



**Asia-Pacific
Economic Cooperation**

2018/SOM1/EC/WKSP2/012

Use of Modern Technology for Dispute Resolution and Contract Management in Member Economies: Experience Sharing

Submitted by: Law Society of Hong Kong



**Workshop on the Use of Modern
Technology for Dispute Resolution and
Electronic Agreement Management
Particularly Online Dispute Resolution
Port Moresby, Papua New Guinea
3-4 March 2018**



THE
LAW SOCIETY
OF HONG KONG
香港律師會

110th
ANNIVERSARY

Use of Modern Technology for Dispute Resolution and Contract Management in Member Economies: Experience Sharing

Mr. Amirali Bakirali NASIR MH, JP

CHAIRMAN, INNOTECH COMMITTEE

VICE PRESIDENT, THE LAW SOCIETY OF HONG KONG



Systems of ODR

What are the processes, systems and services involved in ODR as far a lawyer is concerned, particularly a Hong Kong solicitor?

Email

Messaging

Internet

Skype, Facetime, WeChat, Kakao

Video conferencing

ipad or ibook

AI

Other private or commercial systems

Government set up systems

NGO set up systems

Court connected ODR

Mobile



Related legal issues

- Contractual provisions for dispute resolution
- Dispute resolution mechanisms
- Applicable laws
- Competent courts
- Data Privacy issues
- Professional conduct issues, privilege, confidentiality, secrecy
- Consumer protection
- Contractual provisions for the dispute resolution relating to the process, systems and services for ODR



CONFIDENCE IN ODR

- Consumers must perceive the system to be fair and transparent to feel protected and safe in the ODR
- Confidence in the system and lawyers
- Confidence in the developer
- Confidence in the design of the algorithm
- Confidence in the law
- Confidence in bridging cultural gaps

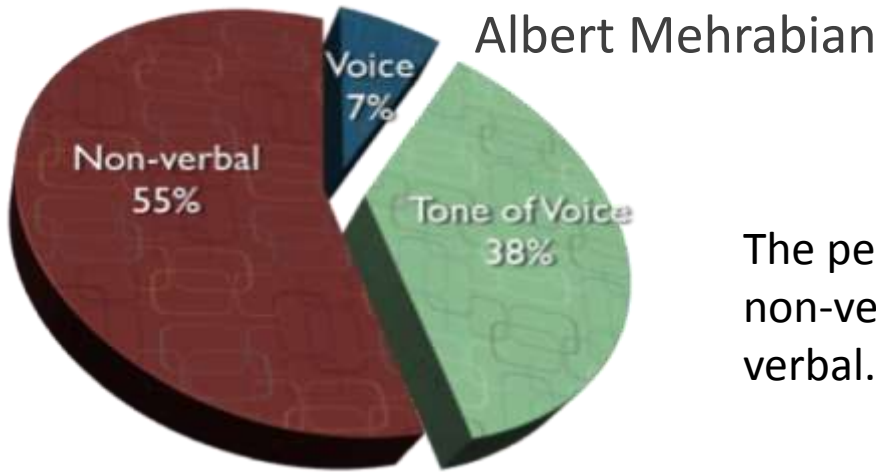


ODR for Goods and Services

- Business to Business B2B
- Business to Consumer B2C
- Consumer to Consumer C2C
- Government to customer G2C
- NGO to customer N2C also A2J



Why Video Conferencing will remain important in ODR



Also useful for developing Rapport which is a process of responsiveness, not liking.

The percentages below dictate that the non-verbal will always win over the verbal.

VERBAL “ Hello! How are you?”

