



Department of Justice
The Government of the Hong Kong
Special Administrative Region

Cutting costs and time for resolving cross-border commercial disputes effectively: ODR

DR. JAMES DING

*COMMISSIONER
INCLUSIVE DISPUTE AVOIDANCE AND RESOLUTION (IDAR) OFFICE
DEPARTMENT OF JUSTICE
HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA*

*IN-HOUSE COMMUNITY ECONGRESS 2020, JAPAN
6 OCTOBER 2020*

Background

- The rise of the digital economy has driven significant growth in cross-border commerce.
- No effective and efficient means to resolve cross-border commercial disputes.
 - Traditional processes of dispute resolution for cross border transactions are often **too long, too costly** and with **uncertainties**.
- Particularly of concern for micro, small and medium size enterprises (MSMEs).
 - One of the **greatest challenges** faced by MSMEs when trading across borders is returns and **dispute resolution**, with **94%** of them reporting that was a problem. (*“Driving Economic Growth Through Cross-Border E-Commerce in APEC: Empowering MSMEs and Eliminating Barriers”*, published by APEC Business Advisory Council in November 2019).
 - **Over 35%** of **cross-border disputes involving MSMEs** remain **unresolved** with the average value of the dispute being **some US\$50,000** (*“Study on the Use of Alternative Dispute Resolution for Business to Business Disputes in the European Union”*, published by Ecorys, commissioned by the European Commission).

What is ODR?

ODR generally refers to a mechanism for **resolving disputes online through the use of modern technology**, including electronic communication and other information and communications technology.

Overcomes geographical and other barriers

- Assists parties in any part of the world to resolve disputes remotely

Efficient and cost-effective

- Expedited models of mediation or arbitration
- Costs ancillary to traditional dispute resolution proceedings (e.g. legal costs, travel costs, etc.) may be reduced or may not be necessary

Secure platform

- Makes use of technologies such as Artificial Intelligence, Blockchain, Cloud etc. to assist parties in resolving disputes on a secure online platform

Attractive and useful for MSMEs

- Particularly attractive and useful for MSMEs

International and Regional Initiatives on ODR

The United Nations

- The United Nations Commission on International Trade Law adopted the *Technical Notes on Online Dispute Resolution* (Technical Notes) in 2016.
- The United Nations General Assembly recognized the use of ODR in the Technical Notes and requested all member states to support the promotion and use of the Technical Notes.



Source: China Law Blog

International and Regional Initiatives on ODR (cont'd)

APEC

- Undertaking a project to use ODR to help global businesses, in particular MSMEs, to resolve **business-to-business (B2B) cross-border disputes**.
- Endorsed the *APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes (APEC ODR Framework)*, including its *Model Procedural Rules* in August 2019.
- Creates a framework for businesses, in particular MSMEs, in participating economies to make use of technology-assisted dispute resolution through **negotiation, mediation and arbitration** to resolve B2B claims.
- Objective: **to promote B2B cross-border confidence** by providing quick electronic resolution and enforcement of disputes across borders, languages and different legal jurisdictions.

APEC's ODR Initiative - Background

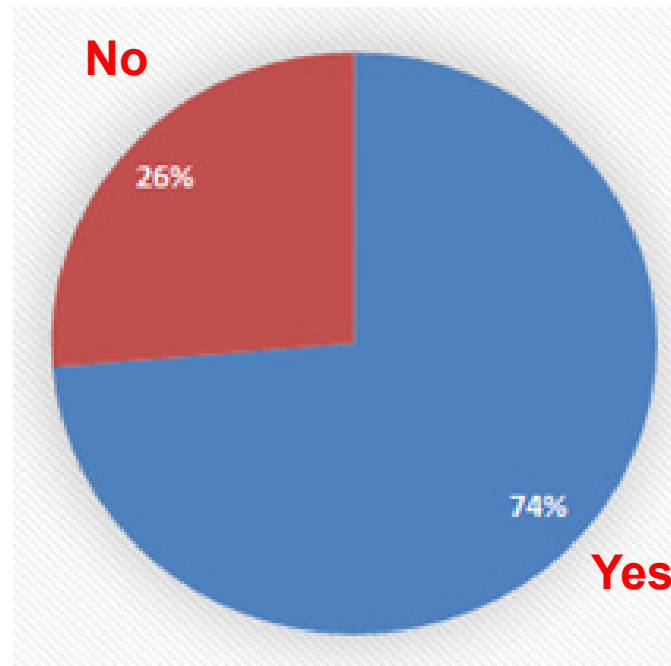
What are the three main obstacles or challenges your organisation faces when seeking to resolve cross border commercial disputes?



