



**Asia-Pacific  
Economic Cooperation**

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Agenda Item: 9b

**Strengthening Economic and Legal Infrastructure  
Friends of the Chair Workplan on Structural Reform  
Under Enhanced APEC Agenda for Structural  
Reform**

Purpose: Information  
Submitted by: Japan



**Second Economic Committee Meeting  
Chiang Mai, Thailand  
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# SELI FoTC Workplan on Structural Reform under EAASR

The work of the APEC Economic Committee (“EC”)’s Strengthening Economic and Legal Infrastructure (“SELI”) Friends of The Chair (“FoTC”) group supports the Enhanced APEC Agenda for Structural Reform (“EAASR”) agenda.

## **I. The Importance of SELI’s Work on Structural Reform**

The EC’s SELI FoTC was reestablished in 2015 to raise awareness of the need to strengthen the economic and legal infrastructure of APEC economies to achieve APEC’s goals of regional economic integration and investment liberalization and facilitation.

Strengthening economic and legal infrastructure has been a core structural reform since APEC Leaders endorsed the Leaders’ Agenda to Implement Structural Reform (“LAISR”) in 2004. It has remained a core structural reform through the APEC New Strategy on Structural Reform (“ANSSR”) initiative launched in 2010, the Renewed APEC Agenda for Structural Reform (“RAASR”) launched in 2015, and now EAASR launched in 2021.

### **Capacity Building**

Consistent with the call for capacity building initiatives in EAASR, SELI identifies areas for technical cooperation and capacity building among APEC member economies in collaboration with international partners such as the Hague Conference, UNCITRAL, UNIDROIT, and the World Bank.

Since EC 1 in 2021, the EC is overseeing a SELI sub-fund financed by Hong Kong, China that provides funds for capacity building work to help APEC economies strengthen their economic and legal infrastructure.

### **Harmonizing Laws Using Existing Instruments**

Consistent with the call in EAASR to remove undue burdens on businesses, private international law instruments from international bodies such as UNCITRAL, the Hague Conference and UNIDROIT augment the work on strengthening economic and legal infrastructure and the APEC Ease of Doing Business (EoDB) initiative. They also provide a platform for the legal reforms that are necessary to create an enabling environment for businesses in areas such as enforcing contracts, starting a business, getting credit, resolving insolvency and trading across border. Experts from these organizations regularly attend SELI meetings, workshops, EC policy dialogues, as well as capacity building activities.

The **2014 APEC Ministerial Statement and Leaders’ Declaration** recognize the importance of these private international laws to achieve structural reform and capacity building. The **2014 Leaders’ Declaration**, at paragraph 32, emphasizes:

“the role of internationally recognized private international law instruments such as the Hague Conventions in facilitating cross-border trade and investment, enhancing ease of doing business, and fostering effective enforcement of contracts and efficient settlement of business disputes. We encourage wider use of these instruments which would contribute to APEC’s regional integration, connectivity and structural reform agenda.”  
(Emphasis added)

The APEC Ministers in the **2015 APEC Structural Reform Ministerial Statement** also stressed:

“the importance of work to develop model legal instruments and commend APEC work in this area in collaboration with the Hague Conference on Private International Law (HCCH) and the United Nations Commission on International Trade Law (UNCITRAL). We agree that the development of international legal instruments and their adoption will create a more conducive climate for cross-border trade and investment, thus facilitating economic growth. Use of these instruments provides greater legal certainty in cross border transactions, harmonization of finance and dispute resolution systems, closer economic and legal integration among cooperating economies, and the simplification of procedures involved in international transactions.” (Emphasis added)

The Ministers further

“instruct[ed] the Economic Committee to: ...Promote awareness and wider use of international legal instruments to strengthen the legal infrastructure of APEC economies ...”

In the **APEC EC September 1, 2021 press release on APEC’s structural reform agenda under EAASR**, Executive Director of the APEC Secretariat Rebecca Sta Maria stated that “the Economic Committee is promoting initiatives to strengthen economic and legal infrastructure, which include the collaborative framework for online dispute resolution to help small businesses resolve cross-border business-to-business disputes.”

