

The Basketball Arbitral Tribunal's 2017 Rules

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Abstract: In late 2016, the BAT issued a new set of arbitration rules, due to come into force on 1st January 2017 (the 2017 BAT Rules). This note discusses the main changes introduced by the 2017 BAT Rules, which concern the provisions governing cost, the content, issuance and notification of the award, and the BAT President's and Secretariat's functions. Noteworthy amendments include the introduction of an internal consultation mechanism for arbitrators (subject to the BAT President's authorisation) and the modifications made to the brackets in the scale of monetary values for disputes, which are relevant, *inter alia*, to determine the amount of the "non-reimbursable handling fee" to be paid by claimants when filing the request for arbitration and the applicable default rule on whether the award will be issued with or without reasons. Overall, the amendments included in the 2017 Rules may be seen as improvements in the users' access to BAT justice.

Keywords: BAT Rules; FIBA; SFT; *ex aequo et bono*; BAT President; BAT arbitrators; arbitration costs; BAT awards

1. Introduction

The BAT was conceived to provide simple, quick and inexpensive arbitral proceedings to resolve commercial disputes arising in the world of professional basketball.¹ Accordingly, the BAT Arbitration Rules have a number of built-in features designed to facilitate the time- and cost-effective resolution of disputes.²

In particular, under the BAT Rules cases can only be decided by a sole arbitrator (appointed by the institution, on a rotational basis and from a closed list),³ written submissions are to be filed within short time limits and – where possible – limited to a single exchange,⁴ hearings are held only where the arbitrator so decides after having consulted the parties,⁵ and communications as well as filings can be made by rapid and simple means such as e-mail or fax.⁶ In addition, unless the parties have agreed otherwise, their dispute will be decided *ex aequo et bono* rather than on the basis of a specific national law, which makes it possible for arbitrators unfamiliar with foreign domestic legal systems to decide cases without the need for (costly and time-consuming) submissions on issues of local law. BAT arbitrators are expected to render their awards quickly, to the extent possible within six weeks from the

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¹ BAT Rules, Preamble 0.1 and 0.2.

² For a detailed discussion of the specific features of the BAT Rules and process, readers are referred to Hasler 2016, pp. 115-132, with numerous further references.

³ BAT Rules, Preamble 0.2 and Art. 8.1.

⁴ BAT Rules, Preamble 0.2, and Art. 12.1.

⁵ BAT Rules, Preamble 0.2 and Art. 13.1.

⁶ Art. 6.3 BAT Rules.

closing of the proceedings or the payment of the advance on costs, whichever occurs last.⁷ To keep party costs under control, the BAT Rules place a cap on the contribution towards the prevailing party's "reasonable legal fees and other expenses incurred in connection with the proceedings" which the losing party will normally be ordered to pay.⁸ Finally, again to contain costs and in the interest of speed, only the dispositive part of the award (without the underlying reasoning) is issued, unless otherwise requested by a party, in cases with a lower amount in dispute.⁹

According to the latest figures (up to end 2016), the average duration of BAT arbitrations is now between 6 and 7 months, and the cost/value ratio of cases is approx. 6%.¹⁰

The total number of cases registered with the BAT as of 31 December 2016 was 951.¹¹ To deal with the Tribunal's growing caseload, the roster of BAT arbitrators was recently partially renewed and augmented from six to seven arbitrators.¹²

Against this busy background, the BAT has issued a new version of its arbitration rules, due to come into force on 1st January 2017 (the 2017 BAT Rules).¹³ The 2017 BAT Rules will replace the current set of rules, which had been effective since 1st May 2014. A redlined version, showing the amendments that will be introduced as against the text of the 2014 Rules, is already available on the BAT website.¹⁴ The following section considers the main changes introduced by the 2017 BAT Rules.¹⁵

2. Main changes introduced by the BAT Rules 2017 – An overview

Upon the release of the text of the 2017 Rules, FIBA and the BAT Secretariat have issued a "Circular on new BAT Arbitration Rules" (hereinafter, the BAT Rules Circular),¹⁶ with brief explanations on the contents of, and rationale for the main amendments. The 2014-2017 redlined version and the BAT Rules Circular show that, in addition to some editorial touch-ups, the 2017 Rules will bring about significant changes to the provisions governing costs

⁷ Art. 16.3 BAT Rules.

