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APEC's ODR Collaborative Framework

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The launch of the [Online Dispute Resolution \(ODR\) Collaborative Framework](#) by the Asia Pacific Economic Council (APEC) is set to incentivise and conceivably revolutionise commercial dispute resolution across APEC economies. In this posting we explore the Framework, how it works, and why it's important.

What does APEC's ODR Collaborative Framework seek to achieve?

With a focus on micro, small and medium enterprises (MSMEs) and cross-border business-to-business (B2B) disputes within the APEC economies, the ODR Framework sets out to provide a trusted platform for small and medium businesses to resolve their cross-border disputes efficiently. The ODR Framework is based on a design architecture that features negotiation, mediation and arbitration offered by online providers. We set out more details below.

But first, why is this so important to MSMEs?

While the ability to make use of the Framework is not limited to MSMEs (in other words, multinationals can make use of it), it is crucial to appreciate the context in which MSMEs operate in and why APEC has placed the focus on smaller businesses. Typically, MSMEs face a lack of legal personnel within their organisation. When disputes arise, MSMEs would need resort to external assistance from legal professionals which can costly and drain the financial capital of MSMEs.

Moreover, smaller business operators generally enter contracts without thinking about or negotiating for dispute resolution clauses (often because they have not engaged lawyers at this stage and/or may not feel they have the negotiating power to do so). So when a dispute does arise, there is no plan about how to deal with it. This situation exacerbates the uncertainty and costs associating with disputing. Yet MSMEs are no stranger to cross-border disputes when they venture into foreign markets. Statistically, over 35% of cross border disputes involving MSMEs remained unresolved. MSMEs do not have adequate financial resources to rely on more prevalent cross-border dispute resolution processes such as arbitration, which tend to be legalistic, expensive and time-consuming. APEC Business Advisory Council ("ABAC") data indicates that 58 percent of APEC MSMEs report a lack of dispute resolution mechanisms. As such, many MSMEs are forced to write off their losses, and are unable to resolve their disputes. Dispute resolution remains a key tenet of a seamless legal system of trade and MSMEs experience a lack of a conducive legal and dispute resolution environment in which to conduct their businesses.

An initiative such as the ODR Collaborative Framework is crucial for MSMEs as it may be the

difference between going into liquidation or the continued operation of the business.

What about ODR Providers and the APEC economies?

A perennial issue plaguing ODR has been the absence of a centralised coordinating agent (either governmental or non-governmental), which holds and shares complete information about ODR systems and providers. The Framework positions itself as a coordinating agent correcting information asymmetries and promoting the efficient resolution of e-disputes. While at its core, the APEC ODR Framework was drafted primarily to assist medium and small to medium enterprises (“MSMEs”), which account for over 97% of APEC businesses, it is also important for two other stakeholders to participate and support the Framework – the ODR providers and economies. World Bank data suggests a strong connection between the level of internet penetration, digital literacy and ODR development in the region. Therefore, without the participation of economies and ODR providers to develop the requisite digital infrastructure and literacy, it is very likely that the successful implementation of the Framework will be hindered.

How does it work?

There are three key elements to the successful operation of the ODR Framework:

- a. MSMEs must agree to use ODR
- b. APEC economies need to opt in
- c. ODR providers must apply to join the Collaborative Framework and meet its requirements .

The APEC Collaborative Framework encourages parties (from opt-in economies) to business-to-business (“B2B”) transactions to consent to the future use of ODR. Additionally, disputing parties can make use of the Framework post dispute, even in the absence of a pre-existing agreement to do so.

The importance of the participation of individual economies cannot be understated. They play a role in promoting the success of ODR practices, creating effective regulatory frameworks including dealing with complaints against ODR providers, and improving ODR-related infrastructure to support the Framework’s implementation. Currently, the Framework sees the opt-in participation of China, Hong Kong – China, Japan, Singapore, and the USA.

Of course participating APEC economies also benefit themselves by participating in the Framework. Historically, APEC’s trade volume has been strong and economies within APEC account for approximately 47% of world trade. The addition of the APEC ODR Collaborative Framework offers greater confidence for MSMEs engaging in cross-border trade by providing a uniform dispute resolution system. In other words, the acceleration of commercial justice for businesses will further accelerate trade between participating economies and improve economic growth. Moreover, the Framework is instrumental in building on the existing momentum of ODR within economies. Many economies have existing national ODR systems for business-to-company (“B2C”) disputes. Opting into the APEC ODR Framework will allow these economies to expand their existing ODR systems internationally to B2B disputes. One example is Mexico’s Concilianet – a government-run ODR platform for consumer disputes. Since its inception in 2008 as a digital platform dedicated to facilitating synchronous and asynchronous communication during the conciliation process between consumers and suppliers, it has reported outstanding results with more than 90% of disputes being successfully resolved. Despite its current success, expanding its work scope to include B2B disputes would accelerate the growth of ODR and its economy. ODR providers of opt-in economies may apply to join the Collaborative Framework. To be compliant with the Framework, providers need to ensure the following before applying for self-certification:

- (a) all information kept remains confidential; secure databases and websites are maintained
- (b) reasonable fees proportionate to the amount in dispute are charged
- (c) their platform offers online negotiation, mediation, and arbitration
- (d) data on the success of the pilot is provided to the APEC EC and to other providers.

The procedural rules within the Framework are based upon the UNCITRAL Technical Notes on ODR and the UNCITRAL Arbitration Rules. These instruments aim to ensure that providers facilitate quick (within 20 days) and fair resolution of disputes. To this end, providers are encouraged to resolve disputes through negotiation, mediation, and arbitration facilitated by automated modern technology such as artificial intelligence where possible to achieve such an outcome.

Currently, the ODR providers that are under the framework include eBRAM International Online Dispute Resolution Centre Limited, the Guangzhou Arbitration Commission and the China International Economic and Trade Arbitration Commission.

The future of the Framework looks promising with many other ODR providers having expressed their interest in participating in time to come. Such include Fairway Resolution, the Arbitration and Mediation Center Chamber of Commerce Chile, the Thai Arbitration Center, the Mediation Center of CCPIT (China) and eBridge (China) to name a few.

Thanks to Alvin LEU for co-writing this with me.

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