



BASKETBALL
ARBITRAL TRIBUNAL

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Arbitration Rules

**1 January 2017
Version**



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ARBITRATION RULES

0. Preamble

- 0.1 The Basketball Arbitral Tribunal (hereinafter the "BAT") has been created by Fédération Internationale de Basketball (hereinafter "FIBA") with a view to provide parties involved in disputes arising in the world of basketball with an efficient and effective means of resolving these disputes.
- 0.2 Parties wishing to have their disputes decided by the BAT recognise that the BAT Arbitration Rules (hereinafter the "Rules") are designed to provide for a simple, quick and inexpensive means to resolve these disputes. As a consequence, these Rules require cooperation by the parties and their counsel or representative, in particular with respect to the limited number of written submissions (as a rule one submission per party) and the short time limits to be observed. In the interest of speed, the parties recognise that BAT arbitration proceedings are conducted before a single arbitrator appointed by the BAT President, that the BAT arbitrators decide *ex aequo et bono* (see Article 15.1 below) and that hearings will be held only upon a decision by the Arbitrator.
- 0.3 It is recommended that parties wishing to refer their possible disputes to the BAT use the following arbitration clause:
- "Any dispute arising from or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law, irrespective of the parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono."*
- 0.4 The BAT Vice-President shall substitute for the BAT President in case of the latter's inability to exercise the functions assigned to him under these Rules, including instances where the BAT President is prevented from exercising his functions due to a conflict of interest.

1. Jurisdiction

- 1.1 These Rules shall apply whenever the parties to a dispute have agreed in writing to submit the same to the BAT – including by reference to its former name “FIBA Arbitral Tribunal (FAT)” –, provided that FIBA and its divisions are not directly involved in the dispute.
- 1.2 A BAT Arbitrator (hereinafter the "Arbitrator") is entitled to refuse to proceed with the arbitration at any time if he/she considers that arbitration under these Rules is not appropriate to resolve the dispute.
- 1.3 The Arbitrator shall have the power to rule on his/her own jurisdiction, including on any objection with respect to the existence, scope or validity of the arbitration agreement.

2. Seat

- 2.1 The seat of the BAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland, even if hearings, if any, are held in another place.
- 2.2 Arbitration proceedings before the BAT are governed by Chapter 12 of the Swiss Act on Private International Law, irrespective of the parties' domicile.

3. Procedure before the Arbitrator, Waiver

- 3.1 To the extent not provided otherwise herein the Arbitrator shall determine in his/her sole discretion the procedure in the proceedings before him/her.
- 3.2 Any party which proceeds with the arbitration without raising without undue delay its objection to a failure to comply with any provision of these Rules, or any other rules applicable to the proceedings, any direction given by the Arbitrator, or to the conduct of the proceedings, shall be deemed to have waived its right to object in that respect.

4. Language

- 4.1 The working language of the BAT shall be English.
- 4.2 Documents provided to BAT in a language other than English must be accompanied by a certified translation unless the Arbitrator decides otherwise.

- 4.3 The Arbitrator may decide, after consultation with the parties, to hold the proceedings in another language.

5. Representation of the Parties

The parties may be assisted by counsel or by any other person of their choice.

6. Filing Address, Notifications and Communications

- 6.1 Requests for Arbitration shall be filed by e-mail to the BAT Secretariat (see www.fiba.com) or with

Fédération Internationale de Basketball
Route Suisse 5, P.O Box 29
1295 Mies, Switzerland
Telephone: +41 (22) 545 0000
Telefax: +41 (22) 545 0099

- 6.2 Upon receipt of the Request for Arbitration, all further notifications and communications to and from the BAT shall be made through the BAT Secretariat, the contact details of which will be communicated to the parties.
- 6.3 Notifications and communications to the parties or their counsel shall be made in writing, including telefax and e-mail, to the addresses indicated in the Request for Arbitration and the Answer or any other address specified in writing at a later point in time.
- 6.4 If, after reasonable efforts, delivery cannot be effected to a party to the arbitration in accordance with Article 6.3, the Arbitrator may designate a third party (e.g. a National Federation affiliated with FIBA) to receive any notifications and communications from the BAT *in lieu* of the party to the arbitration. Any notice or communication so delivered shall be deemed to have been received by the party to the arbitration.
- 6.5 The Arbitrator is entitled to request the parties to submit electronic copies of their submissions.