7 %

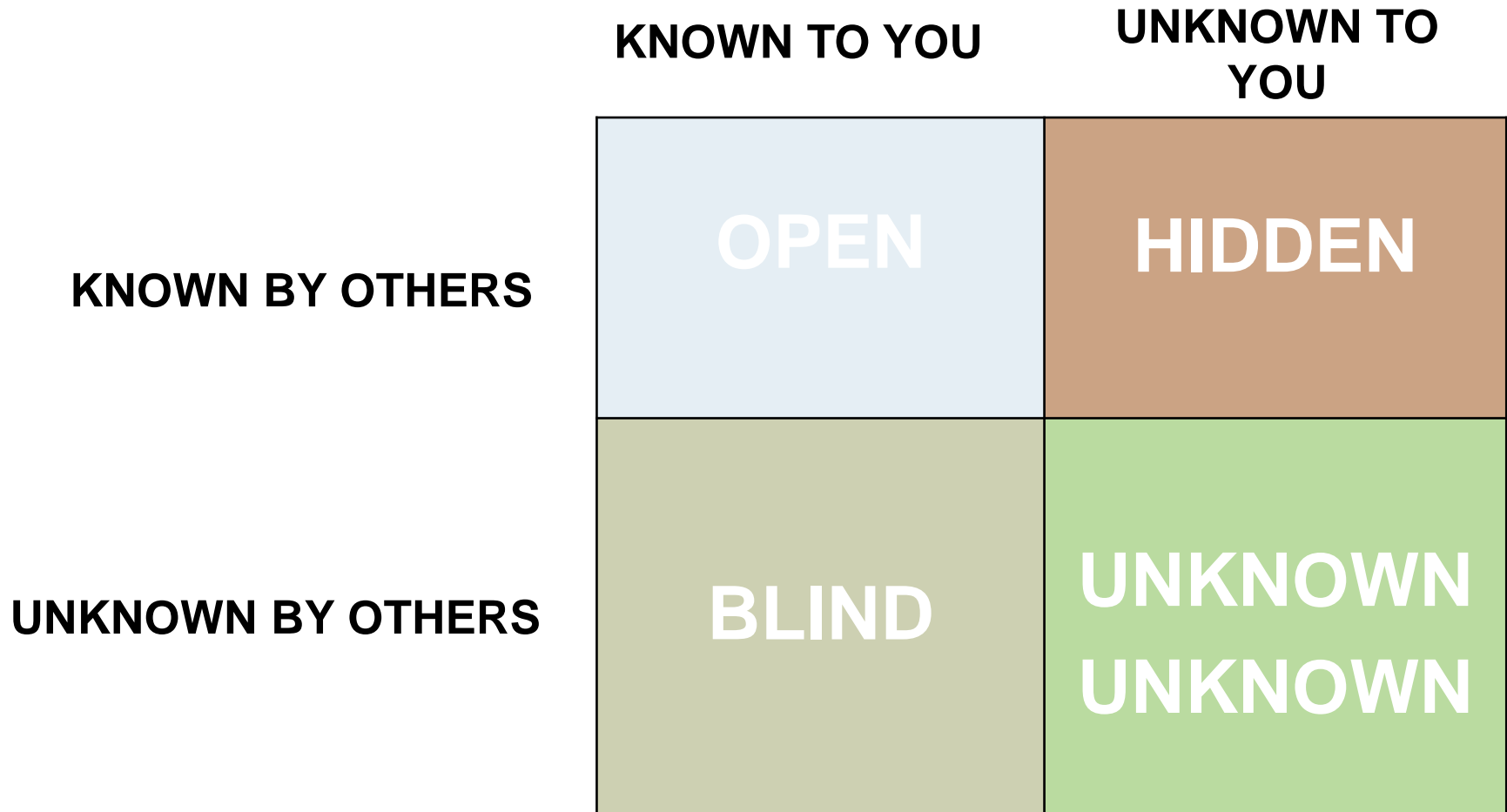
NON-VERBAL

- avoids eye contact
- looks anxious
- closed body language

93 %



Johari Window -an awareness tool





What should the dominant strategy be for ODR?

Player A



Strategy



**Best
Response**

Player B



Strategy



InnoTech Committee of The Law Society of Hong Kong

Work done:-

- Organized Seminars on Smart Contracts & Blockchain and Opportunities to the Legal Profession.
- Made Submissions to Whitepaper 2.0 on Distributed Ledger Technology published by Hong Kong Monetary Authority.
- Co-organised various seminars with Privacy Commissioner on Big Data, AI and Privacy in 2016.



InnoTech Committee of The Law Society of Hong Kong

In the pipeline:-

- To develop a client-centric App to help members with online payment services.
- Further detailing in The Hong Kong Solicitors' Guide to Professional Conduct ("The Solicitors' Guide") (Principle 1.07) the responsibility of members to develop technological competencies and adopting appropriate use of technologically enabled solutions for the benefit of clients in the provision of legal services.



Code of conduct

Solicitors acting as mediators/arbitrators qua a solicitor or through ICT developed and/or used by solicitors for ODR would be subject to the codes of conduct, through Principle 1.07 of The Solicitors' Guide.

