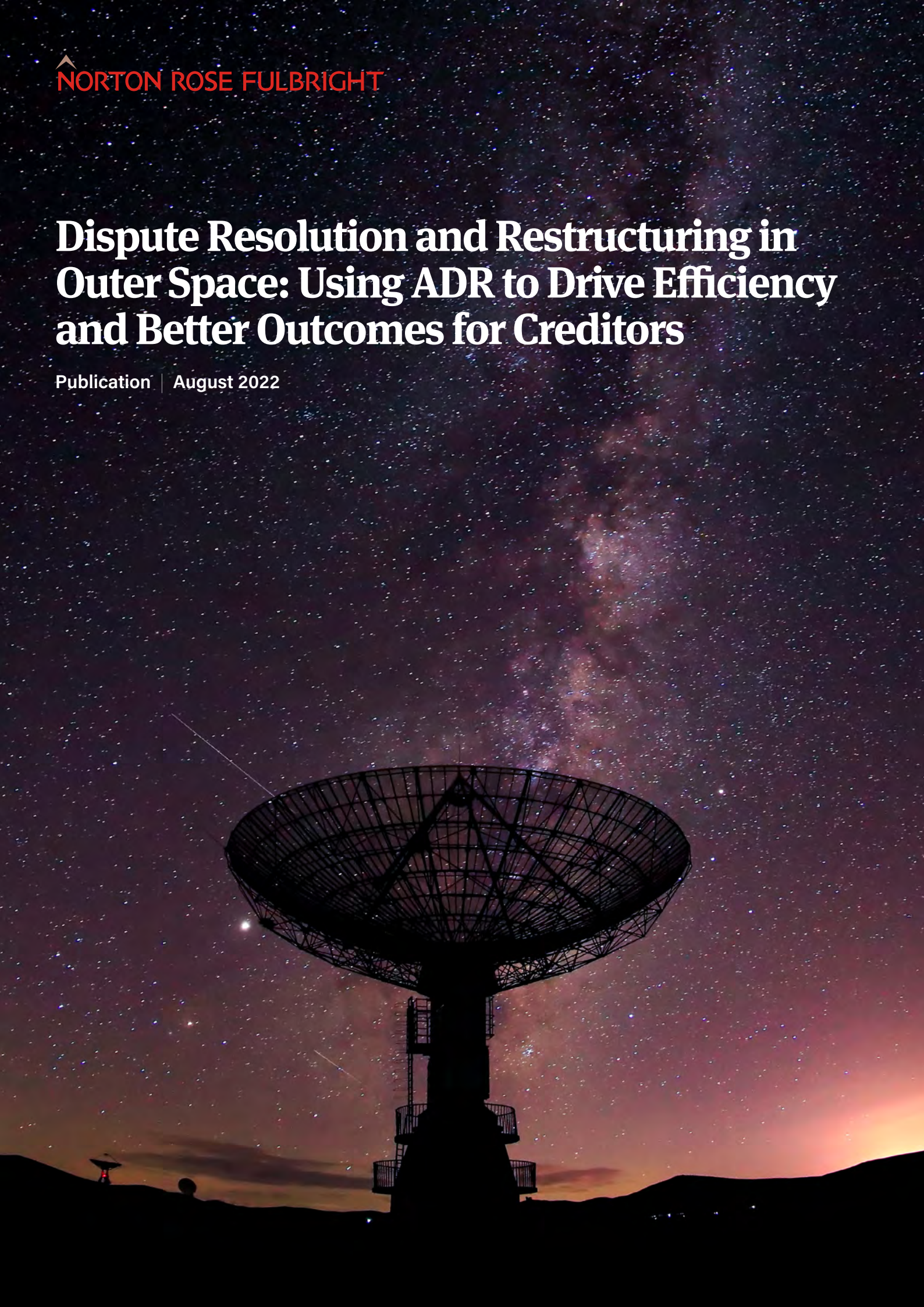


Dispute Resolution and Restructuring in Outer Space: Using ADR to Drive Efficiency and Better Outcomes for Creditors

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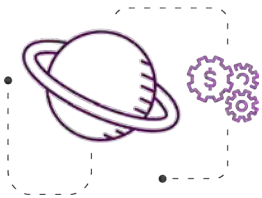
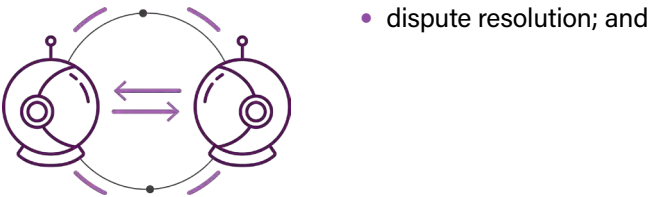
Synopsis

