Study on Economy Legal Frameworks for the Implementation of ODR under the APEC Collaborative Framework

APEC Economic Committee

June 2024

Asia-Pacific
Economic Cooperation

Asia-Pacific
Economic Cooperation

Study on Economy Legal Frameworks for the Implementation of ODR under the APEC Collaborative Framework

APEC Economic Committee

June 2024

APEC Project: EC 01 2023A

Produced by
Michael Dennis
Private International Law Adviser/International ODR expert

Submitted by
Project Overseers:
Mr. Yusuke Iino, Ministry of Economy, Trade, and Industry (METI), Japan
Professor Yoshihisa Hayakawa, Rikkyo University and APEC EC SELI Convenor

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

APEC#224-EC-01.2

The information and recommendations provided in this study were developed using information available then and through dialogue with economies.

The views expressed in this document are those of the author and do not necessarily represent those of the APEC member economies. The APEC Economic Committee may further consider the recommendations provided. Various terms referenced in this report do not imply the political status of any APEC economy.

Study on Economy Legal Frameworks for the Implementation of ODR under the APEC Collaborative Framework

Table of Contents

Executive Summary

This Study reviews economy legal frameworks for readiness to implement the APEC Collaborative Framework for Online Dispute Resolution (ODR) of Cross-Border B2B Disputes (Collaborative Framework).[1] It is part of the APEC Economic Committee's (EC) effort to assist APEC economies in opting into the Collaborative Framework.

The Collaborative Framework was launched in May 2022. Under the Framework, APEC partners with ODR providers from APEC economies that opt-in. In turn, the APEC EC promotes partnering ODR providers on its website and encourages businesses, including micro-, small-, and medium-sized enterprises (MSMEs), to use them to resolve cross-border commercial disputes.

Opting into the Collaborative Framework does not create binding obligations for an economy but allows its ODR providers to partner with APEC. ODR providers, therefore, greatly benefit when their economy opts into the Framework.

If a listed ODR provider does not comply with any part of the Collaborative Framework and Model Procedural Rules, APEC may remove the provider from its list of partnering ODR providers. At the same time, the relevant laws and regulations of the respective participating economies govern the listed ODR providers.

Thus far, five economies have opted into the Collaborative Framework, and five ODR providers have partnered with APEC. Having more economies opt into the Collaborative Framework, and more providers partner with APEC is essential to developing a strong regional cross-border ODR network. A crucial issue in implementing the Collaborative Framework is getting APEC businesses, including MSMEs, to adopt ODR and the APEC ODR providers. That will require a concerted effort among all APEC member economies at the governmental level and from partnering ODR providers, the APEC EC and the APEC Business Advisory Council (ABAC) to educate businesses and promote the APEC ODR mechanism.

A number of APEC economies are actively considering opting into the Collaborative Framework. However, several economies have commented that their laws do not explicitly recognize ODR. Additionally, a United Nations Commission on International Trade Law (UNCITRAL) text on MSMEs that was adopted recently emphasizes that ODR mechanisms such as those provided under the Collaborative Framework require a conducive legal environment that permits, for example, a choice of forum and does not require the physical appearance of the parties or physical written submission of documents. The text concludes that economies may have to amend domestic laws accordingly.[2] It echoes questions that some APEC economies have concerning the suitability of their laws in the context of ODR.

[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] UNCITRAL Guide on Access to Credit for Micro, Small and Medium-sized Enterprises (2023), https://uncitral.un.org/en/texts/msmes.

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.[3] As highlighted in this Study, all APEC economies have implemented the basic elements of these instruments as they relate to the Collaborative Framework.

This Study further conducts an in-depth analysis of APEC economy laws as they relate to the specific elements of ODR under the Collaborative Framework and demonstrates that every economy, consistent with its general framework for alternative dispute resolution (ADR):

- 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 enforcement of negotiated or mediated settlement agreements;
- Provides for recognition and enforcement of foreign online awards;
- Provides the legal framework for the use of ODR for cross-border business to consumer (B2C) disputes (if the provider and parties extend the Framework to B2C transactions) subject to applicable mandatory requirements in the applicable domestic laws of economies.

Since there are no legal impediments, this Study encourages economies to strongly consider opting into the Collaborative Framework to enable their ODR providers to join and their businesses to benefit. Economies are also encouraged to support the implementation of private international law instruments relevant to ODR.

This Study is based on desktop research, questionnaire responses, and comments received on the draft study from APEC economies. This Study's preliminary results were also discussed at a January 2024 APEC ODR Workshop and a March 2024 APEC EC Policy Dialogue on ODR.[4] The APEC EC endorsed this Study in May 2024.

[3] Collaborative Framework, para. 7.1.
[4] See Workshop on Implementation of ODR in APEC Economies, including through the APEC ODR Collaborative Framework (March 2024), 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; Report by the Chair of the Economic Committee on EC 1 2024, at 5-6, https://mddb.apec.org/Documents/2024/SOM/SOM1/24_som1_009a.pdf.

I. Introduction

This Study is part of the APEC ongoing effort to assist economies in opting into the Collaborative Framework. It reviews economy legal frameworks for readiness to implement ODR.

