



**Asia-Pacific
Economic Cooperation**

2019/SOM1/EC/012

Agenda Item: 6c.ii

APEC Collaborative Framework for Online Dispute Resolution

Purpose: Information
Submitted by: Hong Kong, China

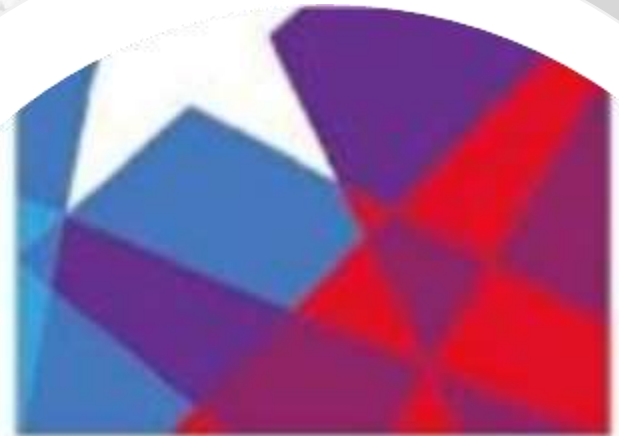


**First Economic Committee Meeting
Santiago, Chile
4-5 March 2019**

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ODR Adviser

**APEC COLLABORATIVE
FRAMEWORK FOR
ONLINE DISPUTE
RESOLUTION**

APEC Economic Committee
ODR Policy Dialogue
EC 1
Santiago, Chile
March 4, 2019



APEC

How Will AI Affect APEC ODR?



Collaborative Framework for ODR

Overview

1. Purpose

What is ODR?

Why ODR?

2. Procedural Rules

3. SELI and APEC Economies

Economy Opt-In

Minimal Oversight

4. APEC Partners/ODR Providers

Follow Procedural Rules

Provide Platform

Share Information

5. SELI Report to EC

6. Participating Businesses

Agree to use ODR

Capacity Building

7. Collaborative Legal Framework for ODR



Collaborative Framework for ODR

SELI Work Plan

- Pilot with platform host/ODR provider via outreach to regional arbitration /mediation centers to determine possible partners for hosting ODR platform
- Promote harmonization of relevant laws using existing international instruments
- Cross-APEC collaboration (with e.g. ABAC, ECSG, SMEWG, GOS, TWELWG)
- Relevant research/information gathering
- Design ODR platform
- Develop ODR procedural rules
- Build capacity
- Leverage private sector and academic community support
- Explore modern technology use...for contract management or enforcement and dispute prevention



Collaborative Framework for ODR

1. Purpose

1.1 This Collaborative Framework...establishes an APEC-sponsored initiative to use ODR to help global businesses, in particular MSMEs, resolve B2B cross-border disputes focusing on low value disputes....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 providing [ODR] through negotiation, mediation and arbitration for B2B claims.



What is ODR?

APEC ODR Follows UNCITRAL Work

UN General Assembly:

“Sharp increase in online cross-border transactions has raised a need for mechanisms for resolving disputes that arise from such transactions, and one mechanism is online dispute resolution.”

“Recommend(s) that all States and other stakeholders use the UNCITRAL Technical Notes on ODR in designing and implementing online dispute resolution systems for cross-border commercial transactions.”

GA Resolution 71/138, UNCITRAL Technical Notes on ODR, December 13, 2016.



UNCITRAL Technical Notes on ODR:

“ODR [designed to] assist parties in resolving disputes in a simple, fast, flexible and secure manner, without the need for physical presence at a meeting or hearing.

UNCITRAL Technical Notes on Online Dispute Resolution, para. 1, available at www.uncitral.org

