

The Standard Ground Handling Agreement (SGHA) from a Swiss law perspective

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Overview

- Aircraft ground handling services
- What do these services entail?
- The SGHA as industry standard
- Case example
 - The relevant provisions of the SGHA
 - Validity under Swiss law
 - Claims in tort against wrongful employee

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Aircraft ground handling services

- Servicing of an aircraft while it is on the ground (between the time it arrives at a terminal gate and the time it departs on its next flight)
- Many airlines subcontract ground handling to handling agents or other airlines.
- In the early days of commercial aviation airlines provided ground handling services in their home countries to other airlines.
- E.g. Swissair via its affiliates Swissair Ground Services International AG (today Swissport), and Gate Gourmet for catering services.

 Gategourmet

 swissport



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What do these services entail?

- Cabin service (cleaning)
- Catering



What do these services entail?

- Ramp service (towing, luggage handling, refueling, passenger stairs)



What do these services entail?

- Passenger service (customer service, check-in counter)
- Cargo Services



What do these services entail?

- Maintenance Services
- Aviation Security



What do these services entail?

- Executive Aviation



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The SGHA as industry standard

- Airlines may choose to contract for ground handling services under the terms of a Standard Ground Handling Agreement (SGHA).
- Very common standard wording
- The SGHA is part of the IATA Ground Services Agreements as published in the IATA Airport Handling Manual (AHM).
- Newest version of 2018
- Structure:
 - Main Agreement
 - Annex A (general Description of Services)
 - Annex B (location, agreed services and charges) or Annex B with Simplified Procedure
- Liability provision in Art. 8 of the Main Agreement

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Case example

- Handling Company was performing ground handling services to Carrier under the SGHA 2013.
- Three empty Unit Load Devices (ULD) of Handling Company were unloaded on the arrival of an A321 on unsecured baggage carts.
- By jet blast of another aircraft, the ULD were pushed into the avionics compartment door of the A321 and perforated it.



Case example

- Damage:
 - Repair damage and related costs (parking, freight etc.)
 - indemnity payments to passengers and costs for catering, accommodation, rebooking)
 - loss of profit (several days of grounding)



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The relevant provisions of the SGHA

- Liability of Handling Company is very much limited.
- Article 8 SGHA on Liability and Indemnity:
 - "8.1 [...] the Carrier **shall not make any claim** against the Handling Company [including employees, servants, agents and subcontractors] and shall indemnify it [...] against any legal liability for claims or suits [...] in respect of:
 - (a) delay, injury or death of persons carried or to be carried by the Carrier;
 - (b) injury or death of any employee of the Carrier;
 - (c) damage to or delay or loss of baggage, cargo or mail carried or to be carried by the Carrier, and
 - (d) **damage to or loss of property owned or operated by, or on behalf of, the Carrier and any consequential loss or damage;**arising from an act or omission of the Handling Company in the performance of this Agreement **unless done with intent to cause damage, death, delay, injury or loss or recklessly and with the knowledge that damage, death, delay, injury or loss would probably result.**
[...]"

The relevant provisions of the SGHA

- Article 8 SGHA on Liability and Indemnity:

"8.5 Notwithstanding Sub-Article 8.1(d), the **Handling Company shall indemnify** the Carrier against any physical loss of or **damage to the Carrier's Aircraft** caused by the Handling Company's negligent act or omission provided always that the Handling Company's **liability shall be limited** to any such loss of or damage to the Carrier's Aircraft **in an amount not exceeding the level of deductible under the Carrier's Hull All Risk Policy** which shall not, in any event, exceed USD 1,500,000 except that loss or damage in respect of any incident below USD 3,000 shall not be indemnified.

[...] this Sub-Article 8.5 does not affect or prejudice the generality of the provisions of Sub-Article 8.1 including the principle that the Carrier shall not make any claim against the Handling Company and shall indemnify it against any liability in respect of any and all consequential loss or damage howsoever arising."

