

Online dispute resolution network in the Asia-Pacific region

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How does online dispute resolution currently work in the Asia Pacific?

Online dispute resolution (ODR) is the settlement of disputes through online mode of communication/interaction between the disputed parties. Online dispute resolution undertakes disputes that are partially or fully settled over the Internet, having been initiated in cyberspace but with a source outside it (offline).

In the literature and practice, ODR is also called as an alternative dispute resolution (ADR) and Internet dispute resolution (iDR), and these terms are used interchangeably.

Online dispute resolution (ODR) uses alternative dispute resolution processes to resolve a conflict or dispute. Online dispute resolution can be used for disputes arising from an online mode of communication/transaction and also for disputes not involving the Internet, known as “offline disputes.” Online dispute resolution is an alternative to the traditional legal system where litigations are filed in court and justice is sought through legal proceedings. Traditional legal system involves a courtroom, lawyers, judges to register, and resolve the dispute.

The parties involved in dispute may use Internet and web-based technology in a variety of ways. Online dispute resolution can be done entirely on the Internet through email, chat, and videoconferencing and if needed parties may also meet in person for face-to-face interaction. Often, a combination of “online” and “offline” (such as face-to-face) methods are used in online dispute resolution.

ODR systems use synchronous as well as asynchronous communication in the process of resolution.

Synchronous communication means communication/interaction is happening on a continuous basis between disputed parties and mediator/arbitrator/negotiator (appointed by the dispute resolution agency), for example, videoconferencing and instant chat. However, in case of asynchronous communication, interaction is happening in intervals or in discontinuous manner, for example, email exchanges.

Online dispute resolution can involve the parties in mediation, arbitration, and negotiation.

Types of online dispute resolution

Online dispute resolution involves mediation, arbitration, and negotiation to enable the dispute resolution.

Mediation

Mediation can be done entirely online with Internet technology, and parties can have a face-to-face interaction also by meeting personally in the presence of the mediator if required.

Some online dispute resolution methods involve a combination of these methods. In the mediation process, the mediator is only a facilitator and does not have the discretion to make a decision. Mediation resolves the dispute while maintaining a consensual and nonbinding approach.

Arbitration

Like mediation, this process can also be done entirely online with Internet technology (email, instant chat, or videoconferencing) or the parties can physically meet in the presence of the arbitrator.

Arbitration is either binding or nonbinding. In binding arbitration, the parties are supposed to follow the arbitrator's decision. The arbitrator's decision may get the enforcement from the court also. Generally, the arbitrator's decision has an influence on the final judgment of the court.

However, in nonbinding arbitration, the arbitrator's decision is only advisory and not binding, and it is up to the parties' discretion to follow the judgment. In case of further proceedings of the dispute in court, the arbitrator's decision may be submitted as evidence.

Negotiation

ODR is not much used in case of negotiation, but mostly it is used in mediation and arbitration.

Automated online dispute resolution

Automated dispute resolution is mostly used in cases where dispute has originated because terms have not been agreed/negotiated properly. Here, automated systems help in negotiation between disputed parties and the system usually helps in arriving at a win-win situation for disputants.

There are many software packages available, which assist in negotiation through blind-bid negotiation. Here, the disputed parties submit their acceptable amount to them in the online portal system/software, and then the software checks the amount entered in the system and points out whether the deal will materialize between the disputed parties or not. If the amount entered by both the parties matches and overlaps, then the software confirms the deal, and if there is lot of gap between the agreed amount, the deal is called off.

Simultaneously, there are softwires, which use game theory concepts to help in resolving disputes. These softwires are quite sophisticated and apply adjusted winner procedure. This adjusted winner procedure was coined by Brams and Taylor. This procedure is based on the assumption that all items are divisible.

The adjusted winner procedure was famously applied to resolve the issues of Israel and Palestinians, Panama Canal treaty and Camp David accords. There is another program called Family winner, which assists in dividing the assets between the family members or when couples decide to get separated and assets needs to be divided between them.

Automated technology/tools used for online dispute resolution

The following are the mostly used automated tools for online dispute resolution:

Blind bidding:

These systems invite parties in dispute and ask them to submit their acceptable settlement offers with confidentiality and determine acceptable terms for both the parties.

