

Online Dispute Resolution for APEC Cross-border E-commerce (B2B)

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Background

- In this trying time of pandemic, the APEC Economic Committee is working to find ways on how modern technology and structural reform can help businesses of all sizes and how structural reform may help to revitalize the region's economy after the pandemic and even reinforce it against future economic crises:
https://www.apec.org/Press/Blogs/2020/0506_COVID
- For instance, we note that the rise of the digital economy has driven significant growth in cross-border commerce but there is 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).
- Online Dispute Resolution (ODR) provides a viable option for the MSMEs to resolve cross-border disputes in an expeditious, efficient and cost effective manner, which may encourage or facilitate them to go global in their businesses.

Online Dispute Resolution (ODR)

- ▶ A mechanism for resolving disputes through the use of electronic communications and other information and communication technology (2016 UNCITRAL Technical Notes on ODR)
- ▶ Why ODR?

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 (UNCITRAL) adopted the *Technical Notes on Online Dispute Resolution* (Technical Notes) in 2016.
- The United Nations General Assembly recognized that ODR “*can assist the parties in resolving disputes in a simple, fast, flexible and secure manner, without the need for physical presence at a meeting or hearing*” (as provided for in the Technical Notes) and requested all member states to support the promotion and use of the Technical Notes.

APEC

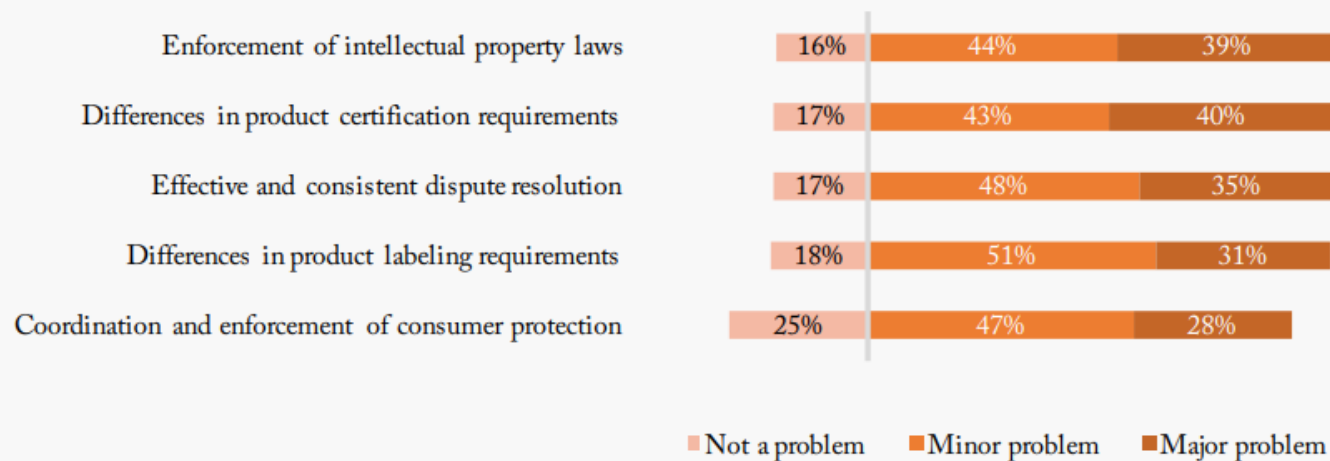
- Undertaking a project to use ODR to help global businesses, in particular MSMEs, to resolve **business-to-business (B2B) cross-border disputes**.
- APEC Economic Committee (EC) endorsed the *APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes (APEC ODR Framework)*, including its *Model Procedural Rules* in August 2019.

APEC's ODR Project - Background

- ▶ In the APEC region, MSMEs account for **over 97%** of all businesses; continued growth of MSMEs is important for APEC economies' wellbeing.
- ▶ **Dispute resolution** was one of the **greatest challenges** for MSMEs that trade across borders, with **83%** of respondents reporting that effective and consistent dispute resolution was a problem.

MSMEs face a number of regulatory challenges when trying to go cross-border

Q: Please indicate the severity of each problem for doing cross-border e-commerce in other countries.



