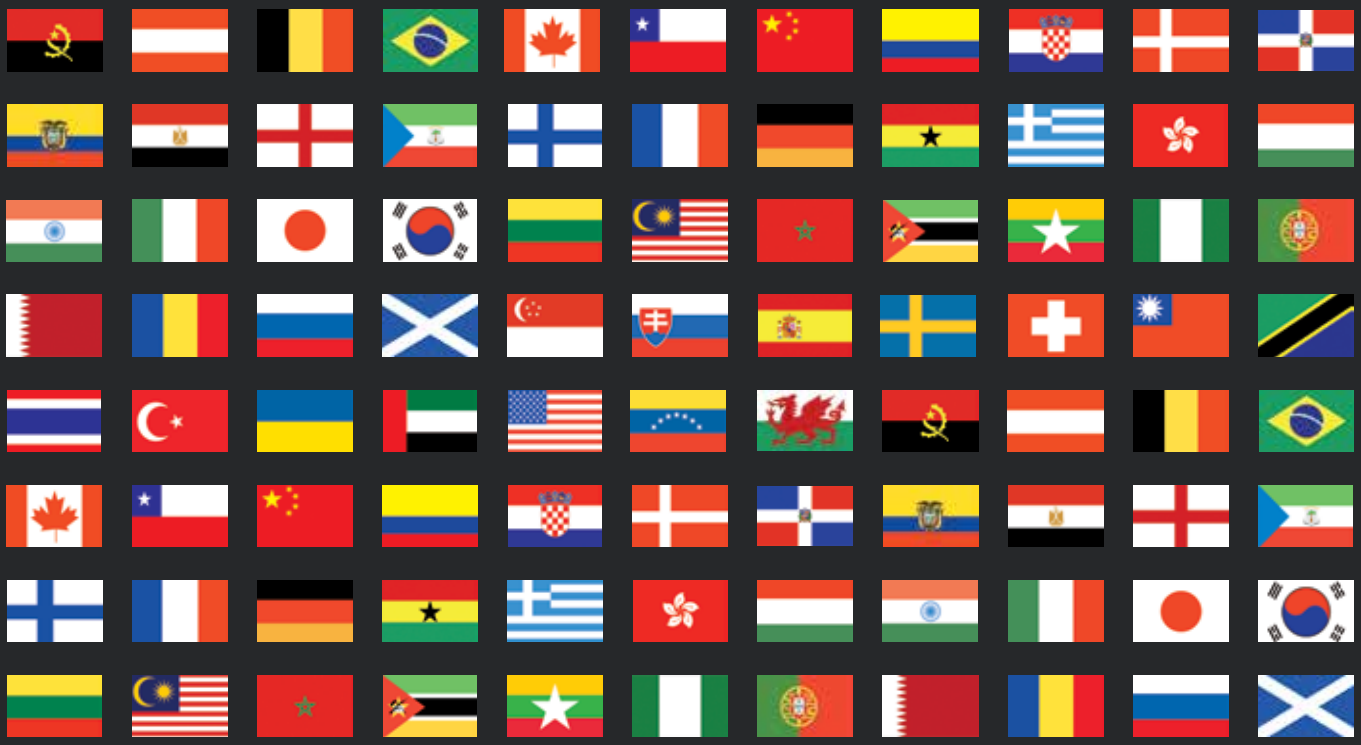
Arbitration

Contributing editors
Gerhard Wegen and Stephan Wilske



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GETTING THE DEAL THROUGH

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Arbitration 2016

Contributing editors

Gerhard Wegen and Stephan Wilske

Gleiss Lutz

Publisher
Gideon Roberton
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Business development managers
Alan Lee
alan.lee@gettingthedealthrough.com

Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com

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Finland

Tom Vapaavuori and Juha Ojala
Bird & Bird Attorneys Ltd

Laws and institutions

1 Multilateral conventions relating to arbitration

Is your country 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 is a contracting state to the New York Convention. The Convention has been in force in Finland since 19 April 1962. Finland has not made any declarations or notifications under the Convention.

Finland is also a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 and the Energy Charter Treaty of 1994.

2 Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

Finland is a party to 72 bilateral investment treaties with other countries (as of December 2015).

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?