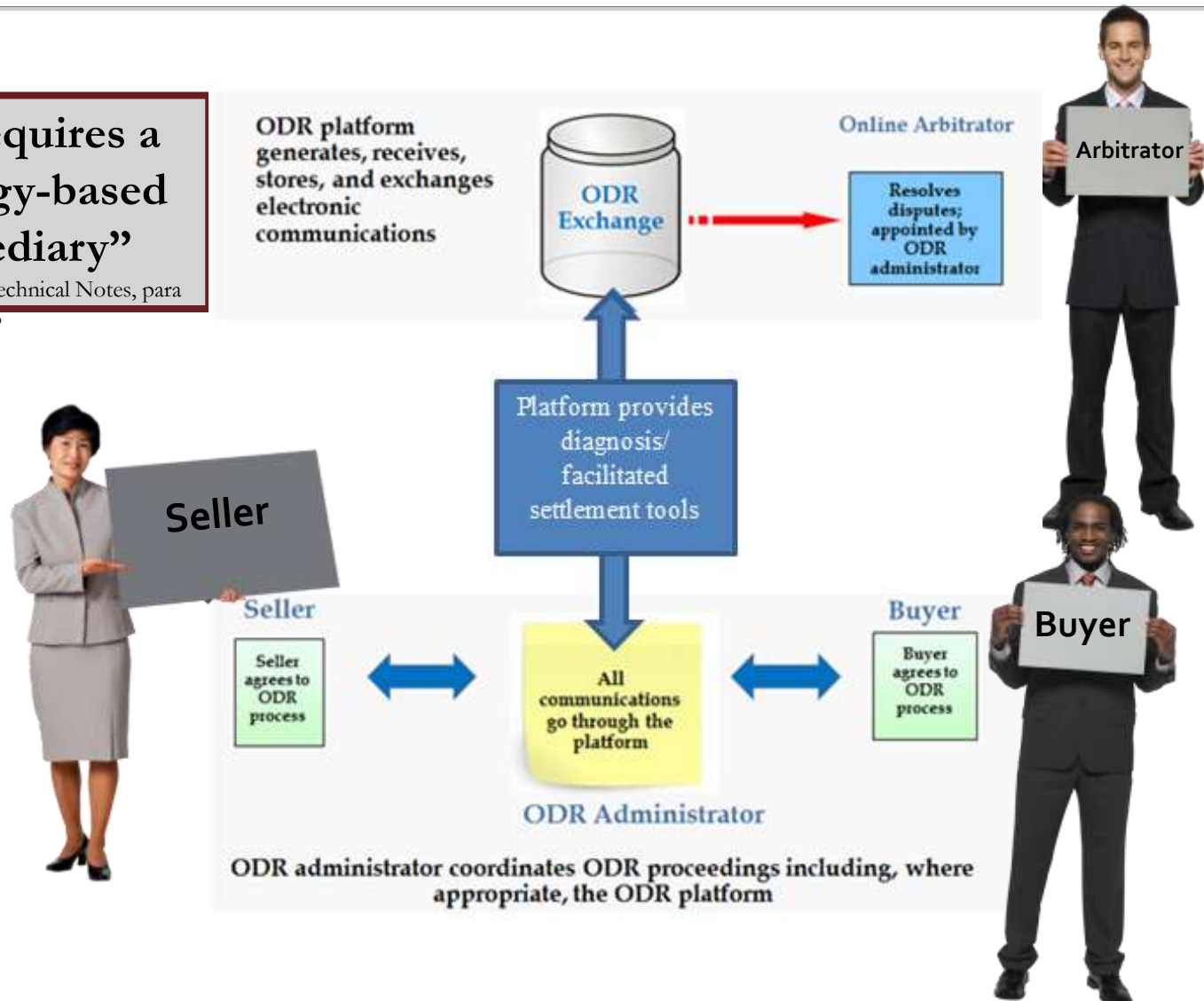
What is ODR?

Requires an ODR Platform

“ODR requires a technology-based intermediary”

UNCITRAL ODR Technical Notes, para

26



What is ODR?

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.

Why ODR?

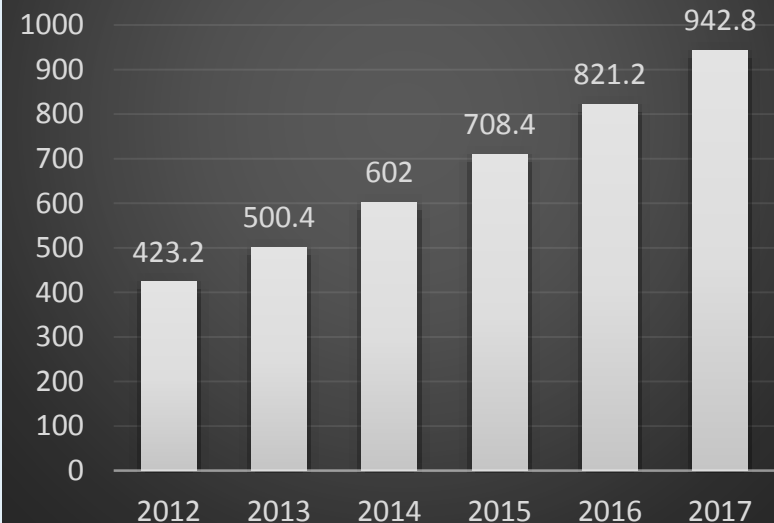
Many Disputes Unresolved

- In APEC, dispute resolution is a great challenge for MSMEs trading abroad.
 - 83% of APEC MSMEs report effective and consistent dispute resolution is needed.
- According to EU, for B2B –
 - 25% of B2B disputes are unresolved i.e. 1.2 million annually.
 - Businesses involved in disputes with other businesses average 6 disputes annually.
 - As businesses grow from small to medium-sized companies, disputes grow five-fold.