“Driving Economic Growth Through Cross-Border E-Commerce in APEC: Empowering MSMEs and Eliminating Barriers”, published by APEC Business Advisory Council in November 2015

APEC's ODR Project - Background (cont)

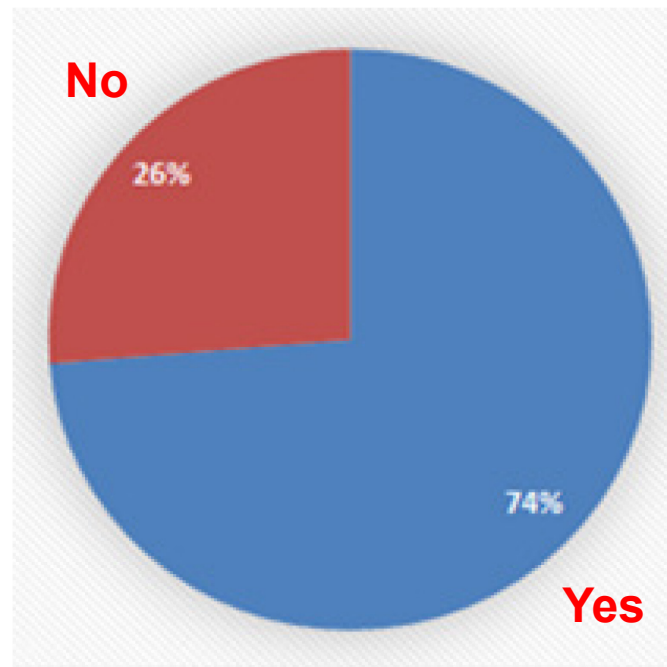
What are the three main obstacles or challenges your organisation faces when seeking to resolve cross border commercial disputes?



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

APEC's ODR Project - Background (cont)

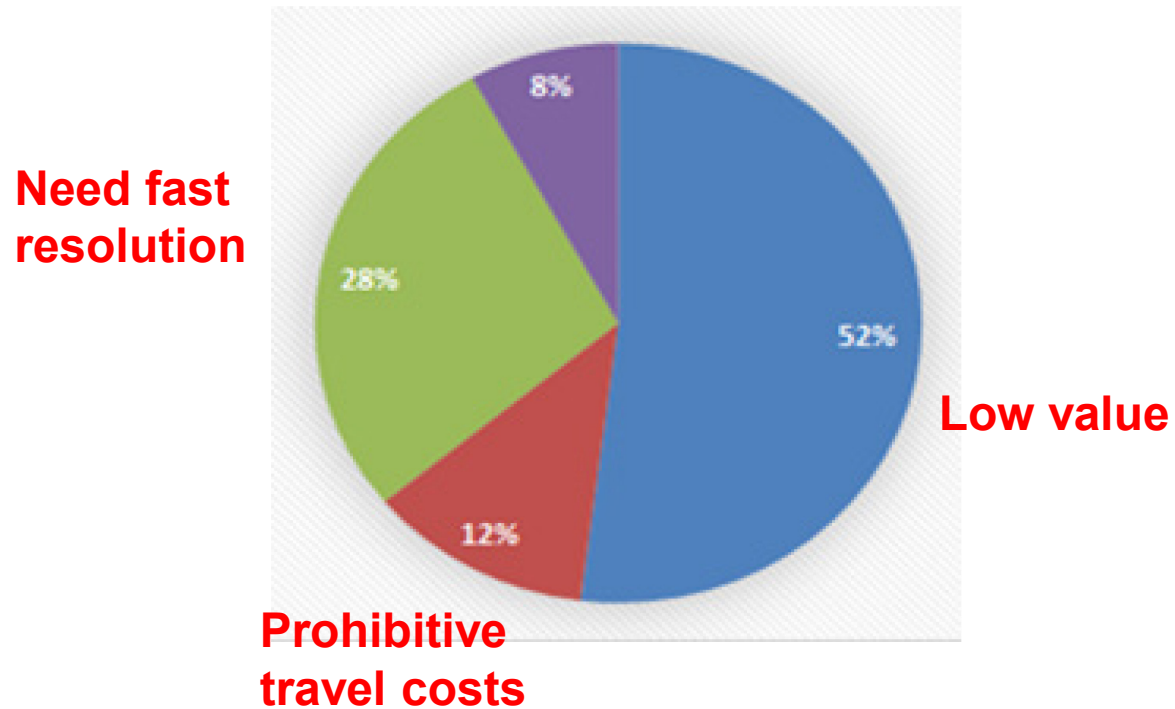
Would you like to have the option of using ODR to resolve disputes?



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

APEC's ODR Project - Background (cont)

What types of dispute are best suited to ODR?



