, the Arbitration Rules require final award to be rendered within nine months from the tribunal's receipt of the case file.^[33] Conversely, the Expedited Rules require the final award to be rendered within three months from the tribunal's receipt of the case file.^[34]

One third of all FAI arbitration cases have typically had an international dimension (ie, at least one party is domiciled abroad).^[35] However, in contrast to previous years, only 16 per cent of the FAI cases were international cases in 2019.^[36]

THE REFORM OF THE FINNISH ARBITRATION ACT

Along with the FAI Rules, as updated in 2020, Finland's progressive and pro-arbitration legislative framework contributes towards making Finland an attractive and arbitration-friendly seat. Finland has ratified and enacted the 1958 New York Convention, and ratified the ICSID Convention.

Both domestic and international arbitration proceedings in Finland are currently governed by the 1992 Arbitration Act (the Arbitration Act).^[37] While the Arbitration Act largely mirrors the provisions of the UNCITRAL Model Law on International Commercial Arbitration 1985, it nevertheless diverges from it in some respects.^[38] One notable example of such divergence is the unlimited possibility for an unsuccessful party to request the final award to be declared null and void at any time in the foreseeable future.^[39] Other such examples are the lack of express powers on arbitrators to order interim measures and the prospect of lengthy setting

aside proceedings resulting from the possibility to appeal from the district court's decision to court of appeal and ultimately to the Supreme Court.^[40]

However, in January 2019, the Finnish Ministry of Justice announced the commencement of the revision process of the Arbitration Act.^[41] The announcement followed the FAI's proposal in 2016 to replace the 1992 Act with the UNCITRAL Model Law and the Ministry's subsequent consultation of the Finnish legal practitioners and businesses on the matter.^[42] The Ministry has established a working committee that is due to study options for the reform until the end of year 2020, after which the legislative process can begin.^[43]

THE FAI WAS ONE OF THE FIRST INSTITUTES TO DRIVE GENDER DIVERSITY WHEN APPOINTING ARBITRATORS

The current FAI Board members include several internationally recognised arbitration experts.^[44] Consequently, the current FAI Board has considerable expertise in appointing high-quality arbitrators in domestic and cross-border disputes.

In the appointment of arbitrators, the FAI Rules require the FAI Board to consider:

- any qualifications required of the arbitrator by the agreement of the parties;
- the nature and circumstances of the dispute;
- the nationality of the parties and of the prospective arbitrator;
- the language of the arbitration;
- the seat of arbitration and the law or rules of law applicable to the substance of the dispute; and
- any other relevant circumstances.^[45]

Where the parties are of different nationalities, the FAI Rules now confirm the FAI's established practice of not appointing a sole or a presiding arbitrator from the same domicile as one of the parties.^[46]

In addition to ensuring that all arbitrators appointed in both domestic and international disputes have sufficient experience, expertise and other relevant qualifications to serve as an arbitrator in the specific case, the FAI Board proclaimed in 2014 to be 'mindful of the importance of expanding the 'pool of arbitrators' to include 'younger arbitration practitioners who are known for their talent, efficiency and user-friendliness' and dedicated to promoting gender diversity.^[47] The FAI statistics show that 32 per cent of the arbitrators appointed by the FAI Board in 2015 and 2016 and 29 per cent in 2017 were female.^[48] However, in 2018, the share of women arbitrators dropped to 15 per cent and remained the same in 2019.^[49]

THE FAI MEDIATION RULES STRENGTHEN THE FAI'S STANDING AS AN ATTRACTIVE ARBITRATION CENTRE

On 1 June 2016, the FAI launched its Mediation Rules, which apply to all FAI mediations commenced on or after that day, unless the parties agree otherwise.^[50] The launch of the FAI Mediation Rules strengthened the FAI's standing as an attractive arbitration centre by extending the array of its services into the broader field of alternative dispute resolution and, thus, providing the disputing parties an opportunity to efficiently mediate their dispute before or during arbitration or litigation proceedings.