⁸ Art. 17.4 BAT Rules.

⁹ Art. 16.2 BAT Rules.

¹⁰ Information provided by the BAT Secretariat.

¹¹ Information provided by the BAT Secretariat.

¹² According to Art. 330(b) of the FIBA Internal Regulations (2017 edition), the roster must consist of at least five arbitrators. Longstanding member Mr Quentin Byrne-Sutton (a Swiss and UK national) was replaced by Ms Brianna Quinn (an Australian national). Mr Rhodri Thomas (a UK national) later also joined the list. BAT arbitrators are appointed for renewable two-year terms and must have legal training and "experience with regard to sports" (FIBA Internal Regulations, *ibid.*).

¹³ The 2017 BAT Rules will apply in all cases where the Request for arbitration is "received by the BAT Secretariat or FIBA (whichever comes first)" on or after 1st January 2017.

¹⁴ <http://www.fiba.basketball/bat/comparison-between-2014-and-2017-bat-arbitration-rules.pdf>. The FIBA Internal Regulations will also be amended where relevant to reflect the changes introduced in the 2017 BAT Rules (see Book 3 (Players and Officials) of the FIBA Internal Regulations, available at <http://www.fiba.basketball/internal-regulations/book3/players-and-officials.pdf>). The section devoted to the BAT in Book 3 of the Regulations will be Chapter 10 (Arts 324-337) in the 2017 edition.

¹⁵ The 2017 edition of the BAT Rules will be the eighth one to have been adopted since the institution started operating in 2007. The previous versions were: FAT Rules 15 March 2007, FAT Rules 9 December 2007, FAT Rules 30 May 2009, FAT Rules 1st May 2010, BAT Rules 1st April 2011, BAT Rules 1st May 2012, and BAT Rules 1st May 2014.

¹⁶ Available at <http://www.fiba.basketball/bat/process>.

(see section 2.2 below) and the contents, issuance and notification of the award (see section 2.3 below). Some clarifications will also be provided in relation to the functions, tasks and prerogatives of the BAT President and Secretariat (see section 2.1 below).

2.1 BAT President's and Secretariat's functions

A new section 0.4 has been added in the Preamble of the 2017 Rules, clarifying that “[t]he BAT Vice-President shall substitute for the BAT President in case of the latter’s inability to exercise the functions assigned to him under the [BAT Rules] including in instances where the BAT President is prevented from exercising his functions due to a conflict of interest”.¹⁷ The BAT President’s functions include the appointment of arbitrators and the decision on any challenges brought against them;¹⁸ the *prima facie* determination, upon the filing of a request for arbitration, whether the case may proceed;¹⁹ the scrutiny of the draft award,²⁰ and the determination of the final amount of the costs of the arbitration.²¹ Article 0.4, which codifies the BAT’s existing practice, offers a simple solution to avoid impasses in the exercise of these fundamental functions, ensuring maximum transparency to the process in case of potential conflicts of interest, and is in line with similar provisions included in other arbitration rules.²²

As just mentioned, one of the BAT President’s tasks, in accordance with Article 11.1 BAT Rules, is to review the Request for arbitration in order to make “a *prima facie* determination whether the arbitration can proceed”. As modified in the 2017 Rules, that provision makes it clear that the scope of the BAT President’s *prima facie* determination in that respect is limited to the verification that “an arbitration agreement exists providing for the dispute to be adjudicated under these Rules”.²³ Ascertaining that the Request for arbitration complies with the requirements of Article 9.1 BAT Rules²⁴ (as Article 11.1 originally also provided) is no longer included in the description of the BAT President’s duties. In addition, Article 9.1 in the 2017 edition states that the Request for arbitration “should” (rather than, as in that article’s

¹⁷ See also Art. 329 of the 2017 FIBA Internal Regulations. According to Article 328 of the Internal Regulations, “[t]he BAT President and BAT Vice-President shall be appointed by the FIBA Central Board for a renewable term of four (4) years [...]”. The BAT President and Vice-President are, at present, Prof. Richard McLaren and Mr Theodore Boehm respectively.

