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Engine Overhaul: The Hague Court of Arbitration for Aviation (Hague CAA) Updates its Rules

While all eyes of the aviation industry are currently on this year's Paris Air Show and the record purchases of India's airlines, aviation lawyers ask themselves how to resolve disputes that arise out of these billion-dollar deals. One of the best tools available is international arbitration.

Since 21 July 2022, The Hague Court of Arbitration for Aviation (Hague CAA) provides a dedicated dispute resolution forum for aviation disputes. On 14 February 2023 and therefore not long after the launch, the Hague CAA already updated its arbitral rules. The "2023 Rules" replace the former "2022 Rules" According to the founder of the Hague CAA, Paul P. Jebely, this is only the first step in a process of continually refining the arbitral rules, in an effort to best align them with the market they are addressed to, the aviation industry.

CHANGES TO THE HAGUE CAA RULES

The most significant change to the rules relates to expedited proceedings. While these were optional under the former rules (Section 4B of the 2022 Rules), they are now the default mode of proceedings. This leads to a tight schedule for the arbitrators, who are supposed to render the arbitral award within five months (at the latest six months) after the first case management conference (Art. 40 of the 2023 Rules). If the matter does not permit such rapid proceedings, the parties can opt for extended proceedings that do not come with a time limit.

Another novelty provision is a mechanism for early determination of legal or factual questions by the arbitral tribunal (Art. 40 of the 2023 Rules). Upon a party's request, the arbitral tribunal may make such a determination and declare that a point of fact or law is either inadmissible or without merit, or that it lacks jurisdiction to decide on it.

The rules on complex arbitrations have been profoundly revised. A new provision on multi-contract arbitrations (Art. 10 of the 2023 Rules) points out that they may be dealt with in a single arbitration. The consolidation mechanism has been refined and its scope of application has been



extended, (Art. 38 of the 2023 Rules) while the provisions on third-party intervention and impleader have been deleted and the joinder mechanism revised (Art. 37 of the 2023 Rules).

A less technical addition is a clause on “Diversity and environmental impact” (Art. 59 of the 2023 Rules)

Further provisions have been deleted, for example a provision relating to the personal appearance of Parties in the hearing (Art. 31 of the 2022 Rules) and the remission during setting aside proceedings (Art. 50 of the 2022 Rules).

Smaller changes concern consist of a rework of the confidentiality provision (Art. 6 of the 2023 Rules) and the provision on the hearing (Art. 26 of the 2023 Rules) as well as detailed instructions for the first case management conference (Art. 23.3/4 of the 2023 Rules). A newly inserted provisions clarifies that the tribunal secretary may not participate in the decision making (Art. 21.2 of the 2023 rules), another new provision concerns the use of personal data (Art. 60 of the 2023 rules).

ON COSTS

The cost provisions have not changed with the amended rules.

The administration costs depend on the amount in dispute, they range between EUR 660 (for an amount in dispute of less than EUR 25,000) and EUR 75,000 (for an amount in dispute exceeding EUR 250,000,000).

The arbitrators are remunerated on the basis of hourly fees, which are determined by the institution depending on the amount in dispute, the complexity of the case and the time the arbitrators have to spend on the case. They range between EUR 175 and EUR 550 per hour.

MODEL CLAUSE

Implementing an arbitration clause in favor of the Hague CAA in a contract is straightforward, thanks to a (only slightly modified) model clause, to which the seat of the arbitration, the language of the proceedings and further elements can be added:

“All disputes arising out of or in connection with the present contract, including any questions regarding its existence, validity, breach or termination, shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of The Hague Court of Arbitration For Aviation.”

FOR MORE BACKGROUND

Arbitration is a tool very commonly used in the aviation world. This begins with international conventions on aviation which commonly refer their member states to arbitration (e.g. Art. 64 of the 1944 Chicago Convention, Art. 20 of the 2010 Beijing Convention). International Conventions that apply to non-state actors also recur to arbitration, for example Art. 34 of the 1999 Montreal Convention for air cargo contracts, where arbitration is optional.

Most importantly, arbitration is used in the aviation industry to settle commercial disputes, whether for the sale of aircraft, aircraft engines or spare parts, leasing contracts for aircraft and aircraft engines or maintenance and service contracts in connection with airports and aircraft. A number of cases in the public domain testify to this (*Cameroon Airlines v. Transnet Limited*, 14 June 2001; *Abdulkareem A. Al Mutawa v. Andrew S. Kanigowski*, 24 June 2011; *Avcorp Industries, Inc. v. Cessna Aircraft Company*, 16 November 2012; *UAB Skyroad Leasing v. OJSC Tajik Air*, 25 April 2018).

Arbitration is frequently chosen for aviation disputes mainly for two reasons. First, for its internationality. Like airplanes, aviation business easily crosses borders. Being able to solve the dispute in a neutral forum and enforcing a subsequent award in currently 172 countries benefits aviation disputes greatly. Secondly, and again like airplanes, aviation disputes tend to be costly. The amounts in dispute are high, which leads to steep court fees in countries



where they are calculated according to the amount in dispute and where judgments in high-stakes litigation are usually appealed. Choosing arbitration might significantly lower the time and expenses required to resolve the dispute.

Apart from the Hague CAA, also the American Arbitration Association (AAA-ICDR-Panel for Aerospace, Aviation and National Security Claims) as well as the Shanghai International Aviation Court of Arbitration (SIACA) administer arbitration services dedicated to the aviation industry.

King & Spalding's International Arbitration lawyers regularly represent stakeholders in the aviation industry in international arbitration and arbitral award enforcement proceedings.

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