The FAI Mediation Rules enable parties to resort to FAI mediation on the basis of a written agreement of the parties to refer their dispute to mediation under the FAI Mediation Rules, or 'any other type of understanding between the parties to resort to FAI mediation'.^[51]

In line with the ICC and many other well-known mediation rules, the FAI Mediation Rules further cater for the parallel conduct of mediation and arbitration or litigation to enable a mediation window to be included in parallel arbitration proceedings.^[52] The FAI Mediation Rules provide that '[u]nless otherwise agreed by the parties, an agreement on FAI mediation does not constitute a bar to any judicial, arbitral or similar proceedings'^[53] and '[s]ubject to applicable laws, orders, regulations and rules of the competent judicial authorities, arbitral tribunals, arbitral institutions or similar authorities, the parties may agree to stay any judicial, arbitral or similar proceedings' for the purposes of initiating FAI mediation.^[54]

The FAI Mediation Rules provide only a light regulatory framework for the mediation process, offering the parties and the mediator great flexibility in tailoring the mediation process to suit each particular case. Accordingly, the FAI Mediation Rules permit the parties to deviate from the FAI Mediation Rules in their agreement to mediate.^[55] The FAI may nevertheless decline to administer the mediation if it considers that the parties' deviations are not compatible with the characteristics of the FAI mediation and the FAI Mediation Rules.^[56]

The parties are particularly given the freedom to agree on the language and place of mediation, any number of mediators, jointly nominate the mediators^[57] for the FAI's confirmation within 15 days of the date of filing the request for mediation^[57] and, subject to the approval of the mediator, the manner of conducting the arbitration.^[58] Furthermore, both parties are, at any time, able to request the termination of the mediation, provided that the request is made in writing.^[59] The FAI Mediation Rules nevertheless provide default provisions for the setting of the language and place of mediation meetings, the number of mediators and the procedure for the appointment of the mediator.^[60]

All parties' nominations of mediators are subject to confirmation by the FAI.^[61] However, the FAI will only decline to confirm the nomination if the prospective mediator fails to fulfil the requirements of impartiality and independence of article 6.1, or the nominated mediator is otherwise unsuitable to serve as mediator.^[62] The FAI Mediation Rules require a mediator to fulfil similar independence and impartiality requirements as the FAI Rules and accordingly submit a statement of acceptance, availability, impartiality and independence.^[63]

In the spirit of the FAI Rules, the mediator is also obliged to conduct the mediation 'expediently and in such manner as he or she considers appropriate, having regard to the preferences of the parties'.^[64] All participants in FAI mediation are additionally obliged to 'act in good faith' and make 'sincere efforts to reach an amicable settlement in the matter'.^[65]

The FAI Mediation Rules further set out an express confidentiality obligation on the parties and the mediator, unless the parties have agreed otherwise or the applicable law provides otherwise.^[66]

Upon successful settlement of the parties' dispute, the parties may, under article 12, subject to the consent of the mediator, agree to appoint the mediator to act as an arbitrator and request the arbitrator to confirm the settlement agreement in an arbitral award in accordance with section 44.2 of the FAI Rules.^[67]

THE FAI BOARD'S RECORDED DECISIONS ILLUSTRATE THAT THE FAI RULES WORK WELL IN PRACTICE

Since the launch of the 2013 FAI Rules, the FAI has published several decisions of the FAI Board and summaries of Arbitral Awards rendered in FAI arbitrations. The published decisions of the FAI Board provide a useful guidance on the practical application of the FAI Rules, particularly in the context of multi-contract and multiparty arbitrations,^[68] and illustrate that the FAI Rules work well in practice. The published summaries of the recent arbitral awards further serve as a fundamental legal source and, thus, enable the arbitration law and practice in Finland to develop.^[69] Some of the most noteworthy, recently published arbitral awards in FAI arbitrations and decisions of the FAI board are summarised below.

