

LONDON INSTITUTE OF SPACE POLICY AND LAW

SPACE OPERATIONS

COMPARATIVE LIABILITY LIMITS OF OPERATORS¹

| JURISDICTION | THIRD PARTY LIABILITY | STATE LIABILITY INDEMNITY AND STATE GUARANTEE |
|---|---|--|
| Australia | Limited to insured amount; Obligation to insure. ² | Government provides additional cover for third party Australian nationals up to \$3bn. ³ |
| Belgium | Limited by Royal Decree on case-by-case basis; generally determined by reference to Operator turnover. ⁴ Obligation to insure. | Indemnification may be sought if operator has not observed authorisation conditions. ⁵ |
| Brazil | Fixed by the Brazilian Space Agency (AEB), on a case by case examination. ⁶ | Potentially unlimited. ⁷ |
| People's Republic of China ⁸ | Required to insure. ⁹ Liability potentially unlimited. | Potentially unlimited. ¹⁰ |
| France | Exemption available, subject to Operator's fault; Insured sum. Obligation to insure. ¹¹ | Limited to the amount specified in each annual Finance Act. ¹² |
| Germany | Limited to insurance. ¹³ | Not specified. |
| Hong Kong, PR China | Required to insure; no limit set. ¹⁴ | Not specified. |
| Italy | Recovery can be made against the State even where no Liability Convention claim arises. ¹⁵ | No specific power of the State to recover from Operator, but may do under general law. ¹⁶ |
| Japan | Required to insure. Liability generally limited, unless damage caused to those related to the launch or as a result of the wilful misconduct of the launcher. ¹⁷ | Not specified. |
| Republic of Korea | Required to insure. Liability limited to 200bn Wan. ¹⁸ | Government will supplement payment in excess of insurance. ¹⁹ |
| The Netherlands | Limited to what is reasonably available on insurance market. ²⁰ | Limited to the insured sum. ²¹ |

| | | |
|----------------|---|--|
| Norway | Unlimited. ²² | Potentially unlimited. |
| Russia | Limited to sum insured, with reserved right to recover shortfall. ²³ | Limited to sum insured, with statutory right to recover any excess. |
| South Africa | Insurance required. Case by case limit specified in Licence. ²⁴ | Limited or None. |
| Sweden | No insurance obligation. Unlimited unless strong argument to limit case by case. ²⁵ | Not specified. ²⁶ |
| Ukraine | Insurance obligation, with amount specified by Government. Liability potentially unlimited. ²⁷ | Potentially unlimited. ²⁸ |
| United Kingdom | Obligation to insure. Liability subject to Statutory Instrument. ²⁹ | Unlimited. ³⁰ |
| USA | Insure to “maximum probable loss,” limited by FAA calculations. ³¹ | In addition to the \$500m limit the Government provides indemnification of up to \$2.5bn ³² |

¹ The author acknowledges with grateful thanks the assistance of: Dr Marietta Benkő, Professor Steven Freeland, Dr Gérardine Goh, Professor Carlo Golda, Mr Richard Graham, Professor Armel Kerrest, Mr Daniël Konrad Tosta Link, Dr Tanja Masson-Zwaan, Professor Pamela L Meredith, Prof. José Monserrat Filho, Professor Francesco Munari, Mr Rolf Olofsson, Professor Lucien Rapp, Ms Matxalen Sánchez-Aranzamendi, Professor Kai-Uwe Schrogl and Mr Christopher Stott.

² Space Activities Act 1998 as amended, Secs 48 & 69. Act expressly states that the entity that is applying for the requisite launching licence has no liability beyond the 'insured amount', which is currently a maximum of A\$750m (Sec 48). The insured amount may be less if the 'maximum probable loss' is less than A\$750m.

³ If the launching entity has paid compensation up to the 'insured amount', the Australian Government will compensate third party Australian nationals for damage in excess of that amount, up to a maximum of A\$3 billion (Sec 69). Although there is no express obligation for the Government to indemnify the launching entity, it seems that the legislation is intended to produce that outcome.

⁴ Law on the Activities of Launching, Flight Operations or Guidance of Space Objects 2005, Article 14.

