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APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes - Endorsed

Purpose: Information
Submitted by: Hong Kong, China



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APEC Collaborative Framework for ODR of Cross-Border B2B Disputes

1. Purpose

1.1. This Collaborative Framework for Online Dispute Resolution of Cross-Border Business to Business Disputes (“ODR Framework”) establishes an APEC-sponsored initiative to use online dispute resolution (ODR) to help global businesses (in particular, micro-, small-, and medium-sized enterprises (MSMEs)) resolve business-to-business (B2B) cross-border disputes focusing on low value disputes (as may be defined by the participating economies). 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 technology-assisted dispute resolution through negotiation, mediation, and arbitration for business-to-business claims. Under this ODR Framework, a business may file a cross-border complaint online against a business in another participating economy in cases where both businesses have consented to have such disputes resolved under the ODR framework. During the first phase of the procedure, the businesses are allowed to exchange information and proposals, and negotiate a binding settlement of their dispute, through electronic means (“Negotiation Stage”). If the parties cannot reach a binding agreement by amicable negotiations, the relevant ODR provider will appoint a qualified online dispute resolution (ODR) neutral to mediate the dispute (and if possible, reach a binding settlement agreement) (“Mediation Stage”) or to arbitrate the dispute (and issue a binding award) (“Arbitration Stage”). The use of artificial intelligence or other modern technology is encouraged in any of the three stages.

1.3. The ODR Framework is designed to be inexpensive for MSMEs. It was structured so that partnering ODR providers are allowed flexibility to create and manage, while still expected to be compliant with the framework.

2. Model Procedural Rules

2.1. The attached Model Procedural Rules are a set of rules for resolving disputes in cross-border transaction between business-to-business (especially MSMEs) through the use of electronic communications and other information and communication technology.

2.2 Participating APEC ODR providers operating under the ODR Framework agree to use the Model Procedural Rules for the APEC Collaborative Framework for ODR (Procedural Rules). The ODR Framework is not intended to interfere with the operation by participating economies of their own arbitration and alternative dispute resolution systems.

3. Central Website

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.

3.2. The Economic Committee (EC) will use its best efforts to 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, as provided in the Procedural Rules.

4. Partnering ODR Providers

4.1. The EC will maintain a list of independent ODR providers willing to undertake dispute resolution under the terms of this ODR Framework on the APEC website. Before listing an ODR provider, 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. Each ODR provider will provide its own ODR platform for the resolution of disputes under the ODR Framework. Any fees charged under the ODR Framework should be affordable and commensurate with the amount in dispute.

4.3. ODR providers are expected to gather the following non-identifying information as far as practicable, and submit that information to EC by the end of each June and December:

- a. the number of ODR disputes initiated;
- b. the number of those ODR disputes that were abandoned;
- c. the number of those ODR disputes that were resolved through:
 - (1) the Negotiation Stage,
 - (2) the Mediation Stage, or,
 - (3) the Arbitration Stage;
- d. the number of counterclaims initiated;
- e. the time to resolution as defined by the total number of business days between the date of initiation and the date of final award;
- f. the number of disputes that were resolved through a money award, including identification of the phase in which the resolution occurred and the amount of the award; and
- g. the number of counterclaims that were resolved through a money award, including identification of the phase in which the resolution occurred and the amount of the award.

4.4. ODR providers are encouraged to publish the data themselves and are encouraged to publish any additional data.

4.5. The ODR provider will ask the parties to complete a brief and optional feedback questionnaire asking at a minimum:

As the primary party accessing the system:

- (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?”

4.6. If an ODR provider appears not to be in compliance with the Procedural Rules, EC should give written notification to the ODR provider of such apparent non-compliance and give it an opportunity to provide a written explanation of any such issues and to remedy them in 30 days, or as soon thereafter as possible for good cause shown. If the ODR provider fails to meet these requirements, EC may remove the ODR provider from its official list. The relevant APEC member economies should also take appropriate action in accordance with the economy’s laws and regulations.