FAI AWARD CLARIFIES THE RECOVERABILITY OF THE COSTS OF INJUNCTION PROCEEDINGS IN THE SUBSEQUENT FAI ARBITRATION

In a recent FAI award, published on 3 March 2017, the arbitral tribunal decided that the costs of injunction proceedings at national courts were recoverable in the subsequent FAI arbitration on the merits of the dispute.^[70] In the reported case, A had sought and obtained an injunction order against B, who in A's view had not been entitled to terminate the parties' cooperation agreement.

The Finnish Procedural Code stipulates that the costs of the injunction proceedings are recoverable in conjunction with the ruling on the merits of the dispute in the main proceedings. The Finnish Procedural Code further provides that an applicant who has unnecessarily resorted to injunction proceedings shall be liable to compensate the opposing for the damage caused by the injunction order. The arbitral tribunal considered that 'the decisive matter here is whether the injunction proceeding initiated by A was unnecessary in light of the outcome of this arbitration'. On the facts of the case, the arbitral tribunal found that B had not been entitled to terminate the agreement and, therefore, A's application for the injunction order had been necessary to prevent the unlawful termination.^[71] Consequently, the arbitral tribunal ordered B to pay A's costs in the related injunction proceedings.

ARBITRAL TRIBUNAL'S RULING ON A BREACH OF CONFIDENTIALITY OBLIGATIONS

In a recent FAI arbitral award, the summary of which was published on 25 November 2016, the arbitral tribunal held that party B had breached confidentiality provisions in two separate contracts between party B and party A. Party B had provided a copy of party A's statement of claim filed in the arbitration to a third party, X, for the purposes of obtaining an expert opinion from X. Party B had entered into a non-disclosure agreement with X. X was a competitor of A but, in B's view, it would not have been possible to obtain expert opinion in the given particular field from a more neutral party. In addition, B had disclosed A's pricing information to another competitor of A, party Y, for the purposes of conducting an expert evaluation of A's pricing. B and Y had also concluded a non-disclosure agreement.

A claimed that through B's disclosure, the key market players, X and Y, had not only gained knowledge of the arbitration proceedings between A and B, which alone had a detrimental effect on A's business, but had also gained confidential information on A's business strategy, financial standing and pricing. B argued that it was a fundamental right of any party to a dispute to have a fair opportunity to present its case, which included a party's right to choose witnesses and experts at its discretion. Owing to the nature of the parties' dispute, the persons with best knowledge of the issues at hand were also active in the same industry as A and consequently A's potential competitors. B further argued that by entering into non-disclosure agreements with X and Y, it had taken appropriate measures to ensure

that the information that X and Y gained was not disclosed beyond the group of persons necessary for the purposes of preparing the expert opinion for the arbitration proceedings.

The arbitral tribunal held that B could have acquired credible expert opinions from neutral third parties, or without disclosing the content of the dispute, and that B could have requested a price comparison without disclosing A's pricing information to its competitors. The fact that B had taken precautions in mitigating the effects of its actions by limiting the information that was disclosed, and by requiring non-disclosure commitments from X and Y, was not sufficient in the arbitral tribunal's opinion, to release B from the liability for a breach of its contractual confidentiality obligations. Accordingly, the arbitral tribunal declared that B had breached its confidentiality obligations and ordered B to cease and desist from disclosing confidential information to any third party to the extent that the disclosure breached the provisions in the parties' contracts.

THE FAI BOARD'S DECISION ON THE NON-CONSENSUAL CONSOLIDATION OF ARBITRATIONS UNDER ARTICLE 13 OF THE FAI RULES

Article 13 of the FAI Rules provides for consolidation of closely connected arbitrations on conditions that resemble those of article 10 of the ICC Rules.^[72] However, in contrast with the ICC Rules, article 13 of the FAI Rules allows the consolidation of arbitrations irrespective of whether the arbitrations are between the same or different parties. Article 13, thus, caters for a relatively flexible consolidation regime.

