APEC COLLABORATIVE FRAMEWORK FOR ONLINE DISPUTE RESOLUTION

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What is APEC?
Collaborative Framework for ODR

Overview

1. Purpose
   a. What is ODR?
   b. Why ODR?

2. Procedural Rules

3. APEC EC and Economies
   a. Economy Opt-In
   b. Oversight

4. APEC Partners/ODR Providers
   a. Follow Procedural Rules
   b. Provide Platform
   c. Share Information

5. EC Yearly Report

6. Participating Businesses
   a. Agree to use ODR
   b. Capacity Building

7. Collaborative Legal Framework for ODR
1.1 This Collaborative Framework ... establishes an APEC-sponsored initiative to use ODR to help global businesses (in particular MSMEs) resolve B2B cross-border disputes focusing on low value disputes....The ODR Framework is designed to promote B2B cross-border confidence by providing quick electronic resolution and enforcement of disputes across borders, languages, and different legal jurisdictions.

1.2. The ODR Framework creates a framework for business, (in particular MSMEs in participating economies), to provide [ODR] through negotiation, mediation and arbitration for B2B claims...
1b. Why ODR?

Most MSME Disputes Unresolved

- In APEC, dispute resolution is a great challenge for MSMEs trading abroad.
  - 58% of APEC MSMEs (74% in emerging economies) report lack of dispute resolution a major or severe problem.
- According to a recent ABAC survey of MSMEs:
  “Few, if any MSMEs used existing methods of arbitration and legal settlement available due to their perceived complexity and cost.”

  “Foreign market dispute resolution challenges become overwhelming barriers for MSMEs. For most it is the main reason they discontinue cross-border trade.”

  “Efforts should continue on the ODR initiative led by the APEC [EC] and full adoption by member economies of dispute resolution mechanisms that are helpful for MSMEs.”

“The power differential between MSMEs and MNCs in payment terms and dispute resolution is a major challenge for MSMEs.”

ABAC, Realizing the Untapped Potential of MSMEs in APEC -- Practical Recommendations for Enhancing Cross-Border Trade (November 2018) at iv, vi, 52, 54, 57, 68.
1b. Why ODR?

*Courts Not An Option in APEC*

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1b. Why ODR?

Existing Arbitration Forums Not An Option

- In-person arbitration predominant form of dispute resolution in cross-border trade.
  (Queen Mary University of London and White & Case, 2018 International Arbitration Survey, http://www.arbitration.qmul.ac.uk/research/2018/ (97% of respondents prefer international arbitration to resolve cross border commercial disputes));

- “Surveys find that firms are attracted to arbitration due to the expertise and neutrality of the decision maker, confidentiality of the proceedings, a lack of familiarity with the courts and laws in foreign countries, and enforceability.”
  (Myburgh, A., & Paniagua, J., The Impact of UNCITRAL on FDI, Section 2)

- But, according to multiple sources including the World Bank, arbitration is too expensive/slow for e-commerce/supply chain disputes.
  (Myburgh, A., & Paniagua, J., The Impact of UNCITRAL on FDI, (2017), supra; 2015 International Arbitration Survey, supra (to reduce the time and cost associated with international arbitration, 92% of respondents favored inclusion of simplified procedures in institutional rules for claims under a certain value).
1b. Why ODR?

Works in Private Sector

- ODR in the global marketplace is a dynamic but fragmented field.
- So far, no initiatives has resulted in widespread use of ODR in B2B disputes involving MSMEs.
Collaborative Framework for ODR

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7. Collaborative Legal Framework for ODR
2. ODR Model Procedural Rules

- 2.1 The Model Procedural Rules are a set of rules for resolving disputes in cross-border B2B transactions (especially for MSMEs) through the use of electronic communications and other information and communications technology.

