



BASKETBALL ARBITRAL TRIBUNAL (BAT)

Arbitration Rules

**1 December 2019
Version**

BASKETBALL ARBITRAL TRIBUNAL

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 these 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 and economy, 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) 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 and the BAT shall have jurisdiction whenever the parties to a dispute have agreed in writing to submit the dispute 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 The BAT Arbitrator assigned to the individual case (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 that proceeds with the arbitration and does not raise, 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 the 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. Notifications and Communications, Filing Address

- 6.1 All submissions, notifications and other communications to and from the BAT shall be made through the BAT Secretariat. The parties shall transmit any such submissions, notifications or other communications by e-mail only; transmission by other means shall be strictly limited to cases in which transmission by email is not technically feasible.
- 6.2 Requests for Arbitration shall be filed to the BAT Secretariat's main e-mail address (BAT@martens-lawyers.com). Claimants shall use the template Request for Arbitration provided, from time to time, on the BAT website.
- 6.3 Notifications and communications from the BAT to the parties or their counsel shall be made to the addresses indicated in the Request for Arbitration and the Answer, or to 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 If a party files a submission other than by email, the Arbitrator is entitled to request an electronic copy of the submission.

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 time limits or grant new time limits. Unless admitted otherwise by the Arbitrator in his/her sole discretion, any requests for extension shall be filed before the last day of the relevant deadline, and shall set out the reasons for which the request is made.

8. Arbitrators, Limitation of Liability

- 8.1 All disputes before the BAT shall be decided by a single Arbitrator appointed by the BAT President in his/her sole discretion 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. In the event that the Arbitrator so appointed is unavailable, resigns, is successfully challenged or declines the appointment, the BAT President shall appoint another 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, Counterclaims

- 9.1 A BAT arbitration shall commence on the date of receipt by the BAT Secretariat of a Request for Arbitration, which shall 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 on which the Claimant seeks to rely.
 - The Claimant's request for relief.

- The total amount of any interest or late payment penalties sought in relation to any period prior to the date of filing of the Request for Arbitration.
 - A copy of any written contract containing the agreement to have the dispute resolved by arbitration before the 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 (see Article 17.1) 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 such advance 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 (see Article 17.1); in fixing the amount of an advance on costs, the BAT Secretariat shall take into account inter alia the sum in dispute and the complexity of the case. The initial advance on costs fixed for an award without reasons (see Articles 16.2 and 16.3) shall not exceed EUR 6,000. Where the sum in dispute does not exceed EUR 100,000, the initial advance on costs fixed for an award with reasons shall not exceed EUR 9,000.
- 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 applies mutatis mutandis to counterclaims.
- 10. Provisional and Conservatory Measures**
- 10.1 Upon request, the Arbitrator may make an order for provisional and/or conservatory measures. In cases of extreme urgency, such orders can be made ex parte.
- 10.2 Orders for provisional and/or conservatory measures can be made conditional upon the posting of a security.

- 10.3 Requests for provisional and/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 and/or conservatory measures from any state court.

11. Initiation of the Arbitral Proceedings, (De-)Consolidation, Answer

- 11.1 After filing, the Request for Arbitration shall be forwarded to the BAT President for a prima facie determination whether the subject matter of the dispute is arbitrable and the arbitration can thus proceed.
- 11.2 If the BAT President determines that the arbitration can proceed, he/she shall appoint the Arbitrator (see Article 8.1).
- 11.3 The BAT President (or, if the same Arbitrator is appointed for the cases concerned, the Arbitrator after his/her appointment) may consolidate two or more Requests for Arbitration into one arbitration. The BAT President (or, once appointed, the Arbitrator) may deconsolidate a Request for Arbitration into two or more arbitrations. In exercising his/her discretion, the BAT President (or the Arbitrator, as the case may be) shall take into account whether there is a sufficiently close connection between the claims and whether they are subject to arbitration clauses that are identical in substance. Claims that are neither based on the same contract nor on contracts that directly relate to each other shall, absent exceptional circumstances, not be deemed to have a sufficiently close connection.
- 11.4 The BAT Secretariat shall inform the parties about the Arbitrator's appointment and shall communicate the Request for Arbitration and the time limit for the Answer. The Answer shall contain:
- Any defence of lack of jurisdiction.
 - A statement of defence, including a statement of all the facts and legal arguments on which the Respondent seeks to rely.
 - Names and addresses of the Respondent and its counsel (if any), unless this has already been set out in the Request for Arbitration.
 - 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, Suspension

- 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.
- 12.4 The Arbitrator may suspend the arbitration upon request by one or both parties. If a requested suspension exceeds two months (by itself or in combination with earlier suspensions), an abeyance fee of EUR 500 shall apply thereafter for each period of suspension of up to six months. Failing payment of the abeyance fee into the BAT bank account (see Article 17.1) within the time limit set by the BAT Secretariat, the Arbitrator may lift any existing suspension and refuse to grant any new suspension unless and until the applicable abeyance fee is paid.

