Study on Issues in Implementing the ODR Collaborative Framework and Using ODR in APEC Courts

APEC Economic Committee

August 2025

Asia-Pacific
Economic Cooperation

Asia-Pacific
Economic Cooperation

Study on Issues in Implementing the ODR Collaborative Framework and Using ODR in APEC Courts

APEC Economic Committee

August 2025

APEC Project: EC 102 2024A

Produced by
Mike Dennis

Project Overseer: Professor Yoshihisa Hayakawa
SELI Conveyer / Rikkyo University

For
Asia-Pacific Economic Cooperation Secretariat
35 Heng Mui Keng Terrace
Singapore 119616
Tel: (65) 68919 600
Fax: (65) 68919 690
Email: info@apec.org
Website: www.apec.org

© 2025 APEC Secretariat

APEC#225-EC-01.2

The information and recommendations provided in this study were developed using information available at the time and through dialogue with economies that responded to a questionnaire as part of this study.

Except where otherwise attributed, the views and recommendations expressed in this document are those of the author and do not necessarily represent those of the APEC member economies. The recommendations do not have any binding effect, though the APEC Economic Committee may further consider them.

Table of Contents

I. INTRODUCTION 4
II. IMPLEMENTATION OF THE COLLABORATIVE FRAMEWORK 5
A. OVERVIEW 5
B. ALL APEC ECONOMIES WOULD BENEFIT FROM OPTING INTO THE COLLABORATIVE FRAMEWORK 8
1. PROVIDES ECONOMY BUSINESSES GREATER ACCESS TO JUSTICE AND FACILITATES THEIR PARTICIPATION IN INTERNATIONAL TRADE 8
2. PROVIDES ECONOMY PROVIDERS AN OPPORTUNITY TO PARTNER WITH APEC 9
3. NO LEGAL IMPEDIMENTS TO USING ODR IN ANY APEC ECONOMY 11
C. BUILDING ODR PROVIDER CAPACITY 14
D. BUILDING MSME CAPACITY. 17
III. APPLICATION OF ODR TO B2C TRANSACTIONS 20
A. DRAMATIC INCREASE IN B2C IN APEC ECONOMIES 20
B. GENERAL LACK OF A REMEDY FOR RESOLVING CROSS-BORDER B2C DISPUTES. 23
C. COLLABORATION WITH ASEAN. 26
IV. DEVELOPING USER-CENTRIC ODR PLATFORMS IN APEC ECONOMY COURTS 27
A. UNITED STATES 28
B. CANADA–BRITISH COLUMBIA 30
C. CHINA 31
V. CONCLUSION 33
ANNEX 1 WORKSHOP CONCLUSIONS AND RECOMMENDATIONS 34
ANNEX 2 OVERVIEW OF APEC PARTNERING OD PROVIDERS 36

I. Introduction

This Study seeks to explore ways to improve the implementation of Online Dispute Resolution (ODR) under the APEC Collaborative Framework for ODR of Cross-Border Business-to-Business (B2B) Disputes (Collaborative Framework)[1] by (1) reviewing the overall progress on the implementation of the APEC ODR Collaborative Framework for B2B disputes; (2) discussing the benefits for APEC businesses and dispute resolution providers when economies opt into the Collaborative Framework; (3) developing strategies to assist in capacity building for partnering APEC ODR providers and to encourage member economy businesses (including micro, small, and medium-sized enterprises (MSMEs)) to use ODR through the APEC-listed ODR providers; and (4) considering the application of ODR to business-to-consumer (B2C) transactions. This Study will also consider more broadly how to implement ODR in APEC courts.

This Study is based on desktop research, reports from international organizations, questionnaire responses, and comments on the draft study from APEC economies.

This Study builds on the earlier work of APEC concerning the Collaborative Framework. Since the Framework was launched in 2022, the APEC EC has held four workshops on ODR and the Collaborative Framework: one in Tokyo in December 2022,[2] a second in Bali in July 2023, a third in Tokyo in January 2024,[3] and a fourth in Tokyo in November 2024. This Study was reviewed and revised based on Conclusions and Recommendations from the fourth Workshop in November 2024. The Conclusions and Recommendations from that Workshop are contained in Annex 1.

The EC has also held three policy dialogues reviewing the implementation of the APEC ODR Collaborative Framework: (1) at EC 2 in Korea on 13 August 2025; (2) at EC 1 in Lima, Peru, on 4-5 March 2024;[4] and (3) earlier at EC 1 in Palm Spring, United States, on 27-28 February 2023.[5]

Additionally, this Study considers four APEC studies on ODR:

1) Stocktake of APEC Online Dispute Resolution Technologies (April 2022) (Russia);[6]
(2) Study on Best Practices in Using ODR (January 2023) (Japan);[7]

[1] For the Collaborative Framework and its Model Procedural Rules, see the APEC ODR Website, which is dedicated to the implementation of the Framework at https://www.apec.org/SELI (also accessible through the webpage of the APEC EC at https://www.apec.org/groups/economic-committee).
[2] APEC Workshop on Enhancing Implementation of Online Dispute Resolution (ODR) through the APEC ODR Collaborative Framework and Other Fora including Courts, March 2023, available at https://www.apec.org/docs/default-source/publications/2023/3/apec-workshop-on-enhancing-implementation-of-online-dispute-resolution/223_ec_apec-workshop-on-enhancing-implementation-of-online-dispute-resolution.pdf?sfvrsn=60e5678b_2.
[3] APEC Workshop on Implementation of ODR in APEC Economies, including through the APEC ODR Collaborative Framework, January 2024, available at https://www.apec.org/docs/default-source/publications/2024/3/224_ec_apec-workshop-on-enhancing-implementation-of-online-dispute-resolution.pdf?sfvrsn=4f88383_2.
[4] Report by the Chair of the Economic Committee on the First Economic Committee Meeting 2024, at 5-6, available at https://mddb.apec.org/Documents/2024/SOM/SOM1/24_som1_009a.pdf (report as endorsed by senior officials).
[5] Report by the Chair of the Economic Committee on the First Economic Committee Meeting 2023, at 5-6, available at https://mddb.apec.org/documents/2023/som/som1/23_som1_008.pdf (report as endorsed by Senior Officials).
[6] APEC Economic Committee, Stocktake of APEC Online Dispute Resolution Technologies, April 2023, https://www.apec.org/publications/2022/04/stocktake-of-apec-online-dispute-resolution-technologies.
[7] APEC Economic Committee, Study on Best Practices in Using ODR, January 2023, https://www.apec.org/publications/2023/01/study-on-best-practices-in-using-odr.

(3) Stakeholder Engagement and Capacity Building on the APEC Collaborative Framework on ODR to Improve Cross-border Trade in Indonesia (September 2023) (Indonesia);[8] and
(4) Study of Economy Legal Frameworks for the Implementation of ODR under the APEC Collaborative Framework (June 2024) (Japan).[9]

The APEC EC Strengthening Economic Legal Infrastructure (SELI) Implementation Work Plan under the Enhanced APEC Agenda for Structural Reform (EAASR) (endorsed by the EC in November 2021) recognizes the important contribution the Collaborative Framework makes to all four pillars of APEC's work on EAASR. These include creating an enabling environment for open, transparent, and competitive markets, boosting business recovery and resilience against future shocks, and harnessing innovation, new technology, and skills development to boost productivity and digitalization.[10]

The workshops and studies have been funded through the ASF SELI Sub-Fund. This Sub-Fund facilitates and implements relevant work plans endorsed by the Economic Committee (EC), including the Collaborative Framework.[11] Any APEC economy can submit a concept note/project proposal under the ASF SELI Sub-Fund to build ODR capacity and promote the implementation of the APEC ODR Collaborative Framework.

II. Implementation of the APEC ODR Collaborative Framework

A. Overview

Under the APEC ODR Collaborative Framework (endorsed by the Economic Committee at EC 2 in 2019), APEC partners with ODR providers from economies that have opted into the Collaborative Framework. The APEC EC promotes ODR providers on its website and encourages businesses, particularly MSMEs, to use them to resolve their cross-border commercial disputes.[12] The APEC Model Procedural Rules (also endorsed at EC 2 in 2019) ensure that the same standards of due process apply across APEC when using ODR under the Collaborative Framework.

The APEC EC SELI Administrative Implementation Work Plan for the Collaborative Framework (Administrative Implementation Work Plan) (endorsed by the EC 1 in 2021) provides the structure for implementing the Collaborative Framework, including collaboration between academic institutions and the EC. An APEC ODR Satellite

[8] APEC Economic Committee, Stakeholder Engagement and Capacity Building on the APEC Collaborative Framework on ODR to Improve Cross-Border Trade in Indonesia - Final Report, September 2023, https://www.apec.org/publications/2023/09/stakeholder-engagement-and-capacity-building-on-the-apec-collaborative-framework-on-odr-to-improve-cross-border-trade-in-indonesia---final-report.
[9] APEC Economic Committee, Study of Economy Legal Frameworks for the Implementation of ODR under the APEC Collaborative Framework, June 2024, https://www.apec.org/docs/default-source/publications/2024/6/224_ec_study-on-economy-legal-frameworks-for-the-implementation-of-odr-under-the-apec-collaborative-framework.pdf?sfvrsn=29641a31_1.
[10] Strengthening Economic and Legal Infrastructure (SELI) Friends of the Chair (FoTC), Workplan on Structural Reform under APEC Agenda for Structural Reform (EAASR), at 10, endorsed by the Economic Committee (EC) in December 2021, http://mddb.apec.org/Documents/2022/EC/EC1/22_ec1_016.pdf.
[11] APEC Project Funding Sources, APEC Support Fund – Sub-Fund on Strengthening Economic Legal Infrastructure, https://www.apec.org/Projects/Funding-Sources. As of June 2025, the balance in the SELI Sub-Fund was $1,251,600. Hong Kong, China has contributed $2 million to the SELI Sub-Fund.
[12] Collaborative Framework, paras. 1-4.

Website proposal (also endorsed at EC 1 in 2021) provides for a centralized website (https://www.apec.org/SELI).[13]

In August 2024, Indonesia and Papua New Guinea joined the Collaborative Framework, bringing the total number of economies that have opted in to seven, or a third of all economies. The economies that opted in earlier were:

- China
- Hong Kong, China
- Japan
- Singapore
- United States.[14]

Opting into the Collaborative Framework does not impose binding legal obligations but allows those economies' providers to participate in the Framework and partner with APEC.[15]

APEC began partnering with ODR providers in June 2022. Initially, the APEC EC partnered with four ODR providers from economies that have opted into it:

• eBRAM International Online Dispute Resolution Centre Limited (eBRAM) (Hong Kong, China),
• Guangzhou Arbitration Commission (GZAC) (China),
• China International Economic and Trade Arbitration Commission (CIETAC) (China), and
• U&I Advisory Service (Japan).

More recently, two additional providers have partnered with the APEC EC:

• CPR Dispute Resolution (United States) in January 2024; and
• Beijing Arbitration Commission/Beijing International Arbitration Court (BAC/BIAC) (China) in January 2025.[16]

Two additional providers are preparing to partner with APEC: the BANI Arbitration Center (Indonesia) and the Shanghai Arbitration Commission (China).[17] BANI has already set up APEC ODR platforms following the APEC ODR Collaborative Framework.[18]

[13] SELI Administrative Implementation Work Plan for the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes, 2021/SOM1/ and its Proposal for the Satellite Website (2021/SOM1/EC/014), http://mddb.apec.org/Documents/2021/EC/EC1/21_ec1_012.pdf. For the EC endorsement of the Work Plan and Satellite Website, see Report of the Chair of the Economic Committee on EC 1 (2021) at 1, available at https://mddb.apec.org/Documents/2021/SOM/SOM1/21_som1_010.pdf.
[14] The Economies that have opted into the Collaborative Framework are listed on the APEC ODR website at https://www.apec.org/SELI/Economies.
[15] Id. The APEC ODR website states: "Opting-in to the APEC ODR Collaborative Framework does not create binding obligations for an economy but it allows that economy's ODR providers to participate in the APEC ODR Collaborative Framework and to be listed as a partnering ODR provider." See also discussion infra, notes 29-30, and accompanying text.
[16] The providers that have partnered with the APEC EC are listed at https://www.apec.org/SELI/ODR-Providers.
[17] APEC November 2024 Workshop, BANI (Huala Adolf), BANI's Plan after the Opt-In at 2-3, Yongmin Bian, Progress on Implementation of ODR and the Collaborative Framework in China at 8.
[18] BANI's Plan after the Opt-In at 2-3, supra note 17.