## **II. Examples of Key SELI Achievements**

### **Creation of New Legal Instruments**

Examples of the work undertaken by SELI include the creation of the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes (“Collaborative Framework”) and the APEC Model Procedural Rules. These APEC instruments follow the UNCITRAL Technical Notes on ODR and the UNCITRAL Arbitration Rules. SELI sponsored **nine** workshops (see Annex 1) and **eight** EC Policy Dialogues on ODR and/or the Collaborative Framework (see Annex 2) in developing these instruments.

The EC endorsed the SELI Work Plan for Developing a Cooperative Online Dispute Resolution (ODR) Framework for MSMEs in B2B Transactions and Use of Modern Technology for Dispute Resolution and Electronic Agreement Management (“SELI ODR Workplan”) at EC 1 and 2 in 2017.

Subsequently, the EC endorsed the Collaborative Framework and APEC Model Procedural Rules at EC 2 in 2019, and the SELI Administrative Implementation Work Plan for the Collaborative Framework (“Administrative Implementation Work Plan”) and the Proposal for a Satellite Website at EC 1 in 2021.

An associated Satellite Website was launched in mid-September 2021 under the APEC domain (<https://www.apec.org/SELI>). It can also be accessed on the EC Webpage at <https://www.apec.org/groups/economic-committee>.

The **2019 APEC Economic Policy Report** (at 91) supports the need for the Collaborative Framework:

“Many MSMEs are reluctant to engage in international trade out of fear of the high costs of litigation in case of a dispute. Current arbitration systems are also too costly and time-

consuming, hence inappropriate for small value disputes. [The ODR Collaborative Framework] is an example of harnessing digital tools to help MSMEs access global opportunities, thereby promoting inclusion.” (Emphasis added)

### **Engagement with the Private Sector**

Consistent with the call in EAASR to increase engagement with the private sector, under the Collaborative Framework, APEC partners with ODR providers located in APEC economies that have opted-in to the APEC ODR Collaborative Framework. Platform hosts and ODR providers supply their own platform to offer online negotiation, mediation, and arbitration in compliance with the Collaborative Framework and APEC Model Procedural Rules.

Also, under the Collaborative Framework, economies (through SELI) educate businesses, especially micro, small, and medium sized businesses (MSMEs), on the value of ODR and the use of ODR providers to resolve appropriate disputes. SELI will also enlist other entities for outreach to businesses, such as the APEC Business Advisory Council (“ABAC”) and local chambers of commerce.

Additionally, the Administrative Implementation Work Plan utilizes academic institutions from participating economies to assist with the implementation of Collaborative Framework.

### **Cross-Fora Collaboration**

**Consistent with the EAASR call for greater cross-fora collaboration**, a crucial element of SELI’s role on structural reform is its work with other fora. The SELI ODR Work Plan specifically calls for collaboration between the EC and other groups such as the IEG, ABAC, DESG, SME Working Group, GOS and TELWG. Those other APEC fora have recognized the significance of the Collaborative Framework:

The **24<sup>th</sup> Meeting of APEC Ministers Responsible for Trade Statement (2018)** emphasizes

“the important contribution of technology and the digital economy in empowering MSMEs and ... notes the [SELI] Work Plan for Developing a Cooperative Online Dispute Resolution Framework for MSMEs. We support greater MSME capacity building and participation in E-commerce, including through the online-to-offline model.”

The **2019 APEC SME Ministerial Statement** (paragraph 14) supports

the development of the Collaborative Framework, observing that “it will provide a cost-effective and efficient platform to resolve low-value cross-border disputes.”

High-level recognition that SELI’s work on ODR (including the Collaborative Framework) contributes to structural reform can be seen from the following examples:

The **2018 High-Level Structural Reform Officials’ Meeting** highlighted as a structural reform priority (paragraph 6):

“For EC to continue the implementation of the SELI Online Dispute Resolution Workplan.”