Where the ODR is fully automated through an AI with no human interaction during the ODR process these rules would not apply, but may apply in the development of ODR processes systems and services.



Code of conduct

Where individual solicitors are involved the application of the code of conduct becomes more complex.

Confidentiality has to be addressed to protect information as well as compliance with Data Privacy laws in an applicable jurisdiction.

Privilege in the place of ODR would have to be considered.



International Aspects

- Jurisdictional issues
- Choice of law
 - Lex fori determines whether an exchange is privileged – *Lawrence v Campbell*
- Substantive law
 - LPO Cap 159 s39A(2)--“Solicitor-client privilege exists between a foreign lawyer and his client to the same extent as the privilege exists between a solicitor and his client”
 - *RMBSA Corporate Services & Another v Secretary of State for Justice*



Code of conduct

Where ODR crosses international boundaries or enters cyberspace or multijurisdictional clouds or servers and holistic servers, codes of professional conduct have to adapt to the new environment/system.

In Hong Kong we adopt International Bar Association's International Code of Ethics where the same is not inconsistent with Principle 1.08 of The Solicitors' Guide.



Principle 1.08

Guide to Professional Conduct

Principle

A solicitor when practising as a Hong Kong solicitor outside Hong Kong remains bound by the general principles of professional conduct which apply to him as a Hong Kong solicitor.

Commentary

- 1. The Principles and Commentaries in this Guide apply to practice outside Hong Kong with any modification necessitated by local conditions.*
- 2. In addition to the provisions of Commentary 1, the Council has adopted as the basic code for solicitors practising outside Hong Kong the International Bar Association's International Code of Ethics (set out below) whenever the same is not inconsistent with this Principle.*



Principle 1.08

Guide to Professional Conduct

Commentary

(IBA International Code of Ethics)

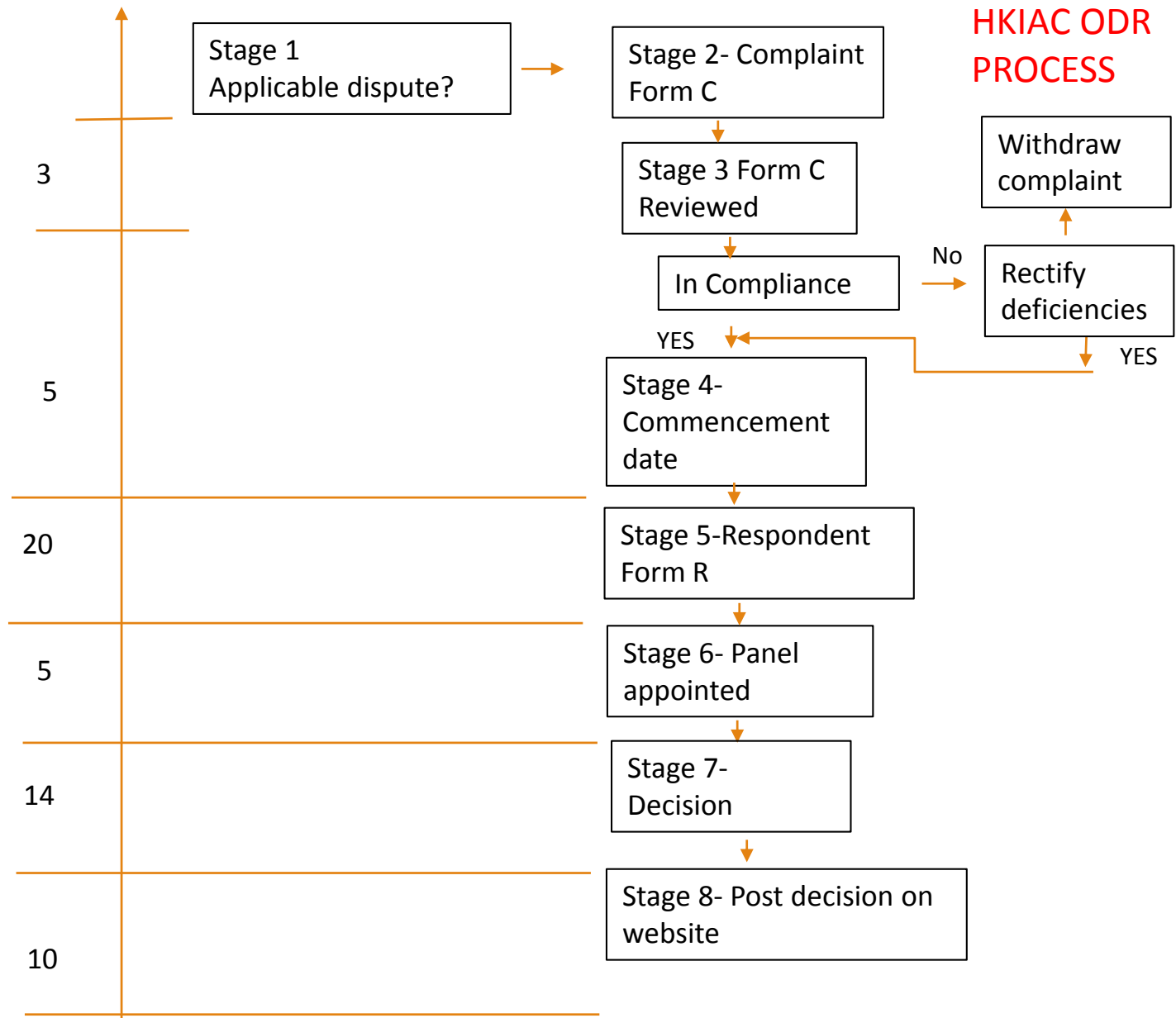
3. In the absence of an express application of local rules to the solicitor as a foreign lawyer, a solicitor should nevertheless respect the rules of conduct applied to local lawyers. Where the structure and sphere of activity of the local legal profession or professions differ substantially from those of Hong Kong solicitors, it may be inappropriate or impossible for a solicitor to comply in every particular with the rules of conduct applicable to the local profession or professions, or it may be doubtful which rules of conduct should be applied. In such circumstances, the solicitor should observe the standards of conduct applicable to the local lawyers to the extent this can be done without infringing the rules applicable to Hong Kong solicitors and without hindering the proper exercise of his profession.