In 2021, the author launched the first article in a ‘space-themed’ series of articles exploring the rapid pace of technological advancements and global investment that is driving the commercialisation of outer space – primarily through satellite infrastructure that delivers enhancements in communications and digital monitoring and imaging for the benefit of economies and societies across the Earth, as well as emerging developments in space mining and engineering. The article also analysed the international legal, regulatory and policy framework relating to outer space commercial activities, and identified gaps which, if not addressed, may serve as a disincentive to ongoing investment in the outer space industry and, in turn, compromise innovation, economic growth and public interest concerns.

The first article in the series looked specifically at the five current outer space treaties in existence and highlighted the absence of a consistent liability and property rights framework.¹

The second article discussed the manner in which the adoption of a uniform securities framework can act as the underpinning of future debt and equity finance in the space industry and support ongoing innovation and space exploration.²

This article focuses on two key issues that will become inevitable features of the continued growth of the commercial space industry:



- the restructuring of financially distressed commercial space enterprises.

It is suggested that alternative dispute resolution (ADR) has a significant role to play in resolving outer space disputes, particularly through the auspices of the investor-state dispute settlement (ISDS) framework, as well as via the adoption of mandatory arbitration and mediation referral powers involving private enterprises.

Further, this article identifies that the pandemic, and ongoing global economic difficulties, have highlighted a number of systemic issues in the commercial space industry that will likely see an increase in restructuring activity for commercial space enterprises in coming years. Notably, the commercial space sector is dominated by small and medium-sized enterprises (SMEs) susceptible to reduced demand and supply chain shocks, and is also typified by a start-up investment culture which drives a ‘boom or bust’ cycle in commercial outer space activities. In this context, ADR also has an important role to play in enhancing the efficiency and flexibility of restructuring processes and increasing the likelihood of effective restructuring outcomes for viable entities. Further uptake of ADR as an adjunct to informal and formal restructuring processes can be encouraged through the greater adoption and implementation of international judgment recognition instruments, as well as mandatory referral powers for courts and insolvency practitioners.

¹ S Atkins and K Luck, ‘Outer Space: The New Frontier for Restructuring and Insolvency’ (2021) 18(5) *International Corporate Rescue*. This article is available for public viewing on the Norton Rose Fulbright website, reproduced with the permission of Chase Cambria Publishing, at <https://www.nortonrosefulbright.com/en-au/knowledge/publications/b34b1f80/outer-space-the-new-frontier-for-restructuring-and-insolvency>.

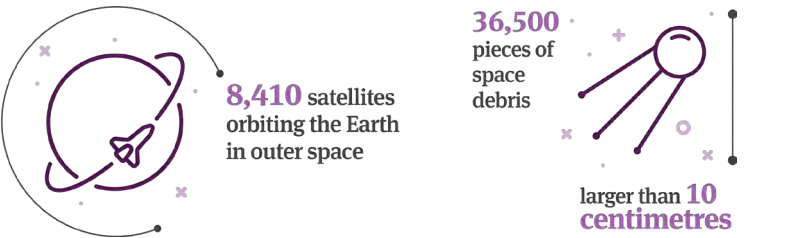
² S Atkins, ‘The Commercialisation of Outer Space: How an International Securities Framework Can Be the Launching Pad for a Global Economy’ (2022) 19(3) *International Corporate Rescue* 129. This article is available for public viewing on the Norton Rose Fulbright website, reproduced with the permission of Chase Cambria Publishing, at <https://www.nortonrosefulbright.com/en-au/knowledge/publications/102a426e/the-commercialisation-of-outer-space>.

Dispute Resolution in Outer Space

The ISDS framework

One of the primary forms of dispute expected to arise as the commercialisation of outer space continues is collision liability from space debris striking an operating satellite.

Indeed, the European Space Agency (ESA) estimates that there are currently more than:³



These figures are expected to continue to rise substantially in coming years, driven by ‘the increasing number and scale of commercial satellite constellations in low-Earth orbit.’⁴

Indeed, it has been estimated that the number of active satellites in outer space has increased 68% in the last year alone, and more than 200% in the last five years, with this ‘debris graveyard’ now becoming a deterrent to insurers extending space insurance policies to include collision coverage.⁵



With more satellites being launched into outer space than ever before by commercial operators who have their own launch capability, and not enough satellites being removed from their orbits at the end of their useful lives, the ESA warns that we can expect to now see a heightened risk of ‘catastrophic in-space collisions.’⁶

³ European Space Agency, ‘Space Debris by the Numbers’, 10 May 2022.

