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Online Dispute Resolution for MSMEs UNCITRAL's Technical Notes on ODR

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**Seminar on Use of International Instruments to
Strengthen Contract Enforcement in Supply Chain
Finance for Global Businesses Including Micro,
Small, and Medium Enterprises
Nha Trang, Viet Nam
24-25 February 2017**



Seminar on Use of International Instruments to Strengthen Contract Enforcement in Supply Chain Finance for Global Businesses (including MSMEs) Nha Trang, Viet Nam

Online Dispute Resolution (ODR) for MSMEs
UNCITRAL's Technical Notes on ODR

Caroline Nicholas
UNCITRAL Secretariat
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Online Dispute Resolution (ODR) for MSMEs

Background



In 2010, UNCITRAL decided to undertake work in ODR

- Sharp increase in online cross-border transactions
- Need for efficient and affordable mechanism for resolving disputes in cross-border transactions

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Obstacles to “traditional” resolution of disputes in XB transactions

Court systems may involve

- High costs
- Delays
- Complex, opaque processes



And barriers to effectiveness

- Recognition and enforcement of judgments in another jurisdiction

ADR, eg arbitration, may share some of these features

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MSMEs

- Contracts likely to involve relatively low values
- Particularly sensitive to time and cost issues
- Opportunity cost of litigation

Potential of ODR

- Resolution of disputes
- Enhancing trust in e-commerce
- Increasing XB trade and e-commerce

Online Dispute Resolution (ODR) for MSMEs

UNCITRAL's initial approach

- Procedural rules for ODR + guidance
- In low-value, high-volume environment
 - “High-volume” = occurs often
- To cover B2B and B2C disputes
- To include XB mechanism to enforce ODR decisions



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Key principles for an ODR process

- Impartiality, independence, efficiency, effectiveness, due process, fairness, accountability and transparency

Key characteristics

- Simple, fast, flexible and secure, without the need for physical presence of buyer/seller

“ODR platform” as the *technology-based* intermediary

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The ODR process: 3 (escalating) stages

- Negotiation
- Facilitated settlement
- Final stage



Key issue

- Form of the final stage
- Binding dispute resolution, e.g. arbitration OR
- Non-binding recommendation (allows court action)

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Other issues considered



- Legal issues
 - Dispute resolution clause
 - Applicable law
 - Language
 - Legal principles to be applied
- Technical issues
 - Confidentiality
 - Data protection
- Other issues
 - Minimum standards for ODR providers
 - Costs of the process

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Some challenges

B2B and B2C transactions

- Different approaches to consumer protection in different systems
- Enforcement of decisions
 - Low-value context



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Eventual resolution



Technical notes on ODR

- Non-binding descriptive document
 - Reflecting elements of ODR process
 - Tool for economies to use domestically
- Three stages
 - Final stage left to economies to address
 - Reflecting different approaches
- Explain powers, roles and responsibilities
 - ODR platforms, administrators, neutrals *and*
 - Steps the actors are to take

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http://www.uncitral.org/uncitral/uncitral_texts/online_dispute_resolution.html

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Online Dispute Resolution

Explanatory texts

- [Technical Notes on Online Dispute Resolution \(2016\)](#)

[Working Group](#)
[Bibliography](#)
[On-line Resources & Webcasts](#)

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The future ...?



- “Technically-assisted dispute resolution systems”?
 - of online systems, traditional approaches
- ODR as greater use of ICT in traditional court systems
- New enforcement mechanisms?
 - Charge-back systems
 - “Money back guarantee”
- Continuing evolution ...

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Further information on the development of the Technical Notes on ODR is available at

http://www.uncitral.org/uncitral/uncitral_texts/online_dispute_resolution.html



THANK YOU

caroline.nicholas@uncitral.org