

The Hague Court of Arbitration for Aviation

MEDIATION RULES
In force as of 31 August 2022



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HAGUE CAA MEDIATION CLAUSE – ENGLISH

“For the purposes of resolution of each and any dispute that has arisen or might arise further to the present agreement, or any further agreements resulting from the same, the parties shall – or a party shall – file a request for mediation with the NAI secretariat in accordance with the Hague CAA Mediation Rules.”

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Article 1 - Applicability

These Hague CAA Mediation Rules shall apply if the parties have referred to mediation in accordance with these Mediation Rules. These Rules shall come into force on 31 August 2022 and, unless otherwise agreed by the parties, shall apply to any arbitration which is commenced on or after that date.

Article 2 - Definitions

1. “Mediation” is taken to mean a procedure in which two or more parties to a dispute endeavour to resolve their dispute with the aid of a mediator on a voluntary basis.
2. “the Mediator Pool”: means the published panel list of approved mediators compiled by the Hague CAA Board and NAI.
3. “the NAI”: means the Foundation Netherlands Arbitration Institute, registered in Rotterdam.
4. “the NAI Executive Board”: means the Executive Board of the Netherlands Arbitration Institute, registered in Rotterdam.
5. “the Hague CAA”: means the Hague Court of Arbitration for Aviation, registered in The Hague.
6. “the Hague CAA Executive Board”: the governing body of The Hague Court of Arbitration for Aviation, registered in The Hague.
7. “the Secretariat”: the Secretariat of the NAI.
8. “the Administrator”: the Administrator of the NAI.

Article 3 - Request for Mediation

1. Every Hague CAA Mediation will be preceded by the filing of a Request for Mediation with the Secretariat.
2. A request may be filed by all the parties to the dispute jointly or by one or more of them.
3. Every request shall contain at least the following information:

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- (a) a brief description of the subject of the dispute;
- (b) the name, the address, the place of residence, the telephone number, the e-mail address and, as applicable, the VAT number of each of the parties involved; and
- (c) a brief description of the matters in dispute to be resolved and the related mutual interests of the parties involved.

4. If a request is not filed by all the parties involved jointly, the Secretariat will forward copies of the request to the other party or parties involved and will request them to notify the Secretariat in writing within 14 days whether they are willing to conclude an agreement pertaining to the resolution of the reported dispute by means of mediation in accordance with these Rules.

5. If the other party or parties involved give notice that they are not willing to conclude an agreement as referred to in Article 3(4), the Secretariat will notify the other parties in this respect.

6. The Secretariat is authorised to request the applicant and the other parties to make translations available of the documents filed with the Secretariat in a language to be indicated by the Secretariat.

Article 4 - Appointment of the mediator

1. The mediator will be appointed as soon as all the parties involved have stated that they are willing to have the dispute resolved by means of Hague CAA Mediation and the administration costs determined in accordance with Article 9(2) have been paid. The mediator will be drawn from the Mediator Pool. Only in the event of compelling reasons, the administrator in consultation with the Hague CAA Board, may appoint a mediator from outside the Mediator Pool.

2. The mediator will be appointed by the parties jointly unless the parties have agreed otherwise. The parties will immediately inform the Secretariat of such appointment; the Secretariat will then confirm the appointment and the applicable conditions to the mediator and will send a copy of that confirmation to the parties involved.

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3. If it is not possible to appoint a mediator in the manner referred to in Article 4(2) within a term of 14 days after the Secretariat has received the joint request or after the Secretariat has received the notification or notifications referred to in Article 3(4) within the term stipulated in that Article, the parties may request the Administrator to appoint the mediator, in which case the following procedure will apply:

- (a) The Administrator will send all the parties a list containing three names of persons who are eligible to be appointed mediator and will request each of the parties to inform it within two weeks of receiving the list which of the persons named in the list they would not accept as the mediator; the Administrator will then appoint a mediator from the remaining persons;
- (b) If none of the persons named in the list is acceptable to all the parties as the mediator, the process indicated under (a) will be repeated;
- (c) If it once again appears that none of the persons named in the list is acceptable to all the parties as the mediator, the Administrator will appoint a person whose name was not contained in any of the above-mentioned lists as the mediator.

4. The Administrator will take into consideration the parties' justified wishes when drawing up the list referred to in Article 4(3)

(a). Before appointment or confirmation, a prospective mediator shall sign a statement of acceptance, availability, impartiality and independence. The mediator shall disclose in writing any facts or circumstances that may affect or be perceived to affect his/her impartiality and the Administrator shall circulate that written document to all parties and shall fix a time limit for all parties to respond with their comments.