(Driving Economic Growth Through Cross-Border E-Commerce in APEC: Empowering MSMEs and Eliminating Barriers at 35, 69, 81.
<http://ncapec.org/docs/ABAC%20Documents/USC%20Marshall%20ABAC%202015%20MSMEs.pdf>
(interviews with 506 business executives plus 244 survey responses))

(Ecorys, Study on the use of Alternative Dispute Resolution for Business to Business disputes in the European Union at 6, 123, 125 (commissioned by the European Commission)
<http://www.adrcenterinternational.com/wp-content/uploads/2015/01/ADR-Final-Report-151012.pdf>
(based in part on Flash Eurobarometer 347: Business to Business Alternative Dispute Resolution in the EU (interviews with 10,840 businesses including MSMEs)); European Commission, DG Enterprise and Industry, Business Disputes Keep Businesses from Doing Business, at 4.)

Worldwide E-Commerce disputes per year (in millions)



Why ODR?

Limited Options for MSMEs

- APEC EODB indicator for Enforcing Contracts measures time, cost and procedural efficiency for resolving commercial *domestic* lawsuits.
 - 451 days on average to enforce contracts in APEC.
 - 31.7 percent of claim on average taken by administrative fees.

Doing Business 2019 (APEC), Regional Profile Asia-Pacific Economic Cooperation, at 55-56.)

- In *cross-border disputes*, traditional judicial relief not only slow but creates jurisdictional, choice of law, and enforcement difficulties.

(Myburgh, A., & Paniagua, J., *The Impact of UNCITRAL on FDI*, (2017) (Section 2) available at <http://www.uncitral.org/uncitral/en/commission/colloquia/50th-anniversary-papers.html>; Born, G, *International Commercial Arbitration*, 579 (2009))

- In-person arbitration predominant form of dispute resolution in cross-border trade.

(Queen Mary University of London and White & Case, 2015 International Arbitration Survey <https://www.whitecase.com/publications/insight/2015-international-arbitration-survey-improvements-and-innovations> (90% of respondents prefer international arbitration to resolve cross border commercial disputes))

- But according to multiple sources, including the World Bank, arbitration is too expensive/slow for e-commerce/supply chain disputes.



Why ODR?

