

MEDIATION RULES

of the Finland Chamber of Commerce



**THE FINLAND
ARBITRATION
INSTITUTE**

PART OF THE FINLAND
CHAMBER OF COMMERCE

MEDIATION RULES

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The English text prevails over other language versions

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MODEL MEDIATION CLAUSE

MODEL MEDIATION CLAUSE

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.

Recommended model mediation clause:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or validity thereof, shall first be submitted to mediation in accordance with the Mediation Rules of the Finland Chamber of Commerce.

Note: Parties may wish to consider adding:

- (a) The place of mediation shall be [town and country].
- (b) The language of the mediation shall be [language].

The commencement of proceedings under the Mediation Rules shall not prevent any party from commencing arbitration in accordance with the clause below.

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or validity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Finland Chamber of Commerce.

Note: Parties may wish to consider adding:

- (a) The number of arbitrators shall be [one / three].
- (b) The seat of arbitration shall be [town and country].
- (c) The language of the arbitration shall be [language].

MEDIATION RULES

PREAMBLE

The purpose of this Preamble is to give a brief overview of the characteristics of mediation under the Mediation Rules of the Finland Chamber of Commerce (“Mediation Rules”) that the Arbitration Institute of the Finland Chamber of Commerce (“FAI”) administers (“FAI Mediation”). More information about mediation and practical guidance on the application of the Mediation Rules is contained in the FAI Mediation Guidelines, which are available on the FAI website.

* * *

Mediation is a voluntary and confidential process in which a neutral third party (a mediator¹) assists the parties (two or several) in settling their disputes amicably. Mediation also helps to maintain business and personal relationships.

These Mediation Rules have been prepared to provide a flexible, straightforward and user-friendly framework for facilitative mediation. In facilitative mediation, the mediator assists the parties in finding an amicable solution and a negotiated agreement that is acceptable to all parties. The Mediator does not make decisions or rulings as to the merits of the case.

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.

As a starting point, a successful mediation requires the participation of party representatives that have the authority to negotiate and agree on a settlement. However, the flexibility of mediation allows the parties and the mediator to, e.g., agree on a process in which the 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. Any other persons, including experts, may be retained to attend the mediation sessions if needed, however always subject to the consent of all parties and the mediator.

¹ Although mediations are usually carried out by one mediator, the parties may also agree on the appointment of several mediators.

The outcome of a mediation, when successful, is a settlement agreement, which is binding on the parties as an agreement. However, in accordance with Article 12 of the Mediation Rules, the parties may, subject to the mediator's consent, agree to appoint the mediator as an arbitrator and request him or her to confirm the settlement agreement in an arbitral award for enforcement purposes. Alternatively, at the request of a party the settlement agreement may also be declared enforceable by a competent court.

Unless so 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 such parallel proceedings at the outset may impair the parties' chances to benefit from mediation.

CHAPTER I INTRODUCTORY PROVISIONS

1. SCOPE OF APPLICATION

- 1.1 When the parties agree to settle any dispute by mediation under these 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.
- 1.2 Unless the parties have agreed otherwise, the Mediation Rules as in effect on the date of the commencement of the mediation as defined in Article 3 shall apply.

CHAPTER II COMMENCEMENT OF FAI MEDIATION

2. REQUEST FOR MEDIATION

- 2.1 The party or the parties wishing to initiate mediation under the Mediation Rules shall submit a Request for Mediation to the FAI.
- 2.2 The Request for Mediation shall contain the following information:
 - (a) the names and contact details of the parties and of their counsel, if any;
 - (b) a copy of the mediation agreement under which the dispute is to be settled, if there is a written agreement of the parties to refer the dispute to mediation under the Mediation Rules, or a description of any other type of understanding between the parties to resort to FAI Mediation;
 - (c) a brief description of the matter including, if possible, an assessment of the monetary value at stake;

- (d) any joint nomination by all of the parties of a mediator or, in the absence of a joint nomination, any agreement or proposal as to the qualifications of the mediator to be appointed by the FAI;
 - (e) description of any time limits for conducting the mediation; and
 - (f) proof of payment of the Filing Fee prescribed in Article 1 of Appendix I.
- 2.3 If the parties have agreed on the language of the mediation, the Request for Mediation shall be submitted in that language. In the absence of such agreement, the Request for Mediation shall be submitted in the language of the parties' contract that is subject to dispute.

3. DATE OF COMMENCEMENT OF MEDIATION

FAI Mediation shall be deemed to have commenced on the date on which the Request for Mediation is received by the FAI, regardless of whether it is received in a hard copy or in electronic format.

