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sociedade de advogados

2nd BAT USER CONFERENCE



VS.



When it starts ?

09 August 2021

To all FIBA Licensed Agents

Reference: Revision of the FIBA Agents Regulations

Dear FIBA Agents,

..As a result, we are glad to inform that the Central Board recently approved substantial amendments to its internal Regulations concerning the activity of the FIBA Licensed Agents...

..Considering that these amendments might have an important impact on FIBA Licensed Agents' activities and on the basketball market in general, the new provisions will enter into force on 1st January 2022...



What has changed?

- Chapter 9: Players' Agents (291 - 324)
- Book 3: Players and Officials (last version dated 26 March 2022)

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- Requirement to be a licensed agent to request FIBA's assistance in the honouring of a BAT award

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What should I do?

- What are the effects of the changes to the agency's market?
- How may the changes influence the wording of the Agent Contracts to be signed by and between players and agents?

What is the legal framework?

FIBA INTERNAL
REGULATIONS?



AGENT
CONTRACT?



BASKETBALL ARBITRAL TRIBUNAL – BAT

What does the BAT say?

BAT Arbitration Rules

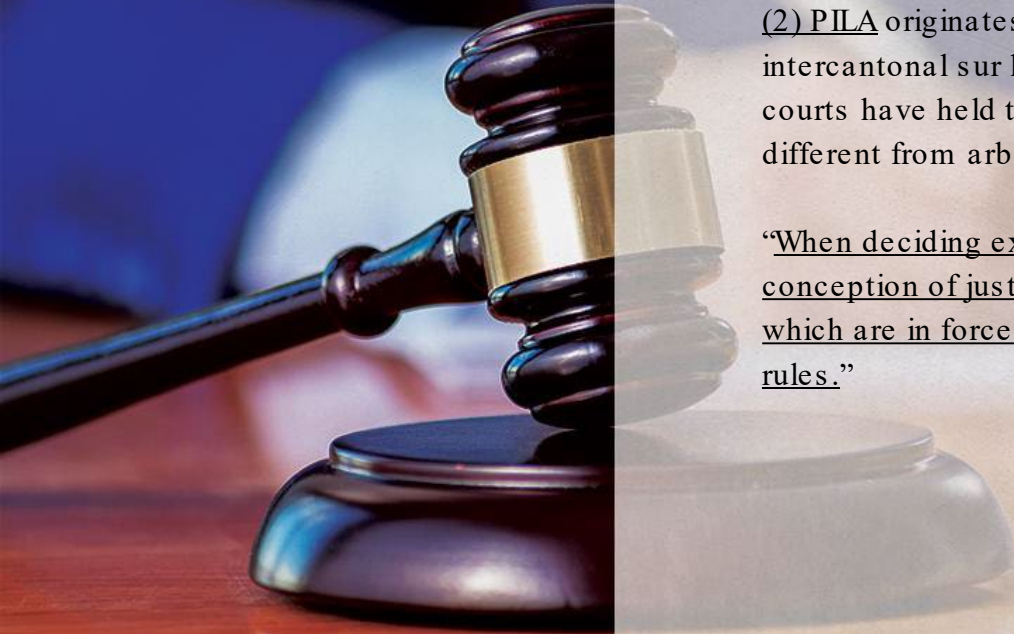
- 15. Law Applicable to the Merits
- 15.1 The Arbitrator shall decide the dispute ex aequo et bono, applying general considerations of justice and fairness without reference to any particular national or international law.

“according to the right and good”

Ex Aequo et Bono

The concept of “équité” (or ex aequo et bono) used in Article 187 (2) PILA originates from Article 31(3) of the Concordat intercantonal sur l’arbitrage (Concordat), under which Swiss courts have held that arbitration “en équité” is fundamentally different from arbitration “en droit”:

“When deciding ex aequo et bono, the Arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules.”



Pacta Sunt Servanda

By way of introduction, the Arbitrator recalls the consistent position taken now over many years by BAT arbitrators that the doctrine of pacta sunt servanda (which is consistent with justice and equity – parties who make a bargain are expected to stick to that bargain) is the cornerstone principle by which the merits of the claims are examined.