The listed ODR providers are governed by the relevant laws and regulations of the respective participating economies. If a listed ODR provider is not in compliance with any part of the Framework and Model Procedural Rules, APEC may remove the ODR provider from its list of Partnering ODR providers.[19]

Annex 2 summarizes each provider's platform presentation at the APEC ODR Workshops held in January and November 2024, highlighting their ODR platforms and compliance with the terms of the Collaborative Framework.

Under the SELI Administrative Implementation Work Plan, the APEC EC can also call on its team of academic experts to help review ODR Providers' compliance with the Framework and Rules and help bring Providers into compliance where appropriate. They can also assist with ODR capacity building for economies, providers, and businesses, including MSMEs.[20]

In September 2024, Papua New Guinea selected its lead academic institution:

- University of Papua New Guinea, School of Law (Mr. Michael Steven Wagambie).

Earlier, five lead academic institutions agreed to coordinate with other academic institutions in the implementation of the Collaborative Framework:

- University of Hong Kong (Hong Kong, China) (Dr. Yun Zhao)
- Indiana University (United States) (Dr. Angie Raymond)
- Rikkyo University (Tokyo, Japan) (Dr. Mayu Watanabe)
- Singapore Management University (Singapore) (Dr. Nadja Alexander)
- University of International Business and Economics, School of Law (Beijing, China) (Dr. Yongmin Bian).[21]

Businesses must choose and incorporate the APEC-listed ODR providers in their contractual dispute resolution clauses before they can access the providers' services under the Collaborative Framework. ODR services are only utilized when contractual disputes arise, which may take months or years in a B2B contract.[22]

Preliminary results are promising. GZAC reports that its APEC-ODR platform has resolved over 800 domestic and international disputes totaling over RMB 7 billion, including cases in industries such as e-commerce, live streaming, and intelligent vehicle manufacturing. The parties' citizenship included Brazil; Cambodia; Hong Kong, China; India; Singapore; Chinese Taipei; the UK; and the United States. The average time to resolve a dispute is 36.7 days, with 68.6% resolved during the negotiation and mediation stages. GZAC participant surveys show that the vast majority (83%) would

[19] APEC ODR Collaborative Framework Removal Procedure, available at https://www.apec.org/seli/removal-procedure.
[20] APEC EC SELI Administrative Implementation Work Plan for the Collaborative Framework, supra note 13 at 10-11.
[21] Id at 9.
[22] See SELI Report on the APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes (January 2025) at 2. Under the Collaborative Framework, businesses can also agree post-dispute to use ODR. However, as pointed out at the November 2024 workshop, whoever has a weaker legal case may not agree to an arbitration proceeding post-dispute if they think they may have an award issued against them. See also discussion infra note 92 and accompanying text.

recommend the process to others and felt the APEC ODR process was simple, fair, and timely.[23]

B. All APEC Economies Would Benefit from Opting into the Collaborative Framework

As the November 2024 Workshop concluded, more economies should favorably consider joining the Collaborative Framework. The following reviews key reasons.

1. Provides APEC Businesses Greater Access to Justice and Facilitates Their Participation in Cross-Border Trade

At the January 2024 Workshop, the APEC Business Advisory Council (ABAC) reported that:

- "Across every level of the trade pipeline, access to easy, low-cost dispute resolution has been consistently identified by ABAC as an issue for MSMEs engaged in trade."
- "Interviews with MSMEs engaged in cross-border trade, business leaders, and policymakers in the 21 APEC economies make it clear that MSMEs either do not engage in dispute resolution or try to engage in informal negotiations with the other party. Few, if any, MSMEs used conventional methods of arbitration and legal settlement available due to their perceived complexity and cost."[24]

For this reason, in its 2019 Report to APEC Leaders, ABAC urged them to support the development of the Collaborative Framework. ABAC observed:

> "Across the region, MSMEs account for more than 95 percent of all enterprises and generate more than 50 percent of domestic employment, but they, including women-led MSMEs, are not sufficiently engaged or are underrepresented in cross-border trade and global value chains. This means that our economies and communities are unable to fully realize inclusive economic growth…."
>
> While APEC member economies have been encouraging MSMEs to enter cross-border business…there has been a failure to recognize and prepare companies for the possibility of – and potential harm from – cross-border disputes. In this regard, ABAC welcomes efforts to develop a region-wide framework for online dispute resolution platforms, which will both reduce the time taken to resolve a dispute, reduce legal costs, and provide them the ease to be better prepared to take their businesses offshore, draw up contracts, ensure the inclusion of dispute settlement clauses in the contracts, among others."[25]

[23] GZAC, Briefing on the GZAC ODR Platform, January 9, 2025; APEC November 2024 Workshop, GZAC (Dr. Chen Chen et al), New Development of GZAC ODR Platform at 5. For a summary of the GZAC APEC ODR platform, see Annex 2 infra.
[24] APEC January 2024 Workshop, supra note 3 at 24 (ABAC, Mr. Julius Caesar Parreñas).
[25] ABAC Report to APEC Economic Leaders Chile 2019 at 28-29, https://www2.abaconline.org/assets/2019/2019_Report_to_Leaders/ABAC_Report_2019_Final_web.pdf.

As recognized in the APEC EC SELI Implementation Work Plan under EAASR:

> "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.[26]

The 2023 APEC Economic Policy Report states that:

> "Lack of effective and consistent dispute resolution is also one of the major challenges for MSMEs trading across borders. Improved access to justice is essential to creating an enabling business environment for MSMEs. …Traditional cross-border litigation or in-person alternative dispute resolution mechanisms often entail staggering legal and travel costs, as well as lengthy court procedures. These costs pose significant burdens on SMEs and divert their limited resources away from pursuing business opportunities and participating in international markets, hindering their growth as a result…."
>
> "The APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes presents APEC's initiative to capitalize on the benefits of ODR to facilitate greater access to justice for micro, small, and medium enterprises (MSMEs)."[27]

The November 2024 APEC ODR Workshop concluded:
"Online dispute resolution [ODR] under the APEC ODR Collaborative Framework leverages information and communication technologies to provide a speedy and cost-effective electronic resolution and enforcement of disputes across borders, bridging language and jurisdictional barriers. It provides MSMEs with a quick and inexpensive option to resolve cross-border disputes, promoting cross-border confidence." [28]

2. Enables an Economy's Providers to Partner with APEC

As stated on the APEC ODR Website, opting into the Framework does not involve any binding legal obligations but allows the Economy's providers to Partner with APEC. The ODR website states:

[26] SELI Implementation Workplan Under EAASR, supra note 10 at 4-5.
[27] APEC Economic Policy Report: Structural Reform and an Enabling Environment for Businesses (2023) at 56, https://www.apec.org/docs/default-source/publications/2023/11/223_ec_aepr.pdf?sfvrsn=888cd37c_2.
[28] APEC November 2024 Workshop Conclusions and Recommendations, Annex 1 infra.

"Any APEC economy may opt into the APEC ODR Collaborative Framework by contacting the EC Chair in writing or making a statement at an EC meeting.

Opting into the APEC ODR Collaborative Framework does not create binding obligations for an economy, but it allows the economy's ODR providers to participate in the Framework and be listed as partnering ODR providers**."**[29]

The November 2024 workshop concluded:
"Opting into the Collaborative Framework does not impose legal obligations on economies. However, only ODR providers from those economies that have opted in can partner with APEC under the Collaborative Framework. Therefore, ODR providers can participate when their economies opt into the Collaborative Framework."[30]

The message from APEC partnering providers is that more APEC economies should opt into the Collaborative Framework so that APEC can have more partnering providers that offer more diversified services and better cater to the different needs of MSMEs in the region.

- **CIETAC**: "Getting more APEC economies to join the Collaborative Framework and getting more ODR providers from more APEC economies to join the mechanism will help promote the mechanism more effectively. The vitality of a mechanism stems from its use. The more frequently it is used, the more vigorously it grows and the faster it improves."[31]

- **eBRAM:** "There is a need for a concerted effort among all APEC member economies at the governmental level to promote the APEC ODR mechanism. All APEC economies must consider opting into the Collaborative Framework."[32]

The ODR Providers listed below from economies that have yet to opt in are keen to reap the benefits of partnering with APEC. These ODR providers have assisted APEC in developing the Collaborative Framework, and all have expressed an interest in partnering with APEC under the Collaborative Framework.

- **THAC (Thai Arbitration Center)** (Thailand) has assisted with developing the Collaborative Framework since 2018, participating in several Workshops and Policy Dialogues. THAC operates an ODR platform called Talk DD that provides ODR for copyright, patent, and trademark infringements, family law, and e-commerce disputes. To enhance its ODR capabilities, THAC reports that it is redesigning its platform to align with international best practices and the APEC ODR Collaborative Framework. These improvements aim to ensure that parties can seamlessly engage in negotiation, mediation, and arbitration without limitation and address not only B2B disputes but also business-to-customer (B2C) disputes, ensuring a more comprehensive service for all

[29] APEC ODR Collaborative Framework, Economies: Opting In, https://www.apec.org/SELI/Economies.
[30] APEC November 2024 Workshop Conclusions and Recommendations, Annex 1 infra.
[31] APEC January 2024 Workshop, supra note 3 at 18 (CIETAC, Dr. Dr. Fan Yang).
[32] Id. at 19 (eBRAM, Ms. Pui-Ki Emmanuelle Ta).

users.[33] At the January 2024 APEC Workshop, THAC stated that "it would be extremely helpful if Thailand opted into the Collaborative Framework, and THAC could partner with the APEC EC to offer ODR under the Collaborative Framework."[34]

- **AIADR (Asian Institute of Alternative Dispute Resolution)** (Malaysia) reported at the November 2024 ODR Workshop that it has established an ODR platform following the requirements of the APEC ODR Collaborative Framework. AIADR stated that it has engaged with multiple agencies within the Malaysian government to encourage it to opt into the Collaborative Framework.[35]

- **CAM Santiago ODR** (Chile) has actively participated in APEC's work on developing the Collaborative Framework since 2018, including through workshops and policy dialogues. In 2013, CAM pioneered the development of a digital processing platform for mediation and arbitration (e-CAM Santiago). Subsequently, it created ODR CAM to provide ODR for both B2B and B2C disputes. CAM Santiago's ODR B2B Platform is in its pilot stage and provides for resolving commercial disputes between businesses, particularly MSMEs, through online negotiation, mediation, and arbitration, consistent with the requirements of the APEC ODR Collaborative Framework. If Chile opts into the Collaborative Framework, CAM Santiago would want to partner with APEC.[36]

Recommendation. Some APEC economies, including those that have not opted into the Collaborative Framework, have requested that APEC collaborate with their local service providers to implement ODR.[37] The November 2024 APEC ODR Workshop recommended that the EC (SELI) should: "Partner with as many ODR providers as possible from economies that have opted in and reach out to providers in economies that have not opted in to gauge their potential interest in partnering with APEC."[38]

3. No Legal Impediments to Using ODR in any APEC Economy

The Collaborative Framework addresses the legal framework that economies need for its successful implementation. It explains that it is not essential for the laws relevant to ODR to be identical in all APEC economies. However, the Collaborative Framework lists several key UNCITRAL instruments on dispute resolution (arbitration) and e-commerce (e-documents and e-signatures) that provide the cornerstone for implementing ODR under the Collaborative Framework.[39]

- *New York Convention*[40]—Provides for the recognition of online arbitration agreements, including the parties' agreement regarding the place of arbitration,

[33] APEC November 2024 Workshop, THAC (Nicky Balani), Summary of THAC ODR (November 21, 2024); Thailand Response to APEC ODR Questionnaire in EC 102 2024A (October 29, 2024).
[34] APEC January 2024 Workshop, supra note 3, at 22-23 (THAC, Ms. Thunpicha Rungcheewin).
[35] APEC November 2024 Workshop, AIADR (Ricky Tan), Online Dispute Resolution (ODR) Development in Malaysia – A Practitioner Perspective at 3-9.
[36] Email from CAM Santiago (Laura Aguilera Villalobos), October 10, 2024.
[37] See Malaysia Response to APEC ODR Questionnaire in EC 01 2022A (October 2022).
[38] APEC November 2024 Workshop Conclusions and Recommendations, Annex 1 infra.
[39] APEC ODR Collaborative Framework, para. 7.1.
[40] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (New York Convention), https://uncitral.un.org/en/texts/arbitration.

institutional rules, and arbitral procedures. It also provides for recognizing and enforcing foreign arbitration awards subject only to narrowly defined exceptions. All APEC economies have implemented the New York Convention.