⁵ Where the State of Belgium must indemnify third parties as a result of damage (it will itself not undertake insurance), it may seek recourse against the operator for reimbursement. This is calculated against the operators's turnover. Where the operator has not observed the conditions for the authorisation, it is obliged to indemnify the State to the full amount of compensation. (Articles 14 and 15 of the Loi relative aux activités de lancement d'operation de vol ou de guidage d'objets spatiaux , Law On The Activities of Launching, Flight Operations or Guidance of Space Objects - 2005).

⁶ Insurance of amount based on degree of risk, as fixed by Brazilian Space Agency, Agência Espacial Brasileira (AEB), art. 9, III Adm. Edict AEB no. 27/2001 and art. 04 Adm. Edict AEB no. 05/2002).

-
- However, Portaria AEB no. 27 from 2001 (licensing) and Portaria AEB no. 05 from 2002 (authorisation) do not make reference to any limit on compensation or liability.
- 7 Responsibility for damage under the Liability Convention may be split between parties responsible, without prejudice to any contracts between (or among) the parties, Art. 4, §1° Adm. Edict AEB no. 05/2002.
- 8 This excludes Hong Kong, Macau and regions other than mainland China.
- 9 Interim Measures on the Administration of Licensing the Project of Launching Civil Space Objects 2002 (“the License Measures [LM]”), Art 19.
- 10 Chinese space legislation is still very sparse. Save for the insurance requirement there is no clear guidance whether the Government can recover Liability Convention payments; Prof. Haifeng Zhao, *The Status Quo and the Future of Chinese Space Legislation*, ZLW 58. Jg. 1/2009.
- 11 Space Activities Act 2008. The compulsory amount of insurance is to be determined by implementing decree, assumed to be €50-€70 m, Arts 6, 15-17, applying the “maximum probable loss” concept; cf USA.
- 12 Articles 16 & 17.
- 13 Germany does not have at present domestic legislation that provides for licensing or third party liability on the part of operators. In practice, the government follows a self-insurance policy. Also, generally in practice, third party liability insurance of USD\$100 million is taken out in respect of joint launches with other countries.
- 14 Hong Kong Special Administrative Region Outer Space Ordinance 1997, amended in 1999, Section 6(2)(f).
- 15 The Italian State is liable to compensate damaged persons both if the State has already taken appropriate action vis-à-vis the responsible foreign State (ex art. VIII, n. 1 of the Liability Convention), and if the State has not done so. Thus, the liability of the Italian State is absolute, Legge 25 January 1983, no. 23, O.J. 5th February 1983, no. 35.
- 16 See Italian Civil Code, Art 2050.
- 17 Law Concerning Japan Aerospace Exploration Agency (Law Number 161 of 13th December 2002), Art 24-2/24-3.
- 18 Space Development and Promotion Act 2005, Arts 11 & 14; Space Damage Compensation Act 2007, Arts 5 & 6.
- 19 Space Damage Compensation Act 2007, Art 7.
- 20 Space Activities Act 2006, Secs 3 & 6.
- 21 Space Activities Act 2006, Sec 12.
- 22 Insurance requirement not provided for by space law. Liability not fixed, unlimited.
- 23 Laws of Russian Federation on Space Activity 1993, Art 30(4).
- 24 Space Affairs Act 1993, Sec 14.
- 25 Space Activities Act 1982 Sec 6.
- 26 See last footnote.

-
- 27 Ordinance of the Supreme Soviet of Ukraine, On Space Activity Law of Ukraine of 15 November 1996 (VVRU, 1997, p. 2), Arts 24 & 25; Laws of Ukraine on Insurance (1996-2004), Art 7 (23)-(25).
- 28 The Government bears no responsibility for any short-fall. But query if it can recover for damages paid under Liability convention.
- 29 Further elaboration by statutory instrument Outer Space Act 1986, Sec11(1). Insurance obligation (currently up to €60m) may be in licence Sec. 5(1) (f). However, different rules can apply in the Isle of Man, Gibraltar, and possibly Bermuda, Cayman Island and Jersey.
- 30 Outer Space Act 1986, Sec 10 imposes an obligation on the operator to indemnify the Government for its Liability Convention obligations. This is currently (July 2011) under review.
- 31 See 51 U.S.C. 50914(a). Currently the limit is \$500m.
- 32 There are provisions in the Commercial Space Launch Act for indemnification of the launch company above the insured amount, subject to Congressional appropriation. See 51 U.S.C. 50915.