7. Time Limits

- 7.1 Time limits for the filing of written submissions or other procedural acts shall be determined by the Arbitrator by reference to a specific date.

- 7.2 The Arbitrator may, in his/her sole discretion, extend the time limits or grant new time limits.

8. Arbitrators, Limitation of Liability

- 8.1 All disputes before the BAT shall be decided by a single Arbitrator appointed by the BAT President on a rotational basis from the published list of BAT arbitrators applicable at the time when the Request for Arbitration is received by the BAT Secretariat or FIBA (whichever comes first). In the event that the Arbitrator so appointed is unavailable, resigns, is successfully challenged or declines the appointment, the BAT President shall appoint the next available Arbitrator.
- 8.2 Before proceeding with the arbitration, the Arbitrator shall send a written declaration of acceptance and independence to the BAT Secretariat. The parties shall be informed about the existence and content of such declaration.
- 8.3 An Arbitrator may be challenged if the circumstances give rise to legitimate doubts regarding his/her independence. The challenge shall be brought in writing within seven days after the ground for the challenge has become known to the party making the challenge. Challenges are to be determined exclusively by the BAT President who shall rule on the challenge after having given to all parties and the Arbitrator an opportunity to state their position.
- 8.4 FIBA, the BAT President, BAT Arbitrators and all personnel involved in a BAT arbitration cannot be held liable for any act or omission in connection with arbitration proceedings hereunder except in cases of grossly negligent or wilful acts or omissions.

9. Request for Arbitration, Advance on Costs

- 9.1 A BAT arbitration shall commence on the date of receipt by the BAT Secretariat or FIBA (whichever comes first) of a Request for Arbitration, which should contain the following:
- The names, postal addresses, telephone, facsimile numbers and e-mail addresses of the Claimant and the Respondent and their respective counsel.
 - A statement of all the facts and the legal arguments.
 - The Claimant's request for relief.
 - A copy of the contract containing the agreement to have the dispute resolved by arbitration before BAT (see also Article 1.1).

- All written evidence on which the Claimant intends to rely.
 - Any request for a hearing and for the examination of (a) witness(es).
- 9.2 The arbitration will not proceed until the non-reimbursable handling fee provided in Article 17.1 below is received in the BAT bank account. The BAT Secretariat may fix a final date for the payment of the non-reimbursable handling fee, failing which the Request for Arbitration shall be deemed withdrawn.
- 9.3 Advance on Costs
- 9.3.1 The BAT Secretariat shall fix an advance on costs (and may adjust the same in the course of the proceedings) to be paid in equal shares by both parties (unless decided otherwise by the Arbitrator) into the BAT bank account (Article 17.1 below); in fixing the amount of an advance on costs, the BAT Secretariat shall take into account inter alia the monetary value of the dispute and the complexity of the case. Where the monetary value of the dispute does not exceed EUR 100,000, the advance on costs fixed for an award without reasons (Article 16.2 below) shall not exceed EUR 7,000 unless decided otherwise by the Arbitrator.
- 9.3.2 If a party fails to pay its share, the other party may substitute for it.
- 9.3.3 The Arbitrator will not proceed with the arbitration until the full amount of the advance on costs is received.
- 9.3.4 The BAT Secretariat may fix a final date for the payment of an advance on costs, failing which the Request for Arbitration shall be deemed withdrawn.
- 9.4 This Article 9 also applies to counterclaims.