The primary domestic source of law relating to arbitral proceedings as well as recognition and enforcement of awards in Finland is the Arbitration Act of 1992 (with amendments). The text can be found in English at www.finlex.fi/fi/laki/kaannokset/1992/en19920967.pdf (including amendments only up to 1999).

Different provisions of the Arbitration Act are applied based on the seat of arbitration (section 1). The arbitration is considered 'domestic' if the seat of arbitration is in Finland and 'foreign' if the seat of arbitration is elsewhere, irrespective of the arbitration's possible international or domestic aspects.

The Arbitration Act does not contain provisions regarding foreign arbitration proceedings. The Arbitration Act (section 51) has a provision regarding the effect of an arbitration agreement (in Finland) concerning foreign arbitration. In terms of recognition and enforcement of foreign awards the Arbitration Act (sections 52 to 55) has substantially similar provisions as the New York Convention.

In addition, the Limited Liability Companies Act of 2006 contains provisions regarding statutory arbitration in the event of a dispute concerning the redemption of shares or other rights in a merger, demerger, squeeze-out or sell-out. Arbitration under these provisions will not be further dealt with in this chapter.

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 Arbitration Act is in many respects based on the UNCITRAL Model Law and there are no major differences between them.

5 Mandatory provisions

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

The main procedural rule under the Arbitration Act is that the arbitral tribunal shall give the parties sufficient opportunity to present their case (section 22). The parties may freely agree upon the procedure within the limits of the aforementioned mandatory provision. Failing such agreement, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, taking into account the requirements of impartiality and speed (section 23).

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?

The parties may freely agree on the law applicable to the merits of the case (section 31). In the absence of such agreement there are, however, no provisions in the Arbitration Act on how the arbitral tribunal is to decide on the law applicable to the merits of the case. The arbitral tribunal should base such decision on the applicable choice of law rules and in many cases this will presumably lead to applying the law of the state with which the subject matter of the dispute has the closest connection.

7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

The most prominent arbitral institution is the Arbitration Institute of the Finland Chamber of Commerce (hereinafter the Institute, also known as FAI):
Arbitration Institute of the Finland Chamber of Commerce
PO Box 1000
FI-00101
Helsinki, Finland

Visiting address: Aleksanterinkatu 17, 7th floor, Helsinki (World Trade Center Helsinki)
Tel: +358 9 4242 6200
Fax: +358 9 4242 6257
E-mail: info@arbitration.fi
www.arbitration.fi

The Institute was established in 1911. The revised arbitration rules and rules for expedited arbitration entered into force on 1 June 2013. The arbitral tribunal's fees are determined exclusively by the Institute, mostly based on the monetary value of the dispute. However, when fixing the arbitrator's fee, in addition to the monetary value of the dispute, the Institute considers the complexity of the dispute, the time spent on the case and the diligence and efficiency of the arbitrator.

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

Most types of disputes are arbitrable, as the general rule under the Arbitration Act is that any dispute in a civil or commercial matter, which can be settled by an agreement between the parties, is arbitrable (section 2). However, in terms of arbitrability it is not relevant whether mandatory rules of law have to be applied (ie, the arbitral tribunal may even decide on issues concerning public policy). Examples of disputes that are not arbitrable include questions involving criminal law and family law matters.

Disputes between the parties regarding antitrust and competition law matters are arbitrable. Also IP disputes are arbitrable in most cases.

Intracompany disputes are arbitrable. An arbitration clause in the articles of association is binding on the company and its bodies as well as the shareholders. Furthermore, an arbitration clause in the articles of association regarding the redemption right or the redemption price under a redemption clause is binding on the parties to the dispute.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

The arbitration agreement must be in writing (Arbitration Act, section 3). An arbitration agreement is also considered to be in writing when the parties have agreed on arbitration by exchanging letters, e-mails, faxes or other such documents.

In addition, arbitration clauses in wills, deeds of gift, bills of lading or similar documents, in the by-laws of an association, of a foundation, of a limited liability company or of another company or corporate entity, and by which the parties or the person against whom a claim is made are bound, shall have the same effect as arbitration agreements (section 4).

Arbitration clauses may also be contained in general terms and conditions. However, the question of whether the general terms and conditions have been effectively incorporated in the agreement is decided based on the general principles of contract law.