5. Two or more mediators may be appointed if all the parties so desire. In such cases the provisions contained in Articles 4(2), 4(3) and 4(4) will apply correspondingly in respect of the appointment of each of the mediators.

6. References below to the mediator will be deemed to include references to a panel of mediators.

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Article 5 - The Mediation Agreement; commencement of the mediation

1. After the mediator has been appointed and the deposit referred to in Article 9 below has been determined and paid, the Secretariat will schedule a meeting between the mediator and the parties in the shortest possible term for the purpose of laying down a contract for services between the mediator and each of the parties (the 'Mediation Agreement'), pursuant to which the mediator will conduct the Hague CAA Mediation. The Mediation Agreement will be signed at that meeting.
2. The mediation will commence when the Mediation Agreement has been signed.
3. Immediately after the meeting the mediator will notify the Secretariat whether the Mediation Agreement has been concluded. If the Mediation Agreement has been concluded the mediator will send a copy of the Agreement to the Secretariat.
4. If the Mediation Agreement is not signed at the meeting referred to in Article 5(1) and as a result no Mediation Agreement is concluded, the Secretariat will confirm to the parties and the mediator that the request cannot lead to mediation.

Article 6 - Applicable procedural rules

1. The applicable procedural rules will be laid down by the mediator in consultation with the parties at the meeting referred to in Article 5(1) and thereafter. They will be laid down in the Agreement referred to in Article 5(1) and in (written) notifications from the mediator to the parties.
2. The parties may be assisted by counsel, experts and other advisors during the mediation, in each case after notifying the mediator and the other party or parties in advance and provided that each of them has confirmed to the mediator and the Secretariat that they will comply with the provisions contained in the Mediation Agreement and the provisions contained in these Rules, in particular the provisions governing confidentiality contained in Article 10.
3. Unless any of the parties objects no later than the time at which the Mediation Agreement is signed, the mediator may be assisted by a secretary during the mediation, provided that the secretary has confirmed in writing to the mediator and the

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Secretariat that he or she will comply with the provisions contained in the Mediation Agreement and the provisions contained in these Rules, in particular the provisions governing confidentiality contained in Article 10.

4. The mediator will be permitted to speak with or correspond with each of the parties separately or to receive information from one or more of the parties in another manner, after the proposal for that purpose has been discussed with and agreed to by all the parties.

5. The parties will suspend any ongoing proceedings between them, will continue to suspend such proceedings and will not commence any new proceedings unless suspension would lead to the expiry of a statutory limitation period or expiry period, new proceedings are necessary to prevent such expiration or they jointly agree otherwise in the presence of the mediator.

6. If the parties wish to terminate ongoing mediation in whole or in part in order to have all or part of their dispute resolved by means of arbitration or binding advice, the mediator will not be permitted to act as the arbitrator, the binding advisor or the secretary in such arbitral proceedings or binding advice proceedings unless all the parties explicitly accept the mediator's intended role in the arbitral proceedings or binding advice proceedings, without prejudice to the provisions contained in Article 8. To act as mediator in such mediation proceedings, the mediator must also come from the Hague CAA Arbitrator Pool or be appointed in accordance with Article 11(6) of the Hague CAA Arbitration Rules.

7. The mediator will keep the Secretariat informed about the progress of the mediation, both on request and unsolicited. The Secretariat will ensure that the mediation proceeds expeditiously.

8. The parties and the mediator will agree on the language in which the mediation will be conducted. If the Secretariat does not understand that language, the Secretariat may request that translations be provided of one or more of the documents that are made available to the Secretariat in the context of the mediation, in a language to be indicated by the Secretariat.

Article 7 - The end of the mediation

1. The mediation will end in one of the following ways:

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- (a) by execution of a settlement agreement, followed by the mediator's notification thereof to the Secretariat;
- (b) by written notification by the mediator to the parties, with a copy to the Secretariat, that the Mediation has been terminated without a settlement agreement being concluded; or
- (c) by any one of the parties giving the other party or parties written notice of termination of the Mediation Agreement, with a copy to the Secretariat.

2. The Secretariat will confirm the termination of the mediation to the parties and the mediator.

3. At the end of the mediation the Secretariat will determine the mediator's costs and fee and will set them off to the fullest extent possible against the deposit that has been paid in accordance with Article 9(5). Termination of the mediation shall not affect the parties' duty of confidentiality and payment obligations pursuant to the Mediation Agreement.

Article 8 - Arbitral award

The parties and the mediator may agree that the settlement agreement referred to in Article 7(1)(a) will be laid down in an arbitral settlement award within the meaning of Article 1069 of the Dutch Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*) and with due observance of Article 50 of the NAI Arbitration Rules. The agreement concluded for that purpose will also apply as an arbitration agreement, pursuant to which the mediator or an odd number of members of a panel of mediators will be appointed as the arbitrator(s) and The Hague, the Netherlands, will be the place of arbitration.

