

# Revised FAI Arbitration Rules and Rules for Expedited Arbitration Enter into Force on 1 January 2024

[arbitration.fi/en/2023/12/revised-fai-arbitration-rules-and-rules-for-expedited-arbitration-enter-into-force-on-1-january-2024](https://arbitration.fi/en/2023/12/revised-fai-arbitration-rules-and-rules-for-expedited-arbitration-enter-into-force-on-1-january-2024)

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The Finland Arbitration Institute (FAI) revises the Arbitration Rules of the Finland Chamber of Commerce (FAI Rules) and the Rules for Expedited Arbitration of the Finland Chamber of Commerce (FAI Expedited Rules) as of 1 January 2024.

The FAI will publish the revised FAI Rules and FAI Expedited Rules, as well as updated forms and guidelines and an updated cost calculator, on its website during December 2023. FAI letter templates and the FAI website will be otherwise updated around the new year 2023–2024.

## **FAI to adopt gender-neutral terminology in Finnish and Swedish**

The FAI will as of 1 January 2024 adopt new gender-neutral terminology in its Finnish and Swedish language FAI Rules and FAI Expedited Rules. The English language versions of the FAI Rules and FAI Expedited Rules do not require similar updates.

In updating its Finnish and Swedish terminology, which have been based on gendered terms, the FAI follows the Nordic equal example set by the SCC Arbitration Institute.

## **FAI to update the cost and fee Tables A and B in Appendix II to the FAI Rules and FAI Expedited Rules – the same Filing Fee and cost and fee tables to be applied in all FAI arbitrations as of 1 January 2024**

The FAI will as of 1 January 2024 update the cost and fee Tables A and B in Appendix II to the FAI Rules and FAI Expedited Rules. Table A sets out the Administrative Fee of the FAI and Table B the fee of the arbitrator.

As of 1 January 2024, the Filing Fee will be EUR 3,000 in all FAI arbitrations, and the same cost and fee tables will be applied in both proceedings under the FAI Rules and the FAI Expedited Rules.

- The FAI has last updated the cost and fee Tables A and B in Appendix II to the FAI Rules and FAI Expedited Rules on 1 June 2017. Inflation between June 2017 and end of year 2023 has been close to 20%. The current cost and fee Tables A and B have not been able to follow the general cost-of-living development.
- The FAI will update the cost and fee Tables A and B in Appendix II to the FAI Rules and FAI Expedited Rules as of 1 January 2024 to correspond to the general cost-of-living development. In addition, the FAI aims to address feedback indicating that the arbitrators' fees have from time to time been low, particularly in relation to the workload in expedited and lower-value cases.
- The FAI will as of 1 January 2024 apply the same cost and fee Tables A and B to arbitrations under the FAI Rules and the FAI Expedited Rules. Most expedited arbitrations at the FAI correspond to arbitrations under the FAI Rules in their complexity and the amount of work required both from the FAI and the arbitrator. Therefore, applying separate cost and fee tables to expedited arbitrations has not been deemed feasible going forward.
- As of 1 January 2024, the FAI will apply the same Filing Fee of EUR 3,000 in all FAI arbitrations.
- The FAI will update the cost and fee Tables A and B in Appendix II to the FAI Rules and FAI Expedited Rules as of 1 January 2024 with an approximate increase of 15% to the FAI Administrative Fee and with an approximate increase of 20% to the fee of the arbitrator. In addition, the lowest margins in the cost and fee tables will be merged.
- As the FAI updates the cost and fee Tables A and B, the FAI will also update its practices in fixing the costs of the arbitration pursuant to Art. 49 of the FAI Rules and Art. 47 of the FAI Expedited Rules. In applying the cost and fee tables in force until 31 December 2023, the FAI has fixed the arbitrator's fee either at the median fee or at a fee between the median fee and the maximum fee. The FAI has fixed the fee below the median fee only in very few cases to sanction the arbitrator, if the arbitrator has, e.g., delayed the rendering of the final award without an acceptable cause.
- As of 1 January 2024, the FAI will continue to assess the fee of the arbitrator with the median fee as a general baseline. However, going forward, the FAI will pay increased attention to the circumstances of each individual case when fixing the costs of the arbitration and will utilise the entire fee table from the minimum fee to the maximum fee.

