

# **FAI Mediation Guidelines**

*(to be amended from time to time)*

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*The Preamble of the Mediation Rules of the Finland Chamber of Commerce (“Mediation Rules”) gives a brief overview of the characteristics of the mediation under the Mediation Rules that the Arbitration Institute of the Finland Chamber of Commerce (“FAI”) administers (“FAI Mediation”). The purpose of these FAI Mediation Guidelines is to explain the process of FAI Mediation and to offer practical guidance on FAI Mediation and the application of the Mediation Rules.*

## **I. What is mediation?**

1. Mediation is a voluntary and confidential process in which a neutral third party (a mediator) assists the parties (two or several) in settling their disputes amicably and/or in avoiding disputes. It is often characterized as a cost-effective, fast, flexible, straightforward, and user-friendly way of settling or avoiding disputes.
2. The mediator’s role is to assist the parties in finding an amicable solution by facilitating discussions, exchange of information, and negotiations between the parties. In facilitative mediation, the mediator does not make decisions or rulings as to the merits of the case.
3. In mediation, the parties are in control of the process and its outcome, and have greater freedom than when using other dispute resolution methods to participate in settling their dispute. Also, the mediation process allows parties to consider the conflict from a broader perspective than merely focusing on the legal aspects of the dispute.
4. A mediation process may have many positive effects for both business and private users. For example, the use of mediation generally helps to establish and maintain business and personal relationships. Mediation permits the parties to explore mutually acceptable areas of settlement by focusing on the parties’ interests and the future, instead of only their rights and obligations and events in the past.
5. The outcome of a mediation, when successful, is a settlement agreement, which is binding on the parties as an agreement.
6. All businesses and industries may benefit from mediation. Mediation is suitable for the resolution and avoidance of both domestic and international conflicts and disputes regardless of their size and complexity.

## **II. What characterizes FAI Mediation?**

7. The Mediation Rules are intended to provide a flexible, straightforward and user-friendly framework for facilitative mediation. In the Mediation Rules, the mediation process is regulated only lightly in order to provide the parties and the mediator with the flexibility to tailor the process to the needs of each particular situation.
8. FAI Mediation can be used in any dispute that has been agreed to be settled under the Mediation Rules by the parties and within the limits of the applicable law. The parties may agree on mediation by including a mediation clause in their contract. The parties may also agree on mediation after a dispute has arisen between them. The FAI recommends the use of the model mediation clause included in the Mediation Rules.
9. When the parties agree to settle any dispute by mediation under the Mediation Rules, this will be deemed to mean that the parties wish the FAI to administer the mediation and the Mediation Rules are part of the agreement to mediate. The parties may agree to deviate from the Mediation Rules for their particular case. However, the FAI may decline to administer the mediation if it considers that these deviations to the Mediation Rules are not compatible with the characteristics of FAI Mediation and the Mediation Rules.

10. FAI Mediation is a voluntary process. If any of the parties objects to FAI Mediation or does not submit a response to the Request for mediation within the time limit determined by the FAI, the FAI may declare that the mediation has terminated. See however Section VIII below.
11. FAI Mediation is also a confidential process. Unless otherwise agreed by the parties or required by applicable law, the parties, the mediator, the FAI and any other person participating in the proceedings shall keep the existence and outcome of any FAI Mediation confidential, as well as any statement or information made or obtained during the mediation. Any settlement reached through FAI Mediation shall be confidential, except for the purposes of its enforcement or implementation in conformity with the applicable law.

### **III. What is the role of the FAI?**

12. The FAI administers mediations governed by the Mediation Rules. The FAI manages the initiation of mediation process and appoints, if requested to do so by the parties, and confirms the mediator(s). Further, the FAI determines the advance on costs and the total costs of the mediation.
13. The parties may agree to use the arbitration services provided by the FAI if they fail to reach a full settlement in FAI Mediation or if they want to confirm a settlement in an arbitral award.

### **IV. III. What is the role of the mediator?**

14. The role of the mediator is to function as a facilitator of the settlement. The mediator facilitates discussions, exchange of information, and negotiations between the parties with the aim of assisting the parties in finding an amicable solution and a negotiated agreement that is acceptable to all parties. The mediator assists the parties during the process by providing the opportunity to vent in private meetings (caucus) and by helping the parties explore and find alternative solutions both in private and joint meetings.
15. Unlike in litigation or arbitration, in facilitative mediation the mediator does not have the authority to give any binding decisions or awards as to the merits of the dispute. However, if the parties request it and the mediator consents, the mediator can make proposals as to the content of the settlement.

### **V. How is a mediator designated?**

16. The parties may jointly nominate a mediator for confirmation by the FAI. At the request of the parties, the FAI may also propose prospective mediators for the parties to consider. Where the parties do not jointly nominate a mediator, the FAI shall make the appointment.
17. Although it is common in mediation to have only one mediator, if the parties' agreement provides that several mediators are to be appointment, the parties may jointly nominate any or all of the mediators for confirmation by the FAI.
18. All nominations of mediators are subject to confirmation by the FAI. The appointment of any mediator shall become effective only upon such confirmation.