A. Collaborative Framework Background

Under the Collaborative Framework, APEC partners with ODR providers in APEC economies that have opted into the Framework. The APEC EC promotes partnering ODR providers on its website and encourages businesses, including MSMEs, to use them to resolve cross-border commercial disputes. The Collaborative Framework was launched in May 2022.

Five economies have already opted into the Collaborative Framework:

- China
- Hong Kong, China
- Japan
- Singapore
- United States.[5]

Opting into the Framework does not impose binding legal obligations but allows the economy's ODR providers to participate in the Framework and to be listed as partnering ODR providers.[6] Thus far, five ODR providers have partnered with the APEC EC:

- eBRAM International Online Dispute Resolution Centre Limited (eBRAM), Hong Kong, China[7]
- Guangzhou Arbitration Commission (GZAC), China[8]
- China International Economic and Trade Arbitration Commission (CIETAC), China[9]
- U&I Advisory Service, Japan[10]
- CPR Dispute Resolution.[11]

Partnering APEC ODR providers self-certify their compliance with the APEC ODR Collaborative Framework and Model Procedural Rules. Compliance involves:

> (a) keeping all information confidential and maintaining secure databases and websites;

[5] The economies that have opted into the Collaborative Framework are listed on the APEC ODR website at https://www.apec.org/SELI/Economies.
[6] The website expressly states that "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." Id. The providers that have partnered with the APEC EC are listed on the APEC ODR website at https://www.apec.org/SELI/ODR-Providers.
[7] The eBRAM APEC Rules are available at https://ebram.org/uploads/rules/eBRAM APEC Rules.pdf?v=1.1.
[8] The Guidance of GZAC on Application of Model Procedural Rules for the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes is available at https://newodr.gzac.org/en/introduce/applicable/.
[9] The CIETAC APEC Rules are available at https://casettle.odrcloud.cn/CIETAC.html.
[10] Information on the U&I Advisory Service is available at https://ui-advisory.com/etcnews/.
[11] The CPR Dispute Resolution guidance on using APEC's ODR Collaborative Framework is available at https://drs.cpradr.org/services/apec-dispute-resolution.

(b) charging reasonable fees proportionate to the amount in dispute;
(c) providing their own platform to offer online negotiation, mediation, and arbitration; and
(d) providing data on the pilot's success to the APEC EC and other providers.[12]

The relevant laws and regulations of the respective participating economies govern the listed ODR providers. If a listed ODR provider does not comply with any part of the Collaborative Framework and Model Procedural Rules, APEC may remove the ODR provider from its list of partnering ODR providers.[13]

Preliminary results are promising. For example, the average time it takes the GZAC to resolve domestic and cross-border commercial disputes using the Collaborative Framework is only 37 days. Sixty-nine percent of disputes are determined during the negotiation and mediation stages.[14]

As was pointed out at the January 2024 APEC ODR Workshop, more economies must opt into the Collaborative Framework, and more providers need to partner with APEC. One of the crucial issues in implementing the Collaborative Framework is getting APEC businesses, including MSMEs, to agree to use ODR and the APEC ODR providers. As the Workshop concluded, that will require all APEC member economies at the governmental level as well as the APEC EC (SELI), ABAC, Lead Academics,[15] and partnering ODR providers to promote APEC ODR to businesses.

B. Legal Framework Under the Collaborative Framework

The Collaborative Framework addresses the legal framework that economies need to effectively implement ODR.[16] It states that it is not essential for the laws relevant to ODR within APEC economies to be identical. However, the Collaborative Framework lists four private international law instruments that constitute a cornerstone for its implementation: the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (New York Convention);[17] the UNCITRAL Model Law on International Commercial Arbitration (Rev. 2006);[18] the UNCITRAL Model Law on Electronic Commerce (1996);[19] and the United Nations Convention on the Use of Electronic Communications in International Contracts (2005) (Electronic Communications Convention).[20] Another important instrument that came into force after the endorsement of the Collaborative Framework is the United Nations

[12] The Self-Certification form is provided on the APEC ODR website at https://www.apec.org/SELI/Self-Certification.
[13] See Collaborative Framework, para. 4.6. The Removal Procedure is provided on the APEC ODR website at https://www.apec.org/SELI/Removal-Procedure.
[14] Report of APEC Workshop on Implementing ODR, January 2024, supra note 4 at 19-20 (Statement of GZAC representative Mr. Chen Chen). He further explained that these disputes totaled over CNY6.5 billion (more than USD900 million), including financial disputes, e-commerce cases, and cases dealing with emerging industries such as live streaming and intelligent vehicle manufacturing. The negotiation and mediation stages utilize AI and are offered for free.
[15] Five lead academic institutions have agreed to coordinate with other academic institutions in the implementation of the Collaborative Framework: University of Hong Kong (Dr. Yun Zhao); Indiana University (United States) (Dr. Angie Raymond); Rikkyo University (Tokyo, Japan) (Dr. Mayu Watanabe); Singapore International Dispute Resolution Academy (Academic Director Nadja Alexander); and University of International Business and Economics, School of Law (Beijing, China) (Dr. Yongmin Bian).
[16] See Collaborative Framework, para. 7.
[17] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (New York Convention), https://uncitral.un.org/en/texts/arbitration.
[18] UNCITRAL Model Law on International Commercial Arbitration (Rev. 2006), https://uncitral.un.org/en/texts/arbitration.
[19] UNCITRAL Model Law on Electronic Commerce (1996), https://uncitral.un.org/en/texts/ecommerce.
[20] United Nations Convention on the Use of Electronic Communications in International Contracts (2005) (Electronic Communications Convention), https://uncitral.un.org/en/texts/ecommerce.