The **2021 Structural Reform Ministerial Statement** (June 16, 2021) further recognizes (paragraph 13)

the “importance” of the Collaborative Framework “which encourages the use of digital technology to resolve cross border business to business disputes.”

The Aotearoa Plan of Action (November 12, 2021) states that economies will:

“Promote cost-effective mechanisms that support cross-border business-to-business engagement, including through electronic transactions and dispute resolution including under the APEC Collaborative Framework for Online Dispute Resolution of Cross Border Business-to-Business Disputes.”

### **III. SELI’s Work & EAASR Pillars**

The work of SELI, including the Collaborative Framework, contributes strongly to all four pillars of EAASR:

- **Creating an enabling environment for open, transparent, and competitive markets:**
  - *The benefits of systematic adoption of private international legal instruments for business include greater legal certainty on cross border transactions, harmonization of finance and dispute resolution systems, closer economic and legal integration among cooperating economies, and the facilitation of export driven job growth. These texts provide a more complete picture of the legal reforms necessary to promote business in the economy and in regional and international trade.*
  - *The Collaborative Framework is designed to promote confidence among businesses by providing quick electronic resolution and enforcement of disputes across borders, languages, and different legal jurisdictions.*
  - *The availability of a low-cost dispute resolution mechanism will enhance competitiveness and create an enabling environment for businesses to thrive.*
- **Boosting business recovery and resilience against future shocks:**
  - *The use of international legal instruments helps APEC economies improve their legal infrastructure to provide access to credit and secured transactions, boosting business recovery and business restructuring for a resilient industry.*
  - *The development of ODR is crucial during a pandemic like COVID-19, in light of restrictions on travel and court closings, particularly in cross-border trade.*
  - *Use of cross-border ODR under the Collaborative Framework can assist MSMEs and other businesses to recover debts and settle disputes, for speedy business recovery.*
- **Ensuring that all groups in society have equal access to opportunities for more inclusive, sustainable growth, and greater well-being:**
  - *The reforms based on private international law instruments serve to open the doors to greater participation of MSMEs and women in trade. Regulatory reforms empower MSMEs and women to participate more fully in global chain, allowing them to link to investors, importers, and exporters by facilitating market participation.*

- *Lack of access to commercial justice is one of the reasons that MSMEs constitute some 97% of APEC businesses domestically, but account for only a fraction of APEC exports. The fact that they lack cost effective and timely commercial justice for cross-border transactions means that many avoid that risk by not trading across borders.*
  - *The Collaborative Framework is intended to provide MSMEs an opportunity to compete and flourish in the global supply chain by lowering costs of doing business across borders, making it more accessible to all.*
  - *The Collaborative Framework promotes inclusivity, good regional business relationships and entrepreneurship by women.*
- **Harnessing innovation, new technology, and skills development to boost productivity and digitalization:**
    - *ODR and the Collaborative Framework are prime examples of harnessing innovation and new technology to boost productivity.*
    - *Opting-in to or otherwise participating under the Collaborative Framework will enhance digitalization of APEC economies in handling cross-border disputes.*
    - *The SELI Work Plan also focuses on the use of modern technology such as blockchain, automated or smart contracts for contract management or enforcement and prevention of disputes.*

#### **IV. Next Steps for SELI's Work on Structural Reform under EAASR**

SELI will continue its work, in alignment with the four pillars of EAASR, to enhance structural reform for all APEC economies. Upcoming events sponsored by SELI include:

- Workshop on Enhancing Implementation of ODR through the APEC ODR Collaborative Framework and Other Fora including Courts (Proposed by Japan), December 2022, Tokyo, Japan (EC01 2022A);
- Workshop on Stakeholder Engagement and Capacity Building on the APEC ODR Collaborative Framework to Improve Cross-Border Trade (proposed by Indonesia), May 2023 (E02 2022A);
- Workshop on Secured Transaction Reform: Developing Tailored Approaches for Common Law and Civil Law Jurisdictions (proposed by United States), March 2023.