Article 9 – Mediation Costs

1. The costs related to the mediation consist of (i) NAI's administration costs and (ii) the mediator's costs and fee. Unless agreed otherwise, the costs of counsel, experts and other advisors retained by or for a party in accordance with Article 6(2), shall be borne by that party.

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2. The administration costs will be determined by the Administrator after the request has been filed. The administration costs will be determined on the basis of the scale determined by the NAI Executive Board as included in Appendix A to these Rules. The Administrator will decide on the administration costs if they cannot be calculated on the basis of that scale.

3. If the request has been filed jointly by all the parties involved, the administration costs will be charged to the party or parties that filed the request, if necessary taking into consideration each of their shares. If the request was not filed by all the parties involved, the Administrator will determine the portion of the administration costs to be paid by the applicant or applicants and will charge that party or those parties those costs, if necessary taking into consideration each of their shares. The remainder will be charged to the other party or parties involved, after a notification is received from that party or those parties within the meaning of Article 3(4). No refund will be made of any administration costs that have been paid in full or in part.

4. The Secretariat and the Administrator will suspend the performance of its duties as long as any administration costs that are due and payable have not been paid in full. If, after a second reminder from the Secretariat, the administration costs owed by a party are not received by the NAI within fourteen days, the mediation will not take place, unless the administration costs owed are paid by the other party or parties.

5. As soon as the mediator has or the mediators have been appointed, the Administrator will determine the amount and each party's share of the deposit that the parties must make available to the Secretariat to secure payment of the fee to be charged by the mediator and his costs. No interest will be paid on any amount that is placed on deposit. Any negative interest may be deducted from the deposit by the NAI. If, after a second reminder from the Secretariat, the deposit to be paid by a party is not received by the NAI within fourteen days, that party will be deemed to have given notice of termination of the Mediation Agreement in accordance with Article 7(1)(c).

6. The deposit referred to in this Article 9 shall be calculated to cover all the estimated mediator fees and costs, using the hourly rate scale determined by the Executive Board of the NAI as included in Appendix B to these Rules.

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7. The Administrator will be entitled to request a supplementary deposit from one or more of the parties, either at the mediator's request or otherwise.

Article 10 - Confidentiality

The parties, the mediator, the Secretariat, the Administrator, and any and all other persons who are involved in the mediation in accordance with these Rules are obliged to observe a duty of confidentiality in respect of all the documents that are disclosed, exchanged or otherwise made available in the context of the mediation and of any and all other information that becomes known in any other manner in the context of the mediation. In particular they are not entitled to use any information that has come to their attention in the context of the mediation as evidence, either in or out of court, or to call the persons involved in the mediation or have them called as witnesses, except insofar as:

- (a) the information in question was already known to the persons or parties referred to in this provision other than in the context of the mediation;
- (b) all the parties approve the disclosure of the information that has become known in the context of the mediation;
- (c) it concerns evidence brought into the mediation for discussion that, without the mediation, would also have been submitted to the court or the arbitrator in court proceedings or arbitration;
- (d) the information relates to actual or impending crimes in respect of which there is a statutory obligation to disclose;
- (e) the information is needed in a grievance procedure, disciplinary proceedings or liability proceedings against the mediator, either for the benefit of the mediator himself with a view to his defence or for the benefit of another party involved in the mediation in order to substantiate a complaint or claim for liability;
- (f) the information that has become known in the context of the mediation must be revealed in connection with urgent reasons relating to public order; or

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- (g) it concerns the settlement agreement, unless the parties have agreed that one or more parts thereof are subject to the confidentiality.

Article 11 - Limitation of liability

The NAI, its board members and staff members, the members of its Advisory Board, the mediator and any secretary that may have been appointed, and any other persons that one or more of them involve in this case are not liable contractually or otherwise for any damage caused by their own or any other person's acts or omissions or as a result of the use of any supporting materials in or in connection with the mediation, unless and only insofar as mandatory rules of Dutch law would preclude exoneration. The NAI, the members of its Governing Board and its staff members are not liable for the payment of any amount that is not covered by the deposit. The foregoing shall apply *mutatis mutandis* to the (founders of the) Hague CAA, its board members, secretary to the board, officers, staff members, the members of its Advisory Board, members of its committees, and any expert that may have been appointed by the mediator, and any other persons that one or more of them involve in the case.

Article 12 - Amendments of these Rules

The NAI Executive Board may amend the NAI Mediation Rules at any time. The Hague CAA Mediation Rules can only be amended jointly by the Hague CAA Board and the NAI Board. The amendments shall have no effect on mediations already pending.