Convention on International Settlement Agreements Resulting from Mediation (2018) (Singapore Convention).[21]

These five legal instruments have been largely implemented in APEC economies:

- *New York Convention*—Recognition of online arbitration agreements, including the parties' agreement regarding the place of arbitration, institutional rules, and arbitral procedures. It also provides for recognition and enforcement of 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*—Procedural legal framework for using binding arbitration including online 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 Communication Convention* and *UNCITRAL Model Law on Electronic Commerce*—Recognition of e-documents and e-signatures in commercial transactions. 16 out of 21 APEC economies have implemented either instrument. However, **every APEC economy provides for the recognition of e-documents and e-signatures.**[22]
- *Singapore Convention on Mediation*—Expedited enforcement of international mediation agreements. It has been implemented by only 2 out of 21 APEC economies. However, every APEC economy provides for the recognition of awards by consent.[23]

[21] United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) (Singapore Convention on Mediation), available at https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements.

[22] APEC Electronic Commerce Steering Group, Regulations, Policies, and Initiatives on E-Commerce and Digital Economy for APEC MSME's Participation in the Region (2020) at 30-34, https://www.apec.org/docs/default-source/publications/2020/3/regulations-policies-and-initiatives-on-e-commerce-and-digital-economy/220ecsgregulations-policies-and-initiatives-on-ecommerce-and-digital-economy-for-apec-msmes-particip.pdf?sfvrsn=63b748d7_1. Papua New Guinea (listed in the Study as the only APEC economy not having an e-commerce law) later implemented the UNCITRAL Model Law on Electronic Commerce, through its Electronic Transactions Act of 2021.

[23] See discussion infra at notes 159-163 and accompanying text.

CHART ONE: Implementation of Legal Instruments in APEC

Economies	New York Convention[24]	Model Law on International Commercial Arbitration	Model Law on Electronic Commerce	Electronic Communication Convention[25]	Singapore Convention on Mediation[26]
Australia	YES	YES	YES	-	-
Brunei Darussalam	YES	YES	YES	-	-
Canada	YES	YES[27]	YES	-	-
Chile	YES	YES	-	-	-
China	YES	-	YES	-	-
Hong Kong, China	YES	YES	YES	-	-
Indonesia	YES	-	-	-	-
Japan	YES	YES	-	-	YES
Republic of Korea	YES	YES	YES	-	-
Malaysia	YES	YES	YES	-	-
Mexico	YES	YES	YES	-	-
New Zealand	YES	YES	YES	-	-
Papua New Guinea	YES	YES[28]	YES	-	-
Peru	YES	YES	-	-	-
The Philippines	YES	YES	YES	YES	-
Russia	YES	YES	YES	YES	-
Singapore	YES	YES	YES	YES	YES
Chinese Taipei	YES[29]	YES	YES	-	-
Thailand	YES	YES	YES	-	-
USA	YES	-		-	-
Viet Nam	YES	-	YES	-	-

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

C. Issues Concerning Legal Frameworks for ODR

[24] Eleven APEC economies will only apply the Convention to recognition and enforcement of awards made in the territory of another contracting economy.
[25] China and the Republic of Korea have signed the Convention.
[26] The following economies have signed the Convention: Australia; Brunei Darussalam; Chile; China; the Republic of Korea; the Philippines; and the United States.
[27] According to UNCITRAL, Canada's provinces have enacted legislation following the UNCITRAL Model Law. See https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration (Status).
[28] On 20 February 2024, Papua New Guinea passed a new arbitration regime with the Arbitration (International) Act 2024 governing international arbitration (https://wolterskluwerblogs.com/arbitration/wp-content/uploads/sites/48/2024/03/Arbiration-International-Bill-2024.pdf) and the Arbitration (Domestic) Act 2024 governing domestic arbitration (https://wolterskluwerblogs.com/arbitration/wp-content/uploads/sites/48/2024/03/Arbiration-Domestic-Bill-2024.pdf). The arbitration legislation will come into operation upon the publication of a notice in the Gazette. The Arbitration (International) Act is based on the UNCITRAL Model Law and implements Papua New Guinea's obligations under the New York Convention (which it became a party to in 2019). See Arbitration (International) Act 2024, Sec. 2.
[29] While Chinese Taipei is not a contracting party to the New York Convention, its Arbitration Act is modeled on the Convention. See discussion infra at notes 75, 83, 95, 121, 125, 142, 146, 161 and accompanying text.

Several APEC economies are considering opting into the Collaborative Framework.[30] They are reviewing their international legal frameworks to ensure their laws facilitate ODR under the Framework.

