China's Space Activities Licensing Regime

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Abstract

According to 1967 Outer Space Treaty and Liability Convention to which China has acceded respectively in 1983 and 1988, China is required to authorize and continuously supervise and take international responsibility for national space activities. In order to implement these international obligations and arrange domestically for the liability between the State and non-governmental entities, China National Space Administration has adopted the "Interim Provisions on Licenses for Civil Space Launching Projects" on November 21, 2002. Its main provisions include the scope of application; the licensing agency, criteria for issuing licenses; procedure for license application and its review; modification, cancellation and revocation of the license; administrative penalties and criminal liabilities, etc. The licensing regime established by the Interim Provisions demonstrates Chinese government's firm efforts in carrying out international obligations on space issues and commitment to achieving legal transparency in outer space. Ever since 2000,aiming at promoting the healthy development of space activities, one of the major policies and measures of China's space industry is to encourage industrial enterprises, scientific research institutions, commercial corporations and social organizations to participate in space activities. On the other hand, these entities have shown great interest in launching civil satellites and have become involved in space activities. So, the relevant practices can provide further evidence that China's intend to create a regulatory climate for commercial space activity.

1. INTRODUCTION

The provisions of responsibility and liability enunciated in Outer Space Treaty and Liability Convention requires that the state parties shall authorize, supervise and bear international responsibility for national activities in outer space, whether such activities are carried on by governmental agencies or by non-governmental entities. The most transparent and effective instrument of implementing these international obligations is to regulate the activities of private entities through the license procedure. Therefore, many states parties have elaborated domestic space regulation on the licensing of outer space activities in order to arrange the liability between the State and non-governmental entities. This paper intends to evaluate China's licensing regime for space activities and highlight its significance in promoting space commercialization.

Due to various reasons, especially China's circumstances in the past that all the programs of exploring and using outer space is carried out by the government or its authorized organs, justified that there is no space activities licensing regime for three decades since its first satellite Dongfanghong-1 was launched in 1970. However, in recent years, the importance of establishing a licensing system has

been realized by China's government because of following changes:

1.1 The Rapid Development of Market Economy.

Since the adoption of reforming and opening-up policy in 1978, China's economy enjoyed average annual growth rates in excess of 9 percents for three decades[1] and a market economy system has already been established. China's enterprises, no matter state-owned or non-state owned sector, have made breakthrough in development and has shown great interests in becoming involved in space activities, especially in the application of space technologies.

1.2 The Extensive and Rapid Development of Space Activities.

As one of the major space powers, China's space industry has made eye-catching achievements and ranks among the world's most advanced countries in some important fields of space technology. Ever since 2000, in order to maintain long-term, stable development in this field, one of the major policies and measures for China's space industry is to muster strength in implementing key space scientific and technological projects and encourage industrial enterprises, scientific research institutes, commercial corporations and social organizations to take an active part in space activities under the guidance of national space policies.[2]

1.3 Improvement of Legal System.

The importance of national space legislation has been acknowledged by individual nations and international society. As a space-faring country, China's space activities need to be regulated by law, which is the basic requirement of a nation ruled by law. In China, there are now frequent appeals for strengthening space legislation to solve a series of problems arising from the rapid development of space activities in a market economy. 1.4 The International Climate of Space Commercialization and Privation. Space commercialization and privation is the logical consequence of the progress of space activities because this trend contributes to the social welfare of all mankind. This trend has accelerated and many space-faring countries have adopted some measures to encourage non-governmental entities to invest in space industry. For example, the United States Congress has declared that "the general welfare of the United States requires that the NASA shall seek and encourage, to the maximum extent possible, the fullest commercial use of space."[3] Although there is great distinction in the developing strategy of space industry between the United States and China, American policy of space commercialization and privation and its prominent effects has established a good example for China. In December 1999, Ministry of Education, on behalf of Tsinghua University, submitted an application to the National Space Agency(NSA) for launching the micro satellite, Tsinghua-1, built as a collaborative project between Surry Satellite Technology Limited(SSTL) and Tsinghua University. NSA issued the license after reviewing the report of Tsinghua University. Based the above mentioned reasons and this practice, NSA adopted the "Interim Provisions on Licenses for Civil Space Launching Projects"(hereinafter referred as the "Interim Provisions") on November 21, 2002.

2. UNDERSTANDING ON INTERIM PROVISIONS

The basic purpose of the Interim Provisions is to regulate civil space launch project; promote the healthy development of civil space industry; maintain the state security and the public benefits and implementing the international obligations of outer space conventions. The Interim Provision, 28 articles in total, contains the basic framework of licensing regime for civil space launching projects.

2.1 Scope of Application

The Interim Provisions regulate all the entry of space objects inside the territory of China into the outer space not for military purpose or the entry of such space objects into outer space from outside of the territory of China for which the natural persons, legal persons or other organizations of China have had property rights including by means of in-orbit delivery. NSA shall be responsible for review, approving and supervising civil space launch projects.[4]

2.2 Criteria for Issuing Licenses

The contractor of the space projects or the final owner of the satellites or other space objects shall be the applicant of the license, who should meet the following conditions: the project shall be operated according to the laws and regulations; shall maintain the state security and public interests; obtain the relevant permission documents issued by the other sectors of the government; have the technological, financial ability for carrying out the projects.[5] The holder of the license shall comply with the relevant requirement of third party liability insurance and other insurances for launching a space object.[6] Furthermore, contract of foreign-related projects shall be entered and organized by an international trade company designated by Chinese government and shall not entered into force until it is approved by NSA and other governmental sectors.[7]