¹⁸ Arts 8.1 and 8.3 BAT Rules.

¹⁹ Art. 11.1 BAT Rules.

²⁰ Art. 16.1 BAT Rules.

²¹ Art. 17.2 BAT Rules.

²² Cf., e.g., Articles S20 and S21 CAS Code, and Articles 1(3) and 5(1) ICC Arbitration Rules 2017, as well as Article 2 of the Internal Rules of the ICC’s International Court of Arbitration (Appendix II to the ICC Arbitration Rules).

²³ The BAT President’s determination that the arbitration may proceed is without prejudice of the arbitrator’s decision as to his or her jurisdiction to hear the case in accordance with Article 1.3 BAT Rules (see, e.g., BAT 0691/15, *Eric Eugene Taylor v. KKS Siarka Tarnobrzeg S.A.*, Award of 1st October 2015). Interestingly, the BAT Rules also provide, in their Article 1.2, that “[a] BAT 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”. To the author’s knowledge, Article 1.2 BAT Rules has not been applied to date.

²⁴ Art. 9.1 BAT Rules prescribes the minimum content of the request for arbitration, namely the identity and contact details of the parties and their representatives; a statement of the facts, legal arguments and relief sought; the text of the arbitration agreement or clause; the written evidence relied upon, and, where applicable, the request for a hearing.

current wording, “shall”) comply with the requirements listed in that provision.²⁵ In practice, already under the current rules, it is the BAT Secretariat that verifies and informs the claimant(s) if the Request for arbitration is defective or incomplete, fixing a time limit for the filing of a fully compliant submission. Article 14.1 BAT Rules, which will remain unchanged in the 2017 edition, provides that if the claimant(s) fail(s) to submit a request in accordance with Article 9.1 “despite having been requested to submit any missing elements, the BAT President may decide that the request is deemed withdrawn”.

A noteworthy development in the 2017 Rules is Article 16.1’s new wording, authorising the President, “in the interest of the development of consistent BAT case law”, to “permit BAT Arbitrators to consult amongst themselves on issues of principle raised by a pending case”. Previously, the Rules only provided that the BAT President himself could consult BAT Arbitrators on issues of principle, and foresaw that such consultations would occur only at a late stage, i.e. once the award was fully drafted and before the President for a final scrutiny.²⁶ Hence, the new wording of Article 16.1 opens up the possibility for BAT arbitrators – subject to the President’s approval – to seek the views of their peers on unsettled questions of general interest at any appropriate stage, so that there is still time for consideration and for adopting any procedural steps as may appear necessary following the consultation.

This (innovative) approach reflects the importance of ensuring the coherent development of BAT case law, given the recurrent nature of many of the issues arising from professional basketball contracts.²⁷ Although the BAT, as other arbitral tribunals, is not subject to a doctrine of *stare decisis* (or binding precedent),²⁸ a well-considered, consistent and therefore predictable jurisprudential output is one of the important benefits of having a single institution, composed of arbitrators with the requisite expertise, and devoted to resolving sector-specific disputes: it enhances both the efficiency of the proceedings and the authority and legitimacy of the relevant adjudicative body. The practice of the BAT is already geared towards favouring consistency in the tribunal’s jurisprudence, through the President’s scrutiny of awards (Article 16.1 BAT Rules), and the holding of annual meetings for BAT

²⁵ To ensure that their request for arbitration complies with the requirements in the BAT Rules, claimants may use or refer to the template Request for arbitration in MSWord format available on the BAT website (at <http://www.fiba.basketball/en/bat/process>).

²⁶ Article 16.1 in the current (2014) and all earlier versions of the BAT (as well as, previously, FAT) Rules read, in its second paragraph, as follows: “[i]n 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”. From a comparative perspective, the second paragraph of Article 16.1 BAT Rules – both in its current version and as worded in the 2017 Rules – is a rather unique provision. For instance, under Articles R46 and R59 of the CAS Code, the CAS Secretary General may, upon scrutiny of the award (and similar to the BAT President under Article 16.1, first paragraph), “draw the attention of the Panel to fundamental issues of principle”, but there is no provision for the consultation (by the Panel or the Secretary General) of other CAS arbitrators on such issues.

