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香港特別行政區政府
Department of Justice
The Government of the Hong Kong
Special Administrative Region

Use of Online Dispute Resolution (ODR) for Businesses

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What is ODR?

- A mechanism for resolving disputes through the use of electronic communications and other information and communication technology.

(2016 UNCITRAL Technical Notes on ODR)

- Advantages of ODR:

**Overcomes
geographical and
language barriers**

- Available in any part of the world - including commercial and investment disputes involving B&R countries and within the Greater Bay Area

**Efficient and cost-
effective**

- Expedited models of mediation + arbitration
- Costs largely reduced as compared to traditional dispute resolution proceedings (e.g. legal costs, travel costs, etc.)

Secure platform

- Using technologies such as Artificial Intelligence, Blockchain, Cloud etc. to assist parties in resolving disputes with high level of security

**Attractive and useful
for MSMEs**

- mechanism for ODR particularly attractive and useful for MSMEs

Need for ODR

- The **rise of the digital economy** has driven significant **growth in cross-border commerce** BUT:
 - Traditional processes of dispute resolution for cross-border transactions are often **too long, too costly** and with **uncertainties**
 - Especially for Micro, Small and Medium-size Enterprises (MSMEs)
- The **outbreak of the pandemic** has caused significant disruptions to the international supply chain and a **rising number of local and cross-border disputes**:
 - When face-to-face dispute resolution has been rendered ineffective under the pandemic, there is a pressing need for MSMEs to resolve disputes in a time-efficient and cost-efficient manner.
- ✓ **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.

Recent ODR developments

2016

**United Nations
Commission on
International
Trade Law
(UNCITRAL)**

- Technical Notes on ODR

2019

**Asia-Pacific
Economic
Cooperation
(APEC)**

- APEC Collaborative Framework for ODR of Cross-Border Business-to-Business Disputes (APEC ODR Framework)

2020

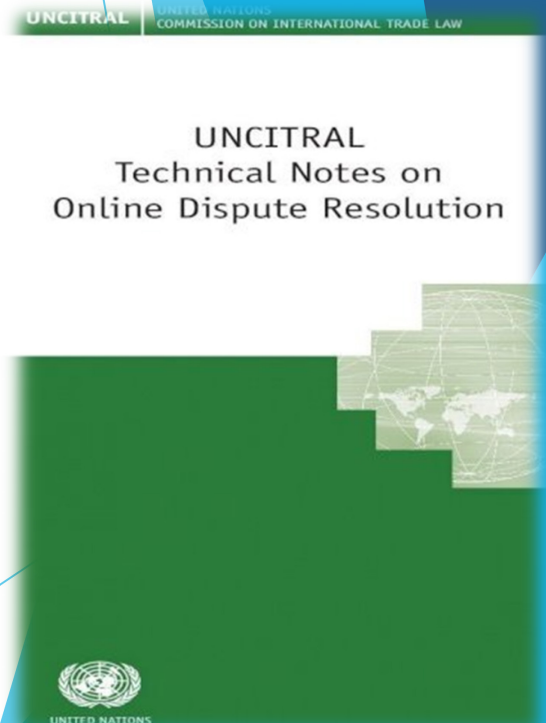
**Hong Kong,
China**

- COVID-19 ODR Scheme

Technical Notes 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 Collaborative Framework on ODR