2.3 Review; Modification, Cancellation and Revocation of the Licenses.

Within 30 days upon receiving the application documents, NSA shall review and issue a license to the qualified applicant. For the unqualified ones, the applicants and relevant sectors of the government shall be notified in writing.[8] If any content of the license needs to be modified, the holder shall file an application to the NSA. Until it has been approved upon examination, the license shall not be modified. For the project unable to be accomplished due to inappropriate management of the license holder, NSA shall nullify the license.[9] NSA can suspend the license under the following severe circumstances: violation of the relating laws or regulations or the agreements on confidentiality during operation of the projects; jeopardizing national security or national interests; action against the national diplomatic policy or international conventions concluded or acceded by China; launching activities carried out beyond the scope approved by the license, etc.[10]

2.4 Administrative Penalties and Criminal Liabilities.

Any natural person, legal person or other organizations shall not be carried out space activities without the license. The involved parties shall be imposed administrative penalties or criminal punishment in accordance with the law.[11] During the application or operation of the launching projects, if

the parties conceal the truth, practice frauds or infringe the national interests, it shall be imposed administrative penalties or criminal punishment in accordance with the law.12 When NSA or its staff neglects duties or abuses powers during the review or approval of the license and caused losses to the state, it/he shall be punished according to the law.13

3. RELEVANT PRACTICES

Soon after the launch of Tsinghua-1, Aerospace Tsinghua Satellite Technology Co. Ltd (ATST) was established with an official sanction from the State Administration of Industry. The financial backing came from the China Aerospace Machinery and Electronics Corporation, Tsinghua University Enterprise Group and Tsinghua Tongfang Co.Ltd. In 2002, China YinTai Holdings Co., Ltd, a private enterprise, invested in ATST by the means of risk capital. ATST focuses on developing micro satellites and detector technologies, and marketing their applications. In China, this is the first time the high-tech aerospace industry, a well-established university collaborate with a private enterprise to fund and share resources in a joint business venture. This company has changed the situation that the State and the government is the exclusive investor for the satellite developing and operation. In 27th October 2005, after been issued the license in accordance with the Interim provisions, Beijing-1 was launched successfully, which is collaborated by Beijing Landview Mapping Information Technology Co., Ltd (BLMIT) and SSTL. Beijing-1 is the first satellite that Beijing posses the whole right of controlling and can provide remote sensing images periodically, which can service as the data base for the city planning, the ecological environment monitoring, important projects and land use projects. This year it has made contribution for the decision making of Wenchuan earthquake relief and the 2008 Olympics. Now, under the guidance of the national space policy and the Interim Provisions, inspired by the successful launches of the two micro satellites, several other commercial entities are setting their sight to compete in the micro satellite market and made clear indication to establish their presence in this booming market both at national and international level.

4. EVALUATION AND RECOMMENDATION

Legal society is governed by law, with the aim to improve legal certainty and transparency. The licensing regime established by the Interim Provisions demonstrates Chinese government's efforts in carrying out international obligations on space issues and commitment to achieving legal transparency in outer space. The promulgation of the Interim Provisions has also indicated that China's firm determination to encourage the commercialization and privation of space activities and the level of space legislation has reached a new stage. And most importantly, Interim Provisions has led to some remarkable achievements after it entered in force in 2002. However, there are some limitations in the articles that run against national space policy. In order to encourage commercial entities to invest in space, a comprehensive regulatory scheme must be enacted to provide private enterprise with a minimum of regulatory interference and long-term predictability. 14 But Interim Provisions require special approvals for the foreign-related projects contract. In practice, the

above-mentioned micro satellites both needs communications with the Ministry of Foreign Affairs and obtained special approvals from State Council because they are joint developed with a British company and were launched in Russian. Consequently, it is very necessary for China to study other existing commercial space-faring nation's legislation and make the licensing regime perfect when it is incorporated into national space legislation. For example, China can learn from U.S space policy about how to expand private-sector investment and involvement in civil space and space related activities. Therefore, although the space commercialization and privation of space is developing in China, but it is developing slowly because there are limitations and interferences for private capital to invest in space ventures. The role of the government is over-emphasized in the management of space activities. As a conclusion, Interim Provision has provided a testing bed for a higher level of legislation to make further improvement and there is much that China's government can do to encourage private space activities through national legislation.

References

1 See Report given by the Director of National Development and Reform Commission, available at http://news.xinhuanet.com/politics/2007/05/03/content_6055744.htm(viewed on August 12, 2008).

2 See White Book on China's Space Activity in 2000 and 2006, available at http://www.cnsa.gov.cn(viewed on August 12 2008).

3 National Aeronautics and Space Act, 42 U. S. C. § 245 (c) (1984).

4 Article 2 of the Interim Provisions; see http://www.cnsa.gov.cn (view on 13th August 2008).

5 Article 5 of the Interim Provisions.

6 Article 19 of the Interim Provisions.

7 Article 9 of the Interim Provisions.

8 Article 7 of the Interim Provisions.

9 Article 13 of the Interim Provisions.

10 Article 15 of the Interim Provisions.

11 Article 25 of the Interim Provisions.

12 Article 24 of the Interim Provisions.

13 Article 26 of the Interim Provisions.

14 Fred Kosmo, The Commercialization of Space: A Regulatory Scheme that Promotes Commercial Ventures and International Responsibility, 61 Southern California Law Review, p. 1058 (May 1988).