⁴ European Space Agency, ‘Space Environment Report 2022’, 22 April 2022.

⁵ N Hussain and C Cohn, ‘Insurers Pull Back as Risks of Satellite and Space Debris Collisions Surge’, *Insurance Journal*, 1 September 2021.

⁶ European Space Agency, see above n 4.

This may precipitate the 'Kessler effect', in which the low-Earth orbit (extending 2,000 kilometres beyond the Earth's atmosphere) is so crowded that one collision will lead to a cascade of further collisions.⁷

Unfortunately, the existing 'space-specific' international dispute resolution framework in relation to collision liability is outdated and gives little investment confidence for commercial enterprises.

As considered in the first article in this series, the Outer Space Treaty⁸ sets out general collision liability principles, including the principle that each State from whose territory an object is launched is internationally liable for damage to another State that is a party to the Outer Space Treaty or the citizens of that State party.⁹

These general principles are expanded on in the Liability Convention¹⁰ which clarifies that a State's liability will only crystallise in the event of 'fault',¹¹ and permits a State which either itself suffers damage from an object launched into outer space, or whose citizens suffer damage, to present a claim for compensation to the launching State.¹²

This framework has very limited practical use for commercial space enterprises because it only permits a State to pursue a claim on behalf of a private entity, initially through diplomatic channels,¹³ and if settlement of a claim is not successful via those channels, then through the establishment of a 'Claims Commission' that will hear the dispute but which is only able to issue a non-binding 'recommendatory' award.¹⁴ There are no direct enforcement rights for private enterprises, and the limitations of the existing international regime are reflected by the fact that the Claims Commission process, intended to be a central feature of the Liability Convention, has never once been used in practice.¹⁵

An effective dispute resolution framework that incentivises investment in outer space activities – with suppliers, financiers and other parties confident their investments will be protected due to the existence of substantive, legally enforceable rights in the event of a dispute – ultimately depends on enabling genuine private enforcement alternatives.

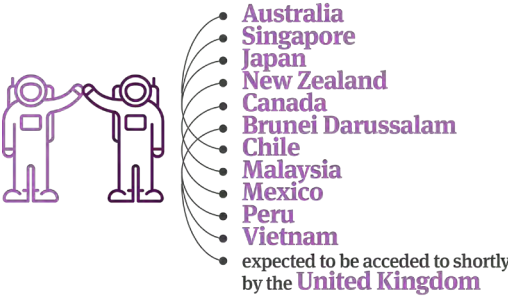
In that regard, there is potential for private entities to pursue claims on their own behalf – rather than via State diplomatic channels – under the general ISDS framework that applies to all commercial investment-related disputes (not limited to space activities).

ISDS provisions are typically incorporated in bilateral and multilateral investment treaties and free trade agreements (FTAs), with some estimates suggesting that these provisions are now present in more than 3,000 treaties and FTAs globally.¹⁶ The provisions are intended to give private investors direct recourse against the 'host State' in which an investment is made in the event that certain guaranteed 'minimum protections' are infringed, and to enable the dispute to be resolved in a neutral ADR-based forum rather than in the courts of the home or host State. In providing a consistent, transparent, non-politicised claims framework based on guaranteed minimum protections, the ISDS framework saves investors complexity, time and expense, and also enables investors to bypass the cumbersome State diplomatic channel dispute resolution process.

While the exact scope of ISDS provisions depends on the specific treaty or FTA under examination, the provisions usually extend minimum protections to core matters such as fair and equitable treatment, full protection and security, no expropriation without full compensation and the free transfer of capital.

After notifying the host State of a dispute, and after the expiry of a minimum mandatory informal negotiation period, ISDS provisions typically allow the investor to commence arbitration. They also nominate the specific arbitral rules applying to any arbitration commenced, or allow the investor a choice of rules, such as the ICSID Arbitration Rules, the UNCITRAL Arbitral Rules or the ICC Rules of Arbitration.

The ISDS framework is readily capable of applying to claims based on damage caused to a low-orbit satellite by flying debris in outer space. This is best illustrated by way of an example under the ISDS framework contained in the Trans-Pacific Partnership Agreement (TPP), incorporated by reference into the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The CPTPP is a FTA between:



The ISDS provisions in Chapter 9 of the TPP are typical of those which apply in other FTAs and investment treaties around the world.

