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The Law Society of Hong Kong's 4th Belt and Road Conference:
"Global Recovery and Harmony through the Belt and Road Initiative"

**Online Dispute Resolution (ODR)
for Businesses along the Belt and Road**

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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)
- 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.

UNCITRAL | UNITED NATIONS
COMMISSION ON INTERNATIONAL TRADE LAW

UNCITRAL
Technical Notes on
Online Dispute Resolution



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.

Significance of ODR to businesses along the Belt and Road

**Overcomes
geographical and
language barriers**

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

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 along the B&R

Leveraging on APEC Collaborative Framework on ODR

- 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 – 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 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.

Taking forward the Belt & Road Initiative: 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.

Thank you!