APEC economies that have opted into the Collaborative Framework generally do not have specific laws governing ODR as their current legal frameworks implementing some, if not all, of the UNCITRAL instruments cited above are already sufficient for implementing the Collaborative Framework.[31] Under the Collaborative Framework and the UNCITRAL Technical Notes on Online Dispute Resolution, ODR is defined as a "mechanism for resolving disputes through the use of electronic communications and other information and communication technology."[32] Under this definition, ODR covers traditional dispute resolution mechanisms, including negotiation, mediation, and arbitration (as provided under the Collaborative Framework), as long as it is carried out online.

However, some economies have expressed concern that their laws do not explicitly provide for ODR.[33] Additionally, some experts recommend enacting specific legislation on ODR.[34] Most recently, the UNCITRAL Guide on Access to Credit for Micro, Small and Medium-sized Enterprises (July 2023) cited the APEC ODR Collaborative Framework and encouraged economies to review their laws and develop a conducive legal environment for ODR where none exists. The Guide states (emphasis added):

> **"(b) Online dispute resolution**
> 157. …Online dispute resolution (ODR) mechanisms are easy-to-use, fast, and low-cost platforms and do not require the physical appearance of the parties. These and other features make them particularly suitable for low-value disputes and disputes arising out of cross-border transactions. For example, the Asia Pacific Economic Cooperation (APEC) has launched the Collaborative Framework for Online Dispute Resolution of Cross-Border Business to Business Disputes for the purpose of helping small businesses resolve cross-border low-value disputes. **Online dispute resolution mechanisms require a conducive legal environment that permits, for example, choice of forum and does not require the physical appearance of the parties**

[30] According to the SELI Report on the APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes (October 2023), "Papua New Guinea and Indonesia indicated that they would soon be ready to opt into the Collaborative Framework."
[31] See Hong Kong, China response to APEC Questionnaire on Enhancing Implementation of ODR through the APEC ODR Collaborative Framework and Other Fora including Courts (EC 01 2022A) (stating that its current legal framework is sufficient for implementing the Collaborative Framework). See also Stakeholder Engagement and Capacity Building on the APEC Collaborative Framework on ODR to Improve Cross-Border Trade in Indonesia – Final Report (September 2023) at 33-56, 72, 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; Stocktake of APEC Online Dispute Resolution Technologies (April 2022) at 5-6, https://www.apec.org/docs/default-source/publications/2022/4/stocktake-of-apec-online-dispute-resolution-technologies/222_ec_stocktake-of-apec-odr-technologies.pdf?sfvrsn=a36c33ff_2.
[32] APEC ODR Model Procedural Rules, Art. 2; UNCITRAL Technical Notes on Online Dispute Resolution, Arts. 24, 26 (2016), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf. Both texts go on to make clear that ODR also requires an ODR platform.
[33] See Report of APEC Workshop on Implementing ODR, January 2024, supra note 4, at 17-18 (representatives of Malaysia; Thailand; and Papua New Guinea).
[34] See Report on Stakeholder Engagement and Capacity Building, supra note 31, at 77-80.

or physical written submission of documents. [Economies] may thus have to amend domestic laws accordingly."[35]

This Study, therefore, conducts an in-depth analysis of APEC economy laws as they relate to the specific electronic elements of ODR under the Collaborative Framework and Model Procedural Rules, including whether they permit (1) agreements to use ODR under the Collaborative Framework, including through agreements concluded electronically; (2) the parties or the ODR provider to choose the place of arbitration (seat of arbitration) even if it is the product of hearings held remotely; (3) notice of ODR (including online arbitration) to be provided using electronic communications on an ODR platform; (4) use of a documents-only decision or a remote hearing; (5) online awards recognition, including those issued digitally; (6) expedited enforcement of negotiated and mediated settlement agreements; (7) use of ODR for cross-border B2C disputes (if the provider and parties agree to extend the Framework to B2C transactions). The Study also considers (8) other elements, such as the use of technology and data privacy.

II. Recognition of Agreements to Use ODR Under the Collaborative Framework

By way of background, the use of arbitration and ODR must be consensual. Therefore, the APEC ODR Model Procedural Rules state: "The Rules shall apply to business-to-business disputes (B2B) where the parties to a sales or service contract have agreed that disputes relating to that transaction shall be resolved under these Rules …." In so agreeing, the parties are deemed to have agreed to be bound by the APEC ODR Model Procedural Rules.

Model ODR Clauses for Contracts

The APEC ODR Collaborative Framework also offers a Model ODR Clause for Contracts to facilitate the agreement of the parties to use ODR under the Collaborative Framework. It provides**:**

"Any dispute, controversy, or claim arising hereunder and within the scope of the APEC ODR Rules providing for an online dispute resolution process through negotiation, mediation, and binding arbitration shall be settled in accordance with the Model Procedural Rules for the APEC Collaborative Framework for ODR for Cross-Border B2B Disputes presently in force….The ODR provider shall be … [Name of Institution]"[36]

The GZAC Guidance on the APEC Collaborative Framework also contains an additional model clause:

"If it is agreed that any B2B Cross-border Commercial Dispute shall be referred to this Commission to resolve through the ODR platform, it shall be deemed as also agreed to be bound by the Model Procedural Rules…."[37]

[35] UNCITRAL Guide for MSMEs, supra note 2.
[36] APEC ODR Collaborative Framework, Appendix to Model Procedural Rules, Model Provisions.
[37] Guidance of GZAC on the APEC Collaborative Framework for ODR, supra note 8, Art. 3.