- *UNCITRAL Model Law on International Commercial Arbitration*[41]— Procedural legal framework for using ODR and binding arbitration. It has been implemented by 17 out of 21 APEC economies. While some APEC economies have not enacted the Model Law, every economy recognizes the parties' freedom of contract to choose the rules of procedure governing the process, such as the APEC ODR Model Procedural Rules.
- *Electronic Communications Convention*[42] and *UNCITRAL Model Law on Electronic Commerce*[43]—Recognition of e-documents and e-signatures in commercial transactions. 17 out of 21 APEC economies have implemented one or the other instrument. However, every APEC economy provides for the recognition of e-documents and e-signatures.

CHART ONE: Implementation of Private International Law Instruments in APEC

Economies	New York Convention	Model Law on International Commercial Arbitration	Model Law on Electronic Commerce	Electronic Communications Convention[44]
Australia	YES	YES	YES	-
Brunei Darussalam	YES	YES	YES	-
Canada	YES	YES[45]	YES	-
Chile	YES	YES	-	-
China	YES	-	YES	-
Hong Kong, China	YES	YES	YES	-
Indonesia	YES	-	-	-
Japan	YES	YES	-	-
Malaysia	YES	YES	YES	-
Mexico	YES	YES	YES	-
New Zealand	YES	YES	YES	-
Papua New Guinea	YES	YES	YES	-
Peru	YES	YES	-	-
The Philippines	YES	YES	YES	YES
Republic of Korea	YES	YES	YES	-
Russia	YES	YES	YES	YES
Singapore	YES	YES	YES	YES
Chinese Taipei	YES[46]	YES	YES	-
Thailand	YES	YES	YES	-
USA	YES	-	YES	-
Viet Nam	YES	-	YES	-

[41] UNCITRAL Model Law on International Commercial Arbitration (Rev. 2006), https://uncitral.un.org/en/texts/arbitration.
[42] United Nations Convention on the Use of Electronic Communications in International Contracts (2005) (Electronic Communications Convention),https://uncitral.un.org/en/texts/ecommerce.
[43] UNCITRAL Model Law on Electronic Commerce (1996), https://uncitral.un.org/en/texts/ecommerce.
[44] China and the Republic of Korea have signed the Convention.
[45] According to UNCITRAL, each of Canada's provinces has enacted legislation following the UNCITRAL Model Law. See https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration.
[46] While Chinese Taipei is not a contracting party to the New York Convention, its Arbitration Act is modeled on the Convention.

SOURCE: Status Table of All UNCITRAL Texts, https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/overview-status-table.pdf.

The APEC Study of Economy Legal Frameworks for Implementation of ODR under the APEC Collaborative Framework (June 2024) conducted an in-depth analysis of APEC economy laws and demonstrated that each economy:

- "Permits the use of ODR for cross-border business-to-business (B2B) disputes;
- Recognizes parties' agreements to use ODR under the Collaborative Framework, including through agreements concluded electronically;
- Permits the parties or the ODR provider to choose the place of arbitration (seat of arbitration);
- Permits the parties to agree that proceedings be conducted using electronic communications and an ODR platform, including for the initiation of the ODR proceedings;
- Permits the parties to agree to the use of a documents-only decision or a remote hearing;
- Provides for the enforcement of negotiated or mediated settlement agreements;
- Provides for recognition and enforcement of foreign online awards."[47]

The November 2024 Workshop concluded:

"APEC economies have broadly implemented the key international instruments relevant to ODR, as listed in the Collaborative Framework. There are no legal impediments to using ODR in any APEC economy."[48]

4. Example of Papua New Guinea

As pointed out above, Papua New Guinea opted into the Collaborative Framework in August 2024. At the November 2024 Workshop, the Papua New Guinea representatives explained that:

> "The enactment of the Papua New Guinea Arbitration (International) Act 2024, and our participation in the APEC Collaborative Framework for Online Dispute Resolution (ODR) marks a significant milestone in strengthening our capacity to resolve cross-border business disputes, especially for micro, small, and medium-sized enterprises (MSMEs)."
>
> "Key recommended actions for Papua New Guinea include engaging with APEC's Economic Committee for technical guidance, establishing supportive legal frameworks, and fostering public-private partnerships with dispute resolution providers to promote ODR usage. These measures will enhance Papua New Guinea's online dispute resolution infrastructure, fostering a more inclusive and efficient environment for businesses engaged in cross-border trade."[49]

[47] Study on Economy Legal Frameworks for Implementing ODR, supra note 9 at 5.
[48] APEC November 2024 Workshop Conclusions and Recommendations, Annex 1.
[49] APEC November 2024 Workshop, Papua New Guinea and ODR (Michael Wagambie, PNG Lead Academic and Ms. Maranatha Letuan, Senior Legal Officer, Department of Justice and Attorney General, PNG).

Recommendation: The uniform conclusion from APEC ODR Workshops has been that all APEC economies would benefit from opting into the Collaborative Framework. The November 2024 APEC Workshop recommended that "APEC Economies should favorably consider opting into the Collaborative Framework." [50]

C. Building APEC ODR Providers' Capacity

Under the Collaborative Framework, each partnering APEC ODR provider must comply with all the terms of the APEC ODR Collaborative Framework and Model Procedural Rules, including:

1. Keeping all information confidential and maintaining secure databases and websites (Collaborative Framework para. 5.1);
2. Charging reasonable fees proportionate to the amount in dispute (Collaborative Framework paras. 4.2, 6.2);
3. Providing for the use of online negotiation, mediation, and arbitration (Collaborative Framework, para. 1.2); and
4. Providing data on the pilot's success to the APEC EC and other providers each June and December (APEC ODR Collaborative Framework, Paragraphs 4.3-4.5).[51]

Each partnering ODR provider has certified its compliance with the terms of the Collaborative Framework. They have also regularly participated in APEC workshops and provided a detailed overview of their platforms' operation and compliance with the Collaborative Framework's requirements.[52]

Under the Collaborative Framework, Lead Academics play a key role in assisting providers in complying with it. They may also help partnering providers implement state-of-the-art, user-friendly platforms.[53]

1. Usability Review of Partnering ODR Providers

In 2022, the Singapore Management University, in collaboration with SELI, conducted a UX (usability) review of ODR provider platforms that initially partnered with APEC. The review included:

1. Efficiency of the dispute resolution process
2. Cost
3. User interface
4. Linguistic accessibility & capabilities
5. Technical support & feedback collection
6. User capacity-building

[50] APEC November 2024 Workshop Conclusions and Recommendations, Annex 1.
[51] See APEC ODR Collaborative Framework, Self-Certification, https://www.apec.org/SELI/Self-Certification.
[52] See Annex 2 infra for an overview of each provider's platform.
[53] APEC EC SELI Administrative Implementation Work Plan for the Collaborative Framework, supra note 13 at 10-11.

The study results were presented at the 2022 APEC ODR Workshop, with active participation from the APEC ODR Providers.[54]

CIETEC reports that in 2023, it made further improvements to its APEC-ODR platform after following suggestions from the Singapore Management University evaluation team. A new tab called "User Guide" was added to the platform with the introductory video and instruction manual for users' easy reference, and a floating window was introduced to give quick access to a list of frequently asked questions, the User Guide, and the Inquiry Service. According to CIETEC, these improvements have made the platform more user-friendly and accessible.[55]

Recommendation: The Economic Committee (SELI) might request that the Lead Academics offer a usability review to new partnering APEC ODR providers. The November 2024 Workshop recommends that "SELI, with help from Lead Academics, should … conduct UX reviews of APEC-approved ODR providers."[56]

2. Encouraging the Use of Advanced Technologies and AI

Under the Collaborative Framework, ODR providers are encouraged to use advanced technologies such as AI wherever possible.[57] The APEC ODR Collaborative Framework further requires that partnering ODR providers keep all information confidential and maintain secure databases and websites.[58]

APEC's partnering ODR providers have embraced advanced technologies.

Artificial Intelligence (AI). Generative AI is used by partnering ODR providers to power various components of ODR, such as handling multiple languages, guided dispute resolution, evaluation of cases, computer-aided mediation, or AI-only mediation. AI can significantly simplify, speed up, and even out the dispute resolution process. Best of all, AI is constantly improving as it gains additional data.[59]

Chatbots and Virtual Assistants. APEC ODR providers use AI-powered chatbots to help guide the parties through the ODR process, especially during the negotiation stage. The chatbots provide information, answer questions, and assist with agreement documentation.[60]

Blockchain and Distributed Ledger Technologies (DTL). Partnering APEC providers use blockchain to create secure, transparent, and tamper-proof digital data. Blockchain uses cryptology and a decentralized, distributed ledger to ensure that data cannot be altered.[61]

[54] Report of the December 2022 APEC ODR Workshop, supra note 2 at 24 (Singapore Management University, Dr. Nadja Alexander et al).
[55] APEC November 2024 Workshop, CIETAC (Dr. Fan Yang), Experience and Reflection from an APEC ODR Provider's Perspective at 8; Email from CIETAC, October 15, 2024.
[56] APEC November 2024 Workshop Conclusions and Recommendations, Annex 1 infra.
[57] APEC ODR Collaborative Framework, para. 1.2.
[58] Id. para. 5.1.
[59] See Annex 2 infra.
[60] Id.
[61] Id.

Recommendation. The APEC EC (SELI) may wish to help new APEC partnering ODR providers with the use of advanced technologies where necessary. The November 2024 Workshop recommended that the APEC EC (SELI), with help from lead academics, should: "Encourage the use of advanced technologies, including artificial intelligence, by ODR providers to facilitate the ODR process under the Collaborative Framework."[62]

The use of AI also has risks, including unauthorized access, vulnerability to viruses and exploits, or unfair underlying rules. For that reason, the APEC Best Practices on Using ODR provides that AI use be auditable.[63] The APEC EC (SELI), with assistance from lead academics, may wish to assist APEC ODR providers in complying with any audit obligations concerning the use of AI.

3. ODR Platform Development

At the November 2024 Workshop, Papua New Guinea noted that no private providers in PNG are capable of offering ODR. PNG emphasized that strategic collaboration with partnering providers under the Collaborative Framework can bring expertise, advanced technology, and training resources to accelerate the adoption and use of ODR platforms in PNG.[64]

Partnering providers have stated their willingness to collaborate with other providers through resource and platform sharing. For example, at the January 2024 Workshop, eBRAM stated:

> "Simultaneously, eBRAM is also willing to collaborate with other ODR providers at the provider level through resource sharing, such as sharing its ODR Platform, to complement such efforts."[65]

Additionally, at the November 2024 Workshop, ODR.com also stated it is willing to collaborate with other APEC providers to develop ODR platforms under the Collaborative Framework. ODR.com offers a multilingual ODR platform for cross-border resolution of MSME disputes and hopes to find partners who can help it localize its services across APEC in different cultural contexts. It doesn't have arbitrators or mediators; it only offers a software platform. ODR.com has worked closely with the APEC EC to help develop the Collaborative Framework. At the November 2024 Workshop, ODR.com highlighted the ways in which advanced technology and AI can improve an ODR platform, including through intake/diagnosis, payment processing, case administration, notifications, document management, calendars/scheduling, and assisted negotiation.[66]

Recommendation: The APEC EC, with help from Lead Academics and providers, might assist those who wish to partner with APEC in developing ODR platforms and using advanced technologies.

[62] APEC November 2024 Workshop Conclusions and Recommendations, Annex 1 infra.
[63] Best Practices in Using ODR, supra note 7 at 10-11. APEC's Best Practices on AI follow the Online Dispute Resolution Standards of the National Center for Technology and Dispute Resolution and the International Council. APEC November 2024 Workshop, Leah Wing, ODR Principles.
[64] APEC November 2024 Workshop, Papua New Guinea, supra note 49 (Michael Wagambie and Ms. Maranatha Letuan, PNG).
[65] APEC January 2024 Workshop, supra note 3 at 20-21 (eBRAM, Ms. Pui-Ki Emmanuelle Ta).
[66] APEC November 2024 Workshop, ODR.Com (Colin Rule, Josh Remis), ODR and the Rise of the Fourth Party.

