



# **A practical perspective on BAT proceedings – how they work and how to avoid common mistakes and inefficiencies**

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Munich, 8 March 2019**

## The Five Main Steps of the BAT Procedure

**1<sup>st</sup> Step:** Filing the Request for Arbitration/Paying the handling fee

**2<sup>nd</sup> Step:** Opening of the Proceedings by the BAT

**3<sup>rd</sup> Step:** Respondent's Answer/Parties' payment of the AoC

**4<sup>th</sup> Step:** Further Proceedings (if any)

**5<sup>th</sup> Step:** Arbitral Award

## First Step: Filing of the Request for Arbitration/Payment of the NRF

- Claimant must file the Request for Arbitration („RfA“) with the BAT Secretariat ([BAT@martens-lawyers.com](mailto:BAT@martens-lawyers.com)).
- As per Article 9.1 of the BAT Rules, the RfA should contain:
  - Names, full addresses, telephone/fax numbers and e-mail addresses of the Parties and their respective counsel, if any
  - Duly signed power of attorney (if applicable)
  - Arbitration clause signed by all Parties
  - Statement of all relevant facts and legal arguments
  - All written evidence
  - Any request for the examination of witnesses
  - Claimant's request for relief

## First Step: Filing of the Request for Arbitration/Payment of the NRF

- Important advice:

- ! File the RfA by email only
- ! Use the 2018 RfA template (<http://www.fiba.basketball/bat/process>)
- ! Provide complete and correct information on Respondent's (and its counsel's/agent's) address, fax and phone number
- ! Do not forget to provide a signed PoA if you are represented by counsel

## First Step: Filing of the Request for Arbitration/Payment of the NRF

- Important advice (cont'd):
  - ! Use PDF format, preferably one document including RfA and exhibits
  - ! Include exhibit list and clearly number all exhibits
  - ! Keep file size below 10 MB
  - ! Do not attach BAT Awards as exhibits to the RfA

## First Step: Filing of the Request for Arbitration/Payment of the NRF

- Important advice (cont'd):
  - ! If you cannot provide a signed arbitration clause: mention it in the RfA and provide reasons.
  - ! Default rule: no further submissions by the Claimant => make sure to include all relevant submissions and evidence
  - ! No time limit for filing of RfA. But: case law on “Verwirkung”!

## First Step: Filing of the Request for Arbitration/Payment of the NRF

- Claimant to pay the non-reimbursable handling fee (“NRF”, Art. 17.1 BAT Rules)
  - Purpose: Funding of the BAT’s administrative work (BAT is self-financed)
  - Amount: Depending on the sum in dispute as follows:
    - Up to EUR 50,000: EUR 1,500
    - From EUR 50,001 to 200,000: EUR 3,000
    - From EUR 200,001 to 500,000: EUR 5,000
    - Over EUR 500,000: EUR 7,000
  - Arbitration will not start before BAT has received the complete NRF. RfA may be deemed withdrawn for non-payment of the NRF.

## First Step: Filing of the Request for Arbitration/Payment of the NRF

- Important advice:
  - ! Consider potential transaction fees if the payment is not made in EUR or from an account outside the EU
  - ! Clearly indicate the reference to the filed RfA on the payment (state the names of the parties involved in the dispute, also refer to “handling fee”)
  - ! Payment of the NRF should be made when filing the RfA, or shortly thereafter
  - ! NRF is considered part of the Claimant’s legal fees and other expenses (≠arbitration costs) => include it in your statement of costs

## Second Step: Opening of the proceedings

- Preparing the initiation of the arbitration (BAT Sec.):
  - Checking if RfA meets all formal requirements / exhibits are complete
  - Determining if correct NRF was paid
  - Creating a new file in the case management system, uploading all documents
  - Determining the Advance on Costs („AoC“) (Art. 9.3.1 BAT Rules)
  - Compiling information in preparation of the appointment of an arbitrator:
    - Current caseload of all BAT arbitrators
    - Potential conflicts of interest of any BAT arbitrator
    - Specific requirements of a case (e.g. language skills)

## **Second Step: Opening of the proceedings**

- Appointing the Arbitrator (BAT President):
  - Prima facie review of BAT's jurisdiction (Art. 11.1 BAT Rules)
  - Selection of the arbitrator, taking into account the information provided by the BAT Sec. (Art. 11.2 BAT Rules)

## Second Step: Opening of the proceedings

- Confirmation Letter („CL“) to the parties (BAT Sec. on behalf of Arbitrator):
  - Acknowledging receipt of RfA and NRF
  - Informing the Parties about the Arbitrator appointed to the case
  - Setting a time limit for the filing of the Respondent's Answer to the RfA (usually 3 weeks)
  - Informing the Parties about the amount of the Advance on Costs („AoC“) and the time limit for payment thereof (usually 10 days)
  - Providing other relevant information on the proceedings

## Third Step: Respondent's Answer/Payment of the AoC

- Respondent may file its Answer which should contain (Art. 11.2 of BAT Rules):
  - Names and addresses of the Respondent and counsel, unless this has already been set out in the Request
  - Duly signed power(s) of attorney (if applicable)
  - A statement of defence, including a statement of all the facts and legal arguments
  - Any objection to the arbitrator's jurisdiction
  - Any counter claim and details of the relief sought
  - All written evidence on which the Respondent intends to rely
  - Any request for the examination of (a) witness(es)
  
- ! Default rule: no further submissions by the Respondent => present any and all arguments that you wish to rely on
  