5. Confidentiality and Reporting Requirements

5.1. ODR providers are expected to treat all information submitted by businesses as confidential, and maintain secure websites and databases for storing information related to the resolution of claims.

5.2. EC should make best efforts to aggregate data received from ODR providers and submit a report every January for the duration of the pilot. The report or at least the summary should be circulated among the APEC member economies, ODR providers and other relevant parties.

6. Participating Businesses

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

6.2. Businesses may be charged a reasonable fee by the ODR provider. *See* paragraph 4.2, *supra*.

7. Development of Cross-border Cooperative Legal Framework

7.1. 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 relevant to ODR, including but not limited to:

- (a) the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards;
- (b) the 2006 UNCITRAL Model Law on International Commercial Arbitration;
- (c) the 2005 UN Convention on the Use of Electronic Communications in International Contracts;
and
- (d) the 1996 UNCITRAL Model Law on Electronic Commerce.

In addition to international agreements, APEC member economies may enter into bilateral agreements to enforce arbitration awards in accordance with the ODR Framework, including requesting assistance from payment networks or referring cases to collection agencies.

(Participating economies may also assist ODR providers with locating neutrals willing to provide their services. Participating economies may also involve private organizations (such as private “Trustmark” organizations) in enforcement of awards.

**Model Procedural Rules
for the
APEC Collaborative Framework for ODR
of Cross-Border B2B Disputes**

I. Introductory rules

Article 1 - Scope of application

- 1. The Rules shall apply to business-to business disputes (B2B) where the parties to a sales or service contract have agreed that disputes relating to that transaction shall be resolved under these Rules, so long as the dispute falls within the scope of the Rules. The rules do not cover consumer transactions.*
- 2. These Rules shall govern the ODR proceedings subject to such modifications as the parties may agree, except that where any of these Rules is in conflict with a provision of the law applicable to the ODR proceedings from which the parties cannot derogate, that provision shall prevail.*

Article 2 - Definitions

For purposes of these Rules:

- 1. 'ODR' or online dispute resolution is a mechanism for resolving disputes through the use of electronic communications and other information and communication technology.*
- 2. 'ODR provider' means the entity that administers and coordinates ODR proceedings under these Rules, including where appropriate, by administering an ODR platform.*
- 3. 'ODR platform' means a system for generating, sending, receiving, storing, exchanging or otherwise processing communications under these Rules.*
- 4. 'Claimant' means any party initiating ODR proceedings under the Rules.*
- 5. 'Respondent' means any party to whom the notice is directed.*
- 6. 'Consumer transaction' means a contract concluded for personal, family or household purposes.*
- 7. 'Communication' means any communication (including a statement, declaration, demand, notice, response, submission, notification or request) made by means of information generated, sent, received or stored by electronic, magnetic, optical or similar means.*
- 8. 'Electronic address' means an information system, or portion thereof, designated by the parties to the online dispute resolution process to exchange communications related to that process.*

Article 3 - Communications

- 1. All communications in the course of ODR proceedings shall be communicated to the ODR provider via the ODR platform.*
- 2. A communication shall be deemed to have been received when, following communication to the ODR provider in accordance with paragraph 1, the ODR provider notifies the parties of its availability, in accordance with paragraph 4.*
- 3. The ODR provider shall promptly acknowledge receipt of any communications by a party or the neutral at their electronic addresses.*
- 4. The ODR provider shall promptly notify a party or the neutral of the availability of any communication directed to that party or the neutral at the ODR platform.*
- 5. The ODR provider shall promptly notify all parties and the neutral of the conclusion of the negotiation stage of proceedings and the commencement of the mediation stage of proceedings; the expiry of the mediation stage of proceedings; and, if relevant, the commencement of the arbitration stage of proceedings.*