An 'investment' is defined in article 9.1 of the TPP to mean 'every asset that an investor owns or controls' which 'has the characteristics of an investment' – including 'the commitment of capital or other resources' and 'the expectation of profit' – and which may take a variety of forms such as 'movable or immovable property and related property rights.'

A satellite launched into outer space by a commercial operator domiciled in a particular State would fall within this broad definition. It could also be classed as an investment 'in the territory' of one or more foreign States – another precondition for an investor to lodge a claim under the ISDS framework¹⁷ – on the basis of various connecting

factors, such as the lease of frequency band rights granted by another State or the use of ground stations located in other States for the purpose of controlling the operation of the satellite once in orbit.

Notably, the UN Convention on Registration of Objects Launched into Outer Space, which entered into force in 1976, requires signatory States to establish their own national registries and to impose obligations on all parties that launch an object into outer space to register those objects on the locally-established outer space register. The records on the locally-established registers are then collated and included in the global UN Register of Objects Launched into Outer Space. For example, in Australia, the *Space (Launches and Returns) Act 2018* (Cth) sets up a regulatory regime for space activities originating in Australia, including the need for approval to launch a space object from Australia and the need to register all space objects so approved.

It could be argued that, if space debris registered, for example, in Australia, collided with a satellite in outer space owned by a private enterprise domiciled in Singapore, and the satellite used frequency rights granted by, or a ground station located in, Australia during orbit, then the investor could pursue a claim against Australia if it could be established that one of the minimum protections outlined in the TPP was infringed. In the context of collision liability, a viable case theory may be that a State, in this example Australia, has failed to accord 'full protection and security in accordance with international law principles.'¹⁸ However, that would depend on showing that the State failed to use all due diligence to prevent a collision. Indeed, as noted in recent academic research, arbitral practice suggests that the full protection and security standard 'is not absolute, but rather one of due diligence, and does not imply strict liability of the host State.'¹⁹ Nevertheless, with continued advances in tracking and monitoring capability for outer space debris, pioneered by national space agencies such as the ESA and the United States National Aeronautics and Space Administration (NASA), the standard of care can be expected to become more exacting in future years, opening the door for collision liability claims as a distinct option under the ISDS dispute resolution framework.

⁷ Ibid.

⁸ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies (1967).

⁹ Outer Space Treaty, article VII.

¹⁰ Convention on International Liability for Damage Caused by Space Objects (1972).

¹¹ Liability Convention, article III.

¹² Ibid, article VII.

¹³ Ibid, article IX.

¹⁴ Ibid, article XV.

¹⁵ H R Hertzfeld and T G Nelson, 'Binding Arbitration as an Effective Means of Dispute Settlement for Accidents in Outer Space' (2013) *Proceedings of the International Institute of Space Law* 129, 132.

¹⁶ L N Skovgaard Poulsen and G Gertz, 'Reforming the Investment Treaty Regime: A "Backward-Looking" Approach', Briefing Paper, Global Economy and Finance Programme, March 2021.

¹⁷ See the definition of 'investor of a Party' in article 9.1 of the TPP.

¹⁸ See the relevant minimum standard of treatment set out in article 9.6 of the TPP.

¹⁹ S Hobe, R Popova, H El Bajjati and J Scheu, 'The Protection of Satellite Telecommunications Activities Under Bilateral Investment Treaties' (2018) *Journal of World Investment & Trade* 1024, 1051.

Private arbitration and mediation

However, in the context of collision liability, the ISDS framework only permits a party to pursue a State. There is no ability under that framework to pursue a private entity directly for damage caused by a space debris collision.

Further, in relation to outer space disputes that arise outside the context of a collision, the ISDS framework has less scope for application in the first place. Indeed, for commercial issues such as equipment/supply disputes, contractor and customer disputes and defaults under financing arrangements, there would be limited connecting factors and scenarios that would tie the dispute to State responsibility under the minimum guaranteed rights set out in the ISDS framework.

In those circumstances, private arbitration and mediation would provide a viable option to resolve complex cross-border outer space disputes in a timely, efficient and cost-effective manner – with the benefit of a single, recognised forum applying predictable and tested procedural processes and overcoming the potential for inconsistent outcomes and doctrinal uncertainty from competing, simultaneous court processes in multiple jurisdictions.

However, the private arbitration and mediation framework is currently underdeveloped in relation to outer space disputes.