In consumer-related matters, a term in a contract concluded before a dispute arises, under which a dispute between a company and a consumer shall be settled in arbitration, is not binding on the consumer.

The arbitral award cannot be set aside on the basis that a written arbitration agreement does not exist, if the party, by taking part in the proceedings without stating its objection or otherwise, shall be considered to have waived the 'in writing' requirement (section 41).

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

An arbitration agreement is independent of the underlying contract and it is therefore enforceable regardless of the validity or termination of the underlying contract for any reasons. An arbitration agreement is also enforceable regardless of the insolvency or death of the other party.

An arbitration agreement could be considered to be no longer enforceable in some rare cases, for example, for reasons of equity or legal incapacity under the general principles of contract law.

11 Third parties – bound by arbitration agreement

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

As a general rule, third parties and non-signatories cannot be bound by an arbitration agreement. In case of (effective) assignment, agency relationship, succession or insolvency, the assignee, principal, successor or bankruptcy estate is generally bound by the arbitration agreement.

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 Arbitration Act does not contain any provisions regarding third-party participation in arbitration. Third-party participation is therefore possible in ad hoc arbitration only with the consent of all parties.

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. However, the general principles of contract law, such as (implied) assignment, may in some cases lead to a somewhat similar outcome as such doctrine.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The Arbitration Act does not contain any provisions regarding multiparty arbitration. The parties may enter into a multiparty arbitration agreement. However, if the agreement does not contain any terms regarding the amount of arbitrators (by default, three) and the constitution of the arbitral tribunal, and the parties on 'one side' cannot agree on a joint nomination of an arbitrator, multiparty arbitration (ad hoc) is not possible. However, the Institute's rules contain an article (article 19) regarding the appointment of arbitrators in multiparty arbitration.

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?

Unless otherwise agreed by the parties, anyone of age who is not bankrupt and whose competence has not been restricted, may act as an arbitrator (Arbitration Act, section 8). Also active and retired judges may act as arbitrators. However, active judges generally only act as a chairman or a sole arbitrator and their employer may set certain conditions for them, such as how many pending cases they can have at the same time.

Contractually stipulated requirements for arbitrators are, in most cases, enforceable.

16 Default appointment of arbitrators

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

The default number of arbitrators under the Arbitration Act is three (section 7). Each party shall appoint one arbitrator and the appointed arbitrators shall appoint the third arbitrator to act as the chairman (section 13). If the parties have agreed that the dispute is to be decided by a sole arbitrator, the parties have to agree on the appointment of an arbitrator. The court shall appoint the arbitrator upon request of a party if a party has not appointed an arbitrator within 30 days of receipt of the notice of arbitration (see question 23), or if the arbitrators appointed by the parties have not, within 30 days of their appointment, agreed on the chairman or if the parties have not reached an agreement on the sole arbitrator within 30 days of receipt of the notice of arbitration (sections 15 and 16).

Under the rules of the Institute, the arbitral tribunal shall by default be composed of a sole arbitrator, unless the Institute's board of directors determines that an arbitral tribunal composed of three arbitrators is appropriate, taking into account the amount in dispute, the complexity of the case, any proposals made by the parties and any other relevant circumstances (article 16). If the dispute shall be decided by a sole arbitrator, the parties may jointly nominate the sole arbitrator for confirmation

and failing such joint nomination within the applicable time limit, the Institute's board of directors shall appoint the arbitrator (article 17). If the dispute shall be decided by three arbitrators, each party shall nominate one arbitrator for confirmation and the parties may jointly nominate the third arbitrator for confirmation to act as the chairman, and if either party fails to nominate an arbitrator or the parties fail to jointly nominate the chairman, the Institute shall appoint the arbitrator or the chairman (article 18). The Institute's rules also contain an article (article 19) regarding the appointment of arbitrators in multiparty arbitration.

17 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?

Respecting party autonomy, the Arbitration Act provides that an arbitrator may always be removed by an agreement between the parties for any reason. A party, who has appointed an arbitrator and informed the other party thereof, cannot revoke its appointment without the consent of the other party (sections 18 and 19).