Every APEC economy has implemented the New York Convention, which broadly provides for the recognition of arbitration agreements. They, therefore, recognize agreements to use ODR and online arbitration as provided under the Collaborative Framework, including agreements concluded electronically.

A. Validity of Arbitration Agreements

Article II(1) of the New York Convention states: "Each Contracting [Party] shall recognize an agreement in writing under which the Parties undertake to submit to arbitration all or any differences, which have arisen, or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration."

The New York Convention further provides in Article II(3): "The court of a Contracting [Party], when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative, or incapable of being performed."[38]

Every APEC economy's arbitration law, consistent with the New York Convention, recognizes agreements to use arbitration (including online arbitration as provided under the Collaborative Framework) to resolve B2B cross-border disputes.

Consistent with Article II of the New York Convention, the UNCITRAL Model Law on International Commercial Arbitration provides (Articles 7 (options 1 and 2) and 8(1)):

> "7. 'Arbitration agreement' is an agreement by the parties to submit to arbitration all or certain disputes which have arisen, or which may arise between them in respect of a defined legal relationship, whether contractual or not."
>
> "8(1). A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed."

All APEC economies implementing the UNCITRAL Model Law on International Commercial Arbitration follow these articles. Economies that have not implemented the UNCITRAL Model Law on International Commercial Arbitration have nonetheless

[38] For a further discussion of Arts. II (1) and II (3), see the UNCITRAL New York Convention Guide, Art. II, paras. 11-12, 59-117, https://newyorkconvention1958.org/index.php?lvl=cmspage&pageid=10&menu=618&opac_view=-1_-_:~:text=Article_II_governs the recognition,referring the parties to arbitration.

enacted substantially similar provisions (China;[39] Indonesia;[40] the United States;[41] and Viet Nam[42]).

This obligation to recognize arbitration agreements extends to all material terms of an agreement to arbitrate, including the parties' agreement regarding the place of arbitration, institutional rules, and arbitral procedures (see discussion in Sections III-V infra.)[43]

B. Recognition of Arbitration Agreements Concluded Electronically

Recognition of arbitration agreements concluded electronically falls under Article II(2) or VII(1) of the New York Convention.

Article II(2). The Convention states in Article II(2) (emphasis added): "The term '**agreement in writing' shall include** an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams." As recommended by UNCITRAL, the phrase "agreement in writing" in the Convention should be applied flexibly, "recognizing that the circumstances described therein are not exhaustive" and that many arbitration agreements today are concluded through e-mail.[44]

The ICCA's Guide to the Interpretation of the 1958 New York Convention: A Handbook for Judges similarly provides:

> "The wording of Article II(2) was intended to cover the means of communication that existed in 1958. It can be reasonably construed as covering equivalent modern means of communication. The criterion is that there should be a record in writing of the arbitration agreement. All means of communication that fulfill this criterion should then be deemed as complying with Article II(2), which includes faxes and e-mails."
>
> "With respect to e-mails, a conservative approach indicates that the written form under the Convention would be fulfilled provided that signatures are electronically reliable, or the effective exchange of

[39] Chinese Arbitration Law, Art. 5 (If the parties have concluded an arbitration agreement and one party institutes an action in a People's Court, the People's Court shall not accept the case unless the arbitration agreement is null and void), https://www.bjac.org.cn/english/page/ckzl/htf1.html (unofficial translation).

[40] Indonesian Arbitration and Alternative Dispute Resolution Act, Art. 11 ("(1) The existence of a written arbitration agreement shall eliminate the right of the parties to seek resolution of the dispute or difference of opinion contained in the agreement through the District Court. (2) The District Court shall refuse and not interfere in the settlement of any dispute determined by arbitration except in particular cases specified in this Act."), http://www.flevin.com/id/lgso/translations/Laws/Law_No._30_of_1999_on_Arbitration_and_Alternative_Dispute_Resolution_(no_elucidation).pdf (unofficial translation).

[41] U.S. Federal Arbitration Act, Chap. 2, Secs 201-202, 206 ("The [New York] Convention shall be enforced in United States courts in accordance with this chapter. An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention.… A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States."), https://www.law.cornell.edu/uscode/text/9/206.

[42] Viet Nam Law No. 54/2010/QH12 on Commercial Arbitration, Art. 6 (follows Art. II(3) of the New York Convention), https://www.viac.vn/en/legal-informative-documents.html, (unofficial translation).

[43] Born, International Arbitration: Law and Practice (2021), Wolters Kluwer (3rd ed.) at 59.

[44] UNCITRAL 2006 - Recommendation regarding the interpretation of article II (2) and article VII (1) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), Report of the United Nations Commission on International Trade Law on the work of its 39th Session, 19 June – 7 July 2006, Annex II, at 62 (2006), available at https://uncitral.un.org/en/texts/arbitration (explanatory texts). UNCITRAL is responsible for the promotion of the Convention and its effective implementation and uniform interpretation.