II. Commencement of ODR Proceedings

Article 4 - Notice

- 1. The claimant shall communicate to the ODR provider a notice in accordance with paragraph 4. The notice should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant or contain references to them.*
- 2. The ODR provider shall promptly notify the respondent that the notice is available at the ODR platform.*
- 3. ODR proceedings shall be deemed to commence when, following communication to the ODR provider of the notice pursuant to paragraph 1, the ODR provider notifies the parties of the availability of the commencement notice at the ODR platform.*
- 4. The notice shall include:*
 - (a) The name and designated electronic address of the claimant and of the claimant's representative (if any) authorized to act for the claimant in the ODR proceedings;*
 - (b) The name and electronic address of the respondent and of the respondent's representative (if any) known to the claimant;*
 - (c) The grounds on which the claim is made;*
 - (d) Any solutions proposed to resolve the dispute;*

(g) The claimant's preferred language of proceedings;

(h) The signature or other means of identification and authentication of the claimant and/or the claimant's representative.

Article 5 - Response

1. The respondent shall communicate to the ODR provider a response to the notice in accordance with paragraph 2 within [seven (7)] calendar days of being notified of the availability of the notice on the ODR platform. The response should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent or contain references to them.

2. The response shall include:

(a) The name and designated electronic address of the respondent and the respondent's representative (if any) authorized to act for them respondent in the ODR proceedings;

(b) A response to the grounds on which the claim is made;

(c) Any solutions proposed to resolve the dispute;

(d) the signature or other means of identification and authentication of the respondent and/or the respondent's representative.

(e) Notice of any counterclaim containing the grounds on which the counterclaim is made.

3. The respondent may provide, at the time it submits its notice, any other relevant information, including information in support of its response, and also information in relation to the pursuit of other legal remedies.

III. Stages of ODR Proceeding

Article 6 - Negotiation Stage

1. If the response does not include a counterclaim, the negotiation stage shall commence upon communication of the response to the ODR provider, and notification thereof to the claimant. If the response does include a counterclaim, the negotiation stage shall commence upon communication of the response by the claimant to that counterclaim and notification thereof to the respondent, or after the expiration of the response period set out in Article 5, whichever is earlier.

2. The negotiation stage of proceedings shall comprise negotiation between the parties via the ODR platform.

3. If the respondent does not communicate to the ODR provider a response to the notice in accordance with the form contained in Article 5, paragraph 2, within the time period set out in Article 5, paragraph 1, or where one or both parties request that the process move to the mediation stage of the proceedings,

or a party elects not to engage in the negotiation stage of proceedings, then the mediation stage of ODR proceedings shall immediately commence.

4. If the parties have not settled their dispute by negotiation within [ten (10)] calendar days of submission of the commencement of the negotiation stage of proceedings, the mediation stage of ODR proceedings shall immediately commence.

5. The parties may agree to a one-time extension of the deadline for reaching settlement. However, no such extension shall be for more than [ten (10)] calendar days.”

Article 7 -- Mediation Stage

1. Upon commencement of the mediation stage of ODR proceedings, the ODR provider shall promptly appoint a neutral in accordance with Article 11 and shall notify the parties (i) of that appointment in accordance with Article 11(1), and (ii) of the deadline for the expiry of the mediation stage under paragraph (3).

2. Following appointment, the neutral shall communicate with the parties to attempt to reach a settlement agreement.

3. If the parties have not settled their dispute by mediation within [ten (10)] calendar days of being notified of the appointment of the neutral pursuant to Article 11(1) the ODR proceedings shall move to the final (arbitration) stage of proceedings pursuant to Article 8.

Article 8 -- Arbitration Stage

1. At the expiry of the mediation stage, the neutral shall proceed to communicate a date to the parties for any final communications to be made. Such date shall be not later than [ten (10)] calendar days from the expiry of the Mediation stage.

2. Each party shall have the burden of proving the facts relied on to support its claim or defence.

3. The neutral shall evaluate the dispute based on the information submitted by the parties and shall render an award. The ODR provider shall communicate the award to the parties and the award shall be recorded on the ODR platform.