An arbitrator shall be and will remain impartial and independent in relation to the parties. If an arbitrator accepts their appointment, he or she must immediately disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence and he or she must disclose throughout the proceedings any such circumstances of which the parties have not previously been informed (section 9). An arbitrator may be challenged by a party if the arbitrator would have been disqualified to handle the matter as a judge or if circumstances give rise to justifiable doubts as to the arbitrator's impartiality or independence (section 10). The requirements for judges, which are by reference applied also to arbitrators, are set out in Chapter 13 of the Code of Judicial Procedure of 1734 (with amendments).

If the parties have not agreed otherwise on the procedure for challenging an arbitrator, a party shall make a challenge within 15 days from becoming aware of the constitution of the arbitral tribunal, and of any circumstance giving rise to justifiable doubts as to the arbitrator's impartiality or independence. The challenge shall be made in writing to the arbitral tribunal and it shall include a statement of the reasons for the challenge. Unless the challenged arbitrator withdraws from his or her office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge. The arbitral tribunal's decision is not subject to appeal, so if the arbitral tribunal dismisses the challenge, the challenging party's only recourse is to later request the arbitral award to be set aside by the court (sections 11, 19 and 41).

When evaluating the impartiality and independence of the arbitrators, guidance is, in addition to other relevant sources, often sought from the IBA Guidelines on Conflicts of Interest in International Arbitration.

If an arbitrator is unable to perform his or her functions in an adequate manner or if the arbitrator, without just cause, delays the arbitration, the court shall remove the arbitrator upon request of a party. Before an arbitrator is removed, he or she shall, whenever possible, be given an opportunity to be heard. The decision of the court is not subject to appeal (section 19).

If an arbitrator dies, resigns or is removed, a substitute arbitrator shall be appointed in the same manner as the predecessor was appointed, unless agreed otherwise by the parties. If the substitute arbitrator dies, resigns or is removed, the 'second' substitute arbitrator is appointed by the court upon request of either party (section 14).

In case a party has appointed an arbitrator contrary to the requirements stipulated for arbitrators in the arbitration agreement (see question 15), the jurisdiction of the arbitral tribunal may be challenged by the other party (see questions 21 and 42).

18 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.

There are no provisions in the Arbitration Act regarding the relationship between parties and arbitrators. According to a decision given by the Supreme Court of Finland (KKO 2005:14), the relationship between parties and arbitrators is 'comparable' to a contractual relationship irrespective of who appointed the arbitrator. The same rules of impartiality and independence apply to all arbitrators (ie, also to party-appointed arbitrators (see question 17)).

Unless otherwise agreed or provided, the parties are jointly and severally liable to pay compensation to the arbitrators for their work and expenses and unless otherwise provided in a manner binding on the arbitrators (eg, in the rules of the Institute), the arbitral tribunal may in its award fix the compensation due to each arbitrator and order the parties to pay. The compensation to the arbitrators shall be reasonable in amount, taking into account the time spent, the complexity of the subject matter and other relevant circumstances. The parties have a right, within 60 days of the date on which he or she received a copy of the arbitral award, to appeal against the decision of the arbitrators with regard to the amount of compensation due to them (Arbitration Act, sections 46 and 47).

19 Immunity of arbitrators from liability

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

There are no provisions in the Arbitration Act regarding arbitrators' liability. In a case regarding a biased arbitrator, the Supreme Court of Finland (KKO 2005:14) ruled that arbitrators may be held liable for their negligence. However, for example, the rules of the Institute contain an article (article 51) regarding the limitation of arbitrators' liability to the extent that such limitation of liability is not prohibited by applicable law (it is usually prohibited in case of gross negligence and intentional breach, for example).

Jurisdiction and competence of arbitral tribunal

20 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?

A court before which an action is brought in a matter that is the subject of an arbitration agreement shall refer the parties to arbitration if a party so requests, at the latest when submitting his or her first statement on the substance of the dispute (Arbitration Act, section 5).

21 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 (competence–competence). A party is precluded from raising a jurisdictional objection if he or she, by submitting a statement on the substance of the dispute or by otherwise taking part in the proceedings without stating his or her objection, shall be considered to have waived his or her right (Arbitration Act, section 41). However, the arbitral tribunal's decision is not final and the arbitral award can later be challenged (see question 42).

Arbitral proceedings

22 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?