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 Articles 6.1 and 9.1 despite having been requested to submit any missing elements, the BAT President may decide that the Request for Arbitration is deemed withdrawn. The Arbitrator shall have the same powers with respect to counterclaims.
- 14.2 If the Respondent fails to submit an Answer at all or in accordance with Article 11.4, 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 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 an express and specific agreement of the parties, 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. In both cases, the parties shall establish the contents of such rules of law. If the contents of the applicable rules of law have not been established, Swiss law shall apply instead.

16. Award

- 16.1 The Arbitrator shall give a written, dated and signed award which, subject to Article 16.2, shall include 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, subject to Article 16.3, the Arbitrator shall issue an award without reasons if the sum in dispute does not exceed EUR 50,000.

- 16.3 In cases falling under Article 16.2, the Arbitrator shall issue an award with reasons (which shall substitute in full for any previously-issued award without reasons) only if
- a) a party (i) 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 (ii) pays, within the deadline set by the BAT Secretariat, an amount of EUR 3,000 into the bank account indicated in Article 17.1, failing which the request shall be deemed withdrawn; or
 - b) the BAT President determines in his sole discretion, before the award is issued, that it shall be rendered with reasons, taking into account the issues raised by the case as well as the public interest in a sufficient body of publicized awards with reasons.
- 16.4 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.
- 16.5 BAT awards are not confidential unless ordered otherwise by the Arbitrator or the BAT President.
- 16.6 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, if any), 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.
- 16.7 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.
- 16.8 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

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

- 17.2 At the end of the proceedings, the BAT President shall determine the final amount of the arbitration costs, which shall include the administrative and other costs of the BAT, the contribution to the BAT Fund (see Article 18), the fees and costs of the BAT President and the Arbitrator, and any abeyance fee paid by the parties (see Article 12.4). 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 any reasonable legal fees and other expenses incurred in connection with the proceedings (including any reasonable costs of witnesses and interpreters). When deciding on the arbitration costs and on the amount of any contribution to 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 (in Euros)	Maximum contribution (in Euros)
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.

- 17.5 The sum in dispute shall be the aggregate amount of all claims (and counterclaims, if any) made in the arbitration. This includes any interest or late payment penalties sought for periods prior to the filing of the Request for Arbitration. If a party seeks any relief other than an order for payment, the BAT Secretariat shall determine in its discretion the sum in dispute attributable to such request for relief, and may adjust this during the arbitration, if necessary.

If the sum in dispute changes during the arbitration (other than by virtue of interest or late payment penalties continuing to accrue), the relevant sum in dispute shall be the highest one.

For the purposes of Article 17.1 only, the sum in dispute shall be determined separately for the claim and any counterclaim.

18. The BAT Fund

- 18.1 The BAT maintains a fund (the "BAT Fund") from and into which payments are made as set out in this provision.
- 18.2 If the President of the BAT determines, in accordance with Article 16.3 b), that the award shall be rendered with reasons, a contribution shall be paid from the BAT Fund

towards the costs of the arbitration in that case. The amount of such contribution shall be determined by the BAT President from time to time.

- 18.3 If a case is terminated before payment of any Advance on Costs, the fees and expenses of the Arbitrator and of the BAT President shall be covered by the BAT Fund.
- 18.4 The payments provided for in Articles 18.2 and 18.3 are subject to sufficient funds being available in the BAT Fund.
- 18.5 The BAT Fund is financed by way of a fixed contribution payable in each arbitration as part of the costs of the arbitration. The amount of such contribution shall be determined by the BAT President from time to time.

19. Miscellaneous

- 19.1 These Rules enter into force on 1 December 2019 and are applicable to Requests for Arbitration received by the BAT Secretariat on or after such date.
- 19.2 Any reference to the BAT's former name "FIBA Arbitral Tribunal (FAT)" shall be understood as referring to the BAT.