Article 13 entitles a party that is involved in multiple arbitrations to request the FAI Board to have the arbitrations consolidated into a single arbitration if:

- all the parties agree;
- the claims are made under the same arbitration agreement; or
- the claims are made under different agreements but in connection with 'the same legal relationship' and the agreements do not contain 'contradictory provisions that would render the consolidation impossible'.^[73]

The FAI Board has sole discretion to decide on the consolidation of arbitration proceedings. The FAI Rules nevertheless oblige the FAI Board to take into account:

- the identity of the parties;
- the connections between the claims made in the different arbitrations; and
- whether the arbitrators have been confirmed or appointed in any of the arbitrations and, if so, whether the same or different persons have been confirmed or appointed.^[74]

Where the Board accepts the request for joinder or consolidation, 'all parties will be deemed to have waived their right to nominate an arbitrator', and the Board has the power to revoke the confirmation or appointment of arbitrators and proceed to appoint the tribunal in accordance with article 19.^[75]

In an FAI Board's decision concerning the consolidation of closely connected arbitrations, the FAI Board ordered two separate arbitration proceedings to be consolidated under article 13, irrespective of objection by respondents in the respective arbitrations.^[76]

Pursuant to an asset purchase agreement, A had acquired certain business from B. The asset purchase agreement in question contained a standard FAI arbitration clause and prescribed Finnish law as the law governing the agreement. The asset purchase agreement between A and B further contained a signed undertaking from B's parent company, C. C's undertaking in the asset purchase agreement further expressly provided that the arbitration clause in the asset purchase agreement also applied to C's undertaking. A subsequently initiated arbitration proceedings against B in relation to certain intellectual property rights. Some time after, A also initiated separate arbitration proceedings against C in relation to C's undertaking. In the request for arbitration against C, A sought effectively the same relief as in the arbitration against B and requested the proceedings against C to be consolidated with the arbitral proceedings between A and B. Both respondents B and C objected to consolidation on the basis of alleged lack of a valid and binding arbitration agreement.

The FAI Board was prima facie satisfied that a valid and binding arbitration agreement may exist between the parties and allowed both arbitrations to proceed. Following consultation of all the parties and the arbitrator nominated by A, the FAI Board ordered the consolidation pursuant to article 13 of the FAI Rules, primarily on the basis that:

- the parties in the two proceedings were closely related (C was B's parent company), albeit formally different;
- the disputes in both proceedings arose from the same legal relationship and economic transaction (namely the asset purchase agreement between A and B, which incorporated C's undertaking);
- both proceedings were based on the same FAI arbitration agreement; and
- the relief sought by A was essentially the same in both proceedings.

Consequently, the FAI Board reasoned that the arguments and evidence that A, B and C were likely to put forward in both proceedings could be expected to be virtually identical. The consolidation would in those circumstances, thus, enable unnecessary extra expenses as well as conflicting decisions to be avoided. Therefore, the consolidation was in the FAI Board's view justified in the interest of procedural efficiency and fairness, and to avoid conflicting decisions on effectively the same dispute under the same arbitration agreement.^[77]

Although the FAI Board's decision represented the first-ever order of 'non-consensual' consolidation, the decision appears to be largely in line with the FAI Board's previous decisions on consolidations, in which the Board has taken a somewhat cautious approach in applying article 13. In general, the FAI Board has advised that:

The Board is likely to accept a request for consolidation mainly in cases where the arbitrations are pending between the same parties and they are based on the same arbitration agreement. Conversely, unless all parties expressly agree to consolidation, it may be anticipated that arbitrations will rarely be consolidated if the parties are different and the proceedings are based on different arbitration agreements. Consolidation is also unlikely if different arbitrators have already been confirmed in the different arbitrations, absent special reasons to the contrary.^[78]