- ! Most tips related to the filing the RfA apply mutatis mutandis to the Answer

## Third Step: Respondent's Answer/Payment of the AoC

- Advance on Costs:
  - Purpose: Cover the estimated costs of the arbitration, i.e. mainly expected fees and expenses of the Arbitrator and the BAT President
  - Determination: Monetary value of the dispute, complexity of the case, number of parties involved in the dispute (Art. 9.3.1 BAT Rules)
  - Proceedings will not continue until and unless BAT receives the entire AoC (Art. 9.3.3 BAT Rules)

## Third Step: Respondent's Answer/Payment of the AoC

- Advance on Costs (cont'd):
  - Parties need to pay their respective share of the AoC, as fixed by the BAT Sec.
  - If one party fails to pay its share of the AoC, the other party may substitute for it to ensure that the arbitration continues (Art. 9.3.2 BAT Rules)
  - Any difference between the AoC and the arbitration costs (as determined at the end of the proceedings) will be reimbursed by BAT Sec.

## Third Step: Respondent's Answer/Payment of the AoC

- Requests for extension of time for the Answer (or any other submission) / for payment of the AoC:
  - ! File the request as soon as possible (in particular: avoid filing it on the last day of the deadline)
  - ! Submit grounds for the request
  - ! Request a specific date until which the time limit shall be extended
  - ! Try obtaining the other party's consent before filing the request

## Fourth Step: Further Proceedings

- Scenario 1: Answer was filed and both shares of the AoC were paid
  - Proceedings are closed (default position under the BAT Rules)

or

  - Only if Arbitrator so decides: second round of submissions and/or specific questions to Parties and/or hearing

## Fourth Step: Further Proceedings

- Scenario 2: No Answer was filed but full AoC was paid
  - Arbitrator may nevertheless proceed with the arbitration and deliver an award (Art. 14.2 BAT Rules)
  - Same options to proceed as if Answer had been filed, but usually the proceedings will be closed without further submissions or a hearing
  
- Scenario 3: AoC was not paid (in full) despite final reminder by the BAT Sec
  - RfA is deemed withdrawn and the Arbitrator issues a termination order (Art. 9.3.4 BAT Rules)
  - Any remainder of the AoC is reimbursed by the BAT Sec.

## Fourth Step: Further Proceedings

- Scenario 4: Parties reach a settlement
  - Claimant withdraws the RfA, Termination Order is issued  
or
  - Arbitrator issues Consent Award upon parties' request (Art. 16.6 BAT Rules)
  - ! AoC is usually adjusted to the total amount of EUR 2,000
  - ! Provide settlement agreement („SA“) signed by all parties involved
  - ! Include clause in the SA stating which party bears the legal fees and arbitration costs, which party is reimbursed remainder of AoC

## Fourth Step: Further Proceedings

- Hearings in BAT proceedings
  - No hearing is held unless the Arbitrator decides to hold a hearing (after consultation with the parties, Art. 13.1 BAT Rules)
    - ! But: if you want a hearing to be held, do make sure to request one and to explain why you deem it necessary.
  - Whether the hearing is held in person or by telephone/video conference is subject to the Arbitrator's discretion (Art. 13.2 BAT Rules)
    - ! But: if you have a preference, do mention it in your request for a hearing
  - Holding of the hearing may be made contingent upon the payment of an additional AoC (Art. 13.3 BAT Rules)

## Fourth Step: Further Proceedings

- Hearings in BAT proceedings (cont'd)
  - Parties are responsible for the availability of their witnesses and bear any costs and expenses related to their testimony (Art. 13.5 BAT Rules) – reimbursement is subject to the Arbitrator's final ruling on costs
  - ! Inform the BAT at your earliest convenience if an interpreter is required (BAT Sec. will retain the interpreter)
  - ! Inform the BAT at your earliest convenience if you require any documents from the BAT to apply for a visa

## Fifth Step: Award

- Once the Arbitrator feels sufficiently informed to render an award, the proceedings will be closed and the parties will be invited to submit their account of costs
  - ! Provide detailed account indicating all legal fees/expenses incurred
  - ! Provide evidence such as invoices from your counsel (should set out in detail how much time was spent and on what)
  - ! Thus far, Arbitrators have only accepted fees of external counsel as reimbursable legal fees

## Fifth Step: Drafting of the Award/Scrutiny

- Arbitrator drafts Award and sends it to the BAT Secretariat
  - Low value case ( $\leq$  EUR 100,000): Award without reasons + internal memorandum on reasons
  - High value case ( $>$  EUR 100,000): Award with reasons
  
- Preliminary review of the Award by the BAT Sec.:
  - Does the Award comply with all formalities?
  - Is there any BAT jurisprudence that should be drawn to the Arbitrator's attention? If so, it will be provided to the BAT President

## **Fifth Step: Drafting of the Award/Scrutiny**

- Scrutiny of the Award by the BAT President; he may make suggestions to the Arbitrator as to form and substance, without affecting however the Arbitrator's liberty of decision (Article 16.1 BAT Rules)
- BAT President determines the arbitration costs (Art. 17.2 BAT Rules)
- The Arbitrator reviews any suggestions by the BAT President and notifies the BAT Sec. of any changes to the initial draft
- BAT Sec. proof-reads the award one last time, has it signed by the Arbitrator and sends it to the parties

## Fifth Step: Drafting of the Award/Scrutiny

- Difference between AoC and arbitration costs is reimbursed by the BAT Sec.
- BAT Sec. sends the (sometimes redacted) award, together with a brief summary, to FIBA for publication on its website:  
<http://www.fiba.basketball/bat/awards>

Thank you for your attention  
and enjoy your lunch!