

HAGUE COURT OF ARBITRATION FOR AVIATION WORKS

Introduction

A study by Allianz revealed that between 2014-2019 there were over 51,867 aviation insurance industry claims worth more than €14.8bn (\$16.3bn).¹ This alarming rate of claims made in the aviation industry demonstrates the need for arbitration and mediation mechanisms in the global aviation industry.

For the first time in Europe, a specialized aviation court of arbitration and center for mediation has been established in The Hague. The Hague Court of Arbitration for Aviation works (HCAA) is a private non-profit initiative founded under Dutch law. The HCAA is preceded by the Shanghai International Aviation Court of Arbitration (SIACA) which was established in June 2014.²

Collectively, nearly 70 diverse aviation and arbitration attorneys, aviation executives and technical experts from around the world have worked together to form the HCAA. The global team of volunteers is comprised of professionals who also work for more than 20 law firms, 4 law schools and nearly 30 aviation companies – representing airlines, aircraft & engine lessors, banks, private jet brokerage, valuation and technical advisory firms and more. Collectively, they represent well over 1,000 years of experience across the entire aviation industry, and several hundred more of arbitration experience.³

What makes Hague CAA different from SIACA

The Hague CAA can be distinguished from SIACA by its lack of affiliation to any particular industry body. SIACA has significant airline industry associations closely involved in its institution, whereas the Hague CAA aims to offer an independent and neutral venue for the resolution of disputes. The HCAA operates independently and impartially, with no allegiance to any industry participant or special interest group. The HCAA is solely administrated by the Netherlands Arbitration Institute (NAI). The NAI provides judicial supervision over all arbitration and mediation proceedings conducted by the HCAA.⁴

Additionally, the Hague CAA's standard of €10m for expedited proceedings is broader than that of other institutions. For instance, the ICC's expedited procedure only applies by default where the dispute is valued at less than US\$2m or US\$3m (depending on the date of the arbitration agreement). Other institutions have lower default standards: ICDR-AAA at US\$500,000; CEPANI at €100,000; and SIACA at RMB 1,000,000. Many other institutions do not by default use an expedited procedure, leaving the onus on the parties to request it. The Hague CAA's higher default standard reflects the particular need of airlines to resolve disputes as quickly as possible.⁵

Purpose

i. Arbitration center

¹ <https://www.agcs.allianz.com/news-and-insights/expert-risk-articles/aviation-risk-report-2020-claims-developments.html>

² http://www.shiac.org/Aviation/aboutus_E.aspx?page=2

³ <https://newsroom.aviator.aero/the-hague-court-of-arbitration-for-aviation-launches-at-the-farnborough-international-airshow/>

⁴ <http://haguecaa.org/index.html>

⁵ <https://blog.freshfields.us/post/102hz0b/we-have-lift-off-the-hague-court-of-arbitration-for-aviation-a-new-specialized>

The purpose of the HCAA is to provide the global aviation industry with fast, fair, private, neutral, flexible and final form of binding dispute resolution, pursuant to arbitration rules specifically tailored to the unique needs of the aviation industry.⁶ In particular HCAA will focus on disputes related to commercial and private aircraft operating, trading, leasing and financing related contractual disputes,⁷ as well as disputes relating to maintenance, repair and overhaul. By virtue of the New York Convention, awards issued by the HCAA will be enforceable in over 160 countries.⁸

HCAA proceedings must emanate from a contractual agreement between parties or through mutual agreement of the parties. This is because the process is voluntary and consensual. Where parties consent to subject their disputes to the HCAA, their disputes shall be governed by the Arbitration rules of the HCAA (the HCAA Rules) which came into force on 31 August 2022.

ii. Mediation Center

The Centre for Mediation at The Hague Court of Arbitration for Aviation facilitates the voluntary settlement of contractual disputes between aviation industry participants. It does so through a framework that is completely private, flexible, fast and cost-effective, and in a manner that also emphasizes reconciliation so as to make possible the continuation of commercial relationships. The parties select any available mediator or mediators they mutually agree from a pool of qualified neutral mediators with aviation industry expertise.⁹

Rules

i. HCAA Arbitration Rules

The HCAA Rules recommend two types of model clauses for parties: one tailored for future disputes and one for tailored to existing disputes. This means that the HCAA can be used for aviation disputes which relate to a contract concluded prior to the launch of the institution.¹⁰ Both variations of the model clauses contain the most critical elements that any arbitration agreement should address, namely: (i) the parties' agreement to submit their disputes to arbitration; (ii) the scope of the disputes submitted to arbitration; and (iii) the choice of the institution and incorporation of its arbitration rules.¹¹

Additional key features of the HCAA rules include:

- The proceedings shall be conducted before an uneven number of arbitrators, If the parties agree on an even number of arbitrators, the arbitrators shall appoint an additional arbitrator who shall act as the chair
- Expedited arbitral proceedings for disputes valued at less than €10 million leading. The arbitral tribunal must render their final and binding award within 6 months from the case management date
- Joinder and intervention, impleader and consolidation mechanisms for multi-party/multi-contract arbitrations
- An array of interim and conservatory measures
- Cost schedule providing clear guidance on tribunal and administrative fees.¹²

⁶ The Hague Court of Arbitration for Aviation, available at www.haguecaa.org/arbitration.html.