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

APEC's ODR Project - Background (cont)

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 Cooperation Council: disaggregated result

APEC ODR Framework

- ▶ A framework for businesses, in particular MSMEs in participating economies, to provide **technology-assisted dispute resolution** through **negotiation, mediation and arbitration** for businesses to resolve **B2B cross-border disputes** focusing on **low value disputes** (as may be defined by participating economies);
- ▶ To **promote B2B cross border confidence** by providing quick electronic resolution and enforcement of disputes across borders, languages and different legal jurisdictions;
- ▶ Designed to be **inexpensive for MSMEs**; structured so that partnering ODR providers are allowed flexibility to create and manage, while still be compliant with the APEC ODR Framework.

Model Procedural Rules (Rules)

- ▶ **Set of rules for resolving disputes** in cross-border transaction between B2B (especially for MSMEs) through the use of electronic communications and other information and communication technology.
- ▶ Participating APEC ODR providers operating under the APEC ODR Framework agree to use the Rules.
- ▶ Not intended to interfere with the operation by participating economies of their own Alternative Dispute Resolution systems.
- ▶ Adopts a **multi-tiered dispute resolution mechanism** designed to provide quick resolution of disputes; governs the ODR proceedings subject to such modifications as the parties may agree.

Negotiation

Mediation

Arbitration

Implementation

- ▶ The APEC EC will maintain a **list** on the EC webpage of ODR providers from participating economies that have agreed to process claims using ODR in accordance with the terms of the APEC ODR Framework.
- ▶ Each ODR provider, before listing, are required to **submit a written undertaking** of its commitment to comply with the Rules and terms of the APEC ODR Framework.
- ▶ Each ODR provider will **provide its own ODR platform** for the resolution of disputes under the APEC ODR Framework.
- ▶ APEC economies should encourage businesses, especially MSMEs, to consider using participating ODR providers.
- ▶ APEC economies should support the development and recognition of **private international law instruments** relevant to ODR.
- ▶ APEC economies may enter into **bilateral agreements** to enforce arbitration awards in accordance with the APEC ODR Framework.

APEC ODR Framework - Benefits

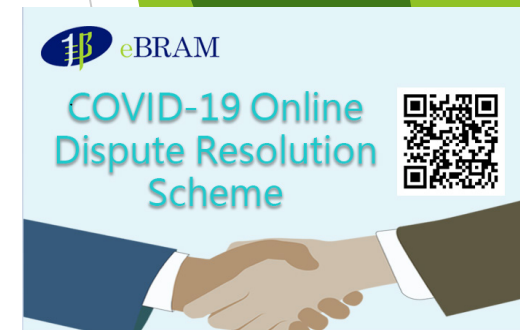
- ▶ Provides a **rule-based framework** for the sustainable development of ODR;
- ▶ Facilitates **speedy and cost-effective resolution of disputes**, thereby promoting B2B cross-border confidence and **inclusive access to justice for MSMEs**; and
- ▶ Builds capacity for **economic growth and development** among APEC economies.

APEC's ODR Framework - Progress

- As at 1 Dec 2020, **China; Singapore; USA; Japan;** and **Hong Kong, China** have opted into the APEC ODR Framework. A number of other member economies are undergoing internal procedures with a view to opting into the APEC ODR Framework in the very near future.
- To identify willing and capable ODR service providers from APEC economies which comply with the APEC ODR Framework and to list them on the APEC EC's website.
- A number of ODR providers have expressed interest in participating in the pilot, including eBRAM International Online Dispute Resolution Centre Limited, from Hong Kong, China.
- To further promote the APEC ODR Framework and engage in capacity building.

APEC's ODR Framework - Significance

- APEC ODR Framework has been used as reference for other recent ODR initiatives in Hong Kong (e.g. **COVID-19 ODR Scheme** launched on 29 June 2020: https://www.ebram.org/covid_19_odr.html)
 - The Scheme, operated independently by eBRAM Centre, covers disputes arising out of or in relation to the COVID-19 pandemic, provided that the claim amount of such dispute is not more than HK\$500,000 (equivalent to approximately US\$64,000) and one of the parties to such dispute is a Hong Kong resident or company.
 - Parties are only required to pay an online registration fee of HK\$200 (equivalent to approximately US\$26) each, with the Government covering fees of neutrals.
 - The Scheme is generally in line with the APEC ODR Framework, with MSMEs as the major beneficiary and adopts a multi-tier dispute resolution mechanism comprising negotiation, mediation and arbitration, but without limiting to B2B disputes.



Thank you!