- For instance, if the FAI is fixing the costs of the arbitration in an expedited or otherwise straightforward case, the FAI may fix the arbitrator's fee below the median fee. Therefore, the FAI may still apply a lower cost level particularly in expedited cases where justified in the circumstances of the case.

## **FAI to add and revise certain provisions in the FAI Rules and the FAI Expedited Rules**

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In addition to the updated terminology and cost and fee Tables A and B, the FAI will add a few new provisions to the FAI Rules and the FAI Expedited Rules as well as make limited revisions to wordings currently adopted in both rules.

- New subsections 15.2(c)–(e) will be added to Art. 15.2 of the FAI Rules and the FAI Expedited Rules regarding the separation of arbitrations. The new subsections will be applicable when claims are made pursuant to Art. 13 under more than one arbitration agreement, and the FAI Board will make a *prima facie* jurisdictional decision. If the Board does not allow the arbitration to proceed regarding claims made under one or several of the arbitration agreements, the Board shall separate the claims made under the arbitration agreement or each of the arbitration agreements in question to be determined in a separate arbitration or arbitrations. The separated arbitration(s) shall be deemed to have commenced on the same date as the original arbitration from which the arbitration(s) is/are separated.
- Art. 18.1 of the FAI Rules and Art. 18 of the FAI Expedited Rules will be revised to allow the parties to jointly nominate the sole arbitrator for confirmation by the FAI within 10 days from the date on which the respondent's Answer to the Request for Arbitration was received by the claimant. In the current rules, the time limit for joint nomination is the same date as the date for submitting the respondent's Answer. This has been viewed problematic, as the claimant will have to participate in nominating the arbitrator before it has seen the respondent's Answer. The corresponding change to the time limit will be made to Art. 20.2(a) of the FAI Rules and Art. 19(a) of the FAI Expedited Rules concerning multi-party arbitrations.
- New sub-articles 21.5–21.6 will be added to the FAI Rules and 20.5–20.6 to the FAI Expedited Rules to the provisions regulating the impartiality and independence of arbitrators. The new sub-articles require the parties to disclose the existence and identity of any third party, which has entered into an arrangement for the funding of claims or defences in the arbitration (third party funding), and any changes or additions regarding party representation in the arbitration. The purpose of the new sub-articles is to further safeguard the impartiality and independence of arbitrators. Similar provisions have been adopted to other institutional arbitration rules.
- Arts. 36.1 and 36.3 of the FAI Rules and Art. 35.5 of the FAI Expedited Rules will be clarified with regard to the use of remote connections in hearings.
- Art. 41.2 of the FAI Rules and Art. 40.2 of the FAI Expedited Rules will be clarified with regard to the application of the provisions in relation to the cut-off date rule under Art. 35 of the FAI Rules and Art. 34 of the FAI Expedited Rules.

- New sub-article 47.6 will be added to the FAI Rules and 45.6 to FAI Expedited Rules clarifying that the provisions on correction and interpretation of an award shall also apply to an order for the termination of the proceedings.
- Art. 2.2 of Appendix I to the FAI Rules and FAI Expedited Rules will be revised with regard to the term of office of the FAI Board members. As a rule, the maximum term will be shortened from the current nine (9) years to six (6) years.
- Art. 2.4 of Appendix I to the FAI Rules and FAI Expedited Rules will be clarified with regard to the use of remote connections in the FAI Board's decision making.
- New sentence will be added to Art. 2.2(d) of Appendix II to the FAI Rules and FAI Expedited Rules. Pursuant to the addition, the FAI may also determine the amount in dispute in other exceptional circumstances. The provision states in its current form that where the amount in dispute cannot be ascertained, the FAI shall determine the amount in dispute taking into account all relevant circumstances. The purpose of the addition is to give the mandate to decide the amount in dispute to the FAI also in situations where, e.g., the amount in dispute is disputed or unclear, or where the FAI deems based on the case documents and other information available that the amount in dispute has been purposefully deflated or inflated.
- New sub-article 5.5 will be added to Appendix II to the FAI Rules and FAI Expedited Rules clarifying the fee payable to the FAI when the FAI acts as appointing authority in an ad hoc arbitration. The amount of the fee remains the same at EUR 3,000. The fee is non-refundable.
- New sub-article 5.6 will be added to Appendix II to the FAI Rules and FAI Expedited Rules clarifying that a party making or receiving any payments concerning the costs of the arbitration shall be liable for all bank charges and other fees incurred in connection with these payments.