> electronic communications can be evidenced through other trustworthy means. This is the approach that has been endorsed by UNCITRAL in its 2006 amendment of the Model Law."[45]

The UNCITRAL Recommendation concerning the New York Convention cites the UNCITRAL Model Law on Electronic Commerce and the Electronic Communications Convention. Those instruments recognize the validity of e-documents and e-signatures, including in arbitration agreements. Both the Model Law and Convention state (emphasis added), "where the law requires that [a communication] be in writing, that requirement is met by an [electronic communication] if the information contained therein **is accessible so as to be usable for subsequent reference**."[46] The Electronic Communications Convention adds that "electronic communication" means "any communication that the parties make by means of data messages." Both the Model Law and Electronic Communications Convention further define "data message" as "information generated, sent, received, or stored by electronic, magnetic, optical, or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or telecopy."[47] The Electronic Communications Convention, according to Article 20(1), also applies to arbitration agreements concluded electronically under the New York Convention.[48]

As mentioned above, 16 of the 21 APEC economies have implemented either the Model Law on Electronic Commerce or the Electronic Communications Convention. They have also interpreted the in-writing requirement of the New York Convention in a manner consistent with the Model Law on Electronic Commerce and Electronic Communications Convention. Australia, for example, in implementing the New York Convention under Part II of its Arbitration Law, clarifies (consistent with the Model Law on Electronic Commerce and the Electronic Communications Convention) (emphasis added):

> "(4) For the avoidance of doubt …, an agreement is in writing [under the New York Convention] if: …
> (b) **it is contained in an electronic communication, and the information in that communication is accessible so as to be usable for subsequent reference** …."[49]

The Australian Arbitration Law further defines an "electronic communication" as "any communication made by means of data messages" and "data message" as "information generated, sent, received or stored by electronic, magnetic, optical or

---

[45] International Council for Commercial Arbitration, Guide to the Interpretation of the 1958 New York Convention, A Handbook for Judges (2011) at 50, https://www.acerislaw.com/wp-content/uploads/2021/08/judges_guide_nyc_english_2018_reprint.pdf. See also UNCITRAL, New York Convention Guide, supra note 38, Art. II (2), paras. 50-53.

[46] Art. 6(1) of the UNCITRAL Model Law on Electronic Commerce, supra note 19 (referring to data messages); Art. 9(2) of the Electronic Communications Convention, supra note 20 (referring to electronic communications).

[47] UNCITRAL Model Law on Electronic Commerce, Art. 1(a); Electronic Communications Convention, Art. 4(c). As to e-signatures, both provide: "Where the law requires that a [communication or a contract should be signed by a party, or provides consequences for the absence of a signature], that requirement is met in relation to a [data message/ electronic communication] if: (a) A method is used to identify the [party] and to indicate that [party's] intention in respect of the information contained in the [data message/electronic communication]; and (b) [that] method is as reliable as was appropriate for the purpose for which the [data message/electronic communication] was generated or communicated, in the light of all the circumstances, including any relevant agreement...." Model Law, Art. 7 (referring to data messages); Convention, Art. 9(3) (referring to electronic communications).

[48] Electronic Communications Convention, Arts. 4(b), 20.

[49] Australia, International Arbitration Act 1974, Part II Enforcement of foreign arbitration agreements and awards, Sec. 3(4) Interpretation. The Act gives effect to the New York Convention, which is set forth in Sch. 1, https://www.legislation.gov.au/C2004A00192/latest/text.

similar means, including, but not limited to, electronic data interchange (EDI), email, telegram, telex or telecopy."[50]

Article VII(1). The New York Convention further provides in Article VII(1) that the Convention should not be read to "deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the [economy] where such award is sought to be relied upon." UNCITRAL recommends that this provision (emphasis added) "should be applied to allow any interested party to avail itself of rights it may have under the law or treaties of the [economy] where **an arbitration agreement** is sought to be relied upon to seek recognition of the validity of such an arbitration agreement."[51] The prevailing view in interpreting the Convention is that it provides the floor for the recognition of **arbitral agreements** and awards, but it does not establish a ceiling preventing broader recognition of agreements and awards following domestic law.[52]

According to Article VII(1), one must, therefore, examine individual economy laws to determine whether arbitration agreements concluded electronically are valid and enforceable under the New York Convention. UNCITRAL offers economies several models for recognizing arbitration agreements concluded electronically. The UNCITRAL Model Law on International Commercial Arbitration offers three options:

1. The 1985 version of the UNCITRAL Model Law – Article 7(2) -- provides (emphasis added): "The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or **other means of telecommunications which provide a record of the agreement."** This definition covers the electronic conclusion of arbitration agreements by an exchange of e-mails.[53]
2. The 2006 revised version of the UNCITRAL Model Law – Article 7 (option 1) – which recognizes arbitration agreements concluded through electronic communications based on the approach of the UNCITRAL Model Law on Electronic Commerce and the Electronic Communications Convention (as discussed above).[54]
3. The 2006 revised version of the UNCITRAL Model Law – Article 7 (option 2) -- which does not include an in-writing requirement.[55]

---

[50] Id., Sec. 3(1).

[51] UNCITRAL 2006 - Recommendation regarding the interpretation of Arts. II (2) and VII (1) of the New York Convention, supra note 44.

[52] For a further discussion of Art. VII (1) and its application to recognition and enforcement of arbitration agreements see UNCITRAL New York Convention Guide, supra note 38, Art. VII, paras. 31-35. See also Gary Born, International Arbitration: Law and Practice (2021) at 88-89.