19. The FAI may decline confirmation of a nomination if the prospective mediator fails to fulfill the requirements of impartiality and independence set forth in Article 6.1 of the Mediation Rules, or if the prospective mediator is otherwise unsuitable to serve as mediator. The FAI has no obligation to give reasons for its decisions.
20. Where the FAI declines confirmation, it may appoint or confirm another mediator if requested to do so by the parties.

## **VI. Who can act as a mediator?**

21. The Mediation Rules are flexible as to the choice of mediators. The FAI does not have a pre-established list of mediators. The FAI will appoint an independent and impartial mediator who possesses the relevant skills and experience to mediate the dispute at hand. The FAI will make all reasonable efforts to appoint a mediator or mediators who meet the qualifications agreed by the parties.
22. Also, the parties can agree on a list of mediators from which the parties themselves may choose the mediator for confirmation by the FAI and/or the FAI will appoint the mediator.
23. If a party objects to the mediator appointed by the FAI, the FAI may, upon the request of the parties, appoint or propose another mediator.
24. Each mediator shall be and must remain impartial and independent of the parties throughout the entire duration of the mediation proceedings. Before appointment, the mediator must sign and submit to the FAI a statement in which they declare their acceptance, availability, impartiality and independence. The prospective mediator shall disclose in the statement any circumstances likely to affect their availability or to give rise to justifiable doubts as to their impartiality or independence.
25. Finnish law does not impose any specific requirements for mediators. In some jurisdictions, however, the law may include mandatory provisions regulating the qualifications for mediators.

## **VII. How is the mediation commenced?**

26. The party or the parties wishing to initiate mediation under the Mediation Rules shall submit a Request for Mediation to the FAI. FAI Mediation shall be deemed to have commenced on the date on which the Request for Mediation is received by the FAI. The Request for Mediation can be submitted by mail, e-mail or by hand delivery.
27. The request must contain all the information stipulated in Article 2.2 of the Mediation Rules.
28. Where the Request for Mediation is not submitted to the FAI on behalf of all the parties to the matter, the FAI must transmit a copy of the Request for Mediation to the other party or parties not having requested mediation for an answer.

## **VIII. What if the other party objects to FAI Mediation?**

29. If any of the parties objects to FAI Mediation or does not submit a response within the time determined by the FAI, the FAI may declare that the mediation has terminated.

30. Further, in the course of mediation the mediator shall terminate the FAI Mediation in the event that a party has requested in writing that the mediation be terminated, or the mediator has concluded in writing that continuation of the mediation is not purposeful.
31. Although FAI Mediation is a voluntary process, the parties may be under a contractual duty to mediate if they have included a mediation clause in their agreement prescribing, e.g., that the parties must first mediate the dispute for a certain period of time before being allowed to resort to other dispute resolution methods.

## **IX. Does agreeing to FAI Mediation constitute a bar to judicial, arbitral or similar proceedings?**

32. Unless otherwise agreed by the parties, an agreement on FAI Mediation does not constitute a bar to any judicial, arbitral or similar proceedings. However, as a practical matter, initiating simultaneous judicial, arbitral or similar proceedings at the outset may impair the parties' chances to benefit from mediation.
33. Subject to applicable laws, order, regulations, and rules by the competent judicial authorities, arbitral tribunals, arbitral institutions or similar authorities, the parties may agree to stay any judicial, arbitral or similar proceedings, and to initiate FAI Mediation.

## **X. How does the mediation process work?**

34. When the mediator has been confirmed and the Filing Fee and the advance on costs have been paid, the FAI will transmit the case file to the mediator. The FAI will invite the mediator to promptly contact the parties to agree on the conduct of the mediation (the number of mediation sessions and the duration, content and purpose of each session, the timetable of the mediation, etc.).
35. A mediation process may include, for example, the following phases: preparation and exchange of information (e.g., exchange of case summaries to better understand the parties' respective positions before the mediation session(s)), mediation session(s) with preliminary meetings with each of the parties, joint meetings with all the parties, and confidential private meetings (caucus) where the mediator meets with one or more parties without the other parties being present. In practice, mediation proceedings are often completed in one or two mediation sessions with some preparatory work before the mediation. Typically, a mediation session lasts one day.
36. The desired outcome of the mediation is a signed settlement agreement between the parties at the end of the mediation.

## **XI. Are there specific requirements for the conduct of mediation?**

37. Mediation is a flexible process and the mediation process is regulated only lightly in the Mediation Rules in order to provide the parties and the mediator with the flexibility to tailor the process to the needs of each particular situation.
38. The mediator shall conduct the mediation expediently and in such a manner as they consider appropriate, having regard to the preferences of the parties. After consulting with the parties, the mediator shall record in a written note the general manner in which the mediation will be conducted and communicate the note to the parties. The mediator shall also keep the FAI informed about the timetable of the mediation.