4. Assisting with Developing a Roster of Neutrals and Training of Neutrals

The Collaborative Framework requires the provider to create a roster of neutrals and ensure adequate training to give them the skills to mediate, arbitrate disputes, and manage the technology.[67] Under the SELI Administrative Implementation Work Plan, the APEC EC can call on its team of Lead Academics to "Assist member economies in supporting, communicating with, and assessing potential ODR providers, including assisting in the creation of a neutral roster and training of neutrals."[68]

Papua New Guinea observed at the November 2024 APEC ODR Workshop:

> "To support the effective implementation of ODR, capacity-building initiatives such as training mediators and arbitrators, providing technical support for ODR platforms, and raising awareness among MSMEs are crucial. Opting in will enable Papua New Guinea to collaborate with other Member economies that have already opted in and offer training and seminars to enhance capacity building in ODR."[69]

Similarly, Viet Nam stressed the need to:

> "Train mediators, arbitrators, and legal professionals in handling ODR to ensure that they understand the digital tools and processes involved in ODR. Well-trained ODR professionals will enhance the quality and reliability of ODR, increasing trust in the system."[70]

Recommendation: The Economic Committee (SELI) might also request that economies, providers, and lead academics assist with the training of neutrals. CIETAC has further suggested that "the APEC EC (SELI) may issue Guidelines for Neutrals and organize training workshops for the current neutral teams of the partnering ODR providers to ensure uniform understanding and practice of the APEC Model Procedural Rules and mechanisms."[71]

D. Building MSME Capacity

A crucial issue in implementing the Collaborative Framework is encouraging APEC businesses, including MSMEs, to adopt ODR and the APEC ODR providers. Surveys indicate that small enterprises often operate without clear contracts and dispute resolution clauses, which makes them vulnerable in case of disputes.[72] Use of ODR and the APEC ODR providers would foster a culture of contract-based relationships.

[67] See APEC ODR Collaborative Framework, Removal Procedures, note 19 supra and accompanying text.
[68] APEC EC SELI Administrative Implementation Work Plan for the Collaborative Framework, supra note 13 at 11.
[69] APEC November 2024 Workshop, Papua New Guinea and ODR, supra note 49 (Michael Wagambie and Ms. Maranatha Letuan PNG). They further noted that "the Department of Justice of Hong Kong, China reached out to PNG proposing possible collaborations and inviting their participation in programs to be offered by the Hong Kong International Legal Talents Training Academy recently launched in November 2024."
[70] APEC November 2024 Workshop, Viet Nam, Online Dispute Resolution in Viet Nam at 11.
[71] APEC January 2024 Workshop, supra note 3 at 19 (CIETAC, Dr. Fan Yang).
[72] Ecorys, Study on the Use of Alternative Dispute Resolution for Business-to-Business Disputes in the European Union (2012) at 111.

This, in turn, would make transactions more efficient, reduce risk, and help MSMEs become more competitive by lowering costs. An effective system will lead to tangible economic benefits for everyone, lowering transaction costs for both sellers and buyers across the supply chain.

The workshop participants recognized that APEC, in collaboration with ABAC, should lead efforts to promote ODR to the private sector, governments, and the legal community. They should also build capacity by leveraging support from trade associations, chambers of commerce, donors, law facilities, and corporate social responsibility programs. Effective implementation of the Collaborative Framework will require a concerted effort among partnering ODR providers, all APEC member economies, and the APEC EC and ABAC to educate businesses and promote the APEC ODR mechanism.

1. Providers

Partnering APEC providers have consistently worked to promote the Collaborative Framework to the public and private sectors, including businesses.

- GZAC reports that it has held numerous seminars and press conferences to disseminate information and collect opinions and suggestions from scholars, e-commerce traders, and others on improving the perception of its APEC-ODR platform. To promote its ODR platform, GZAC is working with international and local business entities, law firms, and industry associations, and asking them to link to it on their websites.[73]
- eBRAM reports that it has provided ODR training sessions to local legal professionals and jointly organized webinars with chambers of commerce to promote ODR to businesses in the APEC EC. It has also been engaged in advertising campaigns, research in the local community, and polling during webinars to raise awareness and promote the use of ODR.[74]
- CPR's mission as a nonprofit organization is to help global businesses resolve commercial disputes more cost-effectively and efficiently through innovative solutions, including ODR. It has organized international events on ODR with UNCITRAL, academics, and the international legal community. It has also hosted foreign government officials to discuss online dispute resolution. Earlier, a CPR senior vice president served as a member of the US Delegation to UNCITRAL for the development of the UNCITRAL Technical Notes on ODR.[75]

2. Economies

The APEC ODR Collaborative Framework states that APEC member economies should encourage businesses, especially MSMEs, to use partnering ODR providers.[76]

At the November 2024 Workshop, several economies shared their experiences in promoting ODR and the Collaborative Framework to MSMEs.

[73] Email from GZAC, Dr. Chen Chen, October. 15, 2024.
[74] Email from eBRAM CEO Ms. Pui-Ki Emmanuelle Ta, October. 15, 2024.
[75] Email from CPR Dispute Resolution, Mia Levi, Vice President, January 24, 2025.
[76] APEC ODR Collaborative Framework, para. 6.1.

For example, Indonesia hosted an APEC Workshop on ODR in July 2023 focused on ODR capacity building for stakeholders, including MSMEs, to analyze the situation of MSMEs in Indonesia and to increase awareness among MSMEs and other stakeholders of the benefits of the Collaborative Framework for resolving cross-border B2B disputes. The Workshop also evaluated Indonesia's readiness to implement the Collaborative Framework. Indonesia received strong support from its stakeholders—policymakers, academics, law practitioners, and business entities, including MSMEs—for implementing ODR under the Collaborative Framework.[77]

In Viet Nam, the Prime Minister developed a master plan for e-commerce development, including promoting a pilot ODR project. Under funding from the Australian Department of Foreign Affairs and Trade, the government implemented a pilot ODR project for capacity building and mock ODR for MSMEs, which led to a significant improvement in awareness of MSMEs regarding the use of ODR, including for B2C disputes.[78]

Recommendation: The 2024 APEC ODR Workshop recommended that Economies should: "[e]ncourage their businesses, particularly MSMEs, to incorporate model ODR dispute resolution clauses from APEC ODR providers into their contracts;" and to "[c]onsider hosting workshops and capacity-building or promotional events to promote the implementation of ODR and the use of the Collaborative Framework."[79]

3. SELI and Lead Academics

The SELI Implementation Workplan on Structural Reform under EAASR states that "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."[80] Additionally, Lead Academics can assist in "local capacity building for economies, MSMEs and potential platform providers in participating economies through workshops, webinars, etc."[81]

Recommendation: The November 2024 Workshop recommended that SELI, with help from Lead Academics, should:

- "Stimulate economy-level capacity building for governments, lawyers, MSMEs, potential ODR platform providers, and courts to implement ODR through workshops, webinars, etc."
- "Conduct regular APEC-wide follow-up workshops, webinars, and other events to assess progress."[82]

[77] APEC January 2024 Workshop, supra note 3 at 14-15 (Indonesia, Mrs. Netty Muharni, Vice Chair, APEC EC).
[78] APEC November 2024 Workshop, ODR in Viet Nam, supra note 70 at 7;
APEC January 2024 Workshop, supra note 3, at 18 (Viet Nam, Mr. Duong Nguyen, representative to the EC and leader of the Vietnamese initiative to promote ODR capacity building for MSMEs).
[79] APEC November 2024 Workshop Conclusions and Recommendations, Annex 1 infra.
[80] APEC EC SELI Implementation Workplan on Structural Reform under EAASR, supra note 10 at 3.
[81] APEC EC SELI Administrative Implementation Work Plan for the Collaborative Framework, supra note 13 at 10.
[82] APEC November 2024 Workshop Conclusions and Recommendations, Annex 1 infra.

4. Collaboration with ABAC and other Fora

The SELI Implementation Work Plan on Structural Reform under EAASR also provides that "SELI will also enlist other entities for outreach to businesses, such as the APEC Business Advisory Council ("ABAC") and local chambers of commerce."[83] ABAC has stressed that it is "willing to co-host events with the APEC EC to promote greater awareness of ODR under the Collaborative Framework." [84] Given the number of businesses ABAC represents, collaboration with ABAC is crucial.

Recommendation: The November 2024 Workshop further recommended that SELI, with help from Lead Academics, should:

- "Work with ABAC to promote the Collaborative Framework and identify businesses willing to participate."[85]

In short, as CIETAC observed at the November 2024 Workshop:

> "The APEC ODR Community (APEC EC, APEC economies, ODR providers, academic experts, ODR platform providers, neutrals, parties, and other stakeholders) needs to make concerted and systematic efforts to promote and facilitate more extensive use of the APEC ODR mechanism, to bring its function into full play."[86]

III. Application of ODR to B2C Disputes

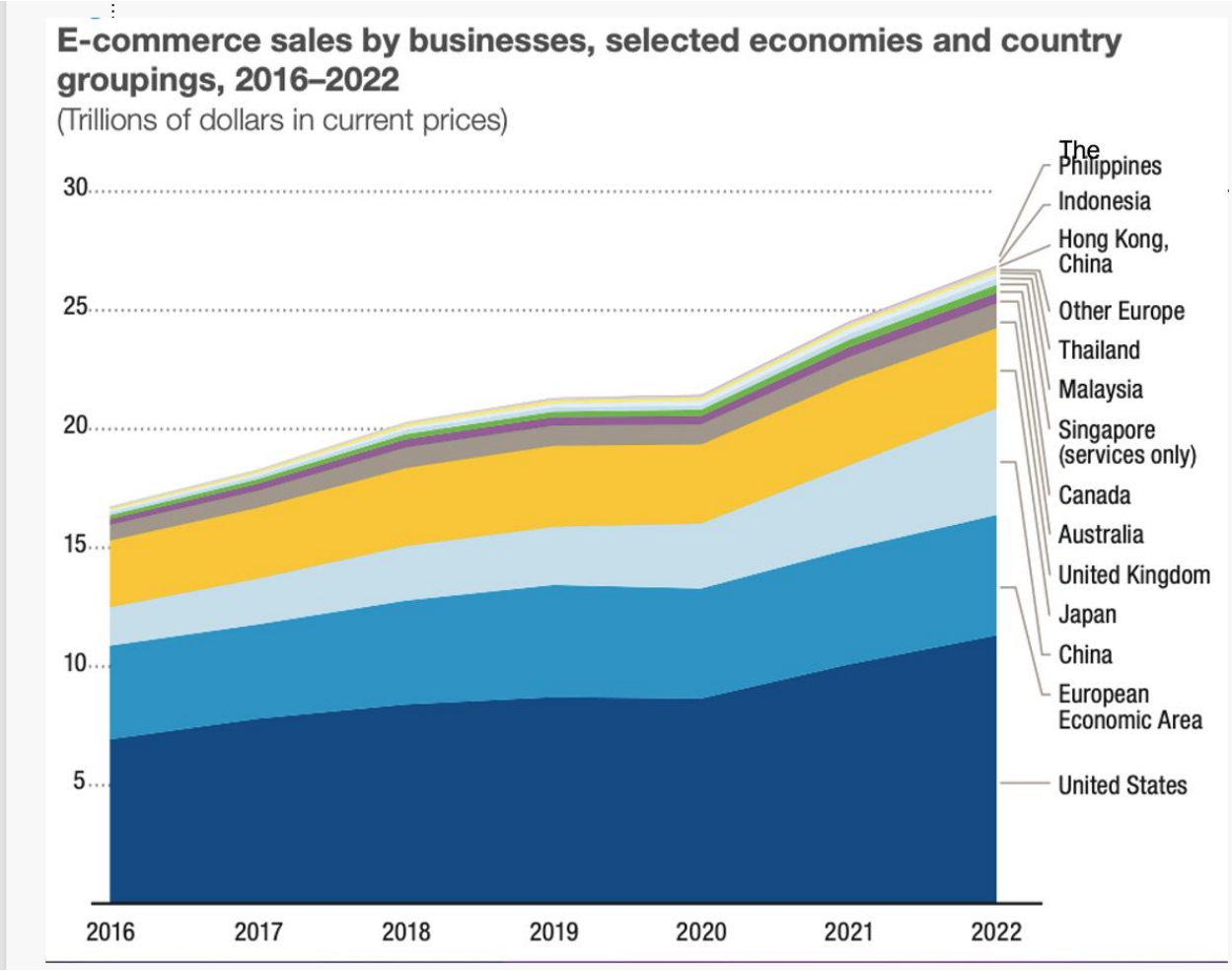
The Model Procedural Rules for the Collaborative Framework expressly note that they apply only to business-to-business disputes and do not cover consumer transactions. However, in keeping with the project proposal that generated this Study, which called for it to consider the potential application of the Collaborative Framework to B2C transactions, certain data and factual information related to the use of ODR for consumer transactions has been included below to provide a more complete picture of the overall ODR landscape.