In 2011, the Permanent Court of Arbitration (**PCA**) released its Optional Rules for Arbitration of Disputes Relating to Outer Space Activities (**Outer Space Rules**). These rules are based on UNCITRAL's 2010 Arbitral Rules, which are commonly used by disputing parties in commercial international arbitrations, but are tailored to reflect 'the particular characteristics of disputes having an outer space component'. Among other things in that regard, the Outer Space Rules provide for a specialised panels of arbitrators²⁰ and scientific and technical experts who may be appointed as expert witnesses.²¹

However, in practice, there are no publicly reported arbitrations that have been resolved using the Outer Space Rules, and it has been suggested that this reflects commercial parties' unfamiliarity with both the PCA and

the potential to incorporate the model arbitration clause in Annex A of the Outer Space Rules in commercial contracts.²²

To enhance the uptake of arbitration to resolve outer space commercial disputes, it is worth considering mandatory referral powers as part of a recast international space treaty. States could be required to implement those referral powers by way of registration preconditions under their local outer space registries established under the enabling legislation discussed earlier in this article.

Usefully, there is already in place an effective and harmonised international framework to ensure the enforceability of arbitral awards under the New York Convention,²³ considered to be one of the most successful multilateral treaties ever signed with over 150 signatory countries.²⁴

However, mandatory arbitral referral powers would need to be supported by a dedicated outer space arbitral centre with expert arbitrators – modelled on general commercial arbitral centres such as the International Chamber of Commerce and the London Court of International Arbitration. This could build on the impetus established with the creation of the world's first 'Court of Space' by the Dubai International Financial Centre (**DIFC**) in 2021 as part of the DIFC's Courts of the Future Initiative.

The establishment of the Court of Space is intended by the DIFC to reflect the progress the United Arab Emirates (**UAE**) as a whole has made in commercial outer space activities in the last decade, with the UAE now recognised as one of the most active countries in the world in space exploration. As part of the Court of Space initiative, there will also be specific guidelines to encourage out of court settlements of space disputes, as well as a dedicated training program for specialist judges to develop advanced knowledge and experience in space-specific technical issues and disputes.

Similar processes – especially in relation to dedicated expertise, training and clarity in procedural rules – could be resorted to in the context of arbitral proceedings for outer space disputes.

In conjunction with arbitration, a recast international space treaty ought also to consider mandatory referral to mediation for outer space disputes. Space-specific mediation rules could be designed, which could be based on current general cross-border commercial mediation rules that exist, such as the UNCITRAL Mediation Rules and the ICSID Mediation Rules.

Incorporating mediation referral powers would accord with growing favourability towards using mediation to resolve complex commercial disputes. Indeed, mediation is increasingly referred to as a standard form of dispute resolution in bilateral and multilateral investment treaties, with a recent study showing that, of 143 investment treaties in the Asian region that entered into force after 2010, 24 per cent had ISDS provisions specifically providing for mediation and conciliation processes.²⁵

As with arbitration, the incentive for parties to use mediation in a complex outer space dispute is now supported by the expedited enforcement framework established by the Singapore Convention,²⁶ which entered into force on 12 September 2020. The Singapore Convention is modelled on the New York Convention but in a mediation (as distinct from an arbitration) context. It provides, for the first time, an internationally-consistent framework for the recognition and enforcement of settlement agreements reached during a mediation process involving claimants and assets in multiple jurisdictions. This addresses the common challenge to the use of mediation as a viable dispute resolution tool – that there is no uniform and harmonised framework to enable the cross-border enforcement of mediated settlement agreements.

That said, the Singapore Convention has still only been signed by 55 States, and it has only been ratified or acceded to by nine States. Ultimately, creating incentives for parties to use mediation as a dispute resolution mechanism in an outer space context – so that they have the confidence of proceeding in the knowledge that any terms agreed can be enforced in a consistent manner in jurisdictions across the world – depends on encouraging the further uptake and implementation of the Singapore Convention.

²⁰ Outer Space Rules, article 10.

²¹ Ibid, article 29.

²² C B Rosenberg, 'The 10 Year Anniversary of the PCA Outer Space Rules: A Failed Mission or The Next Generation?', *Kluwer Arbitration Blog*, 16 February 2021.

²³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

²⁴ G Khoukaz, 'ADR That is Out of This World: A Regime for the Resolution of Outer-Space Disputes' (2018) *Journal of Dispute Resolution* 265, 278.

²⁵ Reference to this research and its implications is outlined in R Weeramantry, B Chang and J Sherard-Chow, 'Investor-State Arbitration Meets Mediation: Putting Mediation and Conciliation Back into ISDS – The Asian Experience', *Kluwer Arbitration Blog*, 2 October 2020.