²⁷ On this point, see also the analysis and illustrations provided in Hasler 2016, pp. 133-152.

²⁸ Arguably, this holds all the more true in the case of a tribunal deciding commercial disputes *ex aequo et bono*, i.e. (in the longstanding formulation used in BAT awards) one that “[i]nstead of applying general and abstract rules, [...] must stick to the circumstances of the case at hand” (see, *ex multis* and most recently, BAT 0847/16, *DAMS Agency v. Basketball Club Union Olimpija*, Award of 3 November 2016, para. 26). On the issue of *stare decisis* and arbitral decision-making, with a detailed discussion of sports arbitration, see Kaufmann-Kohler 2007 (coming to the conclusion, albeit solely by reference to CAS appeals awards in doping cases, that there exists “a true *stare decisis* doctrine” in sports arbitration). For its part, the SFT has denied that arbitral decisions, including CAS awards, can have the effect of binding precedents in the sense of a *stare decisis* rule (SFT 4A_110/2012, decision of 9 October 2012, para. 3.2.1).

arbitrators where the recent case law and any questions or significant developments as may arise from it are discussed collectively.²⁹

As a final point in relation to the attributions and tasks of BAT bodies, Articles 8.1 and 9.1 in the 2017 Rules clarify that the Request for arbitration can be filed directly with the BAT Secretariat, although FIBA can also take care of forwarding the submission to the BAT if the Request is filed with it instead. Direct filing with the BAT Secretariat is in fact the practice followed by the vast majority of parties, and corresponds to the 'standard BAT procedure' as outlined in the presentation on the arbitral process that can be downloaded from the BAT website.³⁰

2.2 Costs issues

The BAT Rules contain a scale dividing the monetary value of cases in several brackets, which are used to determine the amount of the non-reimbursable handling fee to be paid by the claimant(s) at the outset of the arbitration (Article 17.1 BAT Rules). In the 2017 version of the Rules, Article 17.1's scale will become simpler, in that the number of value brackets will be reduced from six to four.³¹ As a result of the rearranged and simplified scale, a greater number of lower value disputes will become less costly to arbitrate: under the 2014 Rules, the handling fee of EUR 1,500 applies to cases with an amount in dispute of up to EUR 30,000, whereas the 2017 Rules will extend the application of this fee to cases with an amount in dispute of up to EUR 50,000.³² On the other hand, disputes with a monetary value ranging from EUR 50,001 to EUR 100,000, which are currently subject to a handling fee of EUR 2,000, will require payment of a EUR 3,000 fee under the new Rules.

Another change brought about by the 2017 revision is that the rule placing a cap on the maximum amount of the advance on costs to be paid for lower value cases (currently those where the amount in dispute is EUR 30,000 or less), as set out in Article 9.3.1 BAT Rules (and subject to a different decision by the Arbitrator), will be extended to cover cases with a monetary value of up to EUR 100,000, with the relevant cap being raised to EUR 7,000 (currently EUR 5,000).

As discussed further below (see section 2.3), cases with a monetary value not exceeding EUR 100,000 will also be affected by the amendments made to the default rule on the issuance of the underlying reasoning for awards.

²⁹ Information provided by the BAT Secretariat. This practice is similar to that of the CAS, which holds regular seminars for its arbitrators and ad hoc clerks.

³⁰ <http://www.fiba.basketball/en/Module/c9dad82f-01af-45e0-bb85-ee4cf50235b4/53eab3df-af21-4043-a4a6-5a264334ce65>. As mentioned above, an MS Word template for the Request for arbitration can also be downloaded from the BAT website (<http://www.fiba.basketball/en/bat/process>).

