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THE NEW SWISS LAW ON SPACE OPERATIONS: SCOPE, APPLICATION AND AUTHORIZATION – PART 1

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Introduction

In the previous article, we introduced and described the new draft law on space operations in Switzerland ("**LOS**"), which is expected to enter into force by 2028, covering both international and national space operations. In this article, we will examine and comment on the key provisions concerning the subject matter, the scope of application, and the authorization requirement. If you have not yet read the introduction, we invite you to consult the relevant article.

Subject Matter and Scope of Application

Space Operations

It is important to note from the outset that this draft law governs, unlike the UN treaties ratified by Switzerland (which address "*the exploration and use of outer space*"), only "*space operations*". This term encompasses all activities relating to the transport of a space object and its surveillance. Such surveillance must not be merely passive; it must include the active maintenance of safety, for example through software updates. An operation is deemed concluded only when the object has returned to Earth, has partially or fully disintegrated, and any resulting fragments have fallen back to Earth. Consequently, if a satellite is placed in a so-called "graveyard orbit", its abandonment does *not* constitute the conclusion of the space operation.

Space Objects

A "*space object*" is defined as any object that is transported into space and used for a specific activity, which may itself not be regulated by the LOS, including its "payload", *i.e.* the useful cargo. As a general rule, if one or more payloads, components, or modules separate from the space object and achieve their own orbit, they immediately become autonomous space objects upon separation.

Operators

Space operations are generally carried out by natural or legal persons so-called "*operators*". It is noteworthy that the possibility of conducting a space operation is not denied, under certain circumstances, to entities without legal personality, such as consortia operating in the form of a simple partnership (see Articles 530 et seq. of the Swiss Code of Obligations with regard to their representatives).

Since the definition of operator also includes a principle of autonomy from a liability perspective, it is considered that shell companies, *i.e.* companies without operational substance in Switzerland cannot obtain authorization to carry out space operations (although such a company may still perform ancillary operations). In particular, the following principle applies: in order to determine which entity actually qualifies as the operator, one must identify who effectively and on a daily basis manages the guidance and control of a space object. If this is done through third-party service providers, then the operator is the entity that "*initiates the transmission of command signals through the telecommunications service provider*". In this regard, the operator is also considered to be the entity that has "*established the positioning of the object in space or on the celestial body*".

Outer Space

To date, several legislations have adopted quantitative criterion to define outer space and, consequently, the legal boundary between existing aviation laws and the present law. A quantitative criterion, e.g. 100 km above sea level, is an option that would result in a dual subjection to both aviation law and this law on space operations for so-called "sub-orbital" flights. Accordingly, sub-orbital flights remain subject to current aviation legislation.

Field of Application

The objective field of application of the LOS refers to space operations, while the subjective one refers to the concept of operator, as defined by the law. From a territorial standpoint, the following distinctions must be drawn: (1) space operations carried out within Swiss territory; (2) operations conducted abroad or in a neutral state, provided they are performed on vessels, floating platforms, or aircraft registered in Switzerland; finally (3) where a company is domiciled in Switzerland but carries out space operations within a foreign state or neutral country.

In the Federal Council's dispatch relating to this law, it is noted that the law also applies to foreign third-party companies performing ancillary functions for a company that holds authorization to carry out space activities. It is worth highlighting that the Federal Council specifies: "*the LOS applies in its entirety when a Swiss operator conducts its space operations in a state where no authorization requirement exists or when, despite such a requirement, the authorization has been denied.*" In the latter case, the authority will assess whether it is in Switzerland's interest to authorize a project that is to be carried out abroad but for which the foreign state has denied authorization.

Activities in Space and the Weaponization Issue

A brief note is warranted on how activities that may be carried out in space are regulated, particularly in light of the growing phenomenon of the so-called "weaponization" of space – that is, the actual militarization of space through the development of active weapons designed to damage, disable, or destroy assets in space or to strike from space. Under the Outer Space Treaty, signed in 1967 and ratified by Switzerland, it is categorically prohibited to place nuclear weapons or weapons of mass destruction in orbit, but conventional weapons are not prohibited.

For example, in 2024, the Center for Strategic and International Studies (CSIS) published a detailed analysis of a US intelligence alarm concerning a Russian project for a nuclear anti-satellite weapon (ASAT), capable of generating a massive electromagnetic pulse (EMP) that could instantly disable commercial satellite networks (such as Starlink) and military networks – not a weapon designed to drop bombs on Earth, but one intended to "fry" satellite networks.

Perhaps it is in this context that Article 7 of the LOS should be understood, which provides that the purpose for which a space object is used or what is done with it (the so-called "space activity", see Article 3(c)) is governed by the regulations that apply to the same activities on Earth, including those relating to: (a) the Federal Act of 13 December 1996 on War Material and its implementing provisions; and (b) the Federal Act of 13 December 1996 on the Control of Dual-Use Goods and its implementing provisions.

Authorization Requirement

Every company that carries out space operations requires authorization from the supervisory authority. Space operations subject to the authorization requirement also include the construction and operation of ground-based rocket launch facilities. However, it is unlikely that such an application would be filed, since from a spatial planning perspective, there is virtually no area left in Switzerland that could be considered for such purposes.