For example, Smartsettle.

Drafting collaboration:

These are based on tools, which facilitate parties to review draft documents and forms to resolve a dispute amicably.

For example, SettlementIQ, MicroPact.

Automated negotiation:

These systems help in calculating all possible outcomes and also help the parties to arrive at a win-win situation as an outcome of the negotiation process.

For example, Modria, Smartsettle.

Virtual mediation rooms:

It facilitates mediation remotely in real time through videoconferencing.

For example, ADR Group's ADRg Express, Virtual Courthouse, Skype, and Zoom.

Arbitration systems:

It facilitates arbitrators to conduct arbitration process online from different locations, through videoconferencing, and so on.

For example, AAA /DecisionQuest's CaseXplorer Arbitration eQuibbly, Traffic Penalty Tribunal.

Online court case initiation:

Here, disputed parties or their legal representatives file claims and supporting documents through an online tool.

For example, Rolls Building.

Online courts:

Judges do the hearing and pass their judgments on cases by using an official online platform, without the need for face-to-face interaction with disputed parties.

For example, eCourtroom.

Agreement monitoring:

These are based on compliance and monitoring tools, which helps in reporting and analysis of agreements and identifying the breach of agreement.

For example: Rechtwijzer, Our Family Wizard.

Impact of online dispute resolution

Online dispute resolution has provided a very positive impact to corporate, legal professionals (Lawyers) dealing in dispute resolution, ombudsmen and regulators, and court of law. Corporates have to deal with lot of disputes arising from customers, business partners, vendors, competitors, as well as from other business entities.

Corporates have to deal with disputes arising from various geographical locations and dealing with them involves lot of time, money, and manpower, and many a times, their image is also at stake. ODR enables the corporates to resolve these disputes at a faster speed and helps them with out-of-court settlement. Corporates are thus getting benefitted by avoiding expensive litigation and reputation loss by using ODR.

Legal professionals dealing in dispute resolution are getting benefitted by online dispute resolution techniques as it improves their efficiency in resolving the cases, and this makes their clients happy and satisfied.

Ombudsmen and regulators are loaded with a massive number of inquiries and complaints, and they are under tremendous pressure to provide satisfactory resolution within the timeline. Online dispute resolution has certainly eased out their load by providing quick resolution.

Usage of online dispute resolution has certainly eased the load of courtrooms and judiciary and made them more efficient in terms of resolution of disputes.

Users/disputed parties are getting benefitted with faster resolution with the online mode of dispute resolution; however, this system needs to be further invested and developed and make it more available to the users.

Advantages of online dispute resolution

The online dispute resolution primarily saves lot of travel time and cost, and also negotiation/discussion can take place at the convenience of the concerned parties. Otherwise, in case of face-to-face discussion/dispute resolution, one party may have the location/environment advantage and may influence the resolution process in his favor to a great extent.

Online communication reduces the power difference and discomfort of face-to-face confrontation situation. The online dispute resolution offers similar ground for the disputed parties where both will remain in their comfortable zone. It also offers the communication between the concerned parties in the controlled environment.

The online dispute resolution process can take into consideration both synchronous as well as asynchronous communication between the parties where communication can take place real time as well as delayed. In case of asynchronous communication, the party will get time to properly phrase his message or prepare a good presentation of his point of view or situation. Online communication not only enables to control your communication but also helps in monitoring the same. Thus, online communication can also be called as hyperpersonal communication.

The advantages of the online dispute resolution can be summarized as follows:

Cost: online dispute resolution is often less expensive as compared to the traditional legal process of litigation.

Efficiency: online dispute resolution can often resolve the dispute in lesser time.

Participation and control: disputants using online dispute resolution mode are equally involved in the process to resolve the dispute and exercise more control on the outcome of the dispute.

Flexibility: parties using online dispute resolution can have more flexibility in terms of timing and availability than the traditional legal process. Online dispute resolution can allow parties in different locations or countries to avoid the costs and inconveniences of travel.

