Canadian Transportation Agency

Office des transports du Canada

Liability Insurance Requirements for Wet-Lease and Code-Share Arrangements: A Guide

Canadian Transportation Agency

Canada

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1. Introduction

All airlines licensed by the Canadian Transportation Agency (CTA) that offer service to, from, or within Canada, must have the appropriate liability insurance to cover claims from injuries, death, and damage to property.

This guide explains the insurance requirements for airlines offering services under a code-share or wet-lease arrangement. It describes:

- the type of insurance that you must hold;
- the minimum amount of that insurance;
- different ways you can hold the insurance; and
- information you must provide to us at the CTA.

2. What are Wet-Leasing and Code Sharing?

Both wet-leasing and code sharing allow an airline to market (sell) flights and offer transportation services (passenger seats or cargo space) to their customers using the aircraft and flight crew of another airline.

A **wet-lease** is an arrangement where one airline (the marketing airline) sells transportation services under its own code and licence, but uses the aircraft and flight crew of another airline, which operates the flight.

A **code-share** is an arrangement between two airlines, where one airline (the marketing airline) sells transportation services under its own code and licence on a flight operated by the other airline. The airline operating the flight also sells transportation services on the same flight using its own code and licence.

For more information on these arrangements see *Code-Share Arrangements: A Guide* and *Applying for Wet-Lease Approval: A Guide*.

3. Insurance coverage requirements

Any airline that offers service to, from or within Canada must hold insurance to cover their passengers and the public.

Passenger liability insurance

- Must cover all passenger injuries or deaths that happen:
  - while the passenger is on board the aircraft; or
  - while the passenger is getting on or off the aircraft.
- Must total at least $300,000 for every passenger seat on the aircraft.

Upcoming increases to insurance requirements

As of July 1, 2021, the minimum passenger liability insurance requirements will change to $595,000 for every passenger seat on the aircraft. The minimum liability insurance requirements will be adjusted every 5 years, to account for changes in prices (inflation or deflation).

Public liability insurance

- Must cover:
  - an injury or death of a person not on board the aircraft; and
  - the loss or damage of property caused by the aircraft (for example, a collision with the aircraft, or an object falling from the aircraft).

- The minimum amount you must hold depends on the Maximum Certified Takeoff Weight (MCTOW) of the aircraft being used:
    - 7,500 pounds (approximately 3,402 kilograms) or less = $1,000,000;
    - 7,500 to 18,000 pounds (approximately 8,615 kilograms) = $2,000,000; and
    - greater than 18,000 pounds = $2,000,000, plus $150 for every pound (approximately 0.45 kilograms) over 18,000 pounds.

Upcoming increases to insurance requirements

As of July 1, 2021, the minimum public liability insurance requirements will change to the following:

- MCTOW of 3,402 kilograms or less = $1,985,000;
- MCTOW of 3,402 to 8,165 kilograms = $3,970,000; and,
- MCTOW greater than 8,165 kilograms = $3,970,000 plus $655 for every kilogram over 8,165 kilograms.

The minimum liability insurance requirements will be adjusted every 5 years, to account for changes in prices (inflation or deflation).

Exceptions

Passenger liability and public liability insurance must provide at least the minimum required coverage. The policies cannot contain conditions that exclude coverage or provide lower coverage unless that condition deals with:

- war, hijacking or other similar situation;
- noise, pollution or radioactive contamination from the aircraft or providing services related to the aircraft (for example, refuelling the aircraft); or
- situations in which the airline hid or misrepresented any significant fact or event related to the insurance coverage.

4. How airlines may hold the required insurance

In a code-share or wet-lease arrangement, the marketing airline is the one providing the air service. If you are the marketing airline, you can meet the insurance requirements in Section 2 using the following options:

- Under your own insurance policy;
- By being named as an "additional insured" under the policy of the airline operating the flight; or
- Using a combination of the options above (for example, using your own coverage for passenger liability and being an "additional insured" for public liability under the policy of the airline operating the flight).

Coverage under own insurance policy

If you are covering both passenger and public liabilities under your own policy, you can do this in two different ways. Your insurance policy can cover liabilities separately, with one amount for passenger liability and another amount for public liability. This is known as a split limit policy.

Another option is a policy that combines passenger and public liabilities under a single amount of insurance. In the event of an accident, any part of this amount can be used for either passenger or public claims, as needed. If you choose this single limit policy, the amount must be enough to cover the combined minimum levels for the passenger and public liabilities.

Example

You are an airline that wants to wet-lease an aircraft that can seat 10 passengers and has an MCTOW of 17,000 pounds. To meet the insurance requirements using a split limit policy, the limit for passenger liability must be at least $3,000,000 and the limit for public liability must be at least $2,000,000. If you choose to cover passenger and public liabilities under a single limit, it must total at least $5,000,000.

Coverage as an "additional insured"

If you are being named as an "additional insured" under the policy of the airline operating the flight, this means that you have agreed with the airline operating the flight that their policy will also provide you with the required insurance for the flight.

Conditions

There are two conditions that must be met if the marketing airline is named as an "additional insured" under the policy of the airline operating the flight for passenger liabilities, public liabilities, or both.

The insurance provided to the marketing airline must be **primary and without right of contribution**. This means that the insurance policy of the airline operating the flight will always be used first, up to that policy's maximum limit, before any insurance held by the marketing airline would apply.

There must be a written agreement that the airline operating the flight will **hold harmless and indemnify** the marketing airline for any losses or damages that happen during a flight. This means that the airline operating the flight will not hold the marketing airline legally or financially responsible.

Requirement to hold harmless and indemnify

The CTA may accept a hold harmless agreement with an exception addressing situations where the marketing airline causes the damages intentionally or through careless behaviour. The CTA assesses these situations on a case-by-case basis.

5. Insurance Information to provide the CTA

To show that the right insurance is in place for a code-share or wet-lease arrangement, you must send us certain information with your notification or application for approval.

Notifications and applications for approval

To find out whether you need to apply for CTA approval to code-share or wet lease, or must simply notify us before the flight(s), please see our guides on code sharing and wet-leasing.

Application for CTA approval

You must **apply to us** for approval before putting in place a wet-lease arrangement, with some exceptions. The application must include the following information to prove the marketing airline holds the required insurance.

If insurance is under the marketing airline's policy, you must:

- provide the certificate of insurance including a statement by the insurer that the appropriate insurance coverage is in place.

If the marketing airline is covered under the policy of the airline operating the flight, you must:

- provide the certificate of insurance including statements by the insurer that:
    - The marketing airline is an "additional insured" under the policy of the airline operating the flight; and
    - The insurance provided to the marketing airline is primary and without right of contribution.
- submit a copy of the hold harmless and indemnity agreement.

Notification

For most code-share arrangements, you only have to **notify us** before the first flight(s). The notification must include a statement that the marketing airline holds the appropriate insurance coverage. You must also be prepared to show us proof of insurance upon request.

You must always notify us at the CTA if your insurance policy has been cancelled or if it no longer provides the required amount of coverage.

Airlines that do not maintain the required insurance will have their license suspended and could face a penalty of up to $25,000.

6. Contact Information

For further information, or if you have any questions about this guide, please send an e-mail to: licence@otc-cta.gc.ca.