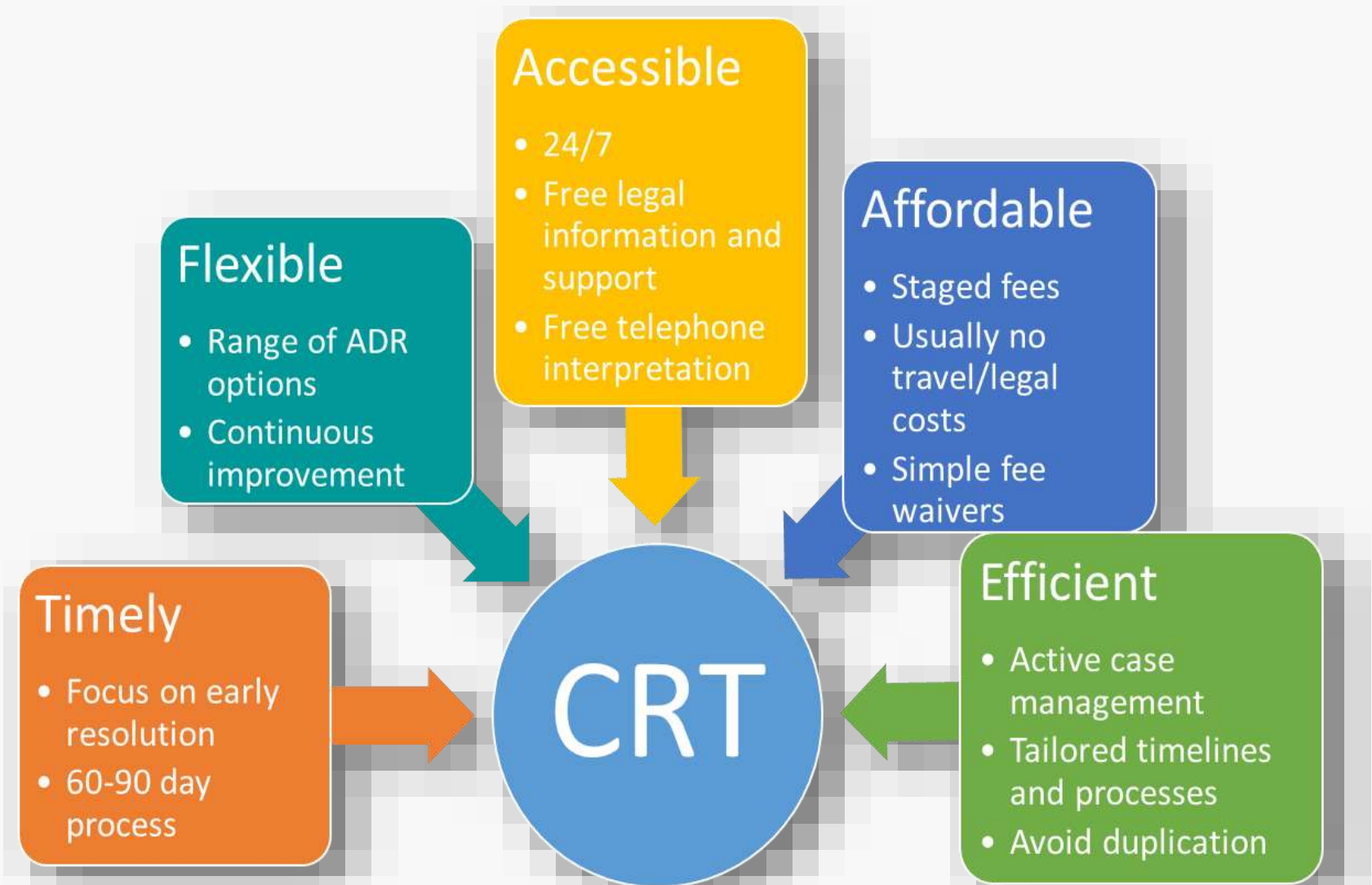
Works in Private Sector

- ODR in the global marketplace is a dynamic but fragmented field.
- So far, none of these initiatives has resulted in widespread use of ODR in B2B disputes involving MSMEs.



Why ODR?

Works for British Columbia



Collaborative Framework for ODR

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2. ODR Model Procedural Rules



- 2.2 Participating APEC ODR providers operating under the ODR Framework agree to use the Procedural Rules [for the resolution of claims handled pursuant to] the ODR Cooperative Framework.

3. Role of SELI/APEC Economies

Economy Opt-In



- 3.1 APEC economies participating in the ODR Framework join a cross-border network that resolves low value disputes by implementing agreed reciprocal procedures, in accordance with the Procedural Rules.

3. ROLE of SELI/APEC Economies

Maintain List of Providers



- 3.3 SELI... will assist the APEC Secretariat in maintaining a list on the APEC/EC website of ODR providers from participating APEC economies that have agreed to process claims using ODR, as per the attached Rules.

3. ROLE of SELI/APEC Economies

Maintain List of Providers on Website



- APEC ... assumes no responsibility or liability for the professional ability or reputation of, or the quality of services provided by, the entities whose names appear on the following list...Before engaging the entities, users should exercise independent judgment and take independent advice, as necessary.

3. ROLE of SELI & APEC Economies

LIMITED Oversight of ODR Providers



- 4.5 If an ODR provider [is] not in compliance with the Procedural Rules, SELI should give the ODR provider written notification of noncompliance, requesting [the issue be remedied] in 30 days...
- If the ODR provider fails to meet these requirements, SELI may remove the ODR provider from its official list.

4. Partnering ODR Providers

Maintain Own ODR Platform

4.2 Collaborative Framework

Each ODR Provider will provide its own ODR platform for the resolution of disputes under the ODR Framework



Public vs. Private Sector

- Private Sector better suited to design and implement ODR platform for pilot involving B2B
- 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

4. Partnering ODR Providers

Follow Procedural Rules and Framework



- 4.1 SELI 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 ...Any fees charged under the ODR Framework should be affordable and commensurate with the amount in dispute.

4. Partnering ODR Providers

Gather and Share Information



- 4.3 ODR providers are encouraged to gather the following [aggregate] information ..., and submit that information to SELI by the end of June and December....
- 4.4 The ODR provider will ask the parties to complete a brief and optional feedback questionnaire asking [about the quality of the service received from the ODR provider and appointed neutral].

