BASKETBALL
ARBITRAL TRIBUNAL

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Arbitration Rules

1 April 2011
Version

FIBA
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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 are designed to provide for a simple, quick and inexpensive means to resolve these disputes. As a consequence, the BAT Arbitration Rules require cooperation by the parties, 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 strictly 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 request by one of the parties and/or 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."*

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1. Jurisdiction

1.1 These BAT Arbitration 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, its Zones or their respective 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, upon decision by the Arbitrator and after consultation with the parties, 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 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.

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
51-53, Avenue Louis Casaï
1216 Cointrin/Geneva
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 by the Arbitrator.

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.

The Arbitrator is entitled to request the parties to submit electronic copies by e-mail 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 extend the time limits in exceptional circumstances.

8. Arbitrators, Limitation of Liability

8.1 All disputes before the BAT will 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 FIBA. In the event that the Arbitrator so appointed is unavailable or declines the appointment, the BAT President shall appoint the next available Arbitrator.

8.2 Before proceeding with the arbitration, the Arbitrator shall sign a declaration of acceptance and independence provided by the BAT Secretariat. A copy of the signed declaration shall be sent to the parties.

8.3 An Arbitrator may be challenged if the circumstances give rise to legitimate doubts regarding his 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 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. Requests for Arbitration, Advance on Costs

9.1 A BAT arbitration shall commence on the date of receipt by FIBA 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.
- 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.

9.3 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 the 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 is below EUR 30,000 the advance on costs fixed for an award without reasons (Article 16.2 below) shall not exceed EUR 5,000 unless decided otherwise by the Arbitrator.

If a party fails to pay its share, the other party may substitute for it.

The Arbitrator will not proceed with the arbitration until the full amount of the advance on costs is received. He/she may fix a final date for the payment of the advance on costs failing which the Request for Arbitration shall be deemed withdrawn.

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, in particular, whether the Request complies with the requirements of Article 9.1 above and 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 shall 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 counter claim 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 Order of Procedure. 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 one of the parties requests a hearing and/or the Arbitrator decides to hold a hearing. 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 are responsible for the availability and the costs of their witnesses.

14. Withdrawal of the Request, Default of Respondent

14.1 If the Claimant fails to submit his 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 his 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 an Order of Procedure or by 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 arbitration clause 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 summary 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 on issues of principle raised by the award.

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 30,000, the Arbitrator will issue an award without reasons. The Arbitrator shall deliver reasons only in the case where 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 the payment of the advance on costs referred to at Article 16.2(b), whichever comes last.

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

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 to the parties.

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 Tribunal can, upon request by a party or on its 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 the Claimant shall pay to the following bank account:

Beneficiary:	FIBA (Basketball Arbitral Tribunal)
Bank:	UBS Lausanne, Switzerland
Account No.:	0243-509384.60F
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 30,000	1,500
from 30,001 to 100,000	2,000
from 100,001 to 200,000	3,000
from 200,001 to 500,000	4,000
from 500,001 to 1,000,000	5,000
over 1,000,000	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. 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 such contribution, the Arbitrator shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties.

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18. Miscellaneous

18.1 These Rules enter into force on 1 April 2011 and are applicable to Requests for Arbitration received by the BAT Secretariat or by FIBA 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.