Questionnaire from the APEC Economic Committee (APEC EC) to APEC Business Advisory Council (ABAC) and member economies in 2017

APEC's ODR Initiative - Background (cont'd)

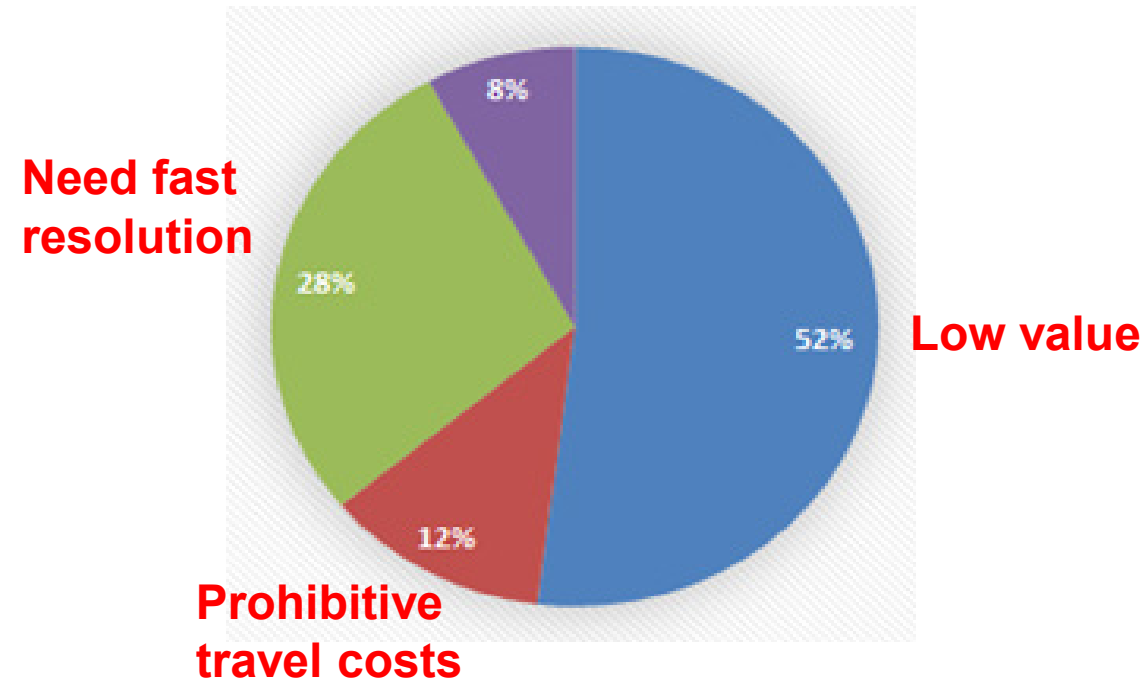
Would you like to have the option of using ODR to resolve disputes?



Questionnaire from the APEC EC to ABAC and member economies in 2017

APEC's ODR Initiative - Background (cont'd)

What types of dispute are best suited to ODR?



Questionnaire from the APEC EC to ABAC and member economies in 2017

APEC's ODR Initiative - Background (cont'd)

How important do you think ODR mechanisms are for the growth of the digital economy?

	Not at all/ Slightly important	Important/ Moderately important	Very important
All	11.4%	62.3%	22.2%
North America	20.6%	45.5%	23.5%
Northeast Asia	11.4%	65.1%	20.8%
Oceania	16.5%	64.7%	14.1%
Pacific South America	8.7%	69.6%	15.2%
Southeast Asia	8.5%	61.7%	27.9%
Large Business	20.8%	57.3%	22.0%
MSMEs	10.3%	61.8%	25.7%

2017 Asia-Pacific Policy Community Survey by Pacific Economic Cooperative Council: disaggregated result

APEC's ODR Initiative – Progress

- As at 1 Sept 2020, China, Singapore, the USA, Japan, as well as Hong Kong, China have opted into the APEC ODR Framework.
- To identify willing and capable ODR service providers from these economies which comply with the APEC ODR Framework and to list them on the APEC Economic Committee's website.
- To further promote the APEC ODR Framework.

ODR Developments in Hong Kong, China

- The Government of the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR) has always encouraged and supported the development of ODR services in the HKSAR, including the development of an ODR platform.
- The Department of Justice of the HKSAR has been working closely with eBRAM International Online Dispute Resolution Centre limited (**eBRAM Centre**) on the development of an **efficient, cost-effective and secure platform for online deal-making and dispute resolution**.
- The Department of Justice, with the support of the Central People's Government, has been **exploring with UNCITRAL possible collaborations** relating to the use of emerging technologies in international trade.





Department of Justice
The Government of the Hong Kong
Special Administrative Region

Thank you!