³¹ The current six value brackets under which BAT cases may fall for the purposes of determining the non-reimbursable handling fee are: 1) EUR 1 to EUR 30,000; 2) EUR 30,001 to EUR 100,000; 3) EUR 100,001 to EUR 200,000; 4) EUR 200,001 to EUR 500,000; 5) EUR 500,001 to EUR 1,000,000; 6) over EUR 1,000,000. The 2017 BAT Rules will replace those six value brackets with the following four: 1) EUR 1 to EUR 50,000; 2) EUR 50,001 to EUR 200,000; 3) EUR 200,001 to EUR 500,000; 4) over EUR 500,000.

³² Cases with a value from EUR 30,001 and 50,000 are currently subject to a EUR 2,000 handling fee. Cases with a monetary value of up to EUR 50,000 make up exactly 50% of all cases handled by the BAT since it began operating (in 2007) until the end of 2016 (information provided by the BAT Secretariat).

Finally, still with regard to the provisions governing costs, it is worth noting that although no changes will be made to Article 17.4's table setting out the maximum amounts losing parties may be ordered to pay to their opponents for legal fees and other expenses (depending on the amount in dispute),³³ the text of that provision will specify – reversing the language used in the BAT Rules' previous editions – that the amounts in the table are *exclusive* of the non-reimbursable handling fee. This amendment will effectively increase the maximum “awardable” amounts for the winning parties' legal costs and expenses by the value of the applicable handling fees.³⁴

2.3 Awards - Contents and notification

Article 16.2 has undergone significant changes in the 2017 edition of the BAT Rules. The first important change is the deletion of Article 16.2.1(b), which gave claimants the possibility of opting to receive an award without reasons in cases with a monetary value ranging between EUR 30,001 and EUR 200,000, where the respondent failed to pay its share of the advance on cost.³⁵

According to the BAT Rules Circular,³⁶ practice has shown that when given that choice, claimants in the cases falling under Article 16.2.1(b)'s rule would systematically opt for an award without reasons, making it clear that the default position for an award *with* reasons did not match the users' preference for that category of disputes. In view of this, the rule providing for the issuance of an award without reasons in low value cases (i.e., hitherto, cases with a monetary value of less than EUR 30,000) will be extended, under the 2017 Rules, to cases with a monetary value of up to EUR 100,000. In all such cases, if a party wishes for the award to be issued with reasons, it will have to make a request to that effect, which can be filed at any time from the submission of the Request for arbitration to 10 days after the notification of the unreasoned award. As before, for the BAT to proceed and issue a

³³ This means that the value brackets in the table set out under Article 17.4 (which will still include the same six brackets as provided under the previous versions of the Rules) will no longer mirror those set out in Article 17.1's table (determining the applicable non-reimbursable handling fee). Consequently, while the handling fee to be paid for initiating cases with an amount in dispute between EUR 30,001 and 50,000 will decrease (by EUR 500) under the 2017 Rules, as just discussed, the winning parties in those cases will still benefit from the possibility of obtaining an order for a higher contribution to their costs (given that the maximum amount of that contribution will remain fixed, as under the previous Rules, at EUR 7,500 for that particular bracket), which (if they were the (counter-)claimants), may be incremented by the amount they paid on foot of the handling fee (i.e. EUR 1,500), bringing the maximum total contribution they may be awarded for their legal costs and expenses under the 2017 Rules to EUR 9,000, instead of EUR 7,500 (as is the case under the 2014 Rules). In other words, winning (counter-)claimant parties in cases with an amount in dispute ranging between EUR 30,001 and 50,000 may stand to recoup up to EUR 2,000 more with regard to their costs under the 2017 Rules (provided of course that the arbitrator will consider a claim for legal fees of EUR 7,500 to be reasonable in a relatively small case, which does not occur very often). By contrast, the costs for parties involved in disputes with higher values at stake will remain unchanged for cases with an amount in dispute between EUR 100,001 and EUR 200,000, or increase slightly for all other cases (i.e. where the amounts in dispute are between EUR 50,001 and 100,000, or EUR 200,001 and above).

³⁴ Provided of course the winning party is the one that paid the fee. In most cases (save where respondents bring successful counterclaims, which are subject to a separate handling fee) this will be the claimant.