Unless the parties have agreed upon the place (seat) and language of arbitration, the arbitral tribunal shall determine the place of arbitration and the language to be used in the arbitral proceedings. Furthermore, the arbitral tribunal may, where appropriate, hear parties, witnesses and experts and also make inspections in other places than the place of arbitration. The arbitral tribunal may also order that any document submitted to the tribunal shall be accompanied by a translation into a language of the proceedings (Arbitration Act, sections 24 and 26).

23 Commencement of arbitration

How are arbitral proceedings initiated?

Under the Arbitration Act (section 12), a party who wishes to initiate arbitral proceedings shall send a notice of arbitration in writing to the other party. The notice shall include a reference to the arbitration agreement and the dispute that is intended to be referred to arbitration, as well as the arbitrator appointed by the party requesting arbitration (or if the case shall be decided by a sole arbitrator, a proposal for the appointment). The other party shall also, at the same time, if applicable, be advised to appoint an arbitrator of his or her choice. If the arbitration agreement provides for the appointment of an arbitrator by someone other than the parties (eg, an arbitral institution), the notice shall also be sent to the appointing authority agreed upon by the parties and this authority shall be requested to make the appointment. The arbitral proceedings shall be deemed to have commenced when the other party has received the notice of arbitration (section 21).

Under the rules of the Institute (article 6), the party initiating arbitration shall submit a request for arbitration to the Institute with one copy for each party, each arbitrator and the Institute. The request shall be submitted in the language of the arbitration as agreed by the parties and failing such agreement, in the language of the arbitration agreement. The request shall contain a number of details as set out in article 6.3 of the rules of the Institute, and if the request does not contain such details, the Institute may direct the party requesting arbitration to remedy the defect within the time limit set by the Institute. The arbitral proceedings shall be deemed to have commenced when the Institute has received the request for arbitration.

24 Hearing

Is a hearing required and what rules apply?

A hearing is not a mandatory requirement under the Arbitration Act and thus, the parties may agree upon whether a hearing is held. However, it is an established practice that a hearing is held and under the mandatory provision of the Arbitration Act (section 22), the arbitral tribunal shall always give the parties a sufficient opportunity to present their case. An arbitral tribunal will therefore, as a rule, hold a hearing at a party's request. If no hearing is held (even in case of the parties' mutual agreement), it could in some cases lead to the arbitral award being set aside by the court (section 41).

Under the rules of the Institute (article 34), the arbitral tribunal may, at any stage of the proceedings, hold a hearing. Holding a hearing is thus ultimately at the arbitral tribunal's discretion, but an arbitral tribunal shall take the parties' views into consideration. It is also common practice under the rules of the Institute that a hearing is held.

25 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?

The parties may agree upon the rules to be applied in establishing the facts of the case and taking evidence. Failing such agreement, the arbitral tribunal may decide on the conduct of the arbitration while promoting an appropriate and speedy handling of the matter (Arbitration Act, sections 23 and 27).

A wide variety of evidence, inspections and examinations of party representatives, witnesses and experts is generally admitted. Parties may also agree upon, or the arbitral tribunal may order, written witness testimonies to be submitted, although such witnesses are often also heard in the hearing. There is a strong tendency towards party-appointed experts, but also an arbitral tribunal may appoint an expert, unless agreed otherwise by the parties. An arbitral tribunal may also require a party or other person to appear for examination as well as request a party or any other person in possession of a written document or other object, which may have relevance as evidence, to produce the document or object, unless agreed otherwise by the parties. The arbitral tribunal may freely assess the relevance and weight of all the evidence introduced (or not introduced) during the proceedings.

IBA Rules on the Taking of Evidence in International Arbitration are often applied in international arbitration.

26 Court involvement

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

If the arbitral tribunal considers it necessary, a party may request court assistance in examining a witness or an expert in the court, or examining a party under oath, or ordering a party or another person to produce a written document or other object that may be of relevance as evidence (Arbitration Act, section 29).

In addition, a court may, to some extent, intervene in the following circumstances: appointment of arbitrators (see question 16), replacement of arbitrators (see question 17), jurisdiction of the arbitral tribunal (see question 21) and interim measures (see question 28).

27 Confidentiality

Is confidentiality ensured?

