



**Asia-Pacific
Economic Cooperation**

2018/SOM1/EC/WKSP2/016

Vision for APEC Online Dispute Resolution Part II – A Way Forward

Submitted by: United States



**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**

APEC EC
Papua New Guinea
March 3-4, 2018



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VISION FOR APEC ODR Part II – A Way Forward

LE MIEUX EST L'ENNEMI DU BIEN



WAY FORWARD FOR ODR IN APEC

SEI Work Plan: Pilot

- **Pilot in conjunction with platform host/ODR provider via outreach to regional arbitration/mediation centers to determine possible partners for hosting ODR platform**
- Continue to promote harmonization of relevant laws using existing international instruments
- Cross-APEC collaboration (with e.g. ABAC, ECSG, SMEWG, GOS, TWELWG)
- Conduct relevant research/information gathering
- Design ODR platform
- Develop ODR procedural rules
- Capacity building
- Leverage private sector and academic community support

WAY FORWARD FOR ODR IN APEC

Pilot

SELI to host 2-day workshop to:

- Identify businesses willing to participate in ODR pilot, working with ABAC
- Establish Regional Arbitration/Mediation Center partners willing to host ODR platform for APEC businesses in pilot
- Create ODR procedural rules and standards for pilot, working with Regional Arbitration/Mediation Centers and ABAC



PILOT PROGRAM

WAY FORWARD FOR ODR IN APEC

SELI Work Plan: Design Platform

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(with e.g. ABAC, ECSG, SMEWG, GOS, TWELWG)
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WAY FORWARD FOR ODR IN APEC

ODR Platform



The New Handshake



ODR Ecosystem



**Problem
Diagnosis/Negotiation
Tools**

**Regional Arbitration/Mediation
Center ODR Platform**



Arbitrator



Buyer



**“ODR requires a
technology-based
intermediary”**
UNCITRAL ODR Technical
Notes, para 26



Seller

WAY FORWARD FOR ODR IN APEC

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.



WAY FORWARD FOR ODR IN APEC

ODR Platform

- In most APEC economies alternative dispute resolution and ODR handled by the private sector for B2B disputes.
- Public sector often risk adverse and lacks market discipline plus delays are endemic.
- Private sector must innovate or die and better suited to deliver leading edge product that works for ODR.
- Private sector has experience using pilot to iron out problems and ensure market readiness.
- Private Sector therefore may be better suited to design and implement ODR platform for pilot involving B2B.



WAY FORWARD FOR ODR IN APEC

SELI Work Plan: Data Collection

- Continue to promote harmonization of the relevant laws for ODR using existing international instruments
- Cross-APEC collaboration (with e.g. ABAC, ECSG, SMEWG, GOS, TELWG)
- **Conduct relevant research/information gathering**
- Design ODR platform
- Develop ODR procedural rules
- Build a pilot in conjunction with platform host
- Capacity building
- Leverage private sector and academic community support



WAY FORWARD FOR ODR IN APEC

SELI Work Plan: Develop Procedural Rules

- Build a pilot in conjunction with platform host/ODR provider via outreach to regional arbitration/mediation centers to determine possible partners for hosting ODR platform
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WAY FORWARD FOR ODR IN APEC

Develop ODR Procedural Rules

- “The General Assembly recommends that all States and other stakeholders use the Technical Notes in designing and implementing online dispute resolution systems for cross-border commercial transactions.”

GA Resolution 71/138, *supra*



- “...why it is crucial that a global harmonizing instrument or set of principles be created ... to support online dispute resolution systems that can handle cross-border disputes across the commercial spectrum...”

Note supporting work on online dispute resolution by UNCITRAL, Institute of International Commercial Law, UN Doc. A/CN.9/710 at 2-3 (2010) (co-sponsored by 35 organizations.)