The relevant provisions of the SGHA

- Pursuant to Art. 8.5 the liability of the Handling Company is limited to direct damages to the aircraft up to deductible under the Carrier's hull insurance policy alone.
- For further damages the Carrier has to prove that the Handling Company caused the loss through willful misconduct or intent.
- Under Swiss law wilful misconduct is a higher degree of negligence than gross negligence (see BGE 128 III 390); a subjective approach is applied.
- Purpose of distributing the risks and avoiding double insurance.

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Validity under Swiss law

- Freedom of contract goes very wide under Swiss law.
- The Contract provides for Handling Company to perform a certain success with its services on a permanent basis.
- The provisions for contracts for work and service according to Art. 363 seq. of the Code of Obligations (CO) are most appropriate.
- On exclusion/limitation of liability the general provisions in Art. 100 and 101 CO apply.

Validity under Swiss law

- Art. 100 (1) of the Code of Obligations (CO) on exclusion of liability:
“Any agreement purporting **to exclude liability** for unlawful intent or **gross negligence** in advance is void.”
- Art. 101 CO on liability for auxiliary persons:
“A person who delegates the performance of an obligation or the exercise of a right arising from a contractual obligation to an auxiliary person [...] is liable to the other party for any loss or damage the auxiliary person causes in carrying out such tasks, [...].
This liability may be limited or excluded by prior agreement.
[...] if the liability arises in connection with **commercial activities conducted under official licence**, any exclusion of liability by agreement may apply at most to minor negligence.”

Validity under Swiss law

- Art. 100 CO only applies if the contracting party itself breached the contract.
- If contracting party is a company, only the acts of its alter ego or senior management would fall under Article 100 CO.
- More often, losses are not caused by members of the senior management but other employees; then Art. 101 CO applies.
- Art. 101 (2) CO allows the parties to exclude liability for auxiliary persons in full (even for damages through intentional acts of such persons).
- Commercial activities conducted under official licence?
 - The Handling Company requires a concession/licence neither from the State nor from FOCA for performing ground handling services.
 - However, the rationale of Art. 101 (3) CO is to protect the weaker contractual party; in order to apply such provision, the party conducting business under an official licence is required to have a considerably stronger bargaining position.

Validity under Swiss law

- Commercial activities conducted under official licence?
 - If the other party does not need such protection, the party carrying on business under the official licence is not prevented from excluding its liability by Art. 101 (3) CO.
 - Examples of businesses under an official concession, are railroads, the mail business, banks (BGE 112 II 450) and cable railways (BGE 113 II 251).
 - In a case against the SBB the Supreme Court held that Art. 101 (3) CO does not apply when the contract was made between two commercial companies (BGE 91 I 223).
- Art. 8.1 and 8.5 SGHA hence limit the Handling Company's liability to direct damages ("indemnify against any physical loss of or damage to the Carrier's Aircraft").
- Very difficult for Carrier to prove wilful misconduct.

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Claims in tort against wrongful employee?



- Art. 41 CO:
“Any person who unlawfully causes loss or damage to another, whether wilfully or negligently, is obliged to provide compensation.”
- Contractual exclusion clauses also apply to related tort claims (BGE 120 II 61).
- Art. 8.1:
“the Carrier shall not make any claim against the Handling Company” (which includes the employee)
- Exclusion clause is for the benefit of the employee as third party.
- In that case, Art. 100 and not Art. 101 CO applies because a direct claim relates to the liability of the employee himself or herself (and not for his or her vicarious liability for another employee).

Claims in tort against wrongful employee?



- Carrier has to prove gross negligence of employee (and not willful misconduct); objective approach.
- The employee has a claim for being held harmless if the or she would not be liable under Art. 321e (1) CO e contrario:
“The employee is liable for any loss or damage he causes to the employer whether wilfully or by negligence.”

Thank you very much for your
attention!

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