

## **Information on the new Payment Order Procedure**

The Basketball Arbitral Tribunal (“**BAT**”) hereby informs its users that a new Payment Order Procedure (“**POP**”) will be introduced with the new edition of the BAT Arbitration Rules (“**BAT Rules**”), which come into effect as of **1 February 2024**.

### **1) What is the POP and why is it introduced?**

The POP is comparable to default judgements before state courts (e.g. the European order for payment procedure) and is arguably the first of its kind in the context of international (sports) arbitration. In a nutshell, a Claimant may request the BAT to issue a payment order for a specific monetary claim against a Respondent. The BAT will issue such payment order without examining the merits of the claim if some basic requirements are fulfilled and the Respondent does not object to the issuance of the payment order.

With the POP, the BAT addresses the feedback received by the BAT user community in recent years, in particular at the BAT User Conference in November 2022. That feedback underlined the existence of a significant demand for a mechanism that provides access to the BAT for Claimants in low value disputes who do not have the financial means to afford the arbitration costs involved in a regular BAT arbitration. At the same time, the POP is a response to the fact that in a significant number of BAT proceedings, the Respondent does not participate in the arbitration.

### **2) Legal effects of the POP?**

At the end of an uncontested POP in which all necessary requirements are fulfilled, the BAT issues the Final Payment Order (“**FPO**”), which shall have the effects of a final and binding arbitral award between the parties. In addition, the FPO qualifies as “decision” in the terms of Article 3-335 of the FIBA Internal Regulations. Accordingly, if the Respondent fails to honour the FPO, the Claimant may request FIBA to initiate disciplinary proceedings.

### **3) When does the POP apply?**

A Claimant may only make use of the POP if the parties have agreed on the application of the POP to their dispute. Therefore, parties wishing to have this option for potential future financial disputes are advised to include into their contract the new alternative BAT clause provided under Article 0.3 of the BAT Rules.

In addition, the POP applies only if the claim...

- ... is of a monetary nature and does not exceed a sum in dispute of EUR 15,000.00,
- ... is filed by a single individual or legal entity as claimant,
- ... is filed against a single legal entity as respondent, and
- ... does not bundle multiple claims deriving from different legal relationships (e.g. claims by an agent against a club for agent fees payable in relation to different player transfers).

#### 4) How does the POP work?

The new POP allows creditors to file a payment order request (“**POR**”) instead of initiating a regular BAT arbitration. To submit a POR, the Claimant must enter the required information on the Claimant, the Respondent and the claim into the online form available under <https://bat-payment-order.martens.legal/> and upload the relevant documents.

Along with the POR, the Claimant must pay a non-reimbursable processing fee of EUR 1,000.00 into the BAT bank account. No further payments by the Claimant are required for the POP. In particular, no advance on costs will need to be paid for the POP. Thus, the costs involved in the POP are significantly lower than the costs required for a BAT arbitration.

The POR is reviewed by the BAT (Vice-)President, who issues a Provisional Payment Order (“**PPO**”) if the requirements mentioned in section 3) above are met, the claim does not violate public policy and the utilization of the POP is not abusive.

The PPO is delivered both to the Claimant and the Respondent and the latter is provided with the opportunity to file an objection against the PPO within 14 days after receipt of the PPO.

If no objection is filed within this time limit and/or the Respondent fails to pay the applicable handling fee of EUR 1,000.00 for the objection, the BAT (Vice-) President, upon the Claimant’s request, will issue a FPO provided that the relevant requirements are still met (e.g. no payment of the claim in the meantime).

If the Respondent objects and pays the handling fee of EUR 1,000.00 in time, the Claimant and the Respondent will be requested to each pay a share of an advance on costs fixed by the BAT Secretariat in anticipation of a regular BAT arbitration procedure. Once each party has paid its share, the Claimant

is required to file a Request for Arbitration and, thereafter, the PPO will lose effect and a regular BAT arbitration shall begin.

**Any questions?**

The new BAT Rules including the provisions on the POP are available on [www.fiba.com/bat/process](http://www.fiba.com/bat/process), both as a clean document and as a marked-up version showing all changes compared to the 2022 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.legal](mailto:bat@martens.legal)) or telephone (+49 89 452 44 22 15).