10. Provisional and Conservatory Measures

- 10.1 Upon request, the Arbitrator may make an order for provisional and conservatory measures. In cases of extreme urgency such orders can be made ex parte.
- 10.2 Orders for provisional and conservatory measures can be made conditional upon the posting of a security.
- 10.3 Requests for provisional or conservatory measures can only be brought together with or after the filing of a Request for Arbitration.
- 10.4 In agreeing to submit their dispute to these Rules, the parties expressly waive any right to request provisional or conservatory measures from any state court.

11. Initiation of the Arbitral Proceedings, Answer

- 11.1 After filing, the Request for Arbitration shall be forwarded to the BAT President for a prima facie determination whether the arbitration can proceed. That determination shall consist of an examination of whether an arbitration agreement exists providing for the dispute to be adjudicated under these Rules.
- 11.2 If the BAT President determines that the arbitration can proceed, he/she shall appoint the Arbitrator (Article 8.1 above). The BAT Secretariat shall inform the parties thereof and shall communicate the Request for Arbitration and the time limit for an Answer. The Answer should contain:
- Any defence of lack of jurisdiction.
 - A statement of defence, including a statement of all the facts and legal arguments.
 - Names and addresses of the Respondent and counsel, unless this has already been set out in the Request.
 - Any counterclaim and details of the relief sought.
 - All written evidence on which the Respondent intends to rely.
 - Any request for the holding of a hearing and for the examination of (a) witness(es).

12. Further Submissions, Procedural Orders, Settlement

- 12.1 After the filing of the Request for Arbitration and the Answer, the Arbitrator shall determine in his/her sole discretion whether a further exchange of submissions is necessary. Unless he/she decides that it is necessary, further submissions will not be taken into account.
- 12.2 The Arbitrator may also issue any Procedural Order. In particular, he/she may order the production of (additional) evidence or the parties' responses to specific questions, or give directions for the further proceedings.
- 12.3 The Arbitrator is authorized to attempt to bring about a settlement to the dispute.

13. Hearing

- 13.1 No hearings are held in arbitration proceedings under these Rules unless the Arbitrator decides to hold a hearing after consultation with the parties. Hearings before the BAT shall be in private.
- 13.2 The Arbitrator shall determine in his/her sole discretion whether a hearing is to be held by telephone or video conference or whether and where a hearing in person is to be held.
- 13.3 The Arbitrator may make the holding of a hearing dependent on the payment of an additional advance on costs by one or both parties.
- 13.4 If witnesses are heard, the Arbitrator shall invite them to tell the truth and draw their attention to the fact that false testimony may lead to criminal sanctions.
- 13.5 The parties shall be responsible for the availability of their witnesses and shall bear any costs and expenses related to their testimony.

14. Withdrawal of the Request, Default of Respondent

- 14.1 If the Claimant fails to submit its Request for Arbitration in accordance with Article 9.1 above despite having been requested to submit any missing elements, the BAT President may decide that the Request is deemed withdrawn.
- 14.2 If the Respondent fails to submit an Answer or fails to submit its Answer in accordance with Article 11.2 above, the Arbitrator may nevertheless proceed with the arbitration and deliver an award. The same applies if any party fails to abide by a Procedural Order (or other directions given by the Arbitrator) or fails to appear at a hearing.

15. Law Applicable to the Merits

- 15.1 Unless the parties have agreed otherwise, the Arbitrator shall decide the dispute ex aequo et bono, applying general considerations of justice and fairness without reference to any particular national or international law.
- 15.2 If according to the parties' agreement the Arbitrator is not authorised to decide ex aequo et bono, he/she shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to such rules of law he/she deems appropriate.

16. Award

16.1 Subject to Article 16.2, the Arbitrator shall give a written, dated and signed award with reasons. Before signing the award the Arbitrator shall transmit a draft to the BAT President who may make suggestions as to the form of the award and, without affecting the Arbitrator's liberty of decision, may also draw his/her attention to points of substance.

In the interest of the development of consistent BAT case law, the BAT President may consult with other BAT Arbitrators, or permit BAT Arbitrators to consult amongst themselves, on issues of principle raised by a pending case.