³⁵ Under the 2014 BAT Rules, Article 16.2.1 reads as follows: “By agreeing to submit their dispute to arbitration under these Rules, the Parties agree that a) where the value of the dispute does not exceed EUR 30,000, the Arbitrator will issue an award without reasons, b) where the value of the dispute is between EUR 30,001 and EUR 200,000, and a Respondent fails to pay its share of the advance on costs, upon request by a Claimant the Arbitrator may decide to issue an award without reasons and reduce the advance on costs in accordance with Article 9.3.1 above”.

³⁶ BAT Rules Circular, p. 2.

reasoned award, the requesting party will have to pay an additional advance on costs, to be fixed by the BAT Secretariat.³⁷

For all cases with a monetary value of EUR 100,001 and higher, the rule (without exceptions) under the 2017 BAT Rules will be that the award must be issued with reasons. Under the 2014 Rules, this applies only to awards in cases (i) with a monetary value of EUR 200,001 or more, or (ii) where the value is comprised between EUR 30,001 and EUR 200,000 *and* the Respondent has duly paid its advance of costs (which does not occur very frequently).

It is submitted that Article 16.2's amendment lowering the threshold monetary value requiring the issuance of a reasoned award from EUR 200,001 to EUR 100,001, is a welcome development, as it should help make more jurisprudence available to BAT users.³⁸ Indeed, the unfortunate effect of Article 16.2.1 in its current (2014) wording has been that, because cases with a monetary value of up to EUR 200,000 make up the bulk of BAT activity and, as mentioned, respondents often fail to pay their share of the advance on costs, given claimants' preference for an unreasoned award in such cases, a majority of the awards rendered in recent years was issued without reasons, making it impossible for readers to know the arguments developed by the parties and to understand the rationale for the decisions set forth the awards' dispositive parts.³⁹ On the other hand, the rationale for introducing Article 16.1.2(b) in the 2014 Rules was to enable "claimants [...] to lower the cost of pursuing their case by requesting the issuance of the award without the reasons" in disputes of moderate value where the respondent did not contest the claims.⁴⁰ Taking into consideration both the amendments made to Article 17 in relation to cost issues, as discussed in the previous section, and Article 16.2's new wording as just seen, the 2017 Rules appear to make a (measured) trade-off between two objectives that are of interest to BAT users, namely cost control and the accessibility of BAT jurisprudence.

Another noteworthy change in relation to the issuance of the award is that the first sentence of Article 16.5 in the 2017 Rules has been amended to specify that the award will be final and binding upon its communication to the parties, whether such communication is effected by e-mail, fax, courier or registered letter, and that if the award is served by more than one such means, the communication that occurs first marks the moment when the award becomes binding (i.e. its effective notification).⁴¹ Parties to future disputes subject to the 2017 BAT Rules should take due note of this wording, as the moment the award is communicated to them in accordance with the procedure set out in the applicable arbitration rules also

³⁷ Art. 16.2(a)-(b) of the BAT 2017 Rules.

³⁸ In accordance with Art. 16.4, BAT awards are not confidential unless ordered otherwise by the Arbitrator or the BAT President. It is quite rare for BAT awards to be declared entirely confidential. Most awards (at least 95%, according to the latest figures provided by the BAT Secretariat) are published in full on the BAT website (<http://www.fiba.basketball/en/bat/awards>; for more details, see Hasler 2016, p. 128, with further references). In some cases (generally upon a party's request), the BAT may decide to redact sensitive information (e.g. details about a player's injury), but will still publish the (redacted) award.

³⁹ BAT unreasoned awards only contain, in addition to the usual information relating to the parties, their counsel and/or representatives, the arbitrator and the available remedies against the award, the so-called dispositive part of the decision, i.e. the arbitrator's ruling on the parties' prayers for relief and on the costs of the arbitration, including the parties' legal and other expenses. According to the author's own counting, more than 65% of the awards issued in 2015 were in "unreasoned" format.

⁴⁰ Hasler 2016, p. 126, and Zagklis 2015, p. 297.