4. ANSWER

- 4.1 Where the Request for Mediation is not submitted to the FAI on behalf of all the parties to the matter, the FAI shall transmit a copy of the Request for Mediation to the other party or parties not having requested mediation for an answer (the "Answer").
- 4.2 The Answer shall state whether the party consents to FAI Mediation and may contain other comments concerning the Request for Mediation, including any comments as to the proposal for a mediator or qualifications of the mediator to be appointed.
- 4.3 If any of the parties objects to FAI Mediation or does not submit a response within 15 days from the date on which it received the Request for Mediation, or within such additional time as may be reasonably determined by the FAI, the FAI may declare that the mediation has terminated.

CHAPTER III MEDIATOR

5. APPOINTMENT AND CONFIRMATION OF THE MEDIATOR

- 5.1 FAI Mediation shall be conducted by one mediator, unless otherwise agreed by the parties.
- 5.2 The parties may jointly nominate the mediator for confirmation by the FAI within 15 days from the date on which the Request for Mediation was received by the other party or all parties or within such additional time as may be agreed by the parties, or failing such agreement, as may be reasonably determined by the FAI.
- 5.3 If the parties' agreement provides that several mediators are to be appointed, the parties may jointly nominate any or all of the mediators for confirmation by the FAI within the said time.
- 5.4 At the request of the parties, the FAI may propose prospective mediators for the parties to consider.
- 5.5 Where the parties do not jointly nominate a mediator or the mediators, the FAI shall make the appointment. The FAI will make all reasonable efforts to appoint a mediator or mediators that meet the qualifications agreed or proposed by the parties.
- 5.6 All nominations of mediators are subject to confirmation by the FAI. The appointment of any mediator shall become effective only upon such confirmation.
- 5.7 The FAI may decline confirmation of a nomination only if the prospective mediator fails to fulfill the requirements of impartiality and independence set forth in Article 6.1, or if he or she is otherwise unsuitable to serve as mediator. The FAI has no obligation to give reasons for its decisions.
- 5.8 Where the FAI declines confirmation, it may appoint or confirm another mediator if requested to do so by the parties.

- 5.9 If a party objects to a mediator appointed by the FAI, the FAI may, upon the request of the parties, appoint another mediator or propose other prospective mediators to the parties.

6. IMPARTIALITY AND INDEPENDENCE OF THE MEDIATOR

- 6.1 Each mediator shall be and must remain impartial and independent of the parties throughout the entire duration of the mediation proceedings.
- 6.2 Before appointment or confirmation, a prospective mediator shall sign and submit to the FAI a statement of acceptance, availability, impartiality and independence (the "Statement"). The prospective mediator shall disclose in the Statement any circumstances likely to affect his or her availability or to give rise to justifiable doubts as to his or her impartiality or independence.
- 6.3 The FAI shall transmit a copy of the Statement to all parties and set a time limit within which they may submit comments on the Statement or object to the appointment of the mediator.
- 6.4 A mediator shall promptly disclose in writing to the FAI, the parties and the other mediators any circumstances referred to in Article 6.2 that may arise during the course of the mediation.

CHAPTER IV FRAMEWORK OF FAI MEDIATION

7. REFERRAL OF THE MATTER TO THE MEDIATOR

- 7.1 The FAI shall transmit the case file to the mediator as soon as the mediator has been confirmed in accordance with Article 5.6 and the Filing Fee referred to in Article 1 of Appendix 1 and the advance on costs referred to in Article 14 have been paid.
- 7.2 The FAI will invite the mediator to promptly contact the parties to agree on the conduct of the mediation, as described in Article 8.

8. CONDUCT OF MEDIATION

- 8.1 Subject to these Mediation Rules and any agreement by the parties, the mediator shall conduct the mediation expediently and in such a manner as he or she considers appropriate, having regard to the preferences of the parties.
- 8.2 After consulting with the parties, the mediator shall record in a written note the general manner in which the mediation shall be conducted and communicate the note to the parties.
- 8.3 The mediator shall keep the FAI informed about the timetable of the mediation.
- 8.4 The mediator shall treat all parties fairly and equally.
- 8.5 All participants in FAI Mediation shall act in good faith and make their sincere efforts to reach an amicable settlement in the matter.
- 8.6 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. The party representatives may, but are not required to, be assisted by counsel. Any other persons may participate in the mediation sessions subject to the consent of all parties and the mediator.
- 8.7 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. The parties may also request a caucus session with the mediator. The mediator shall not disclose to the other parties information that he or she has obtained in such private meetings and/or discussions, unless the disclosing party has given its consent authorizing such disclosure.