A brief aside: unlike other foreign jurisdictions (e.g. Liechtenstein), the relevant shareholding within the applicants is not subject to any requirement under the authorization procedure. This is because the objective of the LOS is to achieve an acceptable level of safety in space operations and, in terms of liability, the shareholding plays a secondary role compared to the management and governing body (in the case of a corporation: the board of directors), which bears primary responsibility for the company's activities. Each operation to be authorized must be described with sufficient precision. So-called general authorizations or "licenses" valid for an unlimited number of operations by the same operator are therefore not envisaged.

Conditions for Granting Authorization

1. The first condition the applicant must meet is to have the organizational, financial, and technical resources necessary to carry out the space operations to be authorized in complete safety. It should be noted that, unlike vessels and aircraft, the LOS does not provide for the possibility of introducing a special lien on assets, particularly because the complexity of the software governing a space object and the specialization of the personnel managing it make the object not easily transferable. Therefore, it was decided not to introduce a special right of lien in the LOS, similar to the one that exists for ships. The creation of a manual pledge under the provisions of the Swiss Civil Code (Article 884 et seq.) is also excluded: if the object in question is in space, from a property law perspective it is no longer controllable and is not considered movable property within the meaning of Article 713 of the Swiss Civil Code.

2. Where the space object necessary for the operation is not owned by the applicant, the owner must contractually grant the applicant full right of disposal over the object.

3. The persons responsible for the management and administration of the company must enjoy a good reputation and guarantee irreproachable conduct, in line with the requirements set out in the Federal Act on Banks and Savings Banks (Banking Act), covering all relevant aspects.

4. The personnel responsible for the guidance and surveillance of space objects must possess the necessary competences and be reliable. The question then arises as to what role AI plays in this context, where certain guidance and surveillance commands relate to the space object. Intuitively, one could envisage the authority requiring specific assessments and requirements for AI components similar to those already established in the aviation domain (e.g. OD, ODD, ConOps, Risk Assessment, etc.).

5. The space objects used and their components must conform to the state of the art in light of innovation and proper use. The state of the art to which space objects must conform will result from the relevant technical standards and norms. Such standards may be overly complex for simple operations, but the Federal Council has established that the "principle of technological neutrality" must nonetheless be taken into account. Accordingly, it will be necessary to determine on a case-by-case basis the extent to which expert assessments from specialized verification centres will be required, in a manner proportionate and appropriate to the operation.

6. The applicant must demonstrate that it has adopted the necessary measures to avoid, to the greatest extent possible, environmental pollution, space debris, and harm to human health.

7. Since space objects are generally guided by radio signals, space operations are subject to the relevant telecommunications laws (e.g., Swiss Telecommunications Act, TCA). Accordingly, the applicant must have submitted a prior application to the competent authorities for the granting of frequency usage rights. Given that such authorizations are often lengthy, in order not to overburden the operator, it is sufficient to have merely submitted the application, hence it is not necessary to have already obtained the relevant authorization.

8. Particularly innovative and important is the requirement that space objects subject to management and control must under no circumstances remain without an owner until they are properly decommissioned. To this end, the necessary precautions must be taken to ensure that a space object is not abandoned in the event of the owner's bankruptcy. One way to address this issue could be through specific financial instruments or a contractual guarantee with a potential third-party owner of the space object, or with another authorization holder who would assume management and control of the object should the owner face insolvency risk. Consequently, a contractual review becomes necessary to ensure that, in the event the owner faces insolvency risk, the required operational measures are adopted – for example, safely returning the space object to Earth, allowing it to disintegrate in the atmosphere, or placing it in a graveyard orbit.

9. The operation must not violate the principles of the Outer Space Treaty. The competent authorities must also be able to verify that the planned space operation or activity does not conflict with Switzerland's space policy, foreign policy interests, or security interests. For instance, an application by a company could be rejected due to military or intelligence use by a foreign country or an undesirable composition of the shareholder group.

10. The duration of the space operation is limited. Therefore, when submitting the application, this point must be clearly described and, where applicable, the applicant should already have an idea of the plans for returning the object to Earth or disintegrating it in orbit. A space operation is not considered concluded if the object is placed in a graveyard orbit.

Conclusion

The LOS represents a significant step towards establishing a comprehensive and modern legal framework for space activities in a country that, despite its small size, plays a growing role in the global space sector. As this article has shown, the law introduces carefully considered definitions of key concepts: space operations, space objects, and operators, and delineates a territorial scope of application that is both broad and nuanced, extending to operations conducted abroad on Swiss-registered platforms and by Swiss-domiciled companies.

The authorization regime is particularly noteworthy for its detailed and forward-looking approach. By requiring applicants to demonstrate organizational, financial, and technical capacity, good reputation, conformity with the state of the art, and measures against environmental pollution and space debris, the LOS sets a high standard for responsible space operations.

Equally important is the law's engagement with emerging technologies, particularly artificial intelligence, and its recognition that the weaponization of space is an increasingly pressing issue that must be addressed within the broader framework of international law.

As the LOS progresses through the legislative process towards its expected entry into force in 2028, the conditions for authorization and the interplay between domestic regulation and international obligations will continue to deserve close attention from operators, investors, and legal practitioners alike.

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