Article 13 - Extension of terms

The terms referred to in Articles 3(4), 4(3), 5(4), 9(4) and 9(5) may be extended by the Secretariat, either at the request of any of the parties or otherwise.

Article 14 - Communications

1. Requests and communications shall be made or confirmed in writing in the manner provided for in this article.
2. Unless the sender is unable to do so, all requests, communications and other documents to the NAI shall only be

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sent electronically by e-mail to the address secretariaat@nai-nl.org or to any other address to be specified by the NAI.

3. The time at which a request or communication is received electronically by the NAI shall be the time at which the request or communication has reached a data processing system for which the NAI bears responsibility.

4. The NAI will send a request or communication addressed to one or more addressees electronically by e-mail if the addressee, by providing its e-mail address, has communicated that it may be reached for these purposes by such means.

5. After signing the Mediation Agreement, the parties shall send their requests, communications and other documents directly to the mediator.

6. Unless the mediator decides otherwise, all requests, communications or other instruments in writing between the parties and the mediator shall be sent in electronic form by e-mail if the parties, by providing their e-mail addresses, have communicated that they may be reached for these purposes by such means.

7. The time at which a request, communication or other document is received electronically by the mediator shall be the time at which the request, the communication and/or the other document has reached a data processing system for which the mediator bears responsibility.

8. The time at which a request, communication or other document is sent electronically by the mediator and/or the NAI shall be the time at which the message has reached a data processing system for which the mediator or the NAI does not bear responsibility.

Article 15 - Applicable law and disputes

1. These Rules, and anything done in accordance with them, are governed by Dutch law. The settlement agreement referred to in Article 7(1)(a) will be governed by Dutch law unless the parties agree otherwise.

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2. In order to resolve any dispute that has arisen or that may arise in the future further to or in connection with these Rules, a Mediation Agreement ensuing therefrom or from further agreements that may be concluded in the context of the mediation or further to these Rules, the parties or the most diligent party, respectively, will file a Request for Arbitration with the Secretariat of the NAI in accordance with the Hague CAA Arbitration Rules.

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Appendix A – Administration Costs

Appendix 2 to the Mediation Rules of the Hague Court of Arbitration
for Aviation in force as from 31 August 2022

APPENDIX TO THE MEDIATION RULES ADMINISTRATION COSTS

The following scale applies with respect to administration costs
as from 31 August 2022, exclusive of VAT (see Article 9 of the
HCAA Mediation Rules):

up to		€	50,000.-	:	€	400.-	
from	€	50,000.-	to	€	100,000.-	€	500.-
from	€	100,000.-	to	€	150,000.-	€	750.-
from	€	150,000.-	to	€	200,000.-	€	1,000.-
from	€	200,000.-	to	€	500,000.-	€	1,750.-
from	€	500,000.-	to	€	1,000,000.-	€	2,500.-
from	€	1,000,000.-	to	€	2,000,000.-	€	3,000.-
from	€	2,000,000.-	to	€	5,000,000.-	€	6,000.-
from	€	5,000,000.-	to	€	10,000,000.-	€	7,500.-
from	€	10,000,000.-	to	€	20,000,000.-	€	9,000.-
from	€	20,000,000.-	to	€	30,000,000.-	€	10,500.-
from	€	30,000,000.-	to	€	40,000,000.-	€	12,500.-
from	€	40,000,000.-	to	€	50,000,000.-	€	15,000.-
from	€	50,000,000.-	to	€	75,000,000.-	€	20,000.-
from	€	75,000,000.-	to	€	100,000,000.-	€	25,000.-
from	€	100,000,000.-	to	€	250,000,000.-	€	30,000.-
as from	€	250,000,000.-				€	35,000.-

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Appendix B – Hourly rates

Table of hourly rates for mediators as of 31 August 2022

Hourly rates mediators/secretaries HCAA (in €)

Category	Financial interest	Hourly rate mediator	Hourly rate secretary	
			Junior	Senior
1	0 - 50,000	150	65	80
2	50,001 - 100,000	175	65	80
3	100,001 - 200,000	200	75	100
4	200,001 - 500,000	200	75	100
5	500,001 - 1,000,000	225	75	100
6	1,000,001 - 2,000,000	250	75	100
7	2,000,001 - 5,000,000	300	75	100
8	5,000,001 - 10,000,000	325	85	125
9	10,000,001 - 30,000,000	350	85	125
10	30,000,001 - 50,000,000	400	85	125
11	50,000,001 - 75,000,000	450	85	125
12	75,000,001 - 100,000,000	500	100	140
13	100,000,001 - 250,000,000	550	100	140
14	more than 250,000,000	600	100	140