9. PLACE OF MEDIATION AND LANGUAGE

- 9.1 The mediation may be conducted at any place, in person or through any means of communication, as deemed appropriate by the parties and the mediator. If the parties cannot agree on the place of mediation, the mediator shall decide the place.

- 9.2 If the parties have not agreed 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.

10. TERMINATION OF FAI MEDIATION

10.1 The mediator shall terminate the FAI Mediation in the event that:

- (a) the parties have reached and recorded a settlement;
- (b) a party has requested in writing that the mediation be terminated; or
- (c) the mediator has concluded in writing that continuation of the mediation is not purposeful.

10.2 The parties' settlement agreement may be confirmed in an arbitral award in accordance with Article 12.

10.3 Before terminating the FAI Mediation, the mediator shall request that the FAI determine the costs of the mediation in accordance with Article 13 and Appendix I.

10.4 The mediator shall notify the parties and the FAI in writing of the termination of the proceedings.

CHAPTER V RELATIONSHIP BETWEEN FAI MEDIATION AND OTHER JUDICIAL, ARBITRAL OR SIMILAR PROCEEDINGS

11. EFFECT OF AGREEMENT TO MEDIATE

11.1 Unless otherwise agreed by the parties, an agreement on FAI Mediation does not constitute a bar to any judicial, arbitral or similar proceedings.

11.2 Subject to applicable laws, orders, 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.

12. CONFIRMING SETTLEMENT IN AN ARBITRAL AWARD

- 12.1 In case of settlement, the parties may, subject to the consent of the mediator, agree to appoint the mediator as an arbitrator and request him or her to confirm the settlement agreement in an arbitral award in accordance with Section 44.2 of the Arbitration Rules of the Finland Chamber of Commerce (“Arbitration Rules”) or Section 42.2 of the Rules for Expedited Arbitration of the Finland Chamber of Commerce (“Expedited Rules”), when applicable.
- 12.2 Before the acceptance of such appointment as an arbitrator, the mediator shall inform the FAI.
- 12.3 Before confirming the settlement agreement in an arbitral award, the mediator shall request the FAI to determine the costs of the mediation, including the fee for the work performed as arbitrator, referred to in Article 14 and in Appendix I.
- 12.4 The provisions of Articles 26, 27, 40, 41, 45, 46 and 49–52 of the Arbitration Rules or Articles 25, 26, 39, 43, 44 and 47–50 of the Expedited Rules, when applicable, shall apply to such proceedings and awards in which a settlement reached in FAI Mediation is confirmed.
- 12.5 The appointed arbitrator shall transmit an original copy of the award to each of the parties and the FAI without delay.

CHAPTER VI COSTS OF FAI MEDIATION

13. DETERMINATION OF COSTS OF MEDIATION

- 13.1 The costs of FAI Mediation include:
- (a) the fee of the mediator;
 - (b) the travel and other expenses incurred by the mediator; and
 - (c) the Administrative Fee and expenses of the FAI.

- 13.2 Before terminating the FAI Mediation in accordance with Article 10, the mediator shall request the FAI to determine the costs in accordance with Appendix I.
- 13.3 Unless otherwise agreed by the parties, the parties shall bear the costs of FAI Mediation in equal shares.
- 13.4 A 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.

14. ADVANCE ON COSTS

- 14.1 The FAI shall fix an advance on costs that the parties must pay before the case file is transmitted from the FAI to the mediator. The amount of the advance on costs shall correspond to the expected costs of the mediation pursuant to Article 13.
- 14.2 Upon request of the mediator, or at its own discretion, the FAI may adjust the advance on costs and either request the parties to pay further advances on costs or reduce the advance on costs. Detailed provisions on the advance on costs fixed by the FAI are set forth in Article 2 of Appendix I.
- 14.3 After the termination of FAI Mediation in accordance with Article 10, the FAI shall cover the total costs of the mediation, as determined by the FAI, from the advance on costs.
- 14.4 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.
- 14.5 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 (i.e., for the payment of any unpaid part of the mediator's fee and expenses or the FAI's Administrative Fee and expenses).

CHAPTER VII OTHER PROVISIONS

15. CONFIDENTIALITY

- 15.1 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.
- 15.2 The parties, the mediator and any other person participating in the proceedings shall not invoke or produce as evidence any information (including, but not limited to, any statements made regarding the possibility to settle the dispute) obtained in the context of FAI Mediation in any subsequent legal proceedings.
- 15.3 Unless required by applicable law, or unless all of the parties and the mediator agree otherwise, the mediator shall not give testimony in any judicial, arbitral or similar proceedings concerning any aspect of the mediation under the Mediation Rules.

