



HAMMARSTRÖM PUHAKKA PARTNERS

Fast track arbitration
Finland

DIS Baltic Arbitration Days 2015 in Riga

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1. Background and introduction



Background and introduction

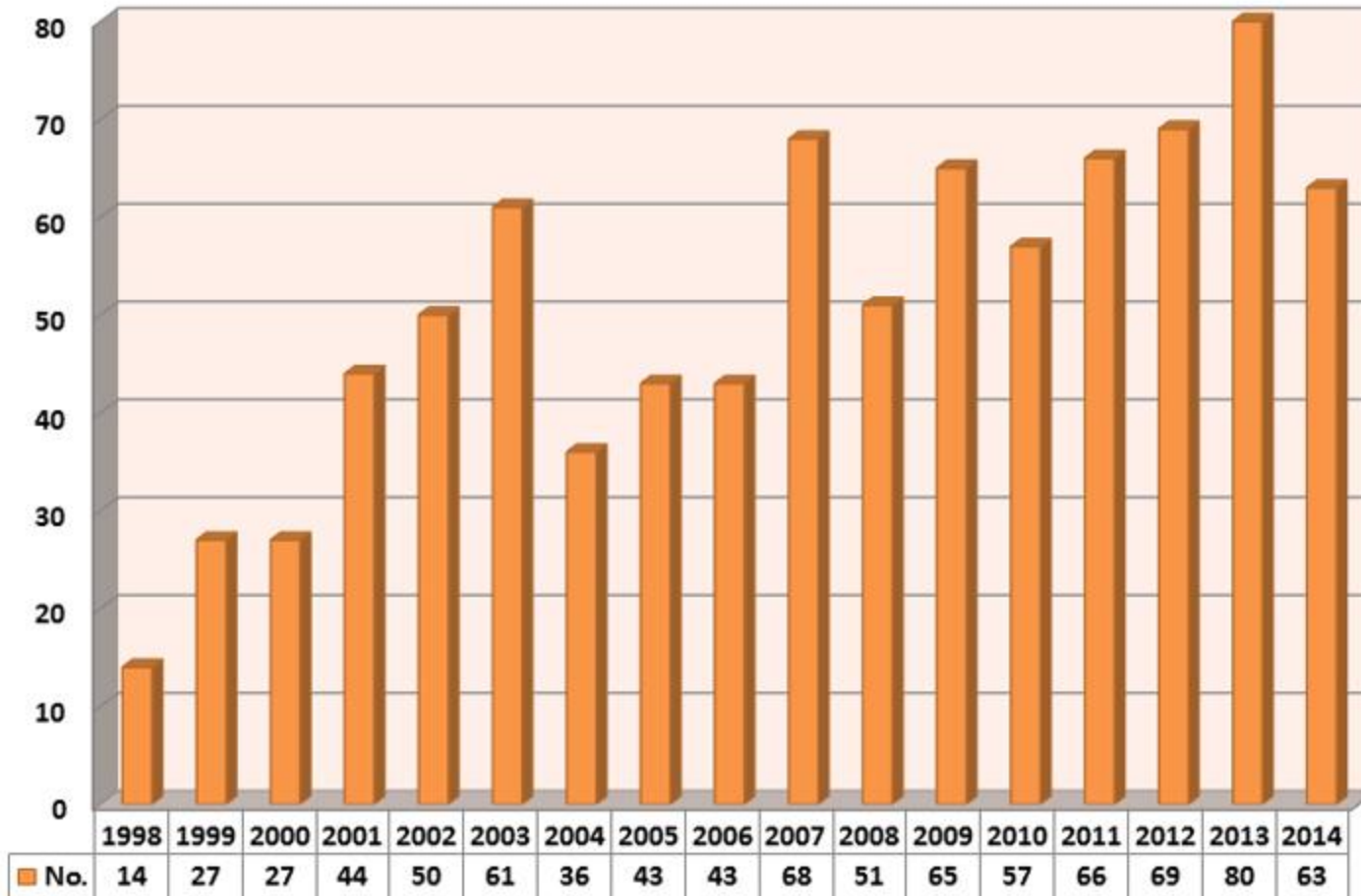
- ✓ Finland is a contracting state to New York Convention (1958)
- ✓ Arbitration Act
 - ✓ 1928
 - ✓ 1992 (UNCITRAL model law observed)
 - ✓ Broad arbitrability
- ✓ One major institute: FAI – The Arbitration Institute of the Finland Chamber of Commerce
- ✓ Arbitration getting more usual
- ✓ Expedited proceedings exist since 2004 (FAI); rules amended 2013