5. SELI Reports to Economic Committee



- 5.1 ODR providers should treat all information submitted by businesses as confidential.
- 5.2 SELI should... aggregate data received from ODR providers and submit a report by end of March every year to the Economic Committee.

6. Participating Businesses



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

6.2 Businesses may be charged a reasonable fee by the ODR provider.

6. Participating Businesses

Capacity Building

- Key implementation hurdle: 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 of commerce, donors, law facilities and corporate social responsibility programs.



8. Cooperative Legal Framework

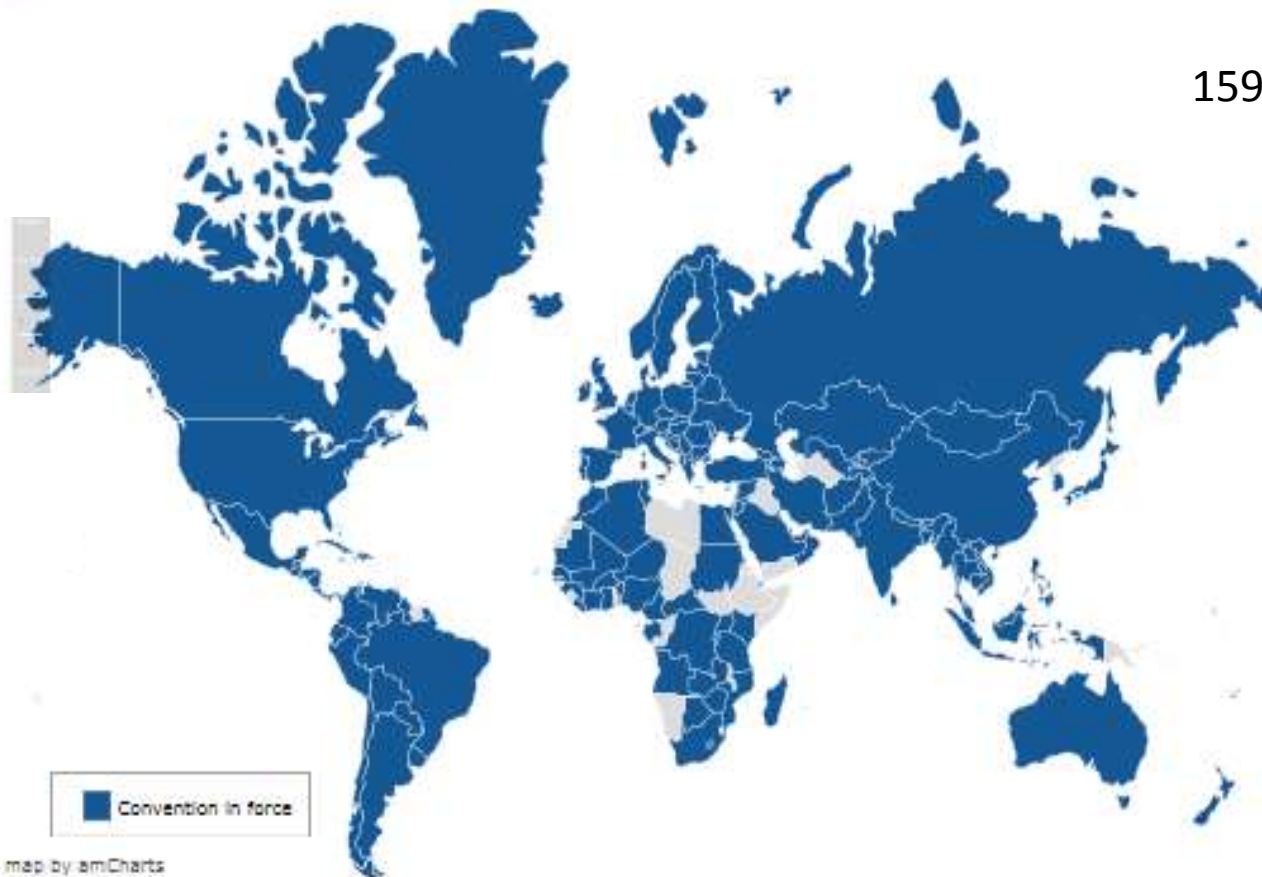
8. “Although ODR laws and practices do not need to be strictly identical throughout APEC, member economies should support the development and recognition of private international law instruments applicable to ODR, including but not limited to:
- a. the 1958 UN Convention on the Recognition and Enforcement 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 E-Commerce.”