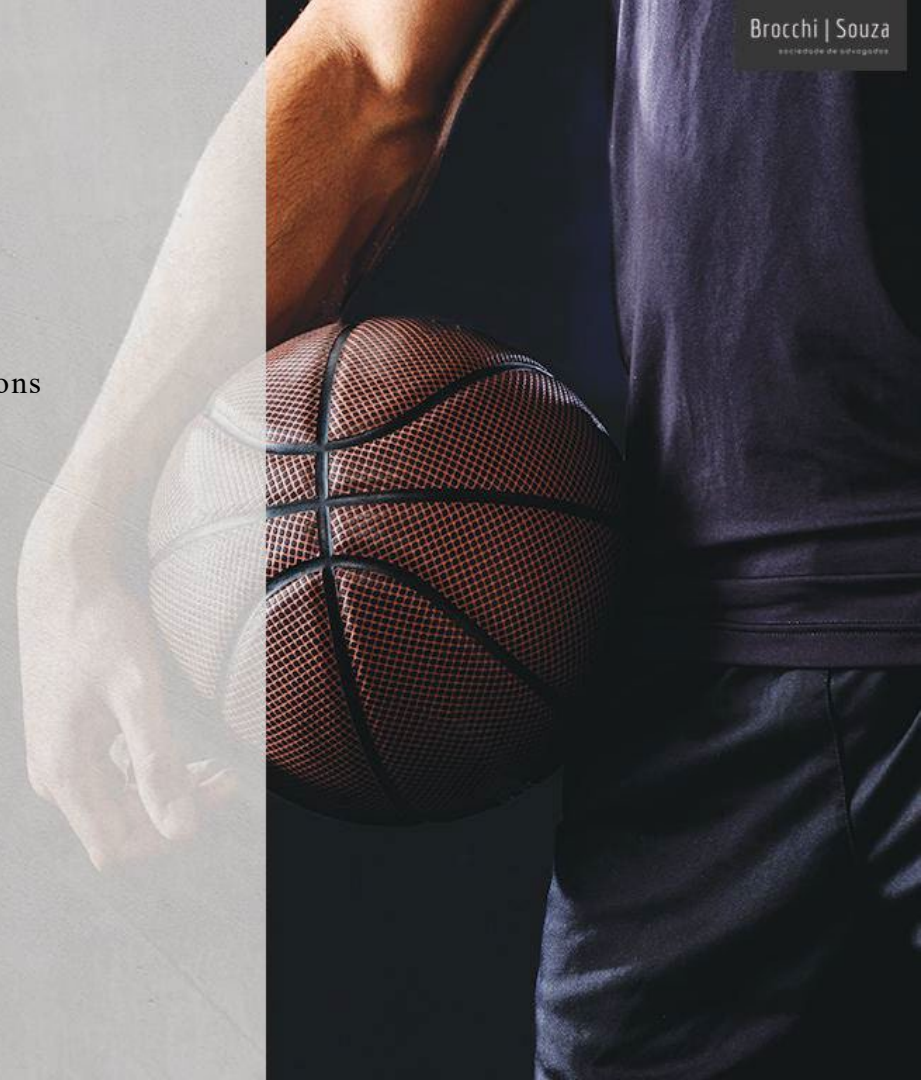
(BAT 1665/21)



Pacta Sunt Servanda

At the heart of all BAT awards is the doctrine of pacta sunt servanda and routes for the discharge of contractual obligations are necessarily specific and limited.

(BAT 1149/18)



Pacta Sunt Servanda

First, the proper interpretation of an agreement is of foremost importance, as the contents of the “pacta” must be known thoroughly before one can say, with confidence, what must be performed (the “sunt servanda”).

(...)

As regards the second aspect of the question, namely, when ruling ex aequo et bono, under what circumstances might the effect of contractual terms (once properly interpreted) be attenuated or moderated. Again, as already noted, under ex aequo et bono, in principle, an arbitrator gives effect to all contractual terms used by parties once properly interpreted.

(BAT 756/15)



Doctrine

“In a nutshell, the arbitrator will analyze the terms of the contract between the parties, considering all the circumstances surrounding each concrete case (e.g. the conducts of the parties, the relationship between the parties, previous violations, etc.) and take a decision based on what he/she considers to be fair and equitable in the case at hand. The arbitrator will give significant weight to the contractual arrangements of the parties according to the legal principle of the pact sunt servanda and he/she may only depart from the contract if he/she considers that a specific term would be disproportionate, unfair or abusive.”

(Tomas Pereda and Giandonato Marino, 2021)

<https://links.law.glueup.cn/resources/protected/edm/47987/d773152f-1fc4-4486-91ad-73af1f648047.pdf>

What to expect?

- Consequences of the New FIBA Agents Regulations
- BAT Jurisprudence
- Ex Aequo et Bono
- Pacta Sunt Servanda
- Prevalence of the wording of the contracts
- Possible Mitigation of the effects of the changes
- How should the new rules be enforced?

Thanks

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