WAY FORWARD FOR ODR IN APEC

Develop ODR Procedural Rules

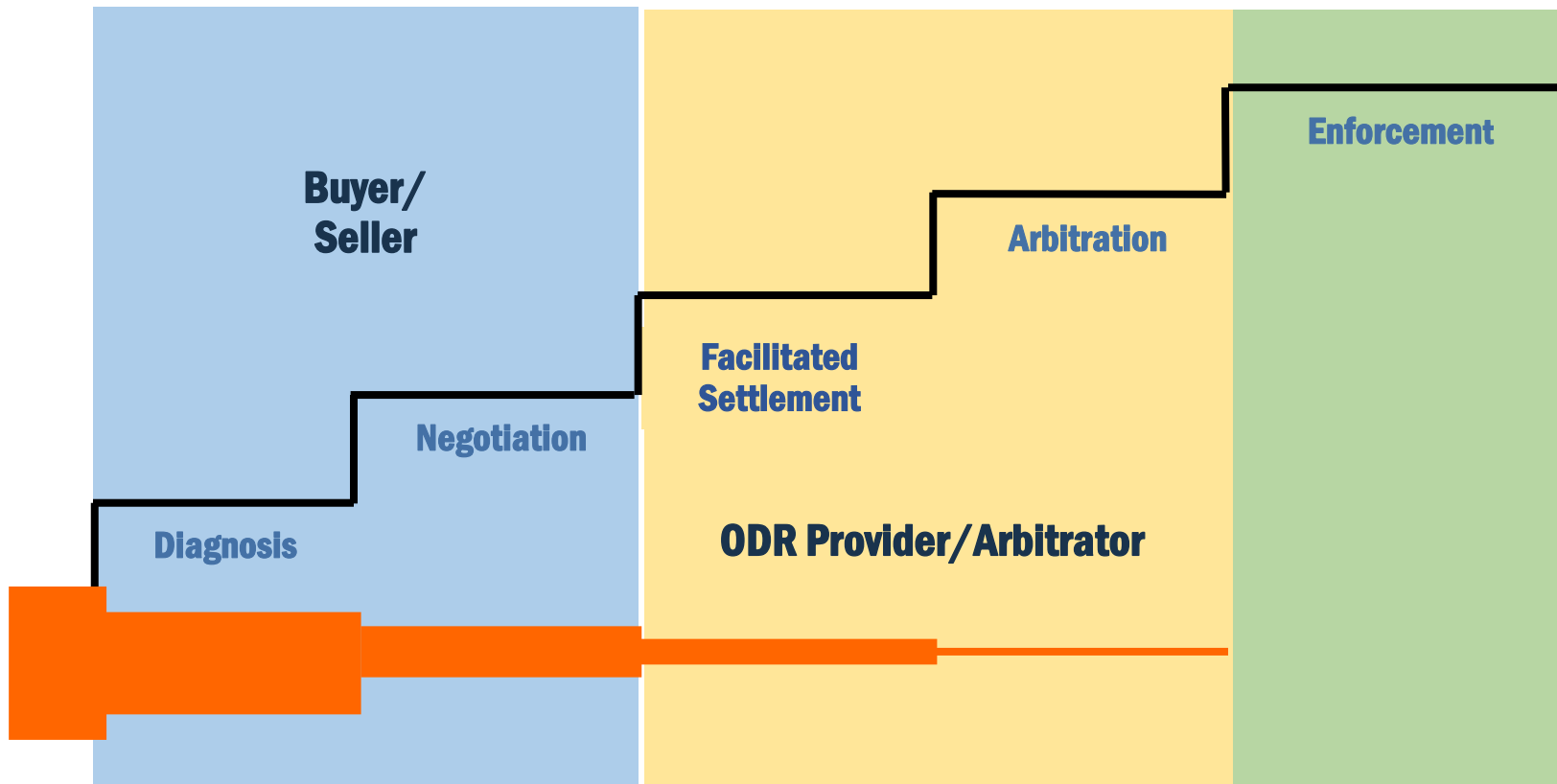
- APEC rules should provide fast-track ODR procedures that comply with due process requirements.
- Major challenge to building an ODR system for low-value disputes involving supply chain/MSMEs is keeping costs low.
- By making the ODR process more structured, easier, faster, and less expensive to complete, ODR improves redress and access to commercial justice.
- Accelerates Justice, Accelerates Trade



WAY FORWARD FOR ODR IN APEC

Develop ODR Procedural Rules

Each phase acts like a filter, resolving a percentage of disputes



WAY FORWARD FOR ODR IN APEC

SELI Work Plan: Capacity Building

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- Design ODR platform
- Develop ODR procedural rules
- **Capacity building**
- Leverage private sector and academic community support



WAY FORWARD FOR ODR IN APEC

Capacity Building

- Key implementation issue is 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, donors, law facilities and corporate social responsibility programs.