- 2.2 Participating APEC ODR providers operating under the ODR Framework agree to use the Model Procedural Rules.
3. Role of EC/APEC Economies

Economy Opt-in

- 3.1 APEC economies participating in the ODR Framework intend to facilitate the development of a cross-border network that resolves low value disputes, in accordance with the Procedural Rules.
3. Role of EC/APEC Economies

*Maintain List of Providers on Webpage*

- 3.2 EC will... assist the APEC Secretariat in maintaining a list on the EC webpage of ODR providers from participating APEC economies that have agreed to process claims using ODR according to the Procedural Rules.
3. Role of EC/APEC Economies

**Limited Oversight of ODR Providers**

- 4.6 If an ODR provider appears not to be in compliance with the Procedural Rules, the EC should give written notification to the ODR provider, ... [requesting] issues [be remedied] within 30 days ....

- If the ODR provider fails to remedy issues, the EC may remove the ODR provider from its official list. The relevant economies should also take appropriate action in accordance with the economy’s laws and regulations.
4. Partnering ODR Providers

Maintain Own ODR Platform

4.2. Each ODR Provider will provide its own ODR platform for the resolution of disputes under the ODR Framework.

5.1. ODR providers ... are expected to maintain secure websites and databases

Public vs. Private Sector

- Private Sector better suited to design and implement ODR platform for pilot involving B2B
- Private sector must innovate to survive and therefore better suited to deliver leading edge product
- Private sector has more experience using pilot to iron out problems and ensure market readiness
4. Partnering ODR Providers

Maintain Own ODR Platform

- Common technological platform needed to offer ODR
- All communications in ODR proceedings should take place via the ODR platform.
- The ODR platform should meet highest standards of data security, privacy, integrity, and preservation as well as fraud detection and prevention.
4. Partnering ODR Providers

Follow Procedural Rules and Framework

- 4.1 EC will require that an ODR provider submit a written undertaking of its commitment to comply with the Procedural Rules and the terms of the ODR Framework.

- 4.2 ... Any fees charged under the ODR Framework should be affordable and commensurate with the amount in dispute.
4. Partnering ODR Providers

Gather and Share Information

- 4.3 ODR providers are expected to gather... non-identifying information ... and submit that information to the EC by the end of June and December....

- 4.4 ODR providers are encouraged to publish the data
4. Partnering ODR Providers

Gather and Share Information

4.5. The ODR provider will ask the parties to complete a brief (but optional) feedback questionnaire, which includes the following:

- (a) “Do you think the process was fair or impartial?”
- (b) “Do you think the dispute was handled in a reasonable timeframe?”
- (c) “Do you think the neutral handled your case with dignity, fairness and impartiality?”
- (d) “Do you think the system was easy to use?”
- (e) “Would you recommend ODR to others?”
6. Participating Businesses

6.1 APEC member economies should encourage businesses, especially MSMEs, to use participating ODR providers for low value claims mediation and arbitration.

6.2 Businesses may be charged a reasonable fee by the ODR provider.
6. Participating Businesses

Capacity Building

- Key implementation hurdle: getting businesses to agree to ODR.
- Requires businesses to understand and trust ODR.

APEC will take the lead in explaining ODR to private sector, governments, and legal community and build capacity by leveraging support from trade associations and chambers of commerce, donors, law facilities and corporate social responsibility programs.
7. Cooperative Legal Framework

• 7. “Although ODR laws and practices do not need to be strictly identical throughout APEC, member economies should support the development and recognition of private international law instruments applicable to ODR, including but not limited to:

• 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards

• 1996 UNCITRAL Model Law on E-Commerce

• 2005 UN Convention on the Use of Electronic Communications in International Contracts

• 2006 UNCITRAL Model Law on International Commercial Arbitration
7. Cooperative Legal Framework

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)

161 Parties
7. Cooperative Legal Framework

83 jurisdictions
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Conclusion

Implementation of ODR Collaborative Framework will

Provide a rule-based ODR framework to ensure that the parties get the same standard of due process regardless of location.

Provide tailored procedures that reduce costs, delays and burdens disproportionate to the economic value at stake.

Foster trust in cross-border B2B e-commerce and enable MSMEs to compete and flourish.

Help APEC women participate in cross-border trade through ODR rule-based approach.

Accelerate and extend real access to justice for all.