2. Statistics



FAI statistics



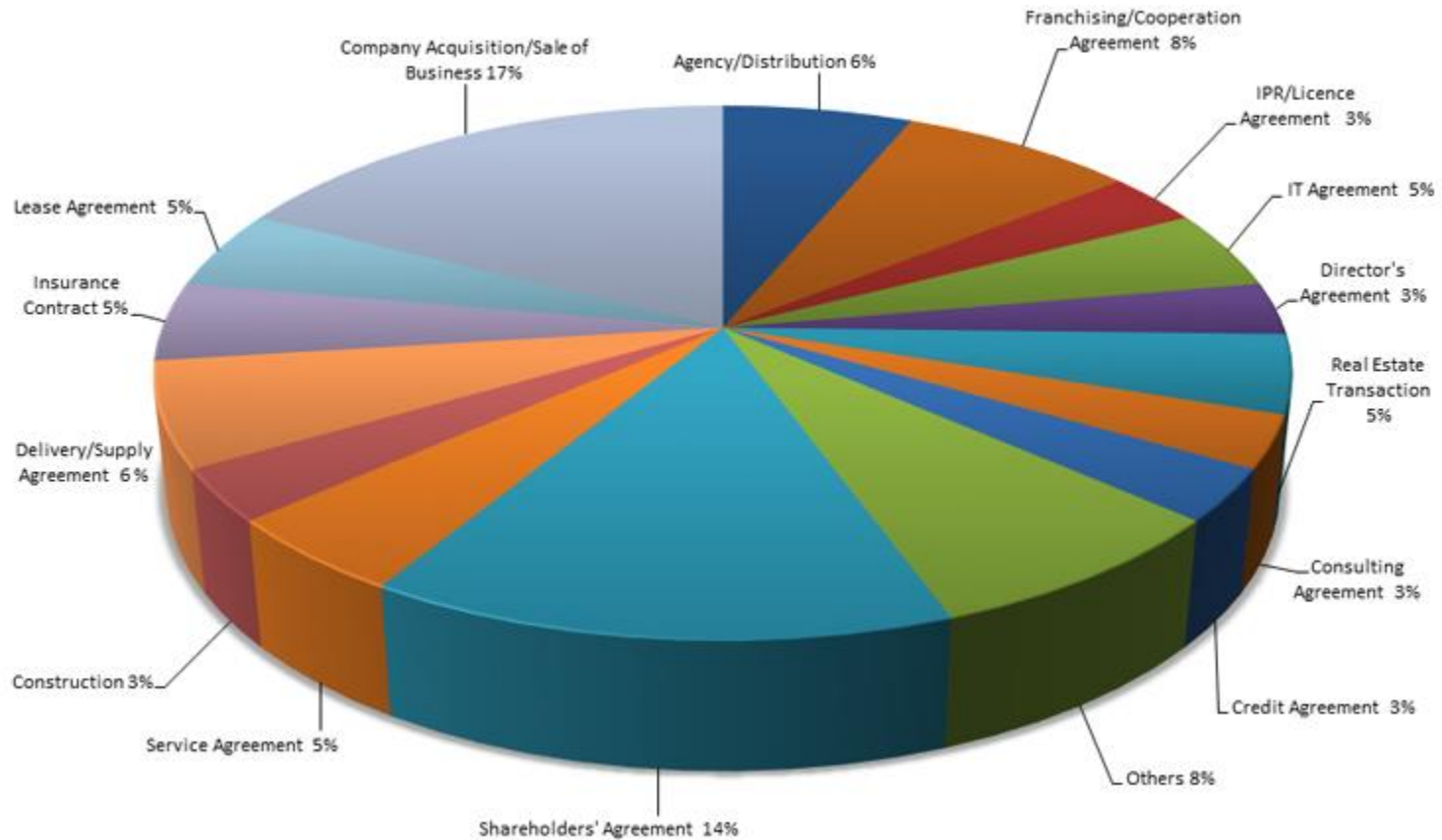


	2014	2013	2012	2011	2010	2009	2008	2007	2006
Number of requests	63	80	69	66	57	65	51	68	43
Cases under the Arbitration Rules	86%	77%	72%	67%	77%	71%	78%	75%	72%
Cases under the Rules for Expedited Arbitration	3%	10%	12%	13%	5%	9%	6%	3%	-
Ad hoc cases	11%	13%	15%	20%	18%	20%	16%	21%	28%
Appointment of conciliator	-	-	1	-	-	-	-	1	-
Composition of the arbitral tribunal									
– sole arbitrator	85%	90%	87%	86%	86%	79%	85%	79%	79%
– three arbitrators	15%	10%	13%	14%	14%	21%	15%	21%	21%
International cases	22%	25%	26%	26%	28%	35%	31%	28%	33%
Median duration of arbitrations under the Arbitration Rules	9* months	8 months	9 months	10 months	10 months	11 months	9 months	9 months	10 months
Median duration of arbitrations under the Rules for Expedited Arbitration	3 months								

*) Median duration of arbitrations was 8 months in cases conducted under the 2013 Arbitration Rules.



