

Columbia FDI Perspectives

Perspectives on topical foreign direct investment issues

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Investment protection and regulatory sovereignty in outer space

by
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The friction between investment protection and states' sovereign right to regulate is well known, through arbitral case law, in sectors such as mining or energy. The emerging domain of outer space investments and regulation offers a relatively new context on how this tension manifests itself. International space law, anchored in the [1967 Outer Space Treaty and its companion agreements](#), originates from an era when states were the sole actors in space. These treaties did not anticipate a commercial space sector. Today, the global space economy is on track to [exceed US\\$1.8 trillion by 2035](#), driven largely by private capital in satellite systems and launch services, with emerging domains such as [space resources](#).

States have responded to these developments by adapting their national laws to attract and govern this new wave of investment. Jurisdictions such as [Luxembourg](#), [the United Arab Emirates](#) and [the United States](#) have passed legislation to provide legal certainty for commercial actors, including foreign-owned MNEs, operating under their jurisdiction through licensing regimes. Incentives include the [explicit recognition of private property rights](#) over extracted space resources.

However, space investments pose distinct regulatory risks. Activities in space are not just high-value and high-risk, they are also strategic and often [dual-use](#). Technologies designed for civilian purposes (like satellite communications or remote sensing) often have military applications. This feature heightens states' sensitivity to controlling access, use and dissemination of space technologies and [data](#). In this context, national security and sovereignty concerns frequently come into play. These concerns may lead states to reconsider, restrict or revoke earlier commitments to liberalize the sector, ultimately having adverse effects on investors' operations.

As national frameworks take shape, it is crucial that they respond to the need of balancing innovation and progress in the space sector, on the one hand, and ensuring that space activities are conducted sustainably and equitably, on the other. Unilateral state action is necessary, but it must build upon multilateral consensus because outer space is a global medium. The UN Office for Outer Space Affairs (UNOOSA) could expand its work by developing policy guidance for responsible and sustainable investment governance frameworks aligned with states' international obligations. Furthermore, the UN Committee on the Peaceful Uses of Outer Space (COPUOS) could build upon its [existing work](#) to support [regulatory responses](#) to increased private activities in outer space.

Furthermore, more sophisticated national policies and regulations may be at odds with international investment law obligations. [More than 2,000 bilateral and multilateral investment treaties](#) often guarantee foreign investors such legal protections as fair-and-equitable treatment, protection against unlawful expropriation and access to investor-state dispute settlement. When these treaties are applied to [outer space investments](#), their implications become uniquely complex. Laws passed to encourage investment in space mining, for instance, may later be curtailed in light of environmental concerns or reinterpretations of obligations under the Outer Space Treaty, such as the non-contamination or non-appropriation principles. If a government retracts previously granted rights, licenses or benefits, foreign investors may allege a breach of their treaty rights. To mitigate this, states should consider including explicit clauses in investment contracts, legislation and international agreements that preserve regulatory space for compliance with evolving international space law obligations.

This national regulatory reflex brings renewed attention to “[essential-security-interests](#)” and “right-to-regulate” provisions in international investment agreements. Although states retain the right to regulate in defense of legitimate objectives, arbitral tribunals often examine such measures closely, requiring them to be proportionate and non-discriminatory. The dual-use nature of space technologies increases states' sensitivity to foreign involvement. National measures to restrict foreign participation may be driven by security assessments rather than protectionism, yet still expose states to liability. Investment treaty negotiators in countries attracting space investments should consider including references to space-specific risks and obligations to signal intent and reduce interpretative ambiguity.

More broadly, the intersection of space law and investment law raises unresolved questions about overlapping legal obligations. For instance, states' duty under space law to avoid harmful interference or to supervise national space activities could justify new limits on foreign investors. Can states defend such regulatory changes under space law? Would an [arbitral tribunal](#) defer to those obligations or prioritize investment commitments? These uncertainties highlight the need for institutional coordination. UNCTAD, with support from UNOOSA and COPUOS, could develop

guidance on how space law and investment policy frameworks can evolve in a compatible manner through thematic policy papers, sets of principles or soft law guidelines.

Outer space introduces a new sectoral context for the debate over investment protection versus the right to regulate. As states open their space sectors to foreign capital, they must retain the flexibility to respond to fast-changing geopolitical and legal developments. To navigate this complexity, states should align their investment promotion strategies, policies, regulatory frameworks, and incentive schemes with the distinct legal and strategic dimensions of outer space activities outlined in this *Perspective*. This awareness should also be reflected in the work of international organizations and negotiations of international investment agreements, investor-state contracts and related legal instruments. The promotion and protection of foreign investment must remain consistent with evolving obligations and norms under international space law and future regulatory necessities inherent to outer space.

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