²⁶ Convention on International Settlement Agreements Resulting from Mediation (2020).






Restructuring in Outer Space

In addition to its role in ensuring more efficient outer space dispute resolution processes and outcomes, ADR also has a key role to play in facilitating more effective restructuring outcomes for financially distressed commercial space actors.

Commercial activities in outer space are inherently risky. As has been considered throughout this three-part article series, commercial entities are now leveraging technological and digital advancements to launch new low-orbit satellites which offer essential telecommunications, navigation and surveillance capabilities and applications around the world, and are also pursuing new activities in relation to space exploration and mining. Often, the entities engaged in these activities are start-up enterprises which solicit high-risk funding in return for the potential for a high-value return – and this business model has typified the modern commercial ‘space race’. Yet the high-risk, high-return value proposition has also led to something of a ‘boom or bust’ cycle in the commercial space industry.

In that regard, the outbreak of the pandemic saw high-profile Chapter 11 bankruptcy filings of satellite operators:

- 
 - Intelstat (which launched the world’s first commercial communications satellite in 1965),
- 
 - OneWeb (a satellite start-up focused on deploying large constellations of small satellites capable of delivering high-speed broadband to remote areas, including the Arctic)
- 
 - and Speedcast International (which operates large geostationary satellites after emerging from Chapter 11).

These filings were precipitated by multiple factors, such as tightened access to capital, disruption of key revenue streams, high equipment costs and reduced demand for high-speed satellite broadband due to improvements in terrestrial-based internet delivery.



The Unites States Department of Defence has also issued a warning that the small launch space satellite market is particularly vulnerable to COVID-19 related and other economic downturns.²⁷

Indeed, the Organisation for Economic Cooperation and Development (OECD) has identified that there are ‘certain structural weaknesses of the space industry’ which make it ‘uniquely vulnerable to economic shocks’.²⁸ These weaknesses include the fact that many commercial space actors, such as satellite and launch manufacturers, experience ‘low production volumes and high levels of specialisation’ and have a limited number of suppliers.²⁹ With the disruption to global supply chains caused by COVID-19, as well as the war in the Ukraine and other geopolitical tensions and inflationary pressures, the ability of those entities to continue to trade is compromised, and this has a spill-on impact on satellite operators as well as digital service providers that make use of satellite signals and data in marketing their services to consumers.

There is also a further systemic issue insofar as the success of commercial space activities depends significantly on technological advances. Yet for satellite operators, the irony is that the very technology which drives satellite capability is now advancing so rapidly that existing operators may find their offerings are soon made obsolete, with a marked ‘inability to change and adapt to other developments from within the satellite industry itself’.³⁰

Further, as the OECD notes, SMEs ‘constitute the bulk of commercial actors in the space sector’.³¹ It is these enterprises that are particularly susceptible to economic downturns, with limited working capital and funding sources to act as a buffer to adverse supply and demand issues. As noted, many of these enterprises are also start-up firms, and those firms are especially prone to ‘clients and investors putting decisions on hold’ in periods of economic downturns.³²

Yet commercial space activities bring immense value in terms of innovation and economic growth, as well as advances in:

- 
 - digital imaging and exploration, and
- 
 - human communications and connectivity through high speed broadband services to remote regions –


which helped to sustain online education, remote work and remote hospitals and health care during COVID-19. It is therefore imperative from a public policy perspective to ensure there are effective and flexible restructuring processes available to maximise the potential for financially distressed yet viable commercial space entities to restructure their affairs and continue to trade. A decline in commercial space activity would further constrain global economic growth and would place additional pressure on living standards and global inequity, with a loss of technological, scientific and practical know-how and infrastructure that could take years, if not decades, to recover.

In that setting, ADR can become an indispensable part of enhancing effective restructuring outcomes for viable commercial space entities, both in the context of informal workouts and court-sanctioned restructuring processes.

In an informal workout context, the particular benefit of mediation has been identified by the World Bank in its Principles for Effective Insolvency and *Creditor/Debtor Regimes* (the revised edition of which was released in April 2021),³³ as well as by UNCITRAL in its *Legislative Recommendations on the Insolvency of Micro and Small Enterprises* (adopted in July 2021).³⁴

Indeed, a mediator can play a critical role in building trust and consensus among disparate stakeholders and can guide a financially distressed debtor and its creditors towards a negotiated restructuring plan. This is especially important in countries that lack a strong creditor collectivist culture, such as many developing nations in East Asia and the Pacific.