[53] See Reinmar Wolff, E-arbitration Agreements and E-Awards – Arbitration Agreements Concluded in an Electronic Environment and Digital Arbitral Awards, in M. Piers and C. Aschauer (eds.), *Arbitration in the Digital Age: The Brave New World of Arbitration* (Cambridge University Press 2018), https://ssrn.com/abstract=2922550.

[54] Option 1 of Article 7 of the revised UNCITRAL Model Law on International Commercial Arbitration (2006), provides in part:

> "(3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.
>
> (4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; 'electronic communication' means any communication that the parties make by means of data messages; 'data message' means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy."

[55] Option 2 of Article 7 of the revised UNCITRAL Model Law on International Commercial Arbitration (2006), states: "'Arbitration agreement' is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or may arise between them in respect of a defined legal relationship whether contractual or not."

As discussed above, the UNCITRAL Model Law on Electronic Commerce and the Electronics Communication Convention also separately provide for the recognition of arbitration agreements concluded electronically.[56]

All APEC economies except the United States have implemented the provisions of one or several of these UNCITRAL instruments that provide for recognition of arbitration agreements concluded electronically.

CHART TWO: Validity of Arbitration Agreements Concluded Electronically

Economies	Model Law on International Commercial Arbitration (1985)	Model Law on International Commercial Arbitration (Rev.2006) option one	Model Law on International Commercial Arbitration (Rev. 2006) option two	Model Law on Electronic Commerce	Electronic Communication Convention[57]
Australia		YES[58]		YES	-
Brunei Darussalam	YES[59]			YES	-
Canada	YES[60]			YES	-
Chile	YES[61]			-	-
China	YES[62]	-		YES	-
Hong Kong, China		YES[63]		YES	-
Indonesia	YES[64]	-		-	-
Japan		YES[65]		-	-
Republic of Korea		YES[66]		YES	-
Malaysia		YES[67]		YES	-
Mexico	YES[68]			YES	-
New Zealand			YES[69]	YES	-

[56] See discussion supra notes 46-48 and accompanying text.
[57] Article 20 of the Electronic Communication Convention provides that recognition of electronic communications applies to arbitration agreements under the New York Convention.
[58] Australia International Arbitration Act, supra note 49, Sec. 16(2), (adopting Art. 7, option 1).
[59] Brunei Darussalam, International Arbitration Order, 2009, Sec. 2(1) (adopting 1985 Model Law with the exception of Chap. VIII), https://bdac.com.bn/library/S035 International Arbitration Order 2009.pdf.
[60] The Canadian Provinces generally follow the 1985 version of Article 7(2), https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status. The Ontario International Commercial Arbitration Act, 2017, Art. 5(2) follows option 1 of the revised 2006 UNCITRAL Model Law while the British Columbia Arbitration Act of 2020, Art. 5(5) ("For certainty, an arbitration agreement (a) need not be in writing") follows option 2.
[61] Chile Law on International Commercial Arbitration, No. 19971, 2004, Art. 7(2), https://www.bcn.cl/leychile/navegar?i=230697&f=2004-09-29&p=.
[62] The Supreme People's Court Interpretation of Some Issues on the Application of the Arbitration Law of the People's Republic of China (2006), Art. 1 (an agreement for arbitration "in other written forms" described in Article 16 of the Arbitration Law includes any agreement requesting arbitration in the form of contracts, letters or data messages (including telegraphs, telefaxes, electronic data interchanges and emails), https://cicc.court.gov.cn/html/1/219/199/201/672.html.
[63] Hong Kong, China, Arbitration Ordinance, Cap. 609, Sec. 4 (UNCITRAL Model Law to have the force of law in Hong Kong, China subject to modifications and supplements as expressly provided), Sec. 19, (adopting Art. 7, option 1), https://www.elegislation.gov.hk/hk/cap609!en.pdf.
[64] Indonesian Arbitration Act, supra note 40, Art. 4(3) (parties can enter into an arbitration agreement through faxes, emails, or other forms of communication).
[65] Japan Arbitration Act, Art. 13, https://www.japaneselawtranslation.go.jp/ja/laws/view/2784 (unofficial translation).
[66] Republic of Korea Arbitration Act, Art. 8, https://elaw.klri.re.kr/kor_service/lawView.do?hseq=38889&lang=ENG.
[67] Malaysia Arbitration Act 2005, Act 646, Sec. 9, https://admin.aiac.world/uploads/ckupload/ckupload_20210909045828_63.pdf.
[68] Mexico Commercial Code (Title 4) Commercial Arbitration (amended in 2011), Art. 1423, https://www.diputados.gob.mx/LeyesBiblio/pdf/CCom.pdf.
[69] New Zealand Arbitration Act of 1996, Secs. 6-7 (UNCITRAL Model Law set forth in Sch. 1), Art. 7 of Sch.1), https://www.legislation.govt.nz/act/public/1996/0099/latest/DLM403277.html.