The APEC

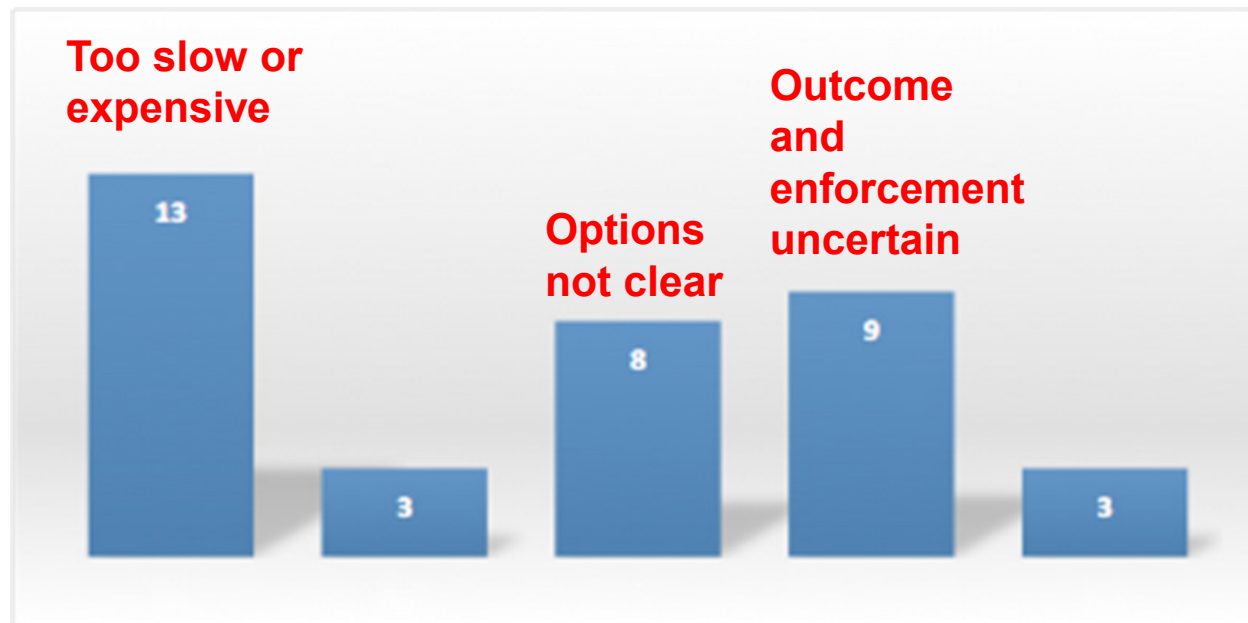
- Promotes use of ODR to help global businesses, in particular MSMEs to **resolve business-to-business (B2B) cross border disputes**.
- Endorsed by the APEC Economic Committee (EC) in August 2019, including its Model Procedural Rules.
- A framework for business, in particular MSMEs in participating economies, to provide technology-assisted dispute resolution through negotiation, mediation and arbitration for B2B claims.
- In the APEC region, **MSMEs** account for **over 97%** of all businesses; continued growth of MSMEs is important for APEC economies' wellbeing.



**Asia-Pacific
Economic Cooperation**

APEC ODR Framework - Background (cont'd)

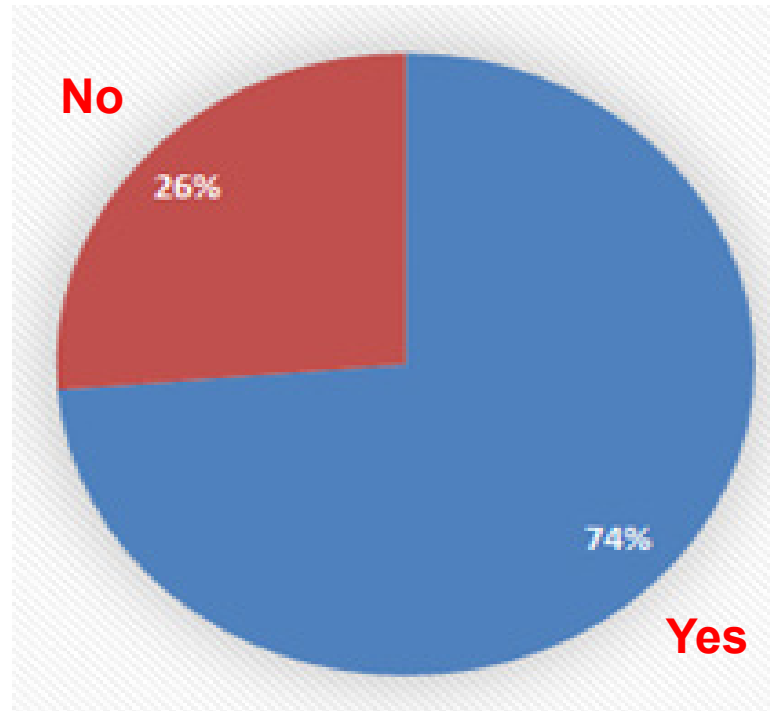
What are the three main obstacles or challenges your organisation faces when seeking to resolve cross border commercial disputes?