The Arbitration Act is silent on the confidentiality issue. In general, the parties do not owe a duty of confidentiality to each other in arbitration in any respect. However, such duty may derive from the arbitration agreement, the parties' underlying contract or other contracts, rules of an arbitral institution, or in some cases from laws that regulate the use of trade secrets. The arbitral proceedings are customarily held in private. If enforcement proceedings are initiated, the proceedings in the court are, as a rule, public and the arbitral award might become public (parties may request that trade secrets are not disclosed).

Interim measures and sanctioning powers

28 Interim measures by the courts

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

Under the Arbitration Act, a court or another authority may, before or during the arbitral proceedings, grant such interim and protective measures that the authority has the power to grant (section 5). The Arbitration Act is silent on interim measures by an arbitral tribunal and thus, in the absence of a party agreement, the courts have an exclusive right to order binding interim measures.

29 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 Arbitration Act does not contain any provisions regarding an emergency arbitrator.

Under the rules of the Institute, 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, unless the parties have exercised their right to opt out of the application of the provisions regarding an emergency arbitrator (article 36). The Institute shall seek to appoint an emergency arbitrator within two days after receipt of both the application and the application deposit, and the emergency arbitrator shall have the same power to grant any interim measures of protection as the arbitral tribunal (Appendix III). However, arbitrator-ordered interim measures are not enforceable in the courts or by other authorities.

30 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 parties may agree that the arbitral tribunal may order interim measures. Failing such agreement, the arbitral tribunal may not, under the Arbitration Act, order any interim measures.

Under the rules of the Institute, the arbitral tribunal may, at the request of a party, grant any interim measures of protection it deems appropriate, but the arbitral tribunal may make the granting of any interim measure subject to appropriate security being furnished by the requesting party for any costs or damage that such measure may cause to the party against which it is directed (article 36).

However, arbitrator-ordered interim measures are not enforceable in the courts or by other authorities.

31 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?

There are no specific provisions in the Arbitration Act or the rules of the Institute regarding sanctioning powers. However, in order to safeguard an appropriate and speedy handling of the matter, the arbitral tribunal may issue orders it deems appropriate during the proceedings. Unless otherwise agreed by the parties, the arbitral tribunal may also take a party's 'guerrilla tactics' into consideration in the allocation of costs between the parties.

Awards

32 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?

Failing party agreement, the arbitral award may be made by a majority of the arbitrators and if no majority of votes is attained for any opinion, the opinion of the chairman shall prevail (Arbitration Act, section 32).

33 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

The Arbitration Act is silent on this issue, but it is an established practice that an arbitrator may write a dissenting opinion to the arbitral award.

34 Form and content requirements

What form and content requirements exist for an award?

Under the Arbitration Act, an arbitral award shall be made in writing and signed by the arbitrators. The award shall also include the date on which it was given and the place of arbitration as agreed or determined. In addition, the parties shall, in the award, be informed of their right to appeal against the decision of the arbitrators with regard to the amount of compensation due to the arbitrators (see question 18) (Arbitration Act, sections 36 and 47).

35 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 Arbitration Act does not contain any specific time limit for the arbitral award to be rendered. However, the arbitral tribunal shall promote speedy handling of the matter (sections 23 and 27).

Under the rules of the Institute, the arbitral award shall be rendered no later than nine months from the date on which the arbitral tribunal received the case from the Institute. The Institute may extend this time limit upon a reasoned request of the arbitral tribunal or, if deemed necessary, on its own motion. The extension does not require the parties' consent (article 42).

36 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 the arbitral award is decisive only in terms of the arbitral tribunal correcting the award at its own initiative (see question 41). Otherwise, the date of delivery is decisive (see questions 41 and 42).

37 Types of awards

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

In addition to final awards, an arbitral tribunal may, under the Arbitration Act, render partial awards and awards based on the parties' settlement (sections 33 to 35). Partial award may concern an independent claim, a specific part of a claim that has been admitted by the respondent or a separate issue in dispute that is relevant for the resolution of the other matters in dispute.