SELI is coordinated and led by Japan. Member economies may nominate legal advisers and officials with legal backgrounds from relevant authorities or agencies to participate in SELI.

**ANNEX 1****Projects Sponsored by SELI**

Project Title	Project Number	Project Year/Location	Proposing Economy/Co-Sponsoring Economies
Workshop on Effective Enforcement of Business Contracts and Efficient Resolution of Disputes through the Hague Choice of Court Agreement Convention	EC 01 2015S	EC 2 2015  Cebu Philippines	Hong Kong, China
Alternative Dispute Resolution – the key to effective settlement of business disputes	EC 022015S	EC 1 2016  Lima, Peru	Hong Kong, China
Use of International Instruments to Strengthen Contract Enforcement in Supply Chain Finance for Global Businesses (including MSMEs)	EC 04 2016S	EC 1 2017  Nha Trang, Viet Nam	Hong Kong China
<u>Workshop on the Use of Modern Technology for Dispute Resolution and Electronic Agreement Management (particularly Online Dispute</u>	EC 03 2017S	EC 1 2018/  Port Moresby Papua New Guinea	Hong Kong, China/  Canada; United States

<u>Resolution (ODR))</u>			
<u>Workshop on Developing a Collaborative Framework for Online Dispute Resolution (ODR)</u>	EC 05 2018A	November 2018 (Osaka, Japan)	United States/ Australia; Canada; Chile; Hong Kong, China; Indonesia; Japan; M exico; New Zealand; Papua New Guinea; Singapore; Chines e Taipei; Thailand; Viet Nam
<u>Stocktake Workshop on the SELI ODR Workplan</u>	EC 02 2018S	February 2019  Santiago, Chile	Hong Kong, China/  Australia; Canada; Chile; Indonesia; Mexico; New Zealand; Papua New Guinea; Peru; Philippines; Russia; Singapore; Chinese Taipei; Thailand; United States; Viet Nam
<u>Workshop on Building the APEC Online Dispute Resolution (ODR) Collaborative Framework Pilot</u>	EC 02 2019S	2019  Osaka, Japan	Japan/  Hong Kong China, Russia
<u>Stocktake of APEC Online Dispute Resolution (ODR) Technologies</u>	EC 02 2020S	Stocktake of APEC Online Dispute Resolution Technologies (April 2022) available at <a href="https://www.apec.org/publications/2022/04/stocktake-of-apec-online-dispute-resolution-technologies">https://www.apec.org/p ublications/2022/04/stockt ake-of-apec-online- dispute-resolution- technologies</a> .	Russia/Hong Kong, China
<u>Webinar Series on Implementing the APEC ODR Collaborative Framework through the Satellite Website</u>	EC 03 2021S	Overview of Satellite Website, 27 August 2021)  Overview of Satellite Website and Discussion of Issues Concerning	Japan/Hong Kong, China; Indonesia; Russia; Singapore; United States; Viet Nam



		<p>Opting-In, 24 September 2021)</p> <p>Overview of Satellite Website and Discussion of Issues Concerning Providers, 8 October 2021)</p> <p>Overview of Satellite Website and Discussion of Issues Concerning Assistance to MSMEs, 22 October 2021)</p>	
<p><u>Workshop on Implementing the APEC Online Dispute Resolution (ODR) Collaborative Framework</u></p>	EC 02 2020A	<p>16-18 February 2022 (virtual).</p> <p>See Report on Workshop on Implementing the APEC ODR Collaborative Frame Work (March 2022) available at <a href="https://www.apec.org/publications/2022/03/workshop-on-implementing-the-apec-odr-collaborative-framework">https://www.apec.org/publications/2022/03/workshop-on-implementing-the-apec-odr-collaborative-framework</a></p>	<p>Japan/Chile; China; Hong Kong, China; Indonesia; Papua New Guinea; Russia; Chinese Taipei; United States; Viet Nam</p>
<p>Hybrid Workshop on Modernizing Secured Transaction Legal Regimes in APEC Economies through International Instruments and Effective Dispute Resolution Mechanisms (including ODR)</p>	EC03 2020A	<p>24-25 May, 2022, Tokyo, Japan</p> <p>Refer also to the Workshop Report and Study on the Effect of the Covid-19 Pandemic on Secured Lending Reform and Access to Credit in APEC Economies (pending endorsement)</p>	<p>United States/Hong Kong, China, Japan, Indonesia; and Viet Nam.</p>