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

APEC ODR Framework - Background (cont'd)

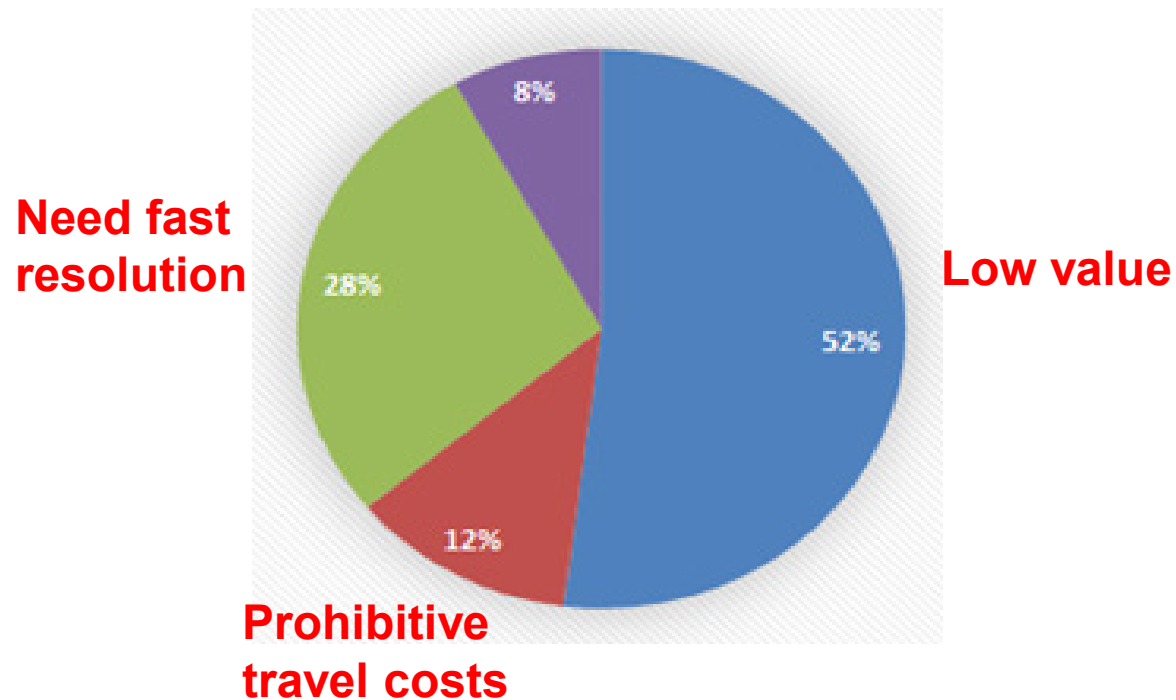
Would you like to have the option of using ODR to resolve disputes?



Questionnaire from APEC EC to ABAC and member economies in 2017

APEC ODR Framework - 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 ODR Framework - 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 ODR Framework - Background (cont'd)

- **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 ABAC in November 2019)
- Another study on the use of ADR for business to business disputes in the European Union reported that **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, jointly with the ADR Center S.p.a. in October 2012)

APEC ODR Framework – Scope

The *APEC ODR Framework* applies to disputes which are:

- **Business-to-business**;
- **Cross-border**;
- **Low value** (as may be defined by the participating economies); and
- Involving **businesses in participating economies**, provided that the parties have consented to resolve their disputes under the *APEC ODR Framework*.



APEC ODR Framework – ODR Proceedings

- Governed by the **Model Procedural 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 Model Procedural Rules.
- Not intended to interfere with the operation by participating economies of their own ADR systems.
- Adopts a **multi-tiered dispute resolution mechanism** designed to provide quick resolution of disputes.



Negotiation

Mediation

Arbitration

APEC ODR Framework – 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.

ODR and deal making platform

Hong Kong, China

- The Government of HKSAR has always encouraged and supported the development of ODR, including development of an ODR platform.
- The DoJ has been working closely with eBRAM International Online Dispute Resolution Centre Limited (**eBRAM Centre**)
 - local NGO founded by members from major professional bodies of Hong Kong's legal and IT sectors
 - aims to develop **efficient, cost-effective and secure platform** for **online deal-making and dispute resolution**.
- ODR platform launched on 29 June 2020. (Other online services will be progressively made available on the platform.)
- Launched the APEC Online Dispute Resolution procedural rules tailor-made for the APEC ODR Framework on 1 June 2021
- Developing a more comprehensive ODR platform in line with the APEC ODR Framework in progress, with a view to becoming an ODR services provider under APEC

Benefits of the ODR and deal making platform

(a) Provide support for and facilitate development of local MSMEs, legal professionals and ADR in Hong Kong

- Provide a **secured, innovative and comprehensive** ODR platform, which is low-cost and affordable for local MSMEs, thereby facilitating their business operation and access to justice
- Provide **business opportunities** and enhancement of **training opportunities** for local professionals
- Promote Hong Kong as an **ideal hub for dispute resolution and deal making**

(b) Enhance business opportunities under the B&R and Greater Bay Area Initiatives

- Many features of the eBRAM Platform (e.g. application of AI translation and the adoption of Blockchain and Cloud platform providing security and flexibility for users) would be particularly attractive and useful not only to the businesses from **B&R jurisdictions** and the **Greater Bay Area** but also to all of their trading partners across the globe.