38 Termination of proceedings

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

If the parties agree on the termination of the proceedings, or if the arbitral tribunal finds that the continuation of the proceedings has for any other reason become impossible, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings. If the claimant withdraws the claim, the arbitral tribunal shall also issue an order for the termination of the arbitral proceedings. However, if the respondent objects thereto and the arbitral tribunal recognises that the respondent has a legitimate interest in obtaining a final award, the proceedings may be continued and the dispute decided by an arbitral award (Arbitration Act, section 30).

The Arbitration Act is silent on a party's default. However, it is an established practice that the arbitral tribunal may continue the proceedings in spite of the respondent's default in case the constitution of the arbitral tribunal has been appropriate.

39 Cost allocation and recovery

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

Pursuant to the Arbitration Act (section 49), the arbitral tribunal may, unless otherwise agreed by the parties, in its award or in any other decision concerning the termination of the arbitral proceedings, order a party to compensate, in whole or in part, the other party for his or her normal legal costs, in accordance with the provisions of the Code of Judicial Procedure on the compensation for legal costs, where applicable. A party always has to request compensation for his or her costs. The main rule is that the costs of the arbitration are borne by the losing party and he or she is ordered to compensate the other party's costs. Recoverable costs include the arbitral tribunal's fees and costs, and attorneys' fees and costs, as well as in-house fees and costs to limited extent.

40 Interest

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

Interest may be, upon request, awarded for both principal claims and costs. Failing party agreement, and if Finnish law is applicable, the delay interest is awarded in accordance with the Interest Act of 1982 (with amendments), under which the annual interest rate has been approximately 8 per cent for several years.

Update and trends

The rules of the Arbitration Institute of the Finland Chamber of Commerce were recently revised; the revised arbitration rules and rules for expedited arbitration entered into force on 1 June 2013. The new rules represent international best practices and the key objectives of the revision were speed and cost-efficiency, party autonomy, effective administration of multiparty arbitrations, parties' access to pre-arbitral and arbitrator-ordered interim relief as well as confidentiality of the arbitration and the award. The main objective of the reform was to raise Finland's profile and attract more international arbitration cases to Finland.

Proceedings subsequent to issuance of an award

41 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?

The arbitral tribunal may, under the Arbitration Act (section 38), correct errors in computation, clerical or typographical errors and any other errors of a similar nature upon a party's request or at its own initiative. A party shall, after having notified the other party thereof, request the correction within 30 days of receipt of a copy of the arbitral award, unless some other period of time has been agreed upon by the parties. If an arbitral tribunal shall correct the award at its own initiative, the 30-day time limit starts from the date of the award.

In addition, unless otherwise agreed by the parties, a party may, after having notified the other party thereof, ask the arbitral tribunal within 30 days of receipt of the award to make an additional award as to claims presented in the arbitral proceedings but omitted from the award (section 39). If the arbitral tribunal considers the request to be justified, it shall make the additional award as soon as possible.

42 Challenge of awards

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

Under the Arbitration Act (section 40), an arbitral award is considered null and void:

- to the extent that the arbitral tribunal has decided, in the award, that an issue that is not arbitrable under Finnish law;
- to the extent that the recognition of the award would be contrary to the public policy of Finland;
- if the award is so obscure or incomplete that it is unclear how the dispute has been decided; or
- if the award has not been made in writing or signed by the arbitrators.

Where one or several of the above criteria are met, the award is null and void even without a court order. However, in practice, a party may need to challenge the award in court and request for the award to be declared null and void. There is no time limit for such claim.

Under the Arbitration Act (section 41), an arbitral award may be set aside by the court upon request of a party if:

- the arbitral tribunal has exceeded its authority;
- an arbitrator has not been properly appointed;
- an arbitrator is biased but a challenge properly made by a party has not been accepted before the award was made, or if a party has become aware of the ground for the challenge so late that he or she has not been able to challenge the arbitrator before the award was made; or
- the arbitral tribunal has not given a party a sufficient opportunity to present his or her case.

A party shall bring his or her action for setting aside an award within three months of the date on which he or she received a copy of the award or, if a party has requested correction of the award or an additional award, of the date on which he or she received a copy of the arbitral tribunal's decision regarding such request. However, a party may not to request the setting aside of an award under the first three grounds above, if he or she, by taking part in the proceedings without stating his or her objection or otherwise, shall be considered to have waived his or her right to rely on the said grounds.

43 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?