Mediation also has a role in a formal insolvency context, with the potential for a mediator to work with the appointed insolvency representative to negotiate disputes and formulate a potential reorganisation plan with creditors. This has been seen in the high-profile matters of MF Global Holdings and Lehman Brothers Holdings. In the latter case, the United States Bankruptcy Court appointed mediators to assist in the resolution of complex disputes with approximately 250 counterparties.



Of the **77** proceedings reaching mediation stage, **73** were settled in mediation and only **four** terminated without settlement

The use of mediation as an adjunct to restructuring processes for financially distressed commercial space entities can draw on the existing architecture of cross-border insolvency frameworks. Indeed, given the global reach and multi-state investments that typify commercial space activities, the restructuring of a commercial space enterprise is likely to extend across borders and involve creditors and assets in many different jurisdictions.

²⁷ N Strout and V Insinna, ‘Will the Small Launch Market Survive COVID-19? The Pentagon has Concerns’, *C4IS/NET*, 1 May 2020.

²⁸ OECD, ‘The Impacts of COVID-19 on the Space Industry’, 5 August 2020, 3.

²⁹ Ibid.

³⁰ J Armand Musey, ‘Satellite Bankruptcies Circa 2000 vs 2020: We’ve Come a Long Way’, *Space News*, 15 April 2021.

³¹ See above, n 28, 3-4.

³² Ibid, 4.

³³ Recommendation B4.1 states: ‘An informal workout process may work better if it enables creditors and debtors to use informal techniques, such as voluntary negotiation or mediation or informal dispute resolution.’

³⁴ Paragraph C(24) of the Introduction identifies the potential for ‘debt counselling, mediation and conciliation services’ to work in conjunction with insolvency reforms aimed at ‘lowering barriers for access to insolvency by MSEs.’

Under the UNCITRAL Model Law on Cross-Border Insolvency (**Model Law**), upon recognition of a foreign insolvency proceeding, courts in signatory countries are required to cooperate ‘to the maximum extent’ with courts and insolvency practitioners in the main or non-main insolvency process.³⁵

One form of cooperation contemplated by the Model Law is ‘the appointment of a person at the discretion of the court,’³⁶ and this could conceivably include a mediator. There is a similar framework to that set out in the Model Law under article 42 of the EIR Recast.³⁷

Similar to the dispute resolution context considered earlier in this article, however, incentivising creditors to resort to mediation and trust in the negotiation process depends on a number of factors. First, further adoption and implementation of the Singapore Convention would give creditors the confidence that the matters agreed to in workout negotiations could be enforced consistently across the world. That same outcome could also be facilitated through the adoption and implementation of UNCITRAL’s Model Law on the Recognition and Enforcement of Insolvency-Related Judgments.

As with the outer space dispute resolution context, mandatory referral powers ought to also be considered. These powers could be incorporated in domestic insolvency laws, and could form part of UNCITRAL’s ongoing work on applicable law and further additions to its *Legislative Guide on Insolvency Law*. Mandatory referral powers could be modelled on those which exist in the United States, where it has been estimated that 51 of the 94 Bankruptcy Courts now enable the presiding judge to order the parties to a dispute to attempt mediation.³⁸

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There is also scope to include referral powers for the appointed insolvency practitioner in a formal restructuring scenario, which currently exists, in the entire world, only in Myanmar in the context of a debtor undergoing the SME-specific restructuring process outlined in Part VI of the *Insolvency Law 2020*.³⁹