A. Increase in B2C E-Commerce

UNCTAD reports that e-commerce sales grew by 60 percent from 2016 to reach USD 27 Trillion in 2022. Most of the global e-commerce sales were made by businesses in APEC member economies, including Australia; Canada; China; Hong Kong, China; Indonesia; Japan; Malaysia; the Philippines; Thailand; and the United States.

[83] APEC EC SELI Implementation Workplan under EAASR, supra note 10 at 3.
[84] APEC January 2024 Workshop, supra note 3, at 23 (Dr. Julius Caesar Parreñas, ABAC Coordinator).
[85] APEC November 2024 Workshop Conclusions and Recommendations, Annex 1.
[86] APEC November 2024 Workshop, CIETAC (Dr. Dr. Fan Yang) supra note 55 at 17.

CHART TWO



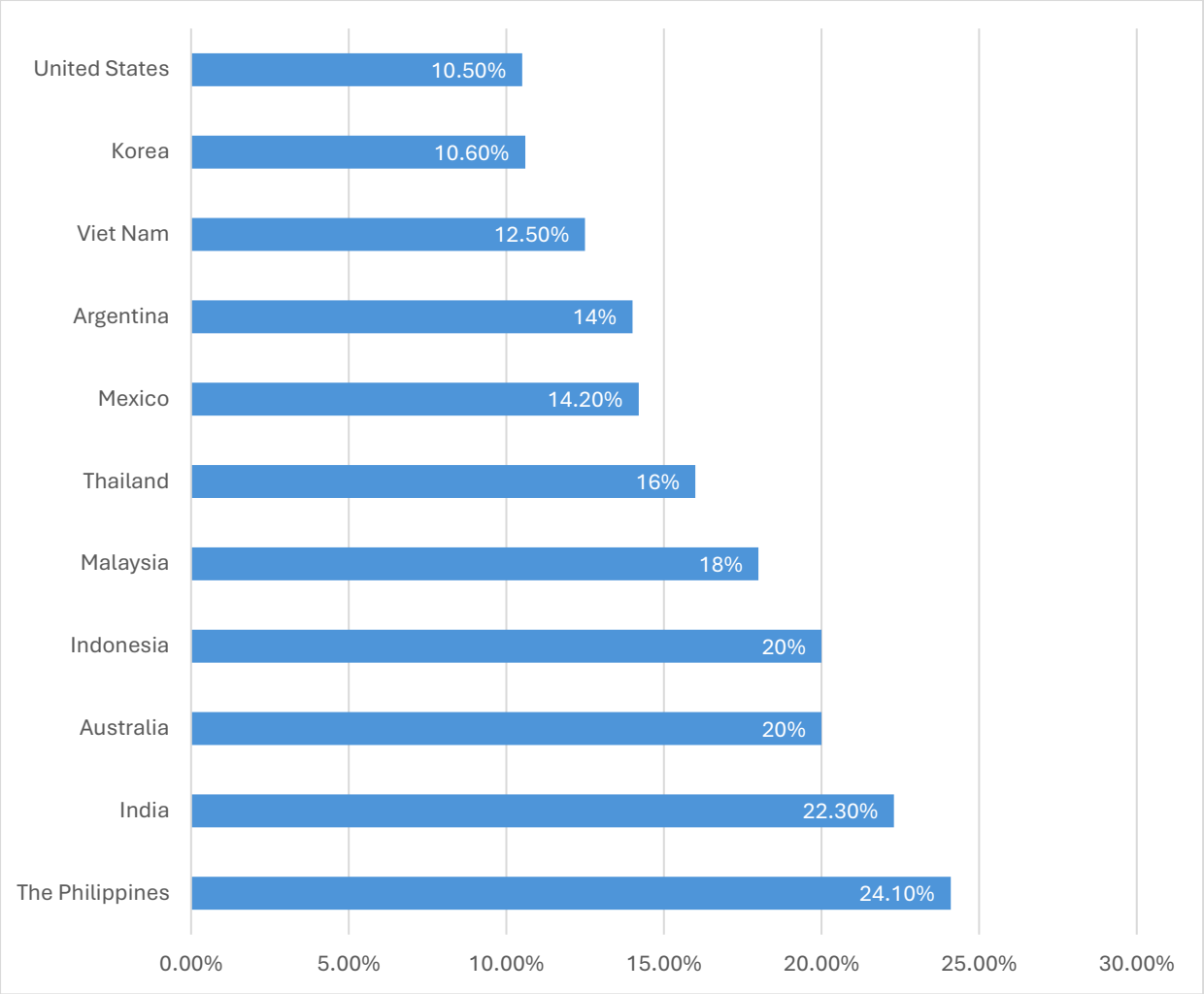
Source: UNCTAD Digital Economy Report (2024) at 146, https://unctad.org/system/files/official-document/der2024_en.pdf.

It is estimated that in North America, 25 percent of e-commerce sales are from cross-border e-commerce, while in the Asia Pacific region, 30 percent are from cross-border e-commerce.[87] Global retail e-commerce is estimated at USD 6.15 Trillion in 2023, with over USD 1 Trillion in cross-border retail sales. [88]

In 2023, 9 out of the top 11 economies in the world for retail e-commerce growth were APEC economies.

[87] Avalara, The State of Global Cross-Border E-Commerce Report 2023-24, at 9, https://www.avalara.com/dam/avalara/public/documents/pdf/state-of-global-cross-border-ecommerce-report-2023-2024.pdf.
[88] EMarketer, Worldwide E-Commerce Forecast 2024, https://www.emarketer.com/content/worldwide-retail-ecommerce-forecast-2024; The State of Global Cross-Border E-Commerce Report, supra note 87 at 12.

CHART THREE: Leading economies based on retail e-commerce sales growth – 2023

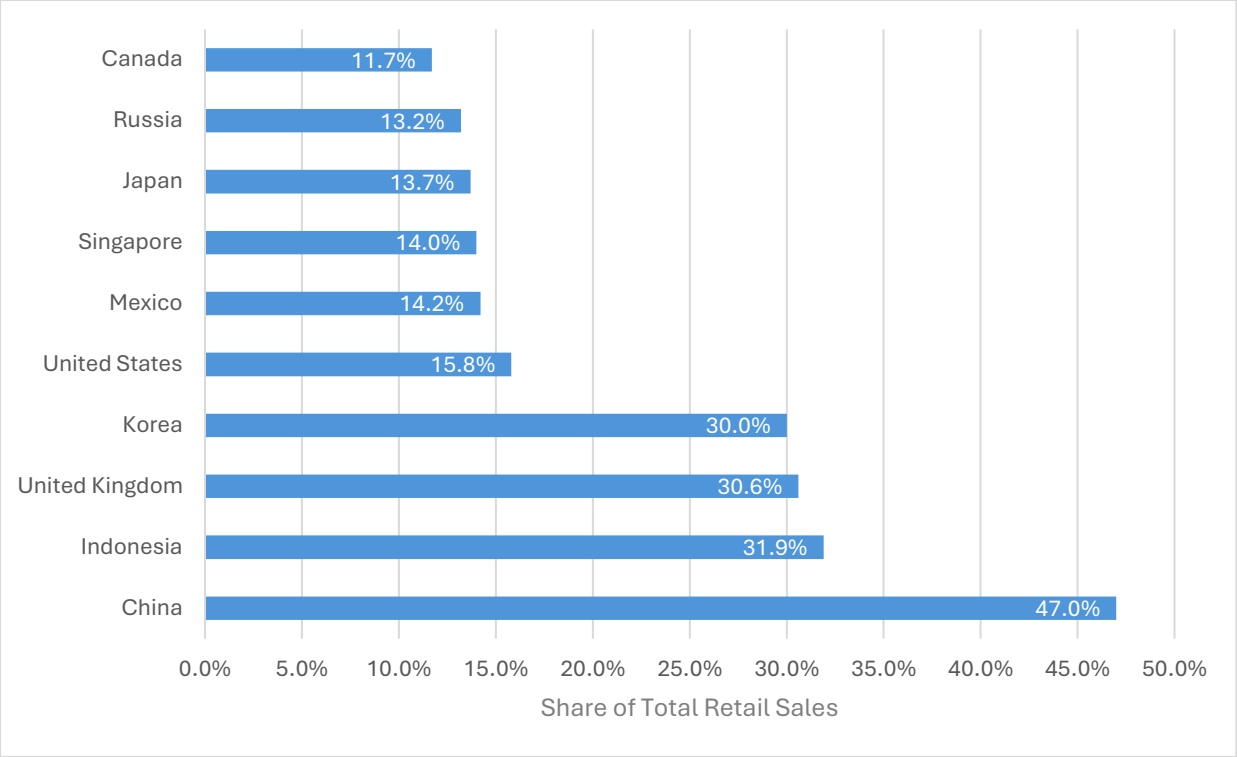


Source: Statista, https://www.statista.com/statistics/266064/revenue-growth-in-e-commerce-for-selected-countries/#:~:text=The%20Philippines%20and%20India%20would%20top%20the%20list,with%20a%20growth%20rate%20of%20about%2014%20percent.

In 2021, an estimated 2.3 billion people shopped online.[89] APEC has 9 out of the top 10 economies globally for the percentage of online retail sales.

[89] UNCTAD Digital Economy Report (2024) at xxiv, 144, https://unctad.org/system/files/official-document/der2024_en.pdf; World Bank, 2021, Global Findex Database, https://www.worldbank.org/en/publication/globalfindex/Data.

CHART THREE: Economies with the Highest Percentage of Retail Sales Taking Place Online -- 2023



Source: Statista, https://www.statista.com/statistics/1042763/worldwide-share-online-retail-penetration-by-country/.

B. General Lack of a Remedy for Resolving Cross-Border B2C Disputes

1. Courts

It is well established that domestic courts do not provide an adequate remedy for most cross-border disputes in B2B or B2C cases.

UNCTAD recently observed:

> "since no global Consumer Dispute Resolution (CDR) platform exists presently, consumers are left with few options but to resort to litigation when attempting to resolve cross-border disputes or to give up seeking redress altogether. However, judicial CDR options are very challenging to pursue in practice….
>
> **Complex procedures and uncertain outcomes**
>
> Three issues are especially hard to tackle:

1) Selecting jurisdiction: If a valid dispute resolution article is absent from the contract, the plaintiff needs to lay out all connecting factors, decide which one(s) is or are most relevant, and choose a court (or a CDR tribunal) that has jurisdiction over the case based on the most relevant connecting factor(s) they have identified. The factors generally include domiciles (habitual residences), and [citizenship] of both parties, the performance of the contract, and so on.

2) Determining applicable laws: The adjudicator needs to assess whether it has jurisdiction over the case before accepting to consider the merits, according to international conventions, treaties, and domestic laws. Once it ascertains jurisdiction, the adjudicator needs to determine what laws apply to the dispute at hand (domestic or foreign law). The adjudicator must understand the foreign law that is applicable to the dispute, which can often be challenging.

3) Recognizing and enforcing foreign decisions: After a consumer receives a decision issued by a foreign CDR, as the business is based in another [economy], the consumer must often go to that other jurisdiction to apply for recognition before the local authority enforces the judgment."[90]

UNCTAD concluded:

"Given the typical considerations presented above, it is not surprising that cross-border [consumer dispute resolution] cases rarely take place because it is too complicated for consumers to pursue them. Further, cross-border cases are complex and thus resource-intensive, so in most cases, it does not make economic sense to pursue litigation.

For these reasons, consumers facing cross-border disputes often give up seeking redress."[91]

Similarly, the ASEAN ADR Guidelines explain:

"Importance of a contractual ADR clause: Unlike with domestic consumer disputes, the issue of litigation is much more complex where cross-border disputes are concerned. In such situations, access to litigation in a domestic court is often not clear-cut, as the issue of which court has jurisdiction over the subject matter of the dispute or is the appropriate forum for deciding the dispute is a complex one that is governed by the principles of private international law. Indeed, to add to that complexity, each [economy's] rules of private international law are

[90] UNCTAD, Consumer Dispute Resolution in the World (2024) at 31-33 (footnote omitted), https://www.bing.com/search?FORM=BGASDF&PC=APMC&q=UNCTAD+Consumer+Dispute+Resolution+in+the+World. Additionally, judicial judgments are not enforceable cross-border in many jurisdictions in APEC. The Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (HCCH Judgement Convention), https://www.hcch.net/en/instruments/conventions/full-text/?cid=137 (entered into force in September 2023) provides rules under which civil and commercial judgments (including consumer e-commerce judgments) rendered by the courts of one Contracting Party are recognized and enforced in other Contracting Parties. However, no APEC economy has implemented the Convention. See https://www.hcch.net/en/instruments/conventions/status-table/?cid=137.

