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ChinaANALYSIS OF THE APPLICABLE LAW TO A PRIVATE SPACEFLIGHT CONTRACT UNDER THE
LATEST CHINESE CONFLICT RULES LEGISLATION**Abstract**

To date, China does not have a private commercial space transportation industry. However, it does have a potential consumer market. Assume that a Chinese space flight participant suffers personal or property damage as a result of a commercial spaceflight. Therefore, he/she or in the case of death, his/her estate will sue the supplier of the service in mainland China. Then the latest conflict rules that will enter into force on April 1, 2011 will apply.

The present paper applies the Chinese conflict rules to a private spaceflight contract. It addresses the importance of the domestic conflict rules when a Chinese citizen becomes a spaceflight participant.

The author analyzes the applicable law to the waiver clause contained in a spaceflight participant-company agreement. According to the Chinese conflict rules, the foreign law which determines the validity of a waiver clause cannot be applied to the agreement because it violates the public interest of China. This is true even if the foreign law would otherwise be the applicable law based on the “party autonomy principle” or the “most connected principle”. Additionally, Chinese contract law stipulates that exception clauses will be null and void if the company causes personal injury to the other contracting party. Furthermore, if the company causes property damage to the other contracting party as result of deliberate intent or gross negligence, the exception clauses will also be null and void. This compulsory law shall be taken as a fundamental principle of justice and as a part of the public interest. The author argues that if the damages arise from both breach of contract and product liability, the waiver clause will not be considered when the company is only sued for product liability. According to the Chinese conflict rules, the law of the “habitual residence” of the spaceflight participant will take priority. Chinese tort law also stipulates that a consumer can ask for compensation from both the supplier of a flight service and the manufacturer of a spacecraft.

This paper also contains a brief analysis of the applicable law to the contracting capacity and contract form related to private spaceflight. Finally, the author argues that before the private spaceflight market is mature enough to need an international agreement unifying substantive law or conflict rules, it will be the domestic conflict rules that play an important role together with domestic safety and liability rules.