4. The award shall be made in writing and signed by the neutral and shall indicate the date on which it was made and the place of arbitration.

5. The requirement in paragraph 4 for:

(a) The award to be in writing shall be met where the information contained in the award is accessible so as to be usable for subsequent reference; and

(b) The award to be signed shall be met where data is used to identify the neutral and to indicate his or her approval of the information contained in the award.

6. *The award shall state brief grounds upon which it is based.*
7. *The award shall be rendered promptly, preferably within [ten (10)] calendar days from a specified point in proceedings as determined by the ODR provider.*
8. *An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.*
9. *The award shall be final and binding on the parties. The parties shall carry out the award without delay.*
10. *In all cases, the neutral shall decide in accordance with the terms of the contract, taking into consideration any relevant facts and circumstances, and shall take into account any usage of trade applicable to the transaction.*
11. *The neutral shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation, the neutral shall apply the law which it determines to be appropriate.*
12. *The neutral shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized the neutral to do so.*

Article 9 -- Correction of award

Within [five (5)] calendar days after the receipt of the award, a party, with notice to the other party, may request the neutral to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the neutral considers that the request is justified, he or she shall make the correction including a brief statement of reasons therefor within [two (2)] calendar days of receipt of the request. Such corrections shall be recorded on the ODR platform and shall form part of the award. The neutral may within [five (5)] calendar days after the communication of the award make such corrections on its own initiative.

Article 10 -- Settlement

If settlement is reached at any stage of the ODR proceedings, the terms of such settlement shall be recorded on the ODR platform, at which point, the ODR proceedings will automatically terminate.

IV. Appointment, Powers, and Functions of the Neutral

Article 11 - Appointment of Neutral

1. The ODR provider shall appoint the neutral promptly following commencement of the mediation stage of proceedings. Upon appointment of the neutral, the ODR provider shall promptly notify the parties of the name of the neutral and any other relevant or identifying information in relation to that neutral.

2. *The neutral, by accepting appointment, confirms that he or she can devote the time necessary to conduct the ODR proceedings diligently, efficiently and in accordance with the time limits in the Rules.*
3. *The neutral shall, at the time of accepting his or her appointment, declare his or her impartiality and independence. The neutral, from the time of his or her appointment and throughout the ODR proceedings, shall without delay, disclose to the ODR provider, any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. The ODR provider shall promptly communicate such information to the parties.*
4. *Either party may object to the neutral's appointment within [two (2)] calendar days (i) of the notification of appointment without giving reasons therefor; or (ii) of a fact or matter coming to its attention that is likely to give rise to justifiable doubts as to the impartiality or independence of the neutral, setting out the fact or matter giving rise to such doubts, at any time during the ODR proceedings.*
5. *Where a party objects to the appointment of a neutral under paragraph 4(i), that neutral shall be automatically disqualified and another appointed in his or her place by the ODR provider. Each party shall have a maximum of [three (3)] challenges to the appointment of a neutral following each notice of appointment, following which the appointment of a neutral by the ODR provider will be final, subject to paragraph 4(ii). Alternatively, if no challenges are made within [two (2)] days of any notice of appointment, the appointment will become final, subject to paragraph 4(ii).*
6. *Where a party objects to the appointment of a neutral under subparagraph 4(ii) above, the ODR provider shall make a determination within [three (3)] calendar days, regarding whether that neutral shall be replaced.*
7. *Either party may object, within [three (3)] calendar days of the final appointment of the neutral, to the provision by the ODR provider to the neutral of information generated during the negotiation stage. Following the expiration of this [three-day] period and in the absence of any objections, the ODR provider shall convey the full set of existing information on the ODR platform to the neutral.*
8. *The number of neutrals shall be one.*

Article 12 – Resignation or Replacement of Neutral

If the neutral resigns or otherwise has to be replaced during the course of ODR proceedings, the ODR provider shall appoint a neutral to replace him or her pursuant to Article 11. The ODR proceedings shall resume at the stage where the neutral that was replaced ceased to perform his or her functions.