[91] UNCTAD, Consumer Dispute Resolution in the World, supra note 90 at 32 (footnote omitted).

> different, and thus, the same issue of whether a domestic court can or should exercise jurisdiction over a dispute is often treated differently in different [economies]. Consequently, the process of commencing litigation in respect of a cross-border dispute is often a lengthy and complicated process spanning several years, involving parallel litigation in multiple courts and very substantial legal costs even in the preliminary phase of establishing the appropriate domestic forum for the litigation of the international dispute."

The ASEAN ADR Guidelines recommend for consumers:

> "Most of these problems can be fixed if parties were to enter into a contractual ADR clause. This would take the dispute entirely out of any domestic litigation situation and allow the dispute to be resolved by ADR, thereby avoiding the bulk of the conflicts of law problems...."
>
> "[P]arties may agree to proceed to arbitration after a dispute has already arisen. However, in such a situation, since the dispute has already arisen, a party who has a weak legal case may not be willing to participate in arbitration and would simply avoid any form of dispute resolution premised on a finding of law."[92]

2. Out-of-Court Dispute Resolution Mechanisms

The World Bank's recent Global Regulations, Institutional Development, and Market Authorities Perspective Toolkit (GRIDMAP) findings provide emerging markets and developing economies (EMDEs) with a "Minimum Package" of policies to build trustworthy markets for consumers, including through efficient dispute resolution mechanisms.[93] According to the World Bank, the findings demonstrate that a significant challenge faced by economies is the gap between their regulatory aspirations and their capacity to regulate them, including for effective ADR or ODR schemes. The World Bank pointed out at the November 2024 Workshop that the findings demonstrate that APEC economies would benefit from applying ODR to help solve cross-border B2C disputes in APEC. The World Bank commented:

[92] ASEAN Guidelines on Alternative Dispute Resolution for Consumer Protection (2021) at 15, 34-35, https://aseanconsumer.org/read-publication-the-asean-alternative-dispute-resolution-adr-guidelines.

[93] World Bank, Global Regulations, Institutional Development, and Market Authorities Perspective Toolkit (GRIDMAP) (November 2024), https://openknowledge.worldbank.org/server/api/core/bitstreams/2be8d8ad-3aea-4766-84a6-ae1df0d6f880/content. The World Bank GRIDMap-GP analyzed data from 53 countries in 7 regions, by region, income level, and legal system (first wave data collection closed July 2024). GRIDMAP used 152 indicators to facilitate gap assessments and identify the maturity level of practices in economies.

> "The World Bank has been trying to keep track of self- and co-regulation mechanisms deployed in a way that can fill gaps that sometimes governments are not able to fill by themselves, or sometimes the private sector is not able to fill by themselves. The Collaborative Framework is a good example of one such mechanism whereby working in partnership with the private sector, governments can achieve things that couldn't be achieved otherwise."[94]

C. Collaboration with ASEAN

Seven of the ten Association of Southeast Asian Nations (ASEAN) members are also APEC members: Brunei Darussalam; Indonesia; Malaysia; the Philippines; Singapore; Thailand; and Viet Nam.

ASEAN issued Alternative Dispute Resolution Guidelines for Consumer Protection in October 2021 (see discussion above)[95] and Guidelines for ODR in July 2022.[96] The Guidelines for ODR recommend two modes of government-led recourse (negotiation and mediation) for B2C disputes but note that "the rules of procedure for the ODR system procedures could foresee … more complex and stricter requirements, for example, using arbitration."[97] The ultimate goal is the establishment of the ASEAN ODR Regional Network, providing for "more effective resolution of cross-border consumer disputes that may otherwise not be adequately resolved due to limitations of jurisdiction and enforcement of decisions beyond [domestic] borders."[98]

ESCAP, in its Asia-Pacific Trade and Investment Report 2023/24, cites both the APEC Collaborative Framework and the ASEAN initiative as promising options for cross-border consumer protection frameworks:

> **The region has made progress in online consumer protection frameworks, …**[R]emedies for cross-border online transaction disputes are lacking, although promising regional frameworks are in the pipeline via Asia-Pacific Economic Cooperation (APEC) and Association of Southeast Asian Nations (ASEAN) initiatives.[99]

AIADR (Malaysia) reported that it is working with the Malaysian government, the CACJ (Council of ASEAN Chief Justices), and the ASEAN Law Association to promote the use of the AIADR APEC ODR Rules Framework with modifications for B2B and B2C commercial disputes in line with the ASEAN Guidelines on ODR.[100]

---

[94] See APEC Nov. 2024 Workshop, World Bank (Elena Gasol, World Bank Global Knowledge Lead, Digital Regulations), The Benefits of Applying the APEC ODR Collaborative Framework to B2C, Review of Challenges and Recommendations at 14.
[95] ASEAN Guidelines on ADR, supra note 92 and accompanying text.
[96] ASEAN Guidelines on ODR, ASEAN Association of Consumer Protection, July 2022, https://asean.org/book/asean-guidelines-on-online-dispute-resolution-odr.
[97] Id. para. 23.
[98] Id. para. 83
[99] ESCAP, Asia-Pacific Trade and Investment Report 2023/24 at xviii, 57-58. The report was prepared in collaboration with the United Nations Conference on Trade and Development and the United Nations Industrial Development Organization.
[100] See note 35 supra and accompanying text.

Recommendation: The World Bank and ABAC recommended that APEC collaborate with ASEAN on applying ODR to B2C disputes.[101] The ABAC representative pointed out that the APEC Business Advisory Council (ABAC) and the ASEAN Business Advisory Council (ASEAN-BAC) have developed several joint initiatives, including establishing an annual joint Southeast Asia Conference.
The November 2024 APEC ODR Workshop recommended that SELI consider: "Working closely with ABAC and collaborating with ASEAN."[102]

IV. Developing User-Centric ODR Platforms in APEC Economy Courts

Pandemic-related travel restrictions and social distancing measures forced courts worldwide, including in most APEC economies, to adopt technology in unprecedented ways. For the most part, this has meant remote hearings. However, merely adding Zoom hearings to court systems fails to capitalize on technology's full potential.[103]

Because of its utility in quickly resolving lower-value, high-volume cases, ODR has spread from the private sector to public courts in several APEC economies. According to the National Center for State Courts (NCSC) (United States):

> "Online Dispute Resolution (ODR) is a public-facing digital space for parties to resolve their dispute or case. Court-implemented ODR is hosted or supported by the judicial branch and designed specifically to meet the needs of the public (not lawyers, judges, or court staff). ODR can include tools for gathering legal information, exploring options, and managing a case from start to finish without setting foot in a courthouse."[104]

---

[101] APEC November 2024 Workshop, World Bank (Elena Gasol), The Benefits of Applying the APEC ODR Collaborative Framework to B2C, supra note 94, at 12 and ABAC (Dr. Julius Caesar Parreñas, ABAC Coordinator), Importance of ODR for MSMEs,

[102] APEC November 2024 Workshop Conclusions and Recommendations, Annex 1 infra.

[103] See APEC Best Practices in Using ODR, supra note 7, at 8. As noted therein, APEC courts using communications technology to implement online hearings during the Pandemic included:

- Brunei Darussalam High Court conducted first virtual hearing on Zoom with witnesses in Malaysia and counsel in Brunei appearing before a Brunei High Court judge sitting in Singapore (Oct 2020);
- Hong Kong, China courts conducted 1,000+ remote hearings by late September 2021;
- Indonesia Supreme Court (MA), Constitutional Court (MK), and lower courts switched to virtual trials to keep the judicial system running;
- The Republic of Korea revised Procedure Act (Aug. 2021) allows remote virtual trials in civil and criminal proceedings;
- Malaysia in 2020 amended its law to allow courts to conduct remote hearings;
- The Philippines' courts conducted 1,139,720 videoconferencing hearings (civil and criminal) between May 2020 and October 2022;
- Russia Supreme Court recommended that courts, if technically possible, hold court hearings of an urgent nature online;
- Singapore made widespread use of virtual hearings;
- Chinese Taipei approved special legislative measures allowing for virtual court hearings in civil and criminal cases to prevent a backlog of trials;
- Thailand Court of Justice implemented a voluntary online dispute mediation system;
- U.S. courts in every state adopted online hearings and electronic filings, case management, and digital notarization.

[104] National Center for State Courts (NCSC), ODR, https://www.ncsc.org/odr. The NCSC focuses on improving judicial administration around the world. See also NCSC, An Evaluation and Performance Measurement Framework for Online Dispute Resolution Programs: Assessing Improvements in Access to Justice (2021) at 6-8, https://www.ncsc.org/__data/assets/pdf_file/0022/65641/ODR-Evaluation-Performance-Measure-Framework.pdf.

The NCSC further notes that "in contrast to other court programs that provide an online interface with which to accomplish discrete tasks (e.g., e-filing, video hearings), ODR users do not otherwise interact with the court for traditional in-court procedures or events."[105]

Significant opportunities exist for APEC economy courts to use ODR to expand services, reduce costs, and improve access to justice. However, to reduce the access to justice gap, courts must ensure that ODR platforms are user-friendly and that the parties can successfully use them. The APEC Best Practices on Using ODR explain: "Usability is paramount for ODR to deliver justice to parties effectively. This is particularly true for courts where parties have no alternative option to choose from and where courts are mandated to deliver equality, fairness, and access."[106] The National Center for State Courts Best Practices state: "Overall, the court system needs to develop a culture of usability testing and feedback in order to understand where there are fail points for the litigants, as well as negative and frustrating experiences or ideas for improvements."[107]

At the November 2024 Workshop, speakers highlighted examples of user-centric ODR court platforms in the United States, British Columbia (Canada), and China.

A. United States

In the United States, the fastest-growing area for ODR is the courts. Over 90 court systems in the U.S. are now deploying ODR systems to facilitate early resolution in low-value civil cases such as small claims, workplace disputes, landlord-tenant, debt collection, family courts, and traffic cases.[108]

For example, Utah has developed an in-house ODR communication platform from the ground up for small claims disputes involving USD 11,000 or less. All 37 of Utah's Justice Courts participate.[109] The platform allows litigants in small claims disputes to initiate communication via text exchange. If unsuccessful, an online facilitator is assigned to help resolve the case. The platform is available 24/7 and features a mobile-enabled interface where litigants can describe their cases, exchange documents, and negotiate a settlement agreement. If the parties cannot settle the dispute, the facilitator helps them prepare their pretrial submission. The trial may be held remotely through the third-party video platform Webex app.[110]

---

[105] NCSC, What is ODR? https://www.ncsc.org/odr/guidance-and-tools.
[106] APEC Best Practices in Using ODR, supra note 7 at 17.
[107] NCSC, Best Practices, https://www.ncsc.org/consulting-and-research/areas-of-expertise/technology/ux-court-capers-challenge/best-practices. See also Lise Embley et al, Usability and Court Dispute Resolution Platforms in NCSC, Trends in State Courts, 75, https://www.ncsc.org/__data/assets/pdf_file/0020/66332/usability_and_court_dispute_Embley-Himonas-Butler.pdf.
[108] See NCTDR, Courts Using ODR, https://odr.info/courts-using-odr/.
[109] See Utah County Justice Court, Small Claims Court, https://justicecourt.utahcounty.gov/small-claims-court; Salt Lake City, Justice Court, Small Claims Online Dispute Resolution (ODR), https://www.slc.gov/courts/2023/12/18/small-claims-online-dispute-resolution-odr-coming-soon/.
[110] Utah Supreme Court, Standing Order 13, (regarding Small Claims Online Dispute Resolution Pilot Project), rev. Jan. 27, 2021, https://legacy.utcourts.gov/rules/urapdocs/13.pdf; NCSC, Expressions of Interest: Utah's ODR Platform https://www.ncsc.org/__data/assets/pdf_file/0018/72090/Expressions-of-Interest-Utah-ODR.pdf; Justice Demo Himonas, Utah Supreme Court, ODR and the Courts (Webinar, February 2021), https://www.youtube.com/watch?v=nwmGoQwqYvw&t=1326s.