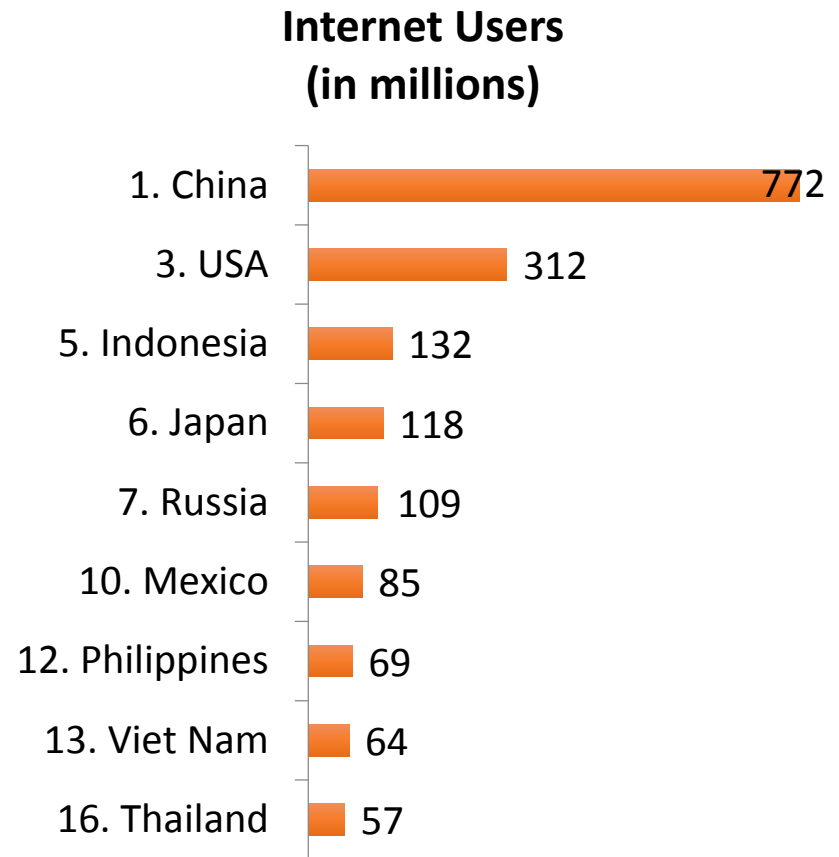


WAY FORWARD FOR ODR IN APEC

Capacity Building

- Over 4 billion people now connected to the Internet.
- 7 billion people (95% of the global population) live in area covered by a mobile-cellular network. Mobile-broadband networks (3G or above) reach 84% of the global population.
- 9 out of the top 16 economies for internet use are APEC economies.

Top 20 Countries with the Highest Number of Internet Users,
<http://www.internetworldstats.com/top20.htm>.



WAY FORWARD FOR ODR IN APEC

SELI Work Plan: Harmonizing Law

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WAY FORWARD FOR ODR IN APEC

Harmonizing Law

- Effective use of ODR across APEC requires adoption of relevant laws and treaties by member economies:
 - **New York Convention** implemented by 20 APEC economies;
 - **UNCITRAL Model Law on International Commercial Arbitration** (revised in 2006) followed by 18 APEC economies;
 - **UNCITRAL Model Law on Electronic Commerce** followed in 14 APEC economies;
 - **UN Convention on the Use of Electronic Communication in International Contracts** ratified by 2 APEC economies;
 - **UN Convention on Contracts for the International Sale of Goods (CISG)** ratified by 13 APEC member economies.
- “In Writing” must include electronic communications.



WAY FORWARD FOR ODR IN APEC

New York Convention

New York Arbitration Convention Status: 2011



157 Parties

WAY FORWARD FOR ODR IN APEC

Harmonizing Law

	NY Convention	ML on Arbitration	ML on Electronic Commerce	Convention on Use of Electronic Comm'	CISG
Australia	√	√	√	--	√
Brunei	√	√	√	--	--
Canada	√	√	√	--	√
Chile	√	√	--	--	√
China	√	√	√	--	√
Hong Kong	√	√	√	--	--
Indonesia	√	--	--	--	--
Japan	√	√	--	--	√
Malaysia	√	√	√	--	--
Mexico	√	√	√	--	√

WAY FORWARD FOR ODR IN APEC

Harmonizing Law

	NY Convention	ML on Arbitration	ML on Electronic Commerce	Convention on the Use of Electronic Communication	CISG
New Zealand	√	√	√	--	√
New Guinea	--	--	--	--	--
Peru	√	√	--	--	√
Philippines	√	√	√	--	--
Rep. Korea	√	√	√	--	√
Russia	√	√	--	√	√
Singapore	√	√	√	√	√
Chinese Taipei	√	√	--	--	--
Thailand	√	√	√	--	--
USA	√	√	√	--	√
Vietnam	√	--	√	--	√

THANK YOU

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