

Transcending Societal Issues for Space Exploration (12)
Transcending Societal Issues for Space Exploration (1) (1)

Author: Prof. Katarzyna Malinowska
Kozminski University, Poland

INSURING THE UNINSURABLE. HOW FINANCIAL MARKET ARE ABLE TO RESPOND TO THE
RISK MANAGEMENT OF THE NEW SPACE CHALLENGES.

Abstract

In recent years we have been witnessing the emergence of an increasing number of national space laws. The concept of the ‘building blocks’ of national space legislation is already common knowledge, where one important aspect is insuring liability for damage. Though not imposed in the space treaties, most recent national laws commonly include an obligation to insure the risk of third party liability. Insurance, as most basic tool for managing legal risks of various business endeavors, became an inherent part of the space ventures. Are its features however respond to the needs of the emerging space activities? Are emerging space ventures, such as in-orbit servicing, mega constellations or ADR insurable under existing insurance concepts? Are there any other measures that financial market may offer to spread at least part of the risk? And if so, how should it be structured to enable effective and flexible coverage responding to the changing landscape of the space industry and its business models? To be same time reliable and affordable? The study analyses the tendencies of regulating space liability insurance as compulsory, and the numerous implications of that fact for both space law and insurance law. As a compulsory insurance contract, it should comply with the space industry needs and law as well as with insurance regulations. The author aims to find an optimal solution of regulating compulsory space liability insurance or other financial measures in emerging national space laws, bearing in mind the necessity of ensuring a flexible tool to manage the risk of space missions and their increasing variety. One that would be acceptable for the space and financial markets. Insuring space liability risks today means insuring the uninsurable (which contradicts the Solvency II regime) and causes big, reliable insurance players to withdraw from covering the space risks. This tendency may pose a serious threat for the innovative, yet not proofed ventures. The study encompasses such aspects as the essence of the risks related to the space projects, holders of the risks (apart from the launching states), coverage triggers, and related aspects. The idea presented in the study includes the need to harmonize space liability insurance terms in a way reflecting the needs both the insurance, financial and space industries and the result is a proposal of a more comprehensible draft provisions concerning compulsory space liability insurance or other financial risk management measures.