Participation in the ODR platform is mandatory unless the court grants a hardship exemption. Less than 2% of the litigants attempt to opt out of the process.[111]

Utah has continuously focused on usability. In the design phase, representatives from the plaintiff and defendant communities were appointed to a task force to develop the ODR platform and program. Utah's ODR platform has also been evaluated twice. First, Utah partnered with the University of Arizona to conduct a UX review of its ODR platform and revised the software based on its results. Utah streamlined the registration process using a QR Code, simplified document sharing to ensure only necessary documents are uploaded, and provided additional ODR help and information to make the system more ADA-friendly.[112]

Second, the National Center for State Courts evaluated the program's progress toward meeting stated access to justice goals. The evaluation concluded in part that:

> The ODR pilot project was an unqualified success for the court: the process for litigants on the ODR platform significantly streamlined internal court processing. Dismissals and default judgments were managed administratively, which led to better case calendaring and the use of judicial resources. The proportion of cases requiring more than one hearing to fully resolve decreased across all disposition types. Except for dismissals, the average time to disposition decreased by 5 weeks or more for all disposition types, clearing caseloads faster and more effectively.[113]

The National Center for State Courts also undertook a code review of Utah's platform for the purpose of informing other jurisdictions that may wish to implement this code in their environment and to document how the code might need to be modified for use in another jurisdiction.[114]

Utah does not charge litigants for using the facilitation platform. The facilitators are volunteers, many of whom have a legal background. Utah provides comprehensive training using a virtual format at no cost.[115]

Utah also established 50 kiosks throughout the State to allow court users without reliable internet connections to access a virtual hearing in a private setting. The kiosks are in courthouses, city buildings, and community health centers.[116]

---

[111] Utah Supreme Court, Standing Order 13, supra note 110, Paragraph 5: Requesting an Exemption from ODR; Justice Demo Himonas, ODR and the Courts, supra note 110.
[112] Stacy Butler et al, The Utah Online Dispute Resolution Platform: A Usability Evaluation and Report, September 8, 2020, https://www.ncsc.org/__data/assets/pdf_file/0020/66332/usability_and_court_dispute_Embley-Himonas-Butler.pdf.
[113] NCSC, Impact of the Utah Online Dispute Resolution (ODR) Pilot Program, Dec. 10, 2020, at 11, 18, https://www.ncsc.org/__data/assets/pdf_file/0025/57823/NCSC-UT-final-2020.pdf.
[114] NCSC, Code Review of Utah ODR Application, https://nationalcenterforstatecourts.app.box.com/s/4g65lbm5ka71mlqahvhu9sgon9wnr5nu.
[115] Utah State Courts, Small Claims ODR Volunteer Opportunity, https://www.utcourts.gov/en/self-help/case-categories/consumer/small-claims/volunteer.html.
[116] Utah Judicial Council, 2023 Annual Report to the Chief Justice, Governor, and Legislature at 3, https://www.utcourts.gov/content/dam/court-records-publications/publications/court-publications/court-reports/2023-CourtsAnnualReport.pdf.

B. Civil Resolution Tribunal, British Columbia, Canada

At the November 2024 Workshop, Eric Regehr, the Vice Chair of the Civil Resolution Tribunal (CRT) (British Columbia), provided an overview of its ODR platform. The CRT was established by British Columbia in 2016 and initially provided ODR for strata property (condominium) and small claims (up to CAD 5000). Since then, its jurisdiction has expanded to include vehicle accidents, societies, cooperative (housing) disputes, and intimate image protections.[117]

Applicants to the CRT start by using the online Solution Explorer, which is free and poses simple questions about the dispute. It offers legal information, classifies the dispute, and provides the applicant with the appropriate online application form. The ODR process encompasses online negotiation, facilitation (mediation), and adjudication. Most small claims cases are resolved during the negotiation and facilitation stages, with only 21% resolved by adjudication.[118]

CRT has focused on making court proceedings accessible and usable to bring the justice system to the public. CRT engages in ongoing user consultation and improvement. Guiding principles in designing and implementing the CRT platform include:

Timely – resolves small claims disputes in 125 days (median time).
Flexible – offers multiple dispute resolution tools and services.
Accessible – is available 24/7 with complimentary telephone interpretation in over 200 languages and adherence to web accessibility best practices.
Affordable – offers staged fees throughout the process, free responses if submitted online, no travel or legal costs, and straightforward fee waivers for low-income individuals.
Efficient – offers active case management, customized timelines, and processes, and avoids duplication.
Inclusive -- offers multiple ways for the public to engage with CRT, including paper forms or telephone services.[119]

CRT participant surveys show that the vast majority (82%) would recommend CRT to others, 86% felt the CRT process was not difficult to understand, 83% thought they were treated fairly, and 92% felt the CRT staff was professional.[120]

Mr. Regehr stated that CRT stands ready to assist other APEC economies in implementing ODR.

[117] APEC November 2024 ODR Workshop, Mr. Eric Regehr, Vice Chair of the Civil Resolution Tribunal (CRT), British Columbia.
[118] CRT, 2023/2024 Annual Report at 1, 4, 29, 33, https://civilresolutionbc.ca/wp-content/uploads/CRT-Annual-Report-2023-2024.pdf.
[119] Id. at 1-3, 33.
[120] Id. at 36.

C. China

At the November 2024 Workshop, Professor Yongmin Bian provided an overview of the use of ODR in Chinese courts.[121]

Before the pandemic in 2018, the government established internet virtual courts in Hangzhou, Guangzhou, and Beijing, which utilize ODR for case filing, case management (e.g., computerizing documents and processes), and virtual hearings. The courts also facilitate access to justice through special programs for parties not represented by lawyers. These courts are reporting excellent results. For example, for the Hangzhou internet court (as of September 2024):

- Resolved 244,000 cases
- Conducted hearings on average in 25 minutes
- Resolved a case on average in 38 days.[122]

Chinese courts are also utilizing ODR. China's Supreme People's Court supports online litigation. Under the People's Court Online Litigation Rules (2021), online litigation can be used, based on parties' consent, to cover civil, administrative, and some criminal cases subject to summary trial. In practice, financial, administrative, labor, property services, sale contracts, divorce, inheritance, tort cases, etc., can all be resolved by a trial online. If only one party accepts online litigation, the other party can attend the hearing in person.[123] The Rules for the Online Operation of People's Courts (2022) provide for an intelligent service function that includes online filing, payment, evidence exchange, identity verification, security, trial, execution, deliberation, service, and publication and cross-court transfer of files.[124] The Chinese courts support parties in settling their disputes via an online mediation platform before or after filing their cases in court. The court may endorse the mediation agreement if the parties wish, so that the agreement can be enforced later if there is a default.[125]

[121] APEC November 2024 Workshop, Yongmin Bian, Use of ODR in Chinese Courts. Professor Bian is one of the APEC ODR Collaborative Framework Lead Academics. See note 21 supra and accompanying text.
[122] APEC November 2024 Workshop, Use of ODR in Chinese Courts, supra note 121 at 7; APEC December 2022 Workshop, supra note 2, at 29 (Prof. Yongmin Bian).
[123] APEC November 2024 Workshop, Use of ODR in Chinese Courts, supra note 121 at 4.
[124] Id. at 6.
[125] Id. at 5, 10; January 2024 APEC ODR Workshop, supra note 3, at 29-30 (Prof. Yongmin Bian).

V. Conclusion

ODR e-justice is an essential component of economic growth. It can help create markets where none currently exist.

The APEC ODR Collaborative Framework can substantially benefit the millions of small businesses that lack access to effective dispute-resolution remedies. For the Collaborative Framework to be successful, more economies need to opt into it, and more dispute-resolution providers need to partner with APEC. Effective implementation of the Collaborative Framework will require a concerted effort among all APEC member economies, partnering ODR providers, ABAC, and the APEC EC to educate businesses concerning using ODR and the APEC Collaborative Framework.

Economies may wish to consider the recommendations provided by the November 2024 Workshop, which are mentioned in earlier sections of this Study and further set out in Annex 1 for implementation of the Collaborative Framework.

Technology-assisted decision-making may not be appropriate in all cases. Still, it offers an invaluable solution to parties that cannot afford lawyers, travel to a physical court, wait weeks for a decision, or have low-value disputes.

Working together, APEC economies can build ODR, which represents the cornerstone of the justice system for the region.

Annex 1

APEC Workshop on Facilitating the Use of ODR under the APEC Collaborative Framework and in Economies Generally (including in Courts)

20-22 November 2024

Conclusions and Recommendations

The Conclusions of the Workshop are as follows:

- Improved access to justice is essential to creating an enabling business environment for MSMEs. Online dispute resolution [ODR] under the APEC ODR Collaborative Framework leverages information and communication technologies to provide a speedy and cost-effective electronic resolution and enforcement of disputes across borders, bridging language and jurisdictional barriers. It provides MSMEs with a quick and inexpensive option to resolve cross-border disputes, promoting cross-border confidence.

- Opting into the Collaborative Framework does not impose legal obligations on economies. However, only ODR providers from those economies that have opted in can partner with APEC under the Collaborative Framework. Therefore, ODR providers can participate when their economies opt into the Collaborative Framework.

- APEC economies have broadly implemented the key international instruments relevant to ODR, as listed in the Collaborative Framework. There are no legal impediments to using ODR in any APEC economy.

- Opting into the Collaborative Framework contributes to all four Enhanced APEC Agenda for Structural Reform (EAASR) pillars.

- Several APEC ODR Providers are seeing significant time and cost reductions in the dispute resolution process for cases submitted under the Collaborative Framework compared to the court process. This helps remove a significant obstacle preventing MSMEs from trading across borders, facilitating their fuller participation in international trade and cross-border e-commerce. This leads to increased growth and productivity for MSMEs, including women-led businesses.

- Retail cross-border e-commerce, including B2B and B2C, is rapidly expanding in the APEC region.

- The benefits of ODR under the Collaborative Framework to disputes include:

(1) public-private sector collaboration with partnering ODR providers, where providers provide technological expertise and implement state-of-the-art platforms at their own expense;

(2) Applying the APEC ODR procedural rules ensures (i) the same standard of due process and procedural protections apply regardless of where the parties are located; (ii) the application of applicable mandatory laws; (iii) the availability of languages other than that chosen by the parties or the neutral; (iv) documents only decisions unless the neutral decides to hold a virtual hearing; and (v) reasonable fees proportionate to the amount in dispute; and

(3) oversight of providers by APEC EC with the assistance of lead academic institutions to monitor compliance with the Framework and Procedural Rules.

- The Collaborative Framework encourages using advanced technologies, including AI, to facilitate the ODR process. Current APEC ODR providers offer cutting-edge technologies such as artificial intelligence and chatbots. These technologies enhance the process and offer functionalities beyond what online ADR can deliver. For example, one APEC ODR provider utilizes AI during the negotiation and mediation stages and offers the service for free.

The Recommendations of the Workshop are as follows:

APEC Economies should:

- Favorably consider opting into the Collaborative Framework
- Identify and assist ADR/ODR providers willing to partner with the APEC EC under the Collaborative Framework
- Encourage their businesses, particularly MSMEs, to incorporate model ODR dispute resolution clauses from APEC ODR providers into their contracts
- Consider implementing relevant private international instruments that are conducive to ODR
- Consider hosting workshops and capacity-building or promotional events to promote the implementation of ODR and the use of the Collaborative Framework.

SELI, with help from Lead Academics, should:

- Work with ABAC to promote the Collaborative Framework and identify businesses willing to participate
- Partner with as many ODR providers as possible from economies that have opted in and reach out to providers in economies that have not opted in to gauge their potential interest in partnering with APEC
- Conduct UX reviews of APEC-approved ODR Providers
- Stimulate economy-level capacity building for governments, lawyers, MSMEs, potential ODR platform providers, and courts to implement ODR through workshops, webinars, etc.
- Promote improvement of APEC legal regimes on ODR by encouraging implementation of UNCITRAL texts

- Conduct regular APEC-wide follow-up workshops, webinars, and other events to assess progress
- Encourage the use of advanced technologies, including artificial intelligence by ODR Providers to facilitate the ODR process under the Collaborative Framework

SELI should also consider the following to facilitate the application of the Collaborative Framework to transactions:

- Working closely with ABAC and collaborating with ASEAN;
- Provide for an explicit agreement to use ODR;
- Considering additional options for enforcing awards, including through bilateral agreements and using trust marks;
- Developing a list of relevant laws in each economy to assist the parties and ODR providers
- Prepare an annual report with data provided by listed ODR Providers.

ANNEX 2

Partnering APEC ODR Providers Under Collaborative Framework

Five partnering APEC ODR Providers provided the following summaries of their platforms at the January and November 2024 APEC ODR workshops. The Beijing Arbitration Commission/ Beijing International Arbitration Court (BAC/BIAC), China -- the sixth partnering provider— did not partner with APEC until January 2025.[126]

GZAC

The Guangzhou Arbitration Commission (GZAC) was established in 1995 and is one of China's most prominent alternative dispute resolution providers. Since 2022, it has partnered with APEC under the ODR Collaborative Framework.