THE FAI BOARD'S REPORTED DECISIONS ON THE DETERMINATION OF JURISDICTION UNDER ARTICLE 14 OF THE FAI RULES

Since the launch of the FAI Rules in 2013, the FAI Board has rendered a number of jurisdictional decisions both in relation to claims presented in single arbitration as well as in multiparty and multi-contract arbitrations. In relation to the FAI Board's jurisdiction in the case of multi-contract arbitrations under article 14.2 of the FAI Rules, the FAI Board has remarked:

The closer (i) the substantive relatedness between the different contracts containing the different arbitration agreements, and (ii) the connectivity between the different claims based on the different contracts and arbitration clauses, the higher the likelihood that the Board will find that the prima facie test under Article 14.2(b) is satisfied.^[79]

Article 14 determines the conditions for the FAI Board's jurisdiction to administer a case under the FAI Rules. The wording of article 14 largely mirrors that of article 6(4) of the ICC Rules. Article 14.1 applies where claims are brought in a single arbitration under one arbitration agreement. In such a case, the Board must be 'prima facie satisfied that an arbitration agreement under the Rules that binds the parties may exist'.^[80]

Conversely, article 14.2 determines the FAI Board's jurisdiction to administer a case under the FAI Rules, where claims are made under multiple contracts or different arbitration agreements. In such cases, the FAI Board must be prima facie satisfied that:

- a) the arbitration agreements under which those claims are made do not contain contradictory provisions; and
- b) all the parties to the arbitration may have agreed that those claims can be determined together in a single arbitration.^[81]

The FAI Rules nevertheless preserve the arbitral tribunal's competence-competence to decide on its own jurisdiction by providing that the Board's decision to allow the arbitration to proceed under article 14 is not binding on the arbitral tribunal.^[82] However, if the Board rejects the request for joinder, the applicant's only remedy is to request a domestic court to rule on the jurisdiction of the arbitral tribunal.

One of the reported FAI Board's jurisdictional decisions concerned a dispute between a Finnish company A (the claimant) and an Indian company B and a guarantor of B's loan, company C (together, the respondents) arising from a loan agreement between A and B (the loan agreement).^[83] The loan agreement between A and B contained an FAI arbitration clause, whereas the first demand guarantee issued by C as a security of B's obligations under the loan agreement (the guarantee) designated the jurisdiction over the guarantee to the Finnish courts.

However, the third amendment to the loan agreement (the amendment agreement) provided that the arbitration agreement contained in the loan agreement also applied to the amendment agreement. The amendment agreement further contained a signed undertaking from company C to guarantee the loan amount specified in the amendment to the loan agreement.

Following B's failure to repay its loan under the loan agreement, the claimant initiated FAI arbitration against B and C. The respondents raised a jurisdictional plea on the basis that certain other agreements concluded in connection with the loan agreement were governed by Indian substantive law and conferred jurisdiction to the courts of Chennai,

the various amendments to the loan agreement had rendered it void, thus preventing the claimant from invoking the arbitration clause in the loan agreement, and that the second respondent, company C, was not a signatory to the arbitration agreement contained in the loan agreement.

The FAI Board was prima facie satisfied that a valid and binding FAI arbitration agreement between A, B and C may exist and, thus, allowed the arbitration to proceed against both respondents pursuant to article 14 of the FAI Rules. The sole arbitrator appointed by the FAI Board decided the jurisdictional plea as a preliminary matter and issued a separate procedural ruling finding that the sole arbitrator had jurisdiction to adjudicate all claims raised against both respondents and dismissing the respondents' jurisdictional objection. The sole arbitrator reasoned that both respondents were bound by the arbitration agreement on the basis that the loan agreement and the guarantee were closely related agreements, the claimant's claims against both respondents were also closely related and it was evident that by signing the amendment agreement the second respondent, company C had become involved in the execution of the loan agreement on a de facto basis and was, thus, deemed to have consented to be bound by the arbitration agreement in the loan agreement.