Developments in Hong Kong- HKIAC

- Hong Kong International Arbitration Centre provides an ODR platform for domain name disputes.
- Since 2002, the HKIAC dealt with over 2,000 domain name disputes.
- Notable cases include: whatsapp.hk; whatsapp.com.hk; skype.hk; gmail.hk; twitter.hk; resulting in domain name transfer.
- Consumers would benefit from regular update in processes, systems and services.

Timeline in days





HKIAC

gTLDs and other ADNDRC Services

[UDRP - Uniform Domain Name Dispute Resolution Policy](#) -Top Level Domains

[URS - Uniform Rapid Suspension System](#)-Uniform Domain Name Suspension

[TM-PDDRP - Trademark Post-Delegation Dispute Resolution Procedure](#)-whether new gTLD Registry Operator is intentionally and systematically infringing trademarks in its top-level domain (TLD).

[TDRP - Registrar Transfer Dispute Resolution Policy](#) Inter-Registrar domain name transfers. designed for resolving dispute relating to Inter-Registrar domain name transfers

[Other Domain Name Dispute Resolution Services](#)-designed for resolving dispute relating to Inter-Registrar domain name transfers



HKIAC

ccTLDs and Keywords

[HKDRP - .hk and .香港 domain names](#)

[CNDRP - .cn and .中国 domain names](#)

[PHDRP - .ph domain names](#)

[IKDRP - Internet Keyword Disputes Resolution Policy](#)

[WKDRP - Wireless Keyword Disputes Resolution Policy](#)



Independence

HKIAC and other organizations being independent would be able to provide independent and fair Dispute Resolution Services and enhance confidence in ODR.



Developments in Hong Kong

- The Law Society, together with other stakeholders, is actively exploring the eBRAM (eBelt and Road Arbitration and Mediation) platform which aims at providing an online dispute resolution platform providing full arbitration and mediation services over the Internet for countries in the Belt & Road region.



Possible Future Innovation

- Use of digital ledger technology for dispute resolution across all APEC jurisdictions.
- Creation of International agreement on enforcement of ODR.
- This could be developed into and AI for ODR, initially for simple cases.



RISKS

Fraud

Criminal activity

Invasion of privacy

Money Laundering

Know your client issues

Getting the standard wrong

No electricity

Server down

Applicable laws

Conflict of laws

Country risk

Enforcement risk

Email and ICT security

Speed increases error and
error cannot be remedied

Quantum computing



THE
LAW SOCIETY
OF HONG KONG
香港律師會

110th
ANNIVERSARY

THANK YOU!