Data. As of November 2024, the GZAC reports that its APEC-ODR platform has resolved over 790 domestic and international disputes totaling over CNY 3 billion, including cases in emerging industries such as e-commerce, live streaming, and intelligent vehicle manufacturing. The parties' citizenship included Brazil; Cambodia; Hong Kong, China; India; Singapore; Chinese Taipei; the UK; and the United States. The average time to resolve a dispute is 36.7 days, with 68.6% resolved during the negotiation and mediation stages. GZAC participant surveys show that the vast majority (83%) would recommend the process to others and felt the APEC ODR process was simple, fair, and timely.[127]

GZAC further reports that from January to November 2024, it closed 125 cases through the APEC-ODR platform, with an average resolution time of approximately 24 days. The total amount in dispute reached RMB 940 million. Among these cases, 16 involved amounts exceeding RMB 10 million, including 1 case valued at over RMB 100 million.

ODR Platform. GZAC's APEC ODR platform includes synchronous and asynchronous communications, on-demand transition between different ODR stages, multilingual translation, artificial intelligence to answer questions throughout the ODR process, online amendment of the settlement agreement, online signing, and issuance of legal documents for the international enforcement of settlement agreements.

In 2023, GZAC developed an AI Arbitration Secretary, Zhong Xiaowen. The AI Secretary performs intelligent functions such as pre-hearing identify authentication, legal inquiry during hearings, and post-hearing award drafting. It effectively addresses the issues of efficiency, cooperation, and knowledge limitations that sometimes occur with human arbitration secretaries. In 2023, GZAC also developed the intelligent robot Yun Xiaozhong, which allows cases to be filed anytime and anywhere while providing legal assistance, saving parties time and money.

[126] Information concerning the Beijing Arbitration Commission APEC Online Dispute Resolution Service is available at https://bjac.odrcloud.cn.
[127] Briefing on the GZAC ODR Platform, January 9, 2025 (submission to APEC).

In 2023, the Chinese Ministry of Justice selected GZAC's "Resolving Foreign Contract Disputes through an ODR Platform" as one of three annual guiding arbitration cases. The Ministry of Commerce honored another case on its ODR platform as an excellent legal practice to promote foreign trade, the only arbitration case among the 30 honorees.

Confidentiality and Data Security. All information is kept confidential by a three-dimensional security system consisting of a secured communication network, a secure network parameter, and a secured computing environment. Facial recognition technology protects parties and further enhances security. Blockchain technology is used in the transmission process and for storing digital information.

Fee Structure. The negotiation and mediation stages utilize AI and are offered for free.

If parties agree to ODR before a dispute, they usually agree to use online negotiation, mediation, and arbitration. If they agree to ODR post-dispute, they typically agree to use online negotiation and mediation only.[128]

For further information about the GZAC platform (including its Guidelines for applying the APEC ODR Rules) see https://newodr.gzac.org/en/.

CIETAC

Established in 1956, the China International Economic and Trade Arbitration Commission (CIETAC) was the first arbitration institution in China and is now one of the major permanent arbitration institutions worldwide.

CIETAC has concluded over 60,000 international and domestic arbitration cases involving parties from more than 160 economies, and its awards have been recognized and enforced worldwide. Its highly international pool includes 1881 arbitrators and 300 domestic and international mediators. The 2021 International Arbitration Survey by Queen Mary University of London recognized CIETAC as one of the world's five most preferred arbitration institutions.

ODR Platform. CIETAC, through its APEC ODR platform, aims to provide efficient, low-cost, accountable, convenient, and easily accessible ODR services for users. CIETAC's platform, consistent with the APEC ODR Collaborative Framework and Model Procedural Rules, offers online negotiation, mediation, and arbitration. The platform includes an English-Chinese bilingual interface and multilingual translation services to facilitate parties' communication. The parties are aided by an intelligent negotiation assistant and can communicate synchronously or asynchronously. A multi-function video conference room allows for more flexible negotiation and mediation. Automatic transfer of case materials to the next stage and smart creation, online amendment, and online signing of settlement agreements foster efficiency and convenience.

[128] APEC November 2024 ODR Workshop, Statement of Dr. Chen Chen et al, New Development of GZAC ODR Platform, Nov. 20, 2024; APEC January 2024 ODR Workshop, supra note 3 at 21-22 (Dr. Chen Chen, GZAC).

Confidentiality and Data Security. The ODR proceedings are confidential. CIETAC's APEC ODR service platform employs advanced technologies to ensure that the collection, use, processing, and storage of all information data during the negotiation, mediation, and arbitration stages protect the security of the user's data and guarantee the orderly conduct of the ODR proceedings.

Fee Structure. To provide low-cost APEC ODR service primarily for MSMEs, CIETAC has adopted a lump-sum fee schedule with substantially lowered fee standards to keep the total dispute resolution cost relatively low and as reasonable and manageable as possible.

Amount in Dispute	Fee (RMB)
Up to 100,000	5% of the amount, minimum 4,000
From 100,001 to 200,000	5,000 + 4% of the amount over 100,000
From 200,001 to 500,000	9,000 + 3% of the amount over 200,000
From 500,001 to 1,000,000	18,000 + 2% of the amount over 500,000
From 1,000,001 to 5,000,000	28,000 + 0.6% of the amount over 1,000,000

The platform includes a cost estimation calculator. However, the ODR services platform does not apply to cases where the amount in dispute (calculated by aggregating the claims and counterclaims) exceeds RMB 5,000,000.[129]

For further information concerning the CIETAC APEC ODR platform, see https://casettle.odrcloud.cn/CIETAC.html.

eBRAM

eBRAM International Online Dispute Resolution Centre, Hong Kong, China, has partnered with APEC under the APEC ODR Collaborative Framework since 2022. eBRAM's vision as a law tech company and ODR institution is to provide SMEs and enterprises with state-of-the-art technology and high security for cross-border deal-making, dispute avoidance, and dispute resolution.

Data. eBRAM reports that it has dealt with fewer than 10 cases under its APEC ODR Rules. In November 2024, it entered into a memorandum of understanding with the Hengdian Film and Television Industry Association and Dongyang Law Society for the use of its APEC ODR Collaborative Framework for Cross-Border B2B disputes involving the film and television industry.[130]

ODR Platform. As an ODR provider under the APEC ODR Collaborative Framework for ODR, eBRAM has developed a fully-fledged APEC ODR platform that complies

[129] APEC November 2024 Workshop, supra note 55 (CIETAC, Dr. Fan Yang); APEC January 2024 Workshop, supra note 3, at 19-20 (Dr. Fan Yang).
[130] See eBRAM Signs MOU with Hengdian Film and Television Industry Association and Dongyang Law Society for International Dispute Resolution in the Film and Television Industry (Nov. 5, 2024), https://www.ebram.org/news_event_item.html?id=182&language=en.

with the ODR Framework by offering online negotiation, mediation, and arbitration. It is a technology-based platform with a human element for administering cases and decision-making. eBRAM provides 24/7 multi-language services. The machine document translation and real-time machine transcription support 15 languages, and live transcriptions currently support English and Chinese.

The platform is entirely web-based and features AI machine translation and transcription, AI-powered eKYC (electronic Know Your Customer) user registration and authentication management, encrypted cloud storage, in-house developed secure videoconferencing (which has machine translation and transcription functions), and e-signing solutions. It is easy to use and facilitates collaboration, document sharing, and online meetings.

Users can contact eBRAM via the eBRAM platform, via phone, email, or a physical visit to eBRAM offices if they have questions, complaints, or feedback. An internal team evaluates the complaints or feedback, and if the feedback is to be implemented, it will become part of the general improvement to the eBRAM platform.

Confidentiality and Data Security. To address users' concerns about confidentiality, cybersecurity, and data privacy, eBRAM has implemented safeguards, including multi-factor authentication and eKYC, and blockchain technologies. eBRAM enlists external, certified security experts to conduct cybersecurity and privacy impact assessments and total system audits on its ODR platform. eBRAM uses blockchain to ensure data integrity and security. In addition, eBRAM has obtained an ISO27001 certification, demonstrating its application of best practices in information security management.

Fee Structure. ODR cases administered by eBRAM generally include a filing fee and an administrative fee, taking into account the affordability of users. eBRAM services are usually priced based on the amount in dispute, subject to caps for filing fees, administrative fees, and neutrals' hourly rates. Fixed fees apply for disputes involving amounts falling under the specified threshold. eBRAM also provides an online calculator (https://odr-apec.ebram.org/calculator.html) for estimating costs of proceedings for claims or counterclaims under the eBRAM APEC ODR Rules.

Application to Consumer Disputes. eBRAM has also expanded the use of its Framework to successfully cover business-to-consumer (B2C) disputes based on the parties' agreement. The relevant laws and regulations governing the dispute resolution process depend on the parties' chosen arbitration seat. By default, the seat is Hong Kong, China, in which case the laws and regulations of Hong Kong, China apply.[131]

For further information concerning the eBRAM APEC ODR platform, see https://www.ebram.org/apec_odr.html.

CPR Dispute Resolution

[131] APEC November 2024 Workshop, Wenny Huang, Deputy Chief Executive Officer & Secretary General, eBRAM, Implementing the Collaborative Framework, eBRAM's Experience (January 20, 2024); APEC January 2024 Workshop, supra note 3, at 20-21 (eBRAM, Ms. Pui-Ki Emmanuelle Ta).

The International Institute of Conflict Prevention and Resolution (CPR Institute), established in 1977, is an independent nonprofit organization that promotes conflict prevention and resolution by sharing best practices and cutting-edge innovation. More recently, the CPR Institute established the CPR Dispute Resolution Services (CPR Dispute Resolution) to provide dispute resolution services utilizing resources generated by the Institute. In early 2023, the CPR Dispute Resolution platform was introduced, a fully online dispute resolution platform. CPR Dispute Resolution has digitized its global arbitration, mediation, and ADR case management services with its platform. CPR Dispute Resolution has a panel of 643 distinguished neutrals (175 outside the United States) from 35 economies and fluent in 40 languages. In early 2024, CPR Dispute Resolution partnered with the APEC EC to offer ODR under the Collaborative Framework.

ODR Platform. Under its APEC ODR platform, CPR offers online negotiation, mediation, and arbitration. The ODR platform is accessible to CPR Dispute Resolution administrators, neutrals, and parties to the dispute, providing them with a digital environment to handle matters more efficiently and securely. The platform is configured for easy filing, secure communications between neutrals, CPR, and the parties, online neutral appointments, organized folders for document storage, and online case management. The integrated video-conferencing feature allows the parties and once appointed, the neutrals to seamlessly connect to their conference while viewing case files and creating and collaborating on shared documents, such as settlement agreements and awards.

Fee Structure. CPR offers lowered fees for lower-value disputes to keep dispute resolution as reasonable and manageable as possible. For disputes with less than USD 500,000 in dispute, users may opt to have their matter mediated for a flat fee of USD 3,500, which is split among the parties. For disputes of less than USD 300,000, online arbitration may be conducted for a total administrative fee of USD 4000.

Data Security. The platform includes enhanced security and provides neutrals, parties, and case administrators with more efficient and effective dispute resolution options. The platform is ISO 27001 certified, demonstrating CPR's compliance with best practices in information security management.[132]

For further information concerning the CPR APEC ODR platform, see https://drs.cpradr.org/services/apec-dispute-resolution.

U and I Advisory

U and I Advisory, Tokyo, Japan, has partnered with Deloitte Tohmatsu Financial Advisory (DFTA), an ODR platform vendor, to offer ODR services under the Collaborative Framework. Under Japanese law, ODR ADR providers must secure a license from the Ministry of Justice for a non-lawyer to operate as a mediator. U&I Advisory was the first recipient of such a license.

[132] APEC January 2024 Workshop supra note 3, at 22 (Ms. Mia Levi, CPR Dispute Resolution, Vice President & Corporate Secretary).

ODR Platform. The “Smart Judgement” ODR platform complies with the APEC Collaborative Framework and Model Procedural Rules.

Data Security. The platform is highly secure, with a complete information security system.

Capacity Building. U&I reports that it is developing a comprehensive agreement to provide ODR services for e-commerce vendors and their customers. However, the Japanese people are not yet well-informed about ODR, as they are more familiar with using Japanese courts for dispute resolution. Therefore, government leadership is needed to assist with implementing ODR, including sponsoring ODR providers, providing subsidies to support its implementation, and actively promoting it in public institutions.[133]

.

[133] APEC November 2024 Workshop, U&I Advisory, ODR Services (November 20, 2024); APEC January 2024 Workshop, supra note 3 at 22 (U&I Advisory).