

Bird & Bird Satellite Bulletin

August 2017



Limit on the Liability of Satellite Launch and Operations Licence Holders in the UK

As the competition between states to attract high-growth innovative space companies grows, what gives certain states the edge is a supportive, enabling regulatory framework and an informed regulator.

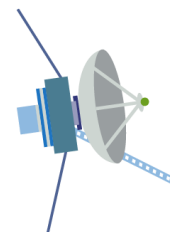
To achieve the UK's ambition to grow its share of the global space market to 10% by 2030, the UK Government must ensure an enabling regulatory framework for existing and new companies and to attract and encourage investment into the UK.

Until 2015, UK satellite operators had to provide an unlimited indemnity to the UK Government. This was contained in section 10 of the Outer Space Act 1986 and was to cover "*claims brought against the government in respect of damage or loss arising out of activities carried on*" under a licence. In short this means that the operator bears all the risks and liability of the space activities.

This concept of unlimited indemnity put UK companies at a competitive disadvantage compared with companies in countries such as the US, France (in relation to launch activities), Sweden and Australia, where there are risk sharing arrangements. For example, there are limits on the liability of licensees and the licensing government may accept liability for damage above the level covered by insurance; the liability of an operator is therefore capped by the level of insurance cover.

The concept of unlimited liability does not offer the clarity and transparency that an investor would seek. It is also very difficult for an operator to purchase insurance cover for unlimited indemnity.

The Deregulation Act 2015 (Act) introduced a cap to the unlimited indemnity from October 2015. The Act was a result of a recognition by the UK Government that the concept of unlimited indemnity was damaging to raising investment in the UK.



The Act made it mandatory for the Government to set a cap and in the majority of cases, the liability cap for a satellite operator was set at Eur 60 million per satellite. This offers some certainty to companies and investors, even though the Government has the discretion to raise or lower the cap.

The unlimited indemnification concept has however been reintroduced by Section 35 of the Space Industry Bill, which states that:

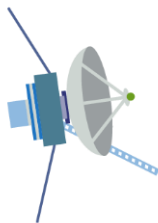
"(1) A person carrying out spaceflight activities must indemnify –

- (a) Her Majesty's government in the United Kingdom, or*
- (b) a person or body listed in subsection (2),*

against any claims brought against the government, or the persons or body, in respect of damage or loss arising out of or in connection with those activities. "

There are two tools by which the UK Government can limit the liability of operators however:

1. Section 11(2) states that *"an operator licence **may** specify a limit on the amount of the licensee's liability under section 35"*; and
2. Section 33(5) states that *"Regulations **may** make provision for an operator licence to specify a limit on the amount of the licensee's liability"*. (Emphasis added).



While the Government has stated that it may consult further on this issue and will draft implementing legislation, the concept of unlimited liability is not attractive for raising investment, growing and recruiting in the UK. This was also acknowledged by the House of Commons Science and Technology Committee in its report dated 27 April 2017 on the Bill, which also proposed a mandatory cap on an operator's liability.

In July therefore the UK trade body, UKspace, sent a letter, signed by 17 industry members, to Jo Johnson MP, the Minister of State for Universities, Science, Research and Innovation asking for a statement as to the Government's intention in relation to the *"implementation of a cap on a licensee's liability under the Space Industry Act, to enable continued investment and ensure that the UK industry can meet its ambitious growth targets"*.

A reply was received on 9 August 2017. In this Jo Johnson MP expressed that:

"given the emerging state of the UK launch and sub-orbital sectors, the Bill should provide for flexibility, rather than bind any future operational policy decisions. This will no doubt be subject to further debate as the Bill continues its passage through Parliament."

He continues by stating that:

"The Bill will retain the "may" wording... However, whilst we cannot commit to a particular approach in relation to any particular future application, it is the Government's current policy intention to continue capping operators' indemnity to the UK Government in licence conditions for the activities of i) procuring the launch of a space object and ii) the operation of a satellite in orbit... The Government therefore proposes to maintain the current policy position in respect of these activities."