⁴¹ Under Swiss law, the award, which is deemed equivalent to a court judgment, acquires *res judicata* effect and becomes enforceable as from the moment it is communicated to the parties. There is no requirement to register or have a judgment entered upon the award by the local courts, as may be the case in other countries.

triggers the running of the (strict) 30-day time limit to file an application for its annulment before the Swiss Supreme Court.⁴²

In addition, to avoid difficulties with recalcitrant losing parties, which – according to the BAT Rules Circular – in some cases have made it virtually impossible for the BAT to serve the award on them,⁴³ a second sentence has been added to Article 16.5 in the 2017 Rules, providing that if the award cannot be delivered to one of the parties (or a third party designated by the arbitrator in accordance with Article 6.4),⁴⁴ it shall become 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”.⁴⁵ This again will mean that, in cases covered by Article 16.5, second sentence, the time limit to file an application for an annulment will start running from the time of publication on the FIBA website.

Article 16.5’s new wording will add a ‘bridge’ (by clarifying when the award is to be deemed effectively notified, including in cases where it cannot be served through the normal channels) to FIBA’s internal enforcement mechanism for BAT awards, governed by Articles 331 to 333 of the FIBA Internal Regulations (2017 edition), whereby the international federation can impose sanctions on a party that fails to honour the award (or even, in its discretion, natural or legal persons that are directly or indirectly linked to that party), ranging from fines to targeted bans (on international transfers, new players’ registrations, or from international competitions), and require that the competent national federation “actively and promptly” cooperate in securing enforcement.⁴⁶

3. Conclusion

As the Basketball Arbitral Tribunal approaches the milestone mark of 1,000 registered cases, having operated at a sustained pace over the past several years, the 2017 amendments to its arbitration rules may be seen, overall, as improvements in terms of users’ access to BAT justice: on the one hand, a wider pool of lower value cases will become (slightly) less costly to arbitrate (see section 2.2 above), and on the other the changes made to Article 16.2 BAT Rules will mean that more awards will be published with the underlying reasoning (see

⁴² SFT 4A_392/2010, decision of 12 January 2011, para. 2.3.2 (with respect to a CAS award), confirmed in the ensuing case law. See also Kaufmann-Kohler and Rigozzi 2015, para. 8.38, with further references. Unless the parties’ agreement provides for an alternative remedy, the SFT is the court of competent jurisdiction to hear annulment actions against BAT awards. In cases falling under Art. 16.2 of the 2017 BAT Rules, where a party will request the reasons for the award *ex post*, making use of the option offered by Art. 16.2(a) (currently Art. 16.2.1(a) BAT Rules), the time limit for bringing an action for annulment will only start to run upon the communication of the reasoned award. For a detailed discussion of the remedies available against BAT awards, with numerous further references, see Hasler 2016, pp. 128-131.

⁴³ See the BAT Rules Circular, p. 2, title 3).

⁴⁴ Article 6.4, which applies to all communications and notifications under the BAT Rules, reads as follows: “If, after reasonable efforts, delivery cannot be effected to a party to the arbitration in accordance with Article 6.3 [which provides for notifications and communications to be made in writing, including by telefax and email, to the addresses indicated by the parties at any point in the proceedings], 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”.

⁴⁵ In accordance with Article V(1)(b) of the New York Convention.

⁴⁶ For a more detailed discussion of this mechanism, see Hasler 2016, p. 132, with further references.

section 2.3 above), which will make it possible for future litigants confronted with the same issues to refer to the solutions adopted in those cases. This, in turn, should contribute to the harmonious development of BAT jurisprudence, as could also the extension of the ‘internal consultation mechanism’ under the new wording of Article 16.1 (see section 2.1 above), which will enable arbitrators directly to seek the views of their peers on unsettled issues of principle, at any appropriate stage in the proceedings.

Ultimately, however, the real measure of success for any court or tribunal is whether its users feel that the actual dispute(s) in which they have been involved has (have) been resolved fairly, efficiently and effectively. While sound black letter rules are essential for the achievement of these objectives (and future practice will tell whether the 2017 Rules meet the BAT users’ expectations in this respect), much depends on the litigants’ own approach to the process, and on the manner in which the institution and the designated arbitrator administer and conduct the proceedings.

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