FAI statistics





3. Legal framework



Arbitration Act (967 / 1992)

- ✓ Any dispute in a civil or commercial matter which can be settled by agreement between the parties may be referred for final decision by one or more arbitrators → **Broad arbitrability**

- ✓ The arbitral tribunal shall give the parties **a sufficient opportunity to present their case.**

- ✓ - - the proceedings shall be conducted in accordance with what the parties have agreed - - . - - the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate - - and **taking into account the requirements of impartiality and speed.**

- ✓ The arbitral tribunal shall promote an **appropriate and speedy** settlement of the matter



4. Institutional rules (FAI)



Institutional rules (FAI)

- ✓ Fast track arbitration **not widely used** in Finland
 - ✓ During 2004 through 1 June 2013, 28 awards (7 %): New Rules: 3 awards so far
- ✓ Always a **sole arbitrator**
- ✓ Main rule: Only **one written submission per party** (in addition to Statement of Claim / Statement of Defence)
 - ✓ Submissions must be **brief**
 - ✓ Submission shall be filed within **14 days** from the request



Institutional rules (FAI)

- ✓ Main rule: **no oral hearing** (only, if requested by a party AND deemed necessary by the arbitrator)
 - ✓ In fact: oral hearing in 85 %
- ✓ Main rule: the award **doesn't contain reasons** (only, if a party so requests within the set time limit)
 - ✓ In fact: reasons given in 78 %



Institutional rules (FAI)

- ✓ Award in **3 months** (calculated from the date the arbitrator received the case file from the FAI)
 - ✓ FAI may extend the award period upon a reasoned request of the arbitrator or on its own motion
 - ✓ In fact: median duration 3 months
- ✓ **Lower costs** (administrative and arbitrator fees)

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5. Costs



- ✓ The **institute determines** in accordance with a pre-determined table
 - ✓ Arbitrator expenses + fee (2,500 – 60,000 + 0.02 % of amount over 75,000,000)
 - ✓ Costs of expert advise
 - ✓ Filing fee (2,500 – 10,000)
 - ✓ Administrative fee (2,500 – 45,000)
- ✓ **Arbitrator** makes the **cost allocation** in the award (main rule: loser pays)



6. When is fast track arbitration suitable?



When is fast track arbitration suitable?

- ✓ **Speed.** Arbitration is faster than litigation.
- ✓ **Flexibility.** Arbitration is based on party autonomy. Parties may choose their arbitral tribunal. Further, they are free to tailor the arbitral proceedings to best suit their individual needs.
- ✓ **Expertise.** Parties may select arbitrators with optimal expertise, experience and other qualifications to resolve a specific dispute.
- ✓ **Confidentiality.** Contrary to court litigation, arbitration is a confidential method of settling business disputes.
- ✓ **Finality and enforceability of the award.** An arbitral award constitutes a legally enforceable decision. It is binding on the parties to the arbitration, and cannot be appealed on its merits. Pursuant to the New York Convention of 1958, arbitral awards are recognized and enforced in most countries in the world.

FOR CLIENTS WHO WANT IT ALL





When is fast track arbitration suitable?

- ✓ Low value cases?
- ✓ Factors to be considered:
 - ✓ Complexity of legal questions
 - ✓ Amount of documentary evidence
 - ✓ Number of witnesses
 - ✓ Multiparty / multicontract disputes
- ✓ Not suitable for construction projects, IT projects etc.
- ✓ Suitable for agency and distributorship contracts?
- ✓ Most commercial cases are better resolved in standard FAI arbitration



7. How to agree upon applicability of fast track arbitration?



How to agree upon applicability of fast track arbitration?

✓ **Standard arbitration clause:**

- ✓ 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 Rules for Expedited Arbitration of the Finland Chamber of Commerce.

✓ *Note: Parties may wish to consider adding:*

(a) The seat of arbitration shall be [town and country].

(b) The language of the arbitration shall be [].



How to agree upon applicability of fast track arbitration?

✓ **Combination clause:**

- ✓ 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 Rules for Expedited Arbitration of the Finland Chamber of Commerce,
- ✓ **unless the FAI Board determines, in its sole discretion, that any given dispute shall be referred to be governed by the Standard Rules having regard to the perceived complexity of the case, the amount in dispute and other relevant factors.**