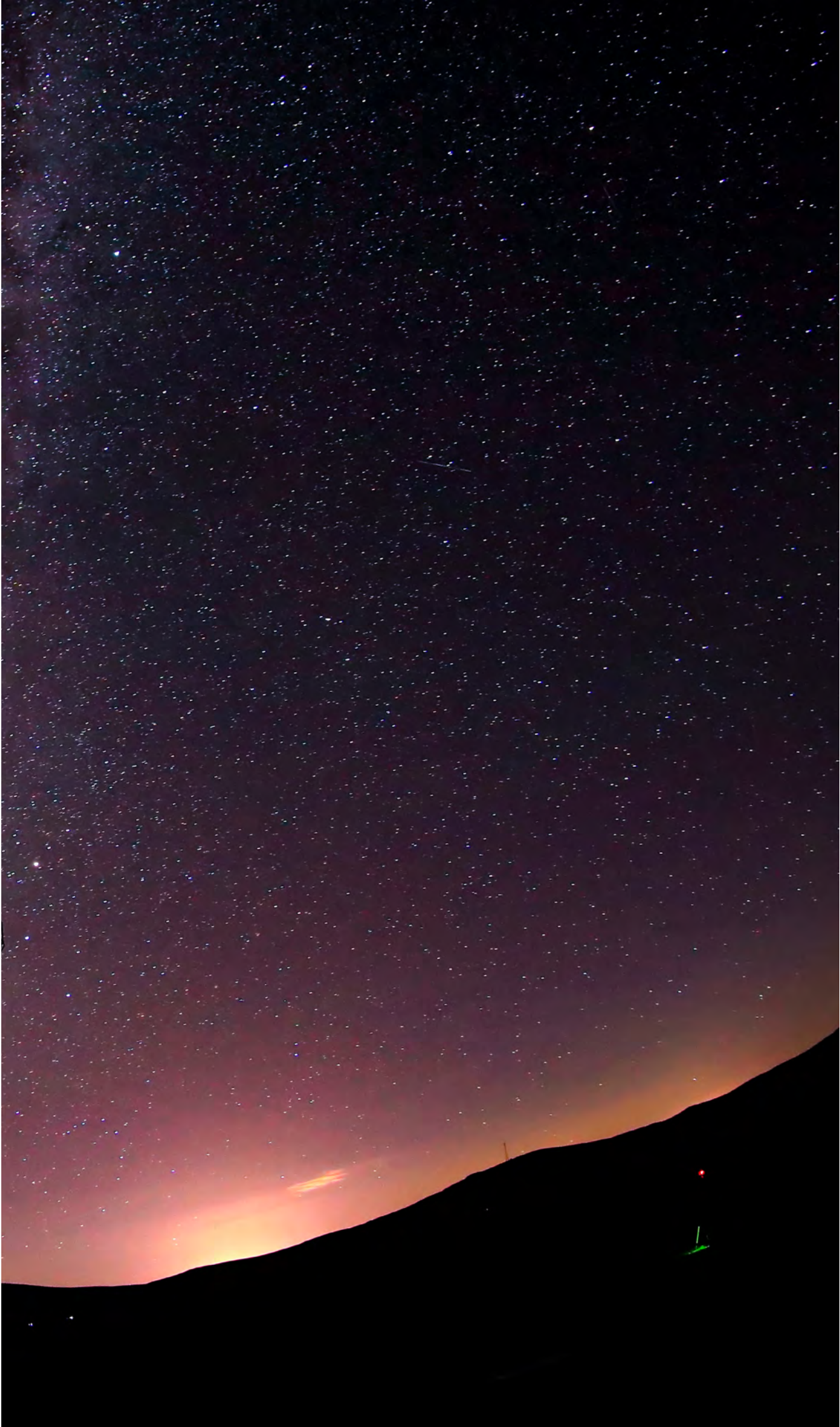
³⁵ Model Law, articles 25-26.

³⁶ Model Law, article 27(a).

³⁷ Regulation (EU) 2015/848 of 20 May 2015.

³⁸ M Akiba, ‘Chapter 11 Plan Confirmations and Mediation: The Need for Uniformity Under the Bankruptcy Code,’ *Business Law Section of the Florida Bar Blog*, 11 November 2021.

³⁹ See section 118 of the *Insolvency Law 2020*.



Conclusion

ADR processes would substantially improve efficiency and creditor returns in the context of both outer space disputes and the restructuring of financially distressed but viable commercial space enterprises.

The existing international architecture to facilitate outer space dispute resolution is outdated, reflecting the fact that space technology and activities have grown at a much faster pace than the underlying legal and regulatory system. A combination of arbitration and mediation via the ISDS framework established in international investment treaties and FTAs for investor-state disputes relating to outer space collisions, as well as, for other outer space disputes, private arbitration and mediation utilising mandatory referral powers, dedicated arbitration and mediation rules and dispute resolution centres and expert training for arbitration and mediation panels, would provide investors with the confidence needed to sustain long-term commercial investment in the outer space industry.

In light of ongoing adverse economic conditions across the globe – which are expected to have a significant impact on commercial space enterprises due to systemic weaknesses and a high-risk start-up investment culture – ADR processes, particularly mediation, can also play an important role in facilitating more efficient and effective restructuring outcomes for financially distressed but viable enterprises. However, incentivising the use of mediation will depend on further adoption and implementation of the Singapore Convention and the UNCITRAL Model Law on the Recognition of Insolvency-Related Judgments, as well as mandatory court and practitioner referral powers.

Incorporating the use of ADR processes in both a dispute resolution and restructuring context will help to support the continued growth of commercial outer space investments which are critical to global innovation, economic growth and improvements in public health, communications and equity outcomes.

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