39. The mediator shall treat all parties fairly and equally.
40. All participants in FAI Mediation must act in good faith and make sincere efforts to reach an amicable settlement in the matter.
41. Unless the parties have agreed otherwise, the mediator may arrange confidential private meetings and/or discussions (caucus) with one or more parties without other parties being present. Also, the parties may request a caucus session with the mediator. The mediator shall not disclose to the other parties information that they have obtained in such private meetings and/or discussions, unless the disclosing party has given its consent authorizing such disclosure.
42. Further, by agreeing to mediate under the Mediation Rules, the parties undertake to be represented by party representatives who have sufficient authority to settle the matter. However, the flexibility of mediation allows the parties and the mediator, e.g., to agree on a process in which settlement agreement is subject to separate approvals by the decision-making bodies of each party. The party representatives may, but are not required to, be assisted by counsel.
43. Finally, all parties, the mediator, the FAI and any other participant in the mediation must keep the existence and the outcome of FAI Mediation confidential as noted in Section II above.

## **XII. Who should attend mediation sessions?**

44. Party representatives and their counsel, if any, should attend the sessions with the mediator(s). Additionally, subject to the consent of all parties and the mediator, other persons, such as experts, may participate in the mediation session(s).
45. As a starting point, a successful mediation requires the participation of party representatives that have the authority to negotiate and agree on a settlement. Please see Section 42 for more information.

## **XIII. How are the place and language of the mediation determined?**

46. The mediation may be conducted virtually at any place, in person or through any means of communication, as deemed appropriate by the parties and the mediator. If the parties have not agreed or cannot agree on the place of mediation, the mediator shall decide the place.
47. The parties may choose any language(s) to be used in mediation. If the parties have not agreed or cannot agree on the language(s) of the mediation, the mediator shall determine the language(s) in which the mediation will be conducted after soliciting the views of the parties.

## **XIV. When does the FAI Mediation end?**

48. The FAI may declare that the mediation has terminated if any of the parties objects to FAI Mediation or does not submit a response to the Request for Mediation within the time limit determined by the FAI.
49. The mediator shall terminate the FAI Mediation in the event that the parties have reached and recorded a settlement, a party has requested in writing that the mediation be terminated or the mediator has concluded in writing that continuation of the mediation is not purposeful.

## **XV. Is a settlement reached in FAI Mediation binding?**

50. A settlement reached in FAI Mediation is binding on the parties as an agreement.
51. The Mediation Rules also enable the parties, subject to the consent of the mediator, to agree to appoint the mediator as an arbitrator and request them to confirm the settlement agreement in an arbitral award.

## **XVI. How much does mediation cost?**

52. The costs of FAI Mediation include the fee of the mediator, the travel and other expenses incurred by the mediator, and the Administrative Fee and expenses of the FAI.
53. The mediator's fee shall be determined exclusively by the FAI. It is based on an hourly or daily rate fixed by the FAI when appointing or confirming the mediator and after having solicited views of the mediator and the parties. The hourly or daily rate shall be reasonable and shall be determined in light of the nature of the matter and other relevant circumstances.
54. The parties shall reimburse the mediator for their reasonable travel, accommodation and other expenses incurred during the mediation. The FAI shall determine the reasonableness of such expenses and the extent to which they will be reimbursed.
55. The Administrative Fee of the FAI shall be determined taking into account the monetary value of the dispute at stake in accordance with Table A of the Mediation Rules. The Administrative fee includes the Filing Fee of EUR 1,500. The monetary value at stake is calculated as the aggregate value of all claims. Where the monetary value cannot be ascertained, the FAI shall determine the Administrative Fee taking into account all relevant circumstances.
56. In exceptional circumstances, the FAI may deviate from the fee amounts set out in Table A of the Mediation Rules or require payment of administrative expenses in addition to the Administrative Fee provided in Table A of the Mediation Rules.
57. Unless otherwise agreed by the parties, the parties shall bear the costs of FAI Mediation in equal shares. Each party's other expenses in relation to the mediation, such as the fees of its counsel, remain the responsibility of that party, unless otherwise agreed by the parties.
58. The FAI shall fix an advance on costs that the parties must pay before the case file is transmitted from the FAI to the mediators. The amount of the advance on costs shall correspond to the expected costs of the mediation. After the termination of FAI Mediation, the FAI will cover the total costs of the mediation, as determined by the FAI, from the advance on costs.
59. The FAI shall reimburse the parties for any amount the parties have paid as an advance on costs that exceeds the total costs of the mediation. If the advance on costs does not cover the total costs of the mediation determined by the FAI, the parties shall be liable for the payment of the remaining part of the total costs of the mediation.