

## Information on new BAT Rules

The Basketball Arbitral Tribunal (“BAT”) herewith informs its users about its new Arbitration Rules (“BAT Rules”), which will come into effect, and thus replace the currently valid 2017 edition, as of **1 December 2019**. The new BAT Rules aim to further improve BAT proceedings, and take into account feedback provided by stakeholders over the past years, in particular from the first BAT User Conference on 8 March 2019. The most important amendments are summarized below.

### 1) Increasing the number of awards with reasons

After the 2014 edition of the BAT Rules came into force, a higher proportion of awards was issued without reasons. This had the benefit of reducing time and cost for the parties involved in the relevant arbitral proceedings. However, there has been growing concern amongst BAT users that, since the findings of the arbitrators in those cases remains unknown, there is a certain lack of guidance as to the jurisprudence of the BAT.

Striking a new balance between the efficiency of the proceedings and the availability of a sufficient body of jurisprudence, the new BAT Rules include the following three amendments:

- Award with reasons to be rendered if sum in dispute exceeds EUR 50,000 (Article 16.2): Based on the statistics of previous years, one can expect that moving the threshold from EUR 100,000 to EUR 50,000 will increase the number of awards with reasons by approximately 20%. At the same time, the threshold is sufficiently high so as to ensure that the additional costs of an award with reasons will not constitute a disproportionate burden on the parties concerned.
- Parties can request reasons for a flat-fee of EUR 3,000 (Article 16.3(a)): If the sum in dispute does not exceed EUR 50,000, the parties remain free to request reasons. Contrary to the current rules, however, this will no longer require payment of an Advance on Costs, which was usually fixed at EUR 5,000. Instead, the new BAT Rules require payment of a flat-fee of EUR 3,000. Apart from this new rule reducing the payment that needs to be made up front, it provides security to the requesting party as to the final amount payable for reasons.
- BAT President may decide that the award be issued with reasons (Article 16.3(b)): If the sum in dispute does not exceed EUR 50,000, the BAT President may decide that the Arbitrator shall nonetheless issue an award with reasons. This rule ensures that awards with significant jurisprudential value can be issued with reasons irrespective of the sum in dispute. To reduce the financial impact of the BAT President’s decision on the parties, the newly-established BAT Fund (see Section (3) below) will pay a contribution to the arbitration costs in those cases.

**2) Reducing the financial burden if the counterparty fails to pay its Advance on Costs**

The second major concern raised by many users, also at the BAT User Conference, is the financial burden placed on a party if the counterparty fails to pay its share of the Advance on Costs. In order to reduce such financial burden and thereby facilitate access to justice, the BAT will implement the following measures:

- Change of BAT practice: If the Respondent fails to submit an Answer to the Request for Arbitration under the new BAT Rules, the BAT will reduce (wherever possible) the Advance on Costs before inviting the Claimant to substitute for the Respondent's share. Accordingly, the Claimant would then need to advance only a lower additional amount before the arbitration can proceed. This change of BAT practice does not require an amendment to the BAT Rules.
- Reduction of the cap on the initial Advance on Costs for awards without reasons: The cap applicable to the initial Advance on Costs for awards without reasons is reduced from EUR 7,000 to EUR 6,000 (Article 9.3.1, second sentence). While it remains possible to require an additional Advance on Costs later in the proceedings, this will often not be necessary. This measure will reduce the financial burden on both parties, but will be of particular relevance for a party whose counterparty fails to pay its share of the Advance on Costs.
- Introduction of a new cap on the initial Advance on Costs for awards with reasons: If the sum in dispute exceeds EUR 50,000 but not EUR 100,000, an award with reasons will be rendered (see Section (1) above). However, given the relatively low sum in dispute, a new cap of EUR 9,000 is introduced for the initial Advance on Costs in those cases (Article 9.3.1, third sentence). While it remains possible to require payment of an additional Advance on Costs later in the proceedings, this will often not be necessary.

**3) Introducing the BAT Fund (Article 18)**

The newly-created BAT Fund will make payments towards the arbitration costs in two cases:

- First, a contribution to the arbitration costs will be paid in cases in which the BAT President decides that the Arbitrator shall issue an award with reasons (see Section (1) above). For the time being, this amount has been fixed by the BAT President at EUR 3,000.
- Second, the BAT Fund will pay the fees and expenses of the Arbitrator and the BAT President if a case is terminated before payment of any Advance on Costs by the parties.

The BAT Fund is financed by way of a fixed contribution payable in each arbitration as part of the costs of the arbitration. For the time being, the BAT President has set this amount to EUR 300.

**4) Further increasing the efficiency of the proceedings**

A number of smaller amendments seek to further increase the efficiency of BAT proceedings. In particular, there is now a formal rule requiring all submissions (and other communication) to be transmitted by email only, unless this is technically unfeasible (Articles 6.1 and 6.2). Also, Claimants will have to specify in their Requests for Arbitration the total amount of any interest or late payment penalties sought for the time prior to filing (Article 9.1). Moreover, the new BAT Rules introduce an express rule on (de-)consolidation, which provides guidance as to the criteria based on which the BAT President or the Arbitrator will decide whether or not to (de-)consolidate cases (Article 11.3). Furthermore, requests for extension, in principle, will need to be filed before the last day of the relevant deadline, and set out the reasons for which the request is made (Article 7.2).

In this context of increasing efficiency, the BAT would also like to remind its users that submissions should be filed as a clearly legible PDF document that includes a list of exhibits. Any exhibits should be submitted either in the same PDF file as the submission itself (with each exhibit clearly numbered/marked in the document) or as separate PDF files (with the file names indicating the exhibit number). Also, e-mails sent to the BAT Secretariat should not exceed 10 MB in size.

**Any questions?**

The new BAT Rules are available on [www.fiba.com/bat/process](http://www.fiba.com/bat/process), both as a clean document and as a mark-up showing all changes compared to the 2017 edition. In addition, the BAT Secretariat is very happy to answer any questions you may have. Please do not hesitate to contact us by e-mail ([bat@martens-lawyers.com](mailto:bat@martens-lawyers.com)) or telephone (+49 89 452 44 22 15).