

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Dispute Settlement (2)

Author: Ms. Naomi Briercliffe
Allen & Overy LLP, United Kingdom, Naomi.Briercliffe@AllenOvery.com

Mr. Pranay Lekhi
Allen & Overy LLP, United Kingdom, pranay.lekhi@allenoverly.com

SPECIALISED DISPUTE RESOLUTION FOR COMMERCIAL SPACE DISPUTES – A
PRACTITIONER’S PERSPECTIVE

Abstract

Outer space activities are no longer in the exclusive domain of States. There has been a marked increase in commercial space activity in recent years, with private players taking the lead in new space developments. As the sector grows, so too do the number of space-related disputes, a fact that has encouraged the Dubai International Financial Centre recently to launch an initiative to develop a standing mechanism for the resolution of commercial space disputes. But is standing space court really necessary – or even desirable?

Specialised dispute resolution mechanisms offer an advantage in that they provide industry-specific procedures and decision-makers. These afford the disputing parties comfort that their case will be handled with the requisite expertise and efficiency. Despite this, however, in 2021, the Permanent Court of Arbitration’s specialised “Optional Rules for Arbitration of Disputes Relating to Outer Space Activities” (the PCA Rules) celebrated their 10-year anniversary without ever having been applied in any proceedings (to the best of public information). This is either because the Rules are not sufficiently known or because parties have not considered the application of specialised rules to be necessary in commercial space disputes.

In the authors’ views, the latter position is more likely. While the space industry is novel, a majority of disputes emerging from it are similar to those in other economic sectors. For instance, commercial space disputes often involve the lease of satellite capacity, insurance and contractual arrangements. None of these topics are original and can be effectively arbitrated under well-known arbitral rules, since as those of UNCITRAL, the International Chamber of Commerce and the London Court of International Arbitration, with which parties are already familiar. Having familiarity with the arbitral rules that will apply in any dispute reduces the uncertainty of the dispute resolution process and, as a corollary, may serve to reduce costs and increase efficiency.

It is also possible within the framework of existing arbitral rules for parties to agree that specialist arbitrators will determine their disputes. This, however, is where a limitation may lie. There are currently very few well-known experts in commercial space disputes (indeed, the PCA’s Panel of Arbitrators and Experts currently lists only seven). Going forward, while it may not be necessary to establish a space court to address space-related commercial disputes effectively, building sectoral legal expertise will be essential.