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航空法与外层空间法

论空间资产特定问题的法律框架——《空间资产特定问题议定书》草案的进展、争议焦点及前景

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摘要:

国际统一私法协会正在制订《移动设备国际利益公约——空间资产特定问题议定书》,以调整以所有权保留、物上担保以及租赁等方式进行的空间资产融资。议定书起草过程已耗时十年,目前在空间资产的定义和范围,用于提供公共服务的空间资产的融资中出现违约情形时对违约救济的限制,议定书与联合国外层空间条约体系规则的关系等问题上仍存在较大争议,甚至导致议定书的起草过程陷入僵局。这些争议问题体现了国家利益的博弈以及债权人与国家利益的冲突。中国虽积极参加了议定书的起草工作,但是国内规范卫星产业的实体和程序性规则距离空间商业化利用所需规范还有很大差距。

关键词: 空间资产 空间资产特定问题议定书 公共服务违约救济限制 联合国外层空间条约

On the Legal Framework of Space Assets: The Lawmaking Process, Disputing Issues and Perspective of the Draft Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets

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Abstract:

UNIDROIT is drafting the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets, so as to regulate the space assets finance in the forms of title retention, asset-backed security or lease. Although discussing for ten years, participants are disputing on the definition and scope of space assets, the limitations on default remedies for space assets that provide public service, and the relationship between the protocol and the UN outer space treaties. Delaying the lawmaking process, these disputes explicitly reflect the game play of the states on the one hand, and the conflicting interests between the creditor and the state on the other hand. China has participated in the drafting work actively. However, China's substantive and procedural rules regulating the satellite industry are far from the need of space commercialization.

Keywords: space asset Draft Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets limitations on public service default remedies UN outer space treaties

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