16. LIMITATION OF LIABILITY

Any mediators appointed under the Mediation Rules, the Finland Chamber of Commerce and its employees, the FAI, the members of the FAI Board and the representatives of the FAI Secretariat shall not be liable to any person for any act or omission in connection with the mediation, except to the extent such limitation of liability is prohibited by applicable law.

17. ENTRY INTO FORCE

These Mediation Rules enter into force on 1 June 2016 and apply to all FAI Mediations commenced on or after that date, unless otherwise agreed by the parties.

APPENDIX I

APPENDIX I SCHEDULE OF MEDIATION FEES AND COSTS

(All amounts in this Appendix are in Euros, hereinafter "EUR")

1. FILING FEE

- 1.1 The Filing Fee amounts to EUR 1,500.
- 1.2 The Filing Fee constitutes part of the Administrative Fee referred to in Article 4 below. The Filing Fee shall be credited to the respective party's share on the advance on costs referred to in Article 2 below.
- 1.3 In case of a joint Request for Mediation, the Filing Fee shall be shared in equal proportions by the parties, unless otherwise agreed by the parties.
- 1.4 The payment of the Filing Fee shall be made by transfer to the bank account of the Finland Chamber of Commerce.
- 1.5 The Filing Fee is non-refundable, except if one of the parties objects to FAI Mediation or does not submit a response within the time limit set by the FAI and the FAI declares that the mediation has terminated in accordance with Article 4.3 of the Mediation Rules.
- 1.6 When the mediation is preceded by the submission of a request for arbitration pursuant to the Arbitration Rules or the Expedited Rules concerning the same parties and the same or parts of the same matter, no Filing Fee shall be charged for the mediation.
- 1.7 When the mediation is followed by a request for arbitration pursuant to the Arbitration Rules or the Expedited Rules concerning the same parties and the same or parts of the same matter, the Filing Fee paid in the mediation shall be deducted from the filing fee payable in the arbitration proceedings.

2. ADVANCE ON COSTS

- 2.1 As provided in Article 14 of the Mediation Rules, the advance on costs fixed by the FAI shall correspond to the expected costs of FAI Mediation pursuant to Article 13.1 of the Mediation Rules.
- 2.2 Unless otherwise agreed by the parties, each party shall pay an equal share of the advance on costs within the time limit set by the FAI.
- 2.3 Upon request of the mediator, or at its own discretion, the FAI may adjust the advance on costs, and request the parties to pay further advances on costs, at any time during the proceedings to take into account any changes in the amount of the expected costs of FAI Mediation.
- 2.4 In the event that any part of the advance on costs remains unpaid, the FAI may declare that the mediation has been terminated.
- 2.5 Each party shall pay its share of the advance on costs in cash. The payment shall be made by transfer to the bank account of the Finland Chamber of Commerce.
- 2.6 The amounts paid as advances on costs do not yield interest for the parties or the mediator.

3. FEE AND EXPENSES OF THE MEDIATOR

- 3.1 The mediator's fee shall be determined exclusively by the FAI. Separate fee arrangements between the parties and the mediator are contrary to the Mediation Rules.
- 3.2 The mediator's fee shall be based on an hourly or daily rate (excluding VAT, if any) 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 in amount and shall be determined in light of the nature of the matter and other relevant circumstances.

- 3.3 When determining the mediator's fee at the end of FAI Mediation, the FAI shall consider the time reasonably spent on the proceedings and any other relevant circumstances.
- 3.4 Pursuant to Article 13 of the Mediation Rules, the parties shall reimburse the mediator for his or her 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.

4. ADMINISTRATIVE FEE

- 4.1 The Administrative Fee referred to in Article 13 of the Mediation Rules shall be determined taking into account the monetary value of the dispute at stake in accordance with Table A below.
- 4.2 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.
- 4.3 In exceptional circumstances, the FAI may deviate from the fee amounts set out in Table A or require payment of administrative expenses in addition to the Administrative Fee provided in Table A.
- 4.4 The payment of the Administrative Fee, if not covered in full by the advance on costs fixed by the FAI in accordance with Article 2.1, shall be payable immediately upon request by the FAI and shall be made by transfer to the bank account of the Finland Chamber of Commerce.