Limitations of online dispute resolution

Online dispute resolution has certain limitations as it is based on online communication. It has certain disadvantages over dispute resolution done through face-to-face interaction. First, cues of nonverbal communication are missing in online communication which is established through email or chat rooms. This makes ODR less effective in comparison to face-to-face dispute resolution.

Nonverbal cues like appearance, dressing, gestures, face expressions, eye contact/expressions, and voice pitch/intensity are very critical to communication and help in making a perception about the person. Nonverbal communication accounts to 90% of the communication, while verbal communication is only 10%. In case of messages communicated through email and chat, the message understanding is only dependent on written message.

Truthfulness/genuineness of the person is also in question in case of online communication as it is easier to present false information and deceive in case of online communication (email and chat) rather than face-to-face interaction. As per the interpersonal deception theory given by Buller and Burgoon [19], deception is easier in online communication. Deception is a message, which is knowingly communicated by the sender to generate false belief in the mind of the receiver.

They further pointed out that the sender may adopt one of the three strategies to deceive the receiver, such as falsification (presenting a fiction), concealment (hiding the truth), and equivocation (avoiding the issue).

Online communication being web-based communication is very much exposed to online security related to privacy and confidentiality issues. Here, the confidentiality of the discussion can be compromised, and some important information can be leaked to unwanted persons. In addition, online dispute resolution is based on the involved person's being technology friendly. Even in the present scenario, there are many people who are not so comfortable with the contemporary communication technology, and they have their own reservations in using it for the communication purposes.

It can be concluded that the scope of online dispute resolution is very wide, and today more and more people are getting oriented toward this mode of dispute resolution. Online dispute resolution agencies are approached for resolving personal as well as professional disputes and the approach used by these agencies to resolution is quite contemporary and well appreciated by the users. Online dispute resolution provides more satisfaction to the disputed parties as it offers solution with a lot of convenience. This process is certainly faster, cost-effective, and more approachable when compared to the traditional legal system.

APEC's New Online Dispute Resolution Framework

APEC Economic Committee at the APEC Senior Officials Meeting (SOM 1) in Santiago, Chile, endorsed a pilot for a Collaborative Framework for Online Dispute Resolution of Business-to-Business (B2B) disputes involving micro-, small-, and medium-sized enterprises (MSMEs).

APEC will partner with platform hosts and ODR providers, including regional arbitration and mediation centers, that comply with APEC's ODR Collaborative Framework and Procedural Rules.

In turn, the Economic Committee will promote partnering ODR providers on its web page and encourage MSMEs to resolve low-value dispute using accredited ODR providers. This is excellent news for small businesses across the APEC region, most of which lack a viable solution for their disputes at present.”

The APEC ODR Framework will therefore reduce barriers to entry into international trade, help create markets where none exist, establish trust between business partners, and promote a culture of contract-based relationships. It will benefit the millions of small businesses who have no access to effective dispute remedies. It will help the most vulnerable MSMEs, such as women-led businesses, compete and flourish in the global supply chain.

ODR is the cornerstone for the next global justice system in APEC. Because small businesses employ the majority of workers in the private sector, APEC ODR will help build the capacity for economic growth in APEC economies based on trade not aid.”

MSMEs in APEC account for over 97% of businesses and employ over half of the workforce. MSMEs face significant hurdles with access to justice in cross-border transactions.

A recent APEC study found that dispute resolution was one of the greatest challenges for MSMEs that trade across borders, with 83% reporting that effective and consistent dispute resolution was a problem.

35% of cross-border disputes involving MSMEs remain unresolved with the average value of the dispute being some \$50,000.

APEC is developing a Cooperative Framework for online dispute resolution (ODR) of cross-border business-to-business (B2B) disputes involving MSMEs to address these issues.

Work Plan is designed to provide MSMEs: more efficient access to commercial justice; the basis for establishment of a culture of contract-based relationships; lower transaction costs where businesses are able to allocate risk in contracting; and lower barriers for entry in international trade.