16.2 By agreeing to submit their dispute to arbitration under these Rules, the Parties agree that, where the value of the dispute does not exceed EUR 100,000, the Arbitrator shall issue an award without reasons, provided, however, that the Arbitrator shall deliver reasons if a party

- a) files a request to that effect at any stage from when the Request for Arbitration is filed until no later than ten (10) days after the notification of the award without reasons; and
- b) pays the respective advance on costs as determined and within the time limit set by the BAT Secretariat.

16.3 The Arbitrator shall endeavour to render the final award no later than six (6) weeks after the completion of the arbitral proceedings or payment of any outstanding advance on costs, whichever comes last.

16.4 BAT awards are not confidential unless ordered otherwise by the Arbitrator or the BAT President.

16.5 BAT awards shall be deemed to have been made at the seat of the BAT and shall be final and binding upon communication of the award to the parties by email, fax, courier or registered letter, whichever comes first. If the award cannot be delivered to a party (or a third-party appointed under Article 6.4), the award shall be final and binding for that party if and when published on the website of FIBA, provided that the party was duly notified of the arbitration and of the appointment of the arbitrator.

16.6 If the parties reach a settlement after the Arbitrator has been appointed, the settlement shall be recorded in the form of a Consent Award if so requested by the parties and if the Arbitrator agrees to do so.

16.7 After notification of the BAT award, the Arbitrator can, upon request by a party or on his/her own motion, correct any clerical, typographical or computational error contained in the award.

17. Costs of Arbitration

17.1 Along with the filing of the Request for Arbitration or a counterclaim, the Claimant (or the Counterclaimant, respectively) shall pay to the following bank account:

Beneficiary: FIBA (Basketball Arbitral Tribunal), Route Suisse 5, P.O Box 29,
1295 Mies, Switzerland

Bank: UBS Bank, Bahnhofstr. 45, 8098 Zurich, Switzerland
IBAN: CH480024324350938460F
Swift: UBSWCHZH80A

a non-reimbursable handling fee in accordance with the scale set forth below:

Sum in Dispute (in Euros)	Handling Fee (in Euros)
up to 50,000	1,500
from 50,001 to 200,000	3,000
from 200,001 to 500,000	5,000
over 500,000	7,000

If no value is specified in the Request for Arbitration, the BAT President shall determine the applicable handling fee.

This handling fee shall be taken into account when granting the prevailing party a contribution towards its legal fees and other expenses (Article 17.3 below).

17.2 At the end of the proceedings, the BAT President shall determine the final amount of the costs of the arbitration which shall include the administrative and other costs of BAT and the fees and costs of the BAT President and the Arbitrator. The final account of the arbitration costs may either be included in the award or communicated separately to the parties.

The fees of the Arbitrator shall be calculated on the basis of time spent at a rate to be determined by the BAT President from time to time.

- 17.3 The award shall determine which party shall bear the arbitration costs and in which proportion. In addition, as a general rule, the award shall grant the prevailing party a contribution towards its reasonable legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When deciding on the arbitration costs and on the parties' reasonable legal fees and expenses, the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s) sought and, secondarily, the conduct and the financial resources of the parties.
- 17.4 The maximum contribution to a party's reasonable legal fees and other expenses (excluding the non-reimbursable handling fee) shall be as follows:

Sum in Dispute <i>(in Euros)</i>	Maximum contribution <i>(in Euros)</i>
up to 30,000	5,000
from 30,001 to 100,000	7,500
from 100,001 to 200,000	10,000
from 200,001 to 500,000	15,000
from 500,001 to 1,000,000	20,000
over 1,000,000	40,000

In case of multiple Claimants and/or Respondents, the maximum contribution is determined separately for each party according to the foregoing table on the basis of the relief sought by/against this party.

18. Miscellaneous

- 18.1 These Rules enter into force on 1 January 2017 and are applicable to Requests for Arbitration received by the BAT Secretariat or FIBA (whichever comes first) on or after such date.
- 18.2 Any reference to BAT's former name "FIBA Arbitral Tribunal (FAT)" shall be understood as referring to the BAT.