5. OTHER PROVISIONS

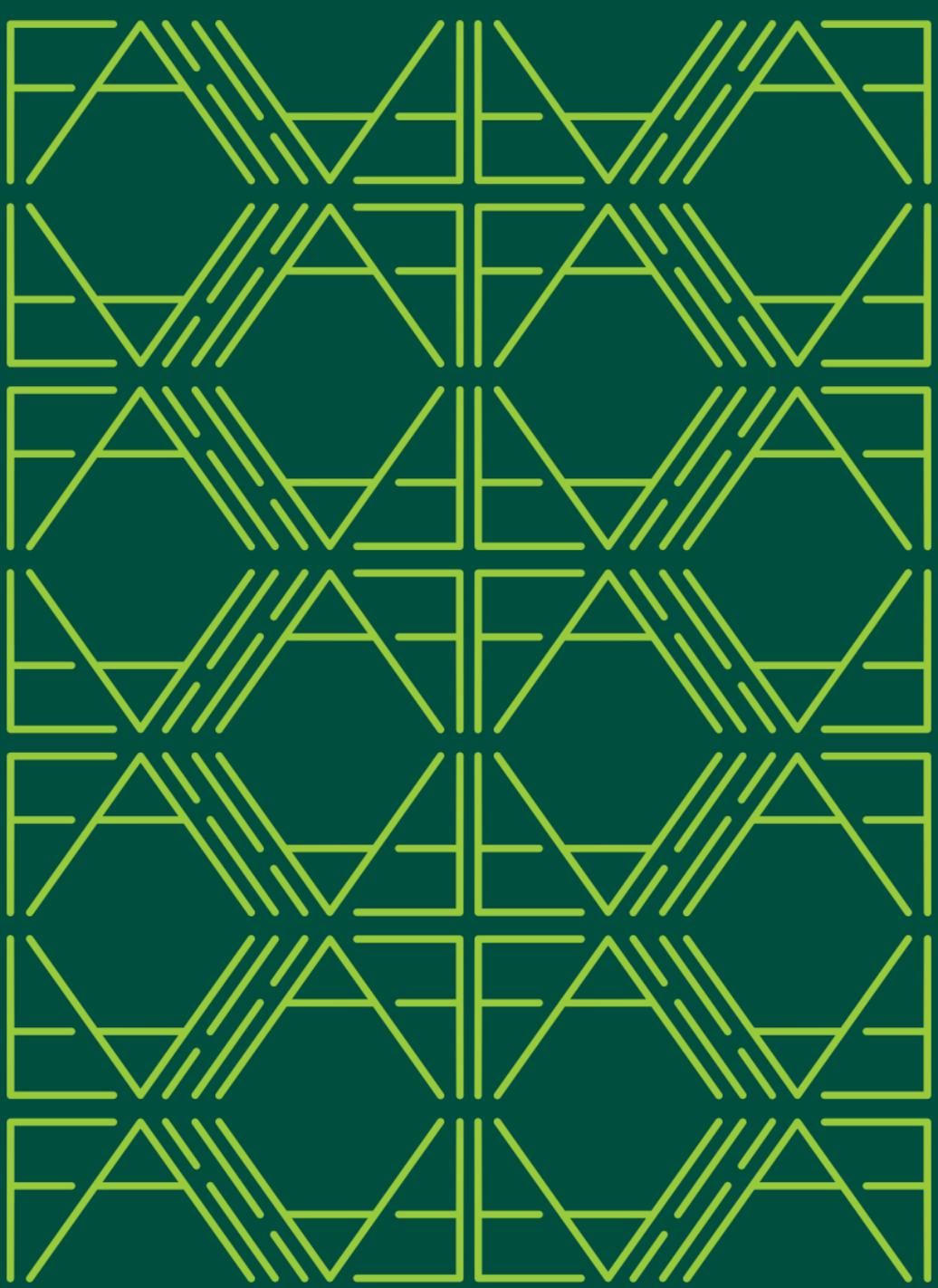
- 5.1 The FAI may issue guidelines to supplement the provisions of this Appendix with regard to the payment of the Filing Fee, advance on costs, mediator's fee and expenses, as well as the Administrative Fee and expenses of the FAI.
- 5.2 This Appendix may be separately amended from time to time by the FAI or the Finland Chamber of Commerce.

TABLE A
ADMINISTRATIVE FEE

Monetary value at stake (EUR)	Administrative Fee (EUR)
to 100 000	1 500
from 100 001 to 200 000	2 000
from 200 001 to 300 000	2 500
from 300 001 to 500 000	3 500
from 500 001 to 1 000 000	4 500
from 1 000 001 to 2 000 000	7 000
from 2 000 001 to 5 000 000	9 500
from 5 000 001 to 10 000 000	13 000
from 10 000 001 to 50 000 000	17 000
from 50 000 001 to 100 000 000	21 000
Over 100 000 000	25 000

The Administrative Fee is not subject to VAT.

Adopted by the Finland Chamber of Commerce on
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