⁷ [The Hague Court of Arbitration for Aviation Launches at The Farnborough International Airshow - EIN Presswire \(einnews.com\)](http://www.haguecaa.org/arbitration.html)

⁸ <http://www.haguecaa.org/arbitration.html>

⁹ <http://www.haguecaa.org/mediation.html>

¹⁰ <http://www.haguecaa.org/arbitration.html>

¹¹ <https://www.haguecaa.org/ASSETS/Documents/ArbitrationRulesHCAA.pdf>

¹² <https://www.haguecaa.org/ASSETS/Documents/ArbitrationRulesHCAA.pdf>

ii. Hague CAA Mediation Rules

The Hague CAA Mediation Rules provide a standard mediation clause that covers present and future disputes. Parties who opt to include the standard mediation clause are advised to make arrangement by including an arbitration clause in the event the mediation does not lead to a resolution of the dispute.¹³

The Mediation Rules also provide that:

- Parties will suspend any ongoing proceedings and will not commence any proceeding pending mediation unless where the suspension leads to the expiry of statute of limitation period.
- If parties opt to termination mediation, the mediator may not be permitted to act as the arbitrator in any other subsequent proceedings.
- Any settlement agreements that arise as a result of mediation shall be treated as an arbitration agreement which shall be subject to The Hague as the place of arbitration unless the parties agree otherwise.¹⁴

Costs

i. Arbitration

The arbitrator fees will vary based on duration, financial interest and the complexity of the case, fixed at an hourly rate. This hourly rate is agreed by the HCAA and the mediator upon confirmation of his or her appointment, pursuant to the guidelines set by the Board of Directors of the HCAA. This hourly rate cannot be negotiated and neither can it be negotiated. The Hourly rate for adjudicating the merits of an arbitration worth less than €50,000 is €100, whereas for disputes worth more than € 40,000,001 will be € 550 an hour.¹⁵ For disputes worth less than € 25,000, the administration costs will be € 660, whereas for disputes worth more than € 250,000,000, the administration costs will be € 75,000. These amounts are exclusive of VAT.¹⁶

ii. Mediation

The Administration costs for mediations worth less than € 50,000 is € 400, whereas for disputes worth more than € 250,000,000 it is € 35,000 exclusive of VAT. Hourly rates for senior mediators for disputes worth less than €50,000 is €80, whereas for disputes more than €75,000,01 it is €140.¹⁷

Request

i. Arbitration

HCAA arbitration is commenced by one or both parties submitting a completed Request for Arbitration form to The Hague Court of Arbitration of Aviation care of the NAI. The application form is completely free.¹⁸

ii. Mediation

¹³ <https://www.haguecaa.org/mediation.html>

¹⁴ <http://haguecaa.org/ASSETS/Documents/MediationRulesHCAA.pdf>.

¹⁵ <http://haguecaa.org/ASSETS/Documents/ArbitrationCostsHCAA.pdf>

¹⁶ <http://haguecaa.org/ASSETS/Documents/ArbitrationCostsHCAA.pdf>

¹⁷ <http://haguecaa.org/ASSETS/Documents/MediationCostsHCAA.pdf>

¹⁸ <http://haguecaa.org/ASSETS/Documents/ArbitrationRequestHCAA.pdf>

Mediation is commenced by one or both parties submitting a completed Request for Mediation form to The Centre for Mediation at the HCAA. The application form is completely free. The mediation will be deemed to have been commenced on the date the request is received by the administrator.¹⁹

Future of the HCAA

The HCAA is already looking to expand the scope of the disputes it covers. It will not only provide the aviation sector with dispute resolution that is in tune with the commercial realities of the aviation industry, but also ultimately expand its scope into disputes in the global aerospace sectors such as advanced air mobility and space industry.²⁰ The HCAA has appointed drone industry experts to its aviation advisory board, reflective of its intention to provide dispute resolution services to advance air mobility (AAM) as well as space.

¹⁹ <http://haguecaa.org/mediation.html>

²⁰ <https://newsroom.aviator.aero/the-hague-court-of-arbitration-for-aviation-launches-at-the-farnborough-international-airshow/>