There are three levels of public courts: the district courts, courts of appeal and the Supreme Court. However, appealing to the Supreme Court is subject to the Supreme Court granting leave to appeal. The duration of the proceedings depends on the specifics of the case, but it generally takes approximately one to two years at each level until a challenge is decided. The challenge proceedings are often similar to other civil cases and therefore the attorneys' fees and costs may be significant (court fees are only a few hundred euros). Costs are appointed according to the same principles as in other civil cases (ie, generally following the 'loser pays' principle).

44 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?

The domestic courts tend to look rather favourably upon enforcing awards. The criteria for refusing recognition and enforcement are slightly different for domestic and foreign awards.

An application for the enforcement of domestic or foreign awards, submitted to the court of first instance, shall be accompanied by the original arbitration agreement and by the original arbitral award or certified copies thereof. If the document is not in Finnish or Swedish, it shall be accompanied by a certified translation into either of these languages, unless the court grants an exemption. In practice, the courts generally accept documents also in English. Before an application is granted, the party against whom enforcement is sought shall be given an opportunity to be heard, unless there is a special reason to the contrary. Unless a witness or another person is to be heard in person, the District Court shall deal with the matter in chambers (Arbitration Act, sections 43, 54 and 55).

With regard to domestic awards, the court may refuse recognition and enforcement only if it finds that the award is null and void or if the award has been set aside by a court (see question 42), or if a court, because of an action for declaring an award null and void or for setting it aside, has ordered that any enforcement of the award shall be interrupted or suspended (section 44).

With regard to foreign awards, the court may refuse recognition and enforcement only if the conditions set out in the Arbitration Act (sections 52 and 53) are met. Those provisions are, to a large extent, similar to the NY Convention (article V), but the Arbitration Act is slightly more favourable for recognition and enforcement in some respects. The court shall, at its own initiative, only review whether the award is, to some extent, contrary to the public policy of Finland. Furthermore, the court may, if it considers it proper, adjourn a decision on the enforcement of the award if the party against whom enforcement is sought invokes that it has made an application for declaring the award null and void, or for setting it aside or for suspension of the award to a competent authority in a state in which, or under the laws of which, that award was made. The court may at the same time order the other party to give suitable security and decide that the adjournment is subject to the condition that such security is given (Arbitration Act, sections 52, 53 and 55 and NY Convention, articles V and VI).

45 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?

The domestic courts shall not enforce foreign arbitral awards that have been set aside by the courts in the place of arbitration (Arbitration Act, section 53).

46 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?

Orders by emergency arbitrators are not enforceable in the courts or by other authorities.

47 Cost of enforcement

What costs are incurred in enforcing awards?

The costs of enforcement mainly comprise attorneys' fees, court fees, fees of execution authorities' and possible translation costs. The court fees are only a few hundred euros and costs of the execution authorities are minimal. However, if the other party objects to the enforcement, the proceedings are often similar to other civil cases, which means the attorneys' fees and costs may be significant.

Other

48 Judicial system influence

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

There are no dominant features that would typically influence an arbitrator. In general, the proceedings are more influenced by the parties' background and views. There is no US-style discovery under the Arbitration Act, unless the parties agree otherwise (for document production, see question 26). Written witness statements are used quite often in international arbitration.

49 Professional or ethical rules applicable to counsel

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

If the attorney is a member of the Finnish Bar Association, he or she shall comply with the Bar Association's Code of Conduct, which contains the relevant professional and ethical standards. There are no specific professional or ethical rules applicable to foreign counsels. The best practice in Finland reflects, to large extent, the IBA Guidelines on Party Representation in International Arbitration.

50 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

There are no common particularities that a foreign practitioner should be aware of. The principle of party autonomy is respected in Finnish arbitration and the parties may, to a large extent, agree on the conduct of the proceedings. As Finland is a member state of the European Union, applicable EU regulations regarding visa requirements, work permits and taxes, for example, are followed in Finland.

Bird & Bird

Tom Vapaavuori **tom.vapaavuori@twobirds.com**
Juha Ojala **juha.ojala@twobirds.com**

Mannerheimintie 8
00100 Helsinki
Finland

Tel: +358 9 622 6670
Fax: +358 9 622 6677
www.twobirds.com

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