8. Cooperative Legal Framework

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)

159 Parties

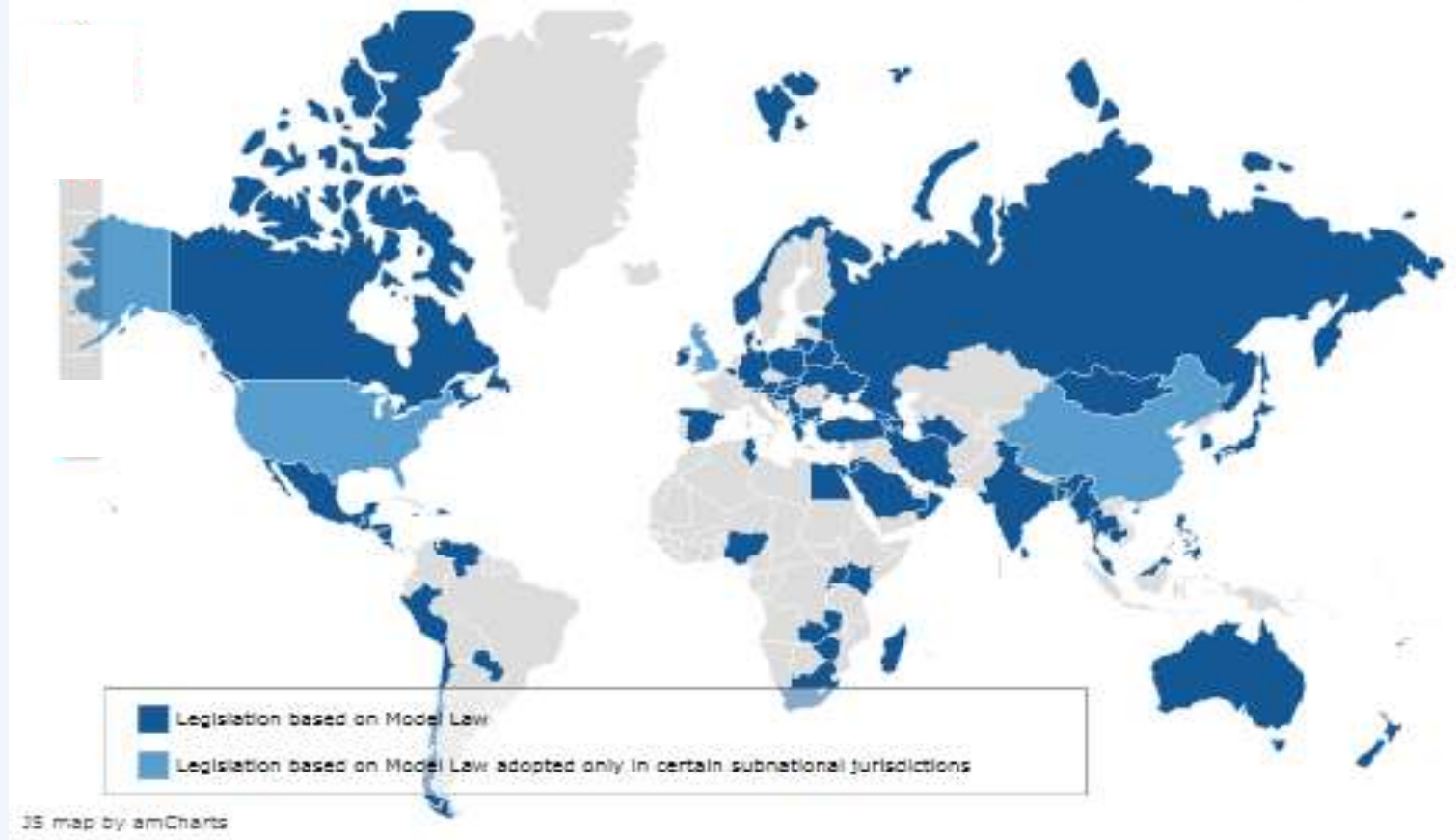


JS map by amCharts

8. Cooperative Legal Framework

Status map

UNCITRAL Model Law on International Commercial Arbitration (1985)



Conclusion

A Cooperative APEC ODR Framework will:



Promote and maintain strong relations with business partners in global supply chain



Provide MSMEs with opportunity to compete and flourish in supply chain



Build capacity for economic growth based on trade, not aid



Empower women to participate more fully in the global chain



Accelerate and extend real access to justice for all

THANK YOU