Some clarity is therefore offered through the Government's intention to grandfather into the new regime under the Space Industry Act the policy to cap the liability of operators. No mention was made by Jo Johnson MP in the letter as to the level of the cap and whether this may remain at Eur 60 million however.

The final paragraph of the letter from Jo Johnson MP notes that:

"Further work needs to be undertaken on the merits and risks of capping all of an operator's liability under the Bill. In line with the Government response to the S&T Committee, the matter of liabilities will be subject to more detailed consultation over the next 18 months."

This is an important area for the industry and also for the Government if it wishes to support and encourage growth in UK space industry effectively. I would encourage interested companies to engage with the UK Space Agency in this area and respond to the forthcoming consultations. More immediately, please contact me if you wish to feed into the current regulatory work being carried out in the UK as part of the UK Space Growth Partnership (SGP).

The SGP is a working group across the UK's space industry and government that will jointly plan for and deliver high levels of sector growth and social benefits to the UK. The partnership comprises members of the UK space industry, UK Space Agency, the Satellite Applications Catapult, InnovateUK, the Department for International Trade and Academics.

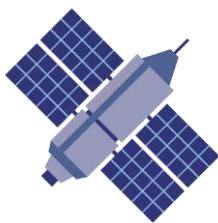
If you have any queries or would like to receive further information please contact:

Joanne Wheeler

Partner, UK

Tel: +44 20 3017 6847

joanne.wheeler@twobirds.com



Bird & Bird's Satellite Group

Bird & Bird's satellite group are international specialists with a unique reputation and track record in the industry. Through many years of experience working in-house, at regulators, in international institutions (EC, ESA, ITU, UN) and in private practice, we have built an extensive footprint of expertise and knowledge. Possessing a genuine interest in the sector, our team assist clients in many areas including: regulatory advice, industry specific commercial contacts, competition, corporate, finance, dispute resolution, employment, and insurance.

Our international team offers clients a one-stop shop to address the issues they face, with expert lawyers across Europe, the Middle East, Asia, and strong experience in Africa.

Our satellite group fits neatly within Bird & Bird's world leading Tech & Comms sector group, which offers advice in related sectors such as: energy and utilities, life sciences, transport and maritime, aerospace, defence and security, aviation, financial services, and healthcare. Bird & Bird also house a team focused on SMEs and the needs of start-ups.

Get in touch



Joanne Wheeler

Partner, UK

Tel: +44 20 3017 6847
joanne.wheeler@twobirds.com



Graeme Maguire

Partner, Global Head of Tech & Comms, UK

Tel: +44 20 7905 6218
graeme.maguire@twobirds.com



Hamish Fraser

Partner, Australia

Tel: +61 2 92269815
hamish.fraser@twobirds.com



Marjolein Geus

Partner, The Netherlands

Tel: +31 70 353 8806
marjolein.geus@twobirds.com



Anne Federle

Partner, Belgium

Tel: +32 2 282 6088
anne.federle@twobirds.com



Frédérique Dupuis-Toubol

Partner, France

Tel: +33 1 42 68 6023
frederique.dupuis.toubol@twobirds.com



Michelle Chan

Partner, China and Hong Kong

Tel: +852 2248 6111
michelle.chan@twobirds.com



Michel Matas

Partner, France

Tel: +331 42 68 6360
michel.matas@twobirds.com



Sven-Erik Heun

Partner, Germany

Tel: +49 69 74222 6158
sven-erik.heun@twobirds.com



Jenni Tapio

Senior Associate, Finland

Tel: +358 96 226 788
jenni.tapio@twobirds.com



**INNOVATIVE
LAWYERS 2014**
AWARD WINNER



twobirds.com

@twobirdsTech

Aarhus & Beijing & Bratislava & Brussels & Budapest & Copenhagen & Dubai & Dusseldorf & Frankfurt & The Hague & Hamburg & Helsinki & Hong Kong & London & Luxembourg & Lyon & Madrid & Milan & Munich & Paris & Prague & Rome & Shanghai & Singapore & Stockholm & Sydney & Warsaw

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses. Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.