Work Plan includes the following components:

- Build a pilot in conjunction with platform host/ODR provider via outreach to regional arbitration/mediation centers to determine possible partners for hosting ODR platform
- Continue to promote harmonization of the relevant laws for ODR using existing international instruments
- Conduct relevant research/information gathering
- Design ODR platform
- Develop ODR procedural rules
- Leverage private sector and academic community support

In this regard, China, Indonesia, Chinese Taipei and Viet Nam identify enforcing contracts as an area of improvement in their IAPs while Chile, Japan, the Philippines, Russia, and Thailand generally reference improving ease of doing business.

Domestic courts do not work well for cross-border disputes involving MSMEs. They are too tied to geography, jurisdiction and in-person enforcement. Even if special courts were created, or systems were made more efficient, the costs of local counsel and travel plus issues of culture and language make access to redress a fiction for MSMEs transacting online with foreign companies.

Traditional in-person arbitration is an improvement, but it is not geared to the needs of MSMEs in cross-border transactions with its high cost and lack of speed.

In one recent survey, 90 percent of the respondents reported that, among cases in which disputes are taken to formal dispute resolution mechanisms, in-person arbitration was the preferred method of resolving disputes in cross-border trade.

However, nearly three-fourths of respondents to the survey favored simplified procedures for claims under \$500,000.

Respondents cited cost and lack of speed as the biggest drawback to international arbitration. As the UN General Assembly has recognized, ODR (as provided in the UNCITRAL ODR Technical Notes) “can assist the parties in resolving disputes in a simple, fast, flexible, and secure manner, without the need for physical presence at a meeting or hearing.”

ODR has been implemented in a number of different contexts and it has consistently proven to reduce both the time and cost for resolving disputes. Nevertheless, thus far ODR has not been offered for the resolution of cross-border disputes involving MSMEs.

The project will also build the capacity of APEC member economies’ MSMEs. Surveys have shown that small enterprises tend to work without clear contracts and dispute resolution clauses, which makes them vulnerable in case of disputes.

Use of ODR would promote a culture of contract-based relationships. In turn, it would make transactions more efficient, driving down risk and making MSMEs more competitive by lowering cost. An effective system will result in tangible economic advantages for everyone, reducing transaction costs for both sellers and buyers in the supply chain.

For purposes of the pilot stage of any ODR Collaborative Framework, the best option (as reflected in the SELI ODR Work Plan) may be partnering with ODR providers such as regional arbitration and mediation centers willing to provide their own platforms or other organizations volunteering to help establish open-source and freely accessible platforms rather than having APEC build and manage a new standalone platform for testing the possible suitable ODR solutions in the framework of the project.

Outcomes: Implementation of ODR for MSMEs engaged in cross-border disputes could save APEC MSMEs billions of dollars. Studies show that in one region, over one-fourth of MSMEs were involved in B2B disputes over a three-year period, with the average value of the dispute being \$50,000. Additionally, as many as 35% of these disputes remained unresolved with the cost of unresolved disputes estimated to be 2.8% of their turnover.

Reducing the number of unresolved disputes through implementation of ODR would also increase the liquidity and sustainability of MSMEs. Studies show that the vast majority of small business B2B disputes are about payments. MSMEs are particularly vulnerable to late payments as cash flow and credit lines are far more restricted than for larger companies with 55 percent of small businesses

facing liquidity problems. As the World Bank has found, speedy dispute resolution is “essential for small enterprises, which may lack the resources to stay in business while awaiting the outcome of a long court dispute.”

If the outstanding payment is not large, it is too expensive to go to court or in-person arbitration.

Implementation of ODR also has the potential to help harmonize client relationships for MSMEs. A significant cost that MSMEs face because of unresolved disputes is loss of market through a damaged relationship with the client. This is especially important for MSMEs because they generally have fewer clients than large businesses.

In the medium term, use of a pilot in the Collaborative Framework would provide a good test of how an ODR mechanism could function in APEC and enable APEC leaders to refine it before implementing a more final or permanent version.

Suggestion to launch

International network for online dispute resolution of Asia-Pacific region

I suggest to all participants of our Forum to join and begin make our service for good money online. It will be more simple, useful and profitable instead of old dying way of traveling across globe and trying to help clients settle their disputes and law deals abroad.

Next presenter will explain our suggestion.

If you will have any question, please contact me.

Thank you!