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## **ANNEX 2**

### **EC Policy Dialogues Sponsored By SELI**

**EC 2 2016 – Lima, Peru - Joint PSG-SELI Policy Discussion on Improving Participation and Transparency in Policy-Making and Implementation (with OECD, UNCITRAL and Hague Conference experts).**

**EC 1 2017 - Nha Trang, Viet Nam – Policy Dialogue on Cross-border MSME Access to Commercial Justice.** *The EC endorses the SELI Work plan for development of a cooperative ODR framework for MSMEs in B2B Transactions (with 11 economies as co-sponsors).*

**EC 2 2017 Ho Chi Minh City – Policy Dialogue on SELI Work Plan on Online Dispute Resolution.** *EC endorses an expanded version of the Work Plan (with 14 economies as co-sponsors).*

**EC 2 2018, Port Moresby – Policy Dialogue on Online Dispute Resolution.**

**EC 1, 2019, Santiago, Chile – Online Dispute Resolution.** *EC agreed to continue implementation of the SELI ODR Work Plan and welcomed the preparatory work being carried out on the APEC Collaborative Framework for ODR and Model Procedural Rules.*

**EC 2, 2019, Puerta Veras, Chile – Policy Dialogue on Secured Transaction and Online Dispute Resolution.** *The EC endorses the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes and its Model Procedural Rules on a pilot basis.*

**EC 1, 2020 Putrajaya, Malaysia - Policy Dialogue on APEC ODR Collaborative Framework.** *The EC welcomed the proposed SELI Work Plan for Implementation of the APEC ODR Collaborative Framework.*

**EC 1, 2021, Virtual Meeting - Policy Dialogue on APEC Collaborative Framework for ODR and SELI Administrative Implementation Work Plan.** *EC endorses the SELI Administrative Implementation Work Plan and the Proposal for the Satellite Website as living documents subject to further refinement and review.*

**EC 1, 2022, Virtual Meeting -- Policy Dialogue on the Launch of the APEC Collaborative Framework for Online Dispute Resolution.** *General consensus for EC to proceed to implement the Collaborative Framework by partnering with ODR providers that: a) are from economies that have opted into the Collaborative Framework; and b) have certified their compliance with the Collaborative Framework and Model Procedural Rules. These providers should be listed on the ODR satellite website.*

### **ANNEX 3**

An APEC Business Advisory Council (ABAC) survey of small businesses found

lack of dispute resolution to be the major reason why small businesses abandon cross-border trade. It is a "major" or "severe" problem for 58% of respondents. In emerging economies, that number rose to 74%. The survey also found that ODR has an important role in providing increased access to justice and markets for women led MSMEs.

ABAC & University of Southern California, Realizing the Untapped Potential of MSMEs in APEC, at 6, 40 (2018), available at <http://info.marshall.usc.edu/academic/gpp/abac/SiteAssets/ABAC%202018%20Final%20Report.pdf> (APEC interviews with 560 business executives and trade association leaders plus 430 survey responses).

According to another regional study:

as many as 35% of cross-border disputes involving MSMEs remain unresolved with the average value of the dispute being some \$50,000. It also found that reducing the number of unresolved disputes through implementation of ODR would increase the liquidity and sustainability of MSMEs.

Other studies show

that the vast majority of small business B2B disputes are about payments. MSMEs are particularly vulnerable to late payments as their cash flow and credit lines are far more restricted than those of larger companies.