(c) Complement and enhance existing dispute resolution services

- Complement and **create synergy** with existing dispute resolution service providers
- eBRAM has signed MoUs with 8 organisations (HKIAC, HIAC, JMHO, HKI Arb, AAIL, Consumer Council, CMAC, BICSZ)

COVID-19 ODR Scheme

1. Background

- Introduced by the HKSAR Government in April 2020 in the second round of the Anti-Epidemic Fund and launched in June 2020.
- **eBRAM Centre** has been engaged as the service provider of the Scheme.
- Aims to provide a **speedy and cost-effective means** for the **general public and businesses in the HKSAR** to resolve global and local **COVID-19 related disputes of low value**.
- The HKSAR Government has provided funding support of \$70 million to eBRAM Centre.



COVID-19 ODR Scheme (cont'd)

2. Why do we need the Scheme?

Problems caused by the pandemic	Purposes and benefits
<ul style="list-style-type: none">❑ Expected increase in disputes❑ Increasing conflicts, resulting in hatred and dissatisfaction with society❑ Businesses are facing economic difficulties❑ A backlog of cases of all levels of courts due to general adjournment	<ul style="list-style-type: none">❑ Provide efficient and cost-effective alternative dispute resolution options❑ Reduce social contact❑ More job opportunities and enhance work abilities❑ Relieve the caseload of civil claims❑ Enhance HK's LawTech capability and create synergy with the APEC on the development of ODR

COVID-19 ODR Scheme (cont'd)

3. ODR Proceedings

- Proceedings are commenced when the parties have been notified by eBRAM Centre that the ODR Agreement is available on its platform. *(Article 4.3 of eBRAM Rules)*
- Respondent must upload its response to the claim and its grounds (and all documents and evidence as far as possible) **within 3 calendar days**.
- If there is a counterclaim, the Claimant has **3 calendar days** thereafter to respond to the counterclaim. *(Article 5 of eBRAM Rules)*
- Adopts a **three-tiered** dispute resolution mechanism, consistent with the mechanism under the *APEC ODR Framework*, with each tier to be conducted within a limited time frame.



COVID-19 ODR Scheme (cont'd)

4. Overview

Scope

- Disputes arising out of or in relation to COVID-19 directly or indirectly
- Either one of the disputing parties must be a HKSAR resident or company
- Claim amount must not be more than HK\$0.5 million

Consensus

- The parties are required to enter into an ODR Agreement
- Each party is required to pay an online registration fee of HK\$200

Neutrals

- Parties are at liberty to appoint the third party neutral of their choice and if no agreement is reached, there will be a mechanism for appointment
- Mediators and arbitrators
- Involved HK\$20 million

Latest Initiative on ODR

- Inclusive Global Legal Innovation Platform on Online Dispute Resolution (“iGLIP on ODR”)

1. Background

- iGLIP on ODR has been set up earlier this year, with the support of the DOJ Project Office for collaboration with UNCITRAL.

2. Objectives

- (a) to keep track of developments in and issues arising from the application of emerging technologies in online dispute resolution
- (b) to provide a platform which acts as a forum to facilitate discussion, collaborative knowledge sharing and creative problem solving.
- (c) to explore, discuss and develop innovative legal tools to address novel issues arising from the use of ODR
- (d) to facilitate the harmonization of new and existing legal tools.
- (e) to explore further co-operation with UNCITRAL



Inclusive Global Legal Innovation Platform on Online Dispute Resolution (cont'd)

3. Organisation

- With about 30 member experts from every continent (except Antarctica) who meet and share with us their experiences on the topic of emerging technologies and their impact on online dispute resolution.
- The Project Office, established to work on the cooperation envisaged under the MOU between the Hong Kong Government and UNCITRAL in 2019, provides secretarial support to the iGLIP on ODR.

4. Meetings

- Held online on 18 March 2021 to stocktake current issues and developments in ODR, and to discuss the utilization of ODR solutions to resolve cross-border disputes, particularly in light of the global pandemic. It is planned that the next meeting will be held around November 2021.

5. Collaboration with UNCITRAL

- At the 54th Session in 2021, the UNCITRAL Commission has endorsed the continued collaboration between the Secretariat and the iGLIP on ODR.

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Thank you!