Article 13 -- Power of the Neutral

1. *Subject to the Rules, the neutral may conduct the ODR proceedings in such manner as he or she considers appropriate.*
2. *The neutral, in exercising his or her functions under the Rules, shall conduct the ODR proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the dispute. In doing so, the neutral shall remain at all times wholly independent and impartial and shall treat both parties equally.*

3. *Subject to any objections under Article 11, paragraph 8, the neutral shall conduct the ODR proceedings on the basis of all communications made during the ODR proceedings, the relevance of which shall be determined by the neutral. The ODR proceedings shall be conducted on the basis of these materials only unless the neutral decides otherwise.*
4. *At any time during the proceedings the neutral may request or allow the parties (upon such terms as to costs and otherwise as the neutral shall determine) to provide additional information, produce documents, exhibits or other evidence within such period of time as the neutral shall determine.*
5. *The neutral shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence or validity of any agreement to refer the dispute to ODR. For that purpose, the dispute resolution clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A determination by the neutral that the contract is null shall not automatically entail the invalidity of the dispute resolution clause.*
6. *The neutral, after making such inquiries as he or she may deem necessary, may, in his or her discretion, extend any deadlines under these Rules.*

V. General Provisions

Article 14 – Deadlines

The ODR provider, or, if relevant, the neutral, shall notify parties of all relevant deadlines during the course of proceedings.

Article 15 - Dispute resolution clause

The ODR platform and ODR provider shall be specified in the dispute resolution clause or subject to the agreement by the parties.

Article 16 - Place of Arbitration

If the parties have not determined the place of arbitration, the ODR provider shall select the place of arbitration, having due regard to the circumstances of the case.

Article 17 - Language of proceedings

The ODR proceedings shall take place in the language of the agreement to submit disputes to ODR under the Rule or in the absence of such agreement, the ODR provider shall determine the language or languages to be used in the proceedings. In the event that a party indicates in a notice or response that it wishes to proceed in another language, the ODR provider shall identify available languages that the parties can select for the proceedings, and the ODR proceedings shall be conducted in the language or languages that the parties select.

Article 18 – Representation

A party may be represented or assisted by a person or persons chosen by that party. The names and designated electronic addresses of such persons and the authority to act must be communicated to the other party by the ODR provider.

Article 19 - Exclusion of liability

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the ODR provider and neutral based on any act or omission in connection with the ODR proceedings under the Rules.

Article 20 - Allocation of Costs at the Arbitration Stage

The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the ODR Provider/arbitrator may apportion each of such costs between the parties in the award if it determines that apportionment is reasonable, taking into account the circumstances of the case.

Article 21 – Definition of Costs

The term ‘costs’ includes only: (1) the fees of the neutral to fixed by the ODR provider in accordance with paragraph 4.2 of the ODR Framework; (2) the reasonable costs of expert advice and of other assistance required by the neutral during the Arbitration Stage; (3) legal and other costs incurred by the parties during the Arbitration Stage; and (4) any fees and expenses of the ODR provider.

APPENDIX TO PROCEDURAL RULES

MODEL PROVISIONS

Model ODR Clause for Contracts

Any dispute, controversy or claim arising hereunder and within the scope of the APEC ODR Rules providing for an online dispute resolution process through negotiation, mediation and binding arbitration, shall be settled in accordance with the Model Procedural Rules for the APEC Collaborative Framework for ODR for Cross-Border B2B Disputes (“the Procedural Rules”) presently in force.

Note. Parties should consider adding:

- (a) *The ODR provider shall be ... [Name of Institution]*
- (b) *The number of neutrals shall be one.*
- (c) *The place of arbitration shall be ... [Town and Economy]*
- (d) *The language used in the arbitration proceeding shall be ...*

Model Statement of Independence pursuant to Article 13 of the Procedural Rules

I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and any other neutrals, any such circumstances that may subsequently come to my attention during this ODR proceeding.