Endnotes

- 1 <https://arbitration.fi/the-arbitration-institute/history/>. [^ Back to section](#)
- 2 Ibid. [^ Back to section](#)
- 3 Ibid, at article 10.1. [^ Back to section](#)
- 4 FAI Combined Model Clause, available at <https://arbitration.fi/arbitration/model-arbitration-clauses/expedited-arbitration-clause/>. [^ Back to section](#)
- 5 FAI Rules 2020, at article 19.1(d). [^ Back to section](#)
- 6 Ibid, at article 19.2. [^ Back to section](#)
- 7 Ibid, at article 30.1. [^ Back to section](#)
- 8 FAI Rules 2013, at article 49. [^ Back to section](#)
- 9 Ibid. [^ Back to section](#)
- 10 FAI Rules 2020, at article 51.3. [^ Back to section](#)
- 11 2013 FAI Rules, at article 25.3. [^ Back to section](#)
- 12 FAI Rules 2020, at article 26.3. [^ Back to section](#)
- 13 Ibid, at article 26.4. [^ Back to section](#)

- 14** FAI Rules 2013, at articles 25.3, 47.4. [^ Back to section](#)
- 15** FAI Rules 2020, at article 49.4. [^ Back to section](#)
- 16** Ibid, at articles 4.1, 4.5, 5. [^ Back to section](#)
- 17** Ibid, at article 1 of the Appendix II. [^ Back to section](#)
- 18** Ibid, at article 50. [^ Back to section](#)
- 19** Ibid, at article 31.1. [^ Back to section](#)
- 20** Ibid, at article 41.1. [^ Back to section](#)
- 21** Ibid, at article 44. [^ Back to section](#)
- 22** Ibid. [^ Back to section](#)
- 23** Ibid, at article 35. [^ Back to section](#)
- 24** Ibid, at article 34.2. [^ Back to section](#)
- 25** Ibid, at articles 11-15. [^ Back to section](#)
- 26** Ibid, at article 38.5 and Appendix III. [^ Back to section](#)
- 27** Ibid, at article 38. [^ Back to section](#)
- 28** FAI commentary on 2019 statistics, available at <https://arbitration.fi/2020/04/27/a-review-of-the-fais-year-2019/>. [^ Back to section](#)
- 29** FAI 2019 statistics, available at <http://arbitration.fi/the-arbitration-institute/statistics>. [^ Back to section](#)
- 30** Ibid. [^ Back to section](#)
- 31** Ibid. [^ Back to section](#)
- 32** Ibid. [^ Back to section](#)
- 33** FAI Arbitration Rules 2020, at Article 44. [^ Back to section](#)
- 34** Rules for Expedited Arbitration 2020, at Article 42. [^ Back to section](#)
- 35** FAI commentary on 2018 statistics, available at <https://arbitration.fi/2019/02/08/a-review-of-the-fais-year-2018/>. [^ Back to section](#)

- 36** FAI 2019 statistics, available at <http://arbitration.fi/the-arbitration-institute/statistics>. ^
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- 37** Arbitration Act 967/1992, available in English (unofficial translation) at www.finlex.fi/fi/laki/kaannokset/1992/en19920967.pdf. ^ [Back to section](#)
- 38** See further, H. Merikalla-Teir, Finland Takes Important Steps to Increase its Attractiveness as a Venue for International Arbitration: Launch of the Revision Process of the Finnish Arbitration Act announced, 17 May 2019, Kluwer Arbitration Blog. ^ [Back to section](#)
- 39** Arbitration Act 1992, at section ^ [Back to section](#)
- 40** Merikalla-Teir, supra note 50. ^ [Back to section](#)
- 41** FAI News, 'Business-driven reform of the Finnish Arbitration Act to go ahead', 28 January 2019, available at <https://arbitration.fi/2019/01/28/business-driven-reform-of-the-finnish-arbitration-act-to-go-ahead/>. ^ [Back to section](#)
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