Papua New Guinea		YES[70]		**YES**	-
Peru		**YES**[71]		-	-
The Philippines	**YES**[72]			**YES**	**YES**
Russia	**YES**[73]			**YES**	**YES**
Singapore		**YES**[74]		**YES**	**YES**
Chinese Taipei	**YES**[75]			**YES**	-
Thailand	**YES**[76]			**YES**	-
USA		-			-
Viet Nam	**Yes**[77]	-		**YES**	-

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

In the United States, the Electronic Signatures in Global and National Commerce Act (ESIGN) (2000) prohibits any interpretation of the U.S. Federal Arbitration Act's 'written provision' requirement that would preclude giving legal effect to an arbitration agreement solely on the basis that it was in electronic form. The Act broadly applies to any statute that relates to interstate or foreign commerce:

> "Notwithstanding any statute, regulation, or other rule of law … with respect to any transaction in or affecting interstate or foreign commerce—
> (1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and
> (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation."

U.S. courts have upheld the application of the ESIGN Act to arbitration agreements.[78]

[70] See Papua New Guinea Arbitration (International) Act 2024, supra note 28, Sec. 13(2).
[71] Peru Arbitration Act, (Legislative Decree 1071 of 2008), Art. 13(4), https://www.cal.org.pe/v1/wp-content/uploads/centro_arbitraje_2014/decreto_legislativo_norma_arbitraje.pdf.
[72] The Philippines Alternative Dispute Resolution Act of 2004, RA 9285, Sec. 19, (International commercial arbitration governed by Model Law attached as App. A), Art. 7 of App. A, https://lawphil.net/statutes/repacts/ra2004/ra_9285_2004.html (unofficial transaction).
[73] Russian Federation Law on International Commercial Arbitration, Art. 7(4), (adopting Model Law option 1), http://arbitrations.ru/upload/medialibrary/d94/international-arbitration-act-russia-in-english.pdf (unofficial translation).
[74] Singapore International Arbitration Act of 1994, Sec. 2A (adopting 2006 Model Law option 1), Sec. 3 (Model Law to have the force of law except for Chap. VIII), https://sso.agc.gov.sg/Act/IAA1994?WholeDoc=1.
[75] Chinese Taipei Arbitration Law, Art. 1, https://law.moj.gov.tw/eng/lawclass/LawAll.aspx?pcode=I0020001.
[76] Thailand Arbitration Act B.E. 2545 (2002), Art. 11 (includes electronic signature), http://thailawforum.com/laws/Arbitration Act.pdf.
[77] Viet Nam Law on Commercial Arbitration, supra note 42, Art. 16(2) ("An arbitration agreement must be in writing. The following forms of agreement may also be regarded as written form: a) Agreement made through communication between the parties by telegram, fax, telex, email or other forms provided for by law...").
[78] Campbell v. Gen. Dynamics Gov't Sys. Corp. 407 F.3d 546, 557 (1st Cir. 2005) ("the E-Sign Act prohibits any interpretation of the 'FAA's written provision' requirement that would preclude giving legal effect to an agreement solely on the basis that it was in electronic form."). The U.S. ESIGN Act is available at https://www.law.cornell.edu/uscode/text/15/7001. See note 41 supra and accompanying text for the U.S. Federal Arbitration Act. See also, Amy Schmitz, Ordering Online Arbitration in the Age of COVID-19 … and Beyond (2021) at 7-8 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3916406; SI Strong, What Constitutes an "Agreement in Writing" in International Commercial Arbitration? Conflicts Between the New York Convention and the Federal Arbitration Act, 48 Stan. J. Int'l L. 47, 63, 71, 73 (2012) (noting that most federal courts take a relatively permissive attitude towards technological innovations), https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1344&context=facpubs.

In conclusion, every APEC economy—except the United States—recognizes arbitration agreements concluded electronically in its arbitration law. This recognition is provided in a separate statute in the United States. Therefore, even if one were to reject Article II(2), Article VII(1) of the New York Convention would still apply, and agreements concluded electronically (including those to use online arbitration under the Collaborative Framework) must be recognized by APEC economies.

III. Place of Arbitration

As noted at the outset, the recent UNCITRAL Guide on MSMEs states that economies may need to amend their domestic laws to ensure that they permit "choice of forum" (place of arbitration) for ODR under the Collaborative Framework.[79] In this regard, some have suggested that determining the place of arbitration becomes more complex when the proceedings are conducted online and that the preparation of additional international standards may be required.[80]

The "place of arbitration" refers to the formal situs or "seat" of the arbitration, that is, the place where the arbitration is considered held from a legal point of view. The place of arbitration is of crucial importance in international arbitration since arbitration legislation is territorial in scope, regulating arbitrations that have their seat within that jurisdiction and not arbitrations that have their seat in other jurisdictions. The New York Convention requires a place of arbitration.[81]

The APEC ODR Model Procedural Rules state in Article 16 – Place of Arbitration:

> "If the parties have not determined the place of arbitration, the ODR provider shall select the place of arbitration, having due regard to the circumstances of the case."

The APEC Model ODR Clause for Contracts notes that "Parties should consider adding: … The place of arbitration shall be …[Town and Economy]."

The APEC ODR Model Procedural Rules further state in Article 8(4) that the award shall state the place of arbitration.

Under APEC economy legal frameworks, consistent with the APEC ODR Model Procedural Rules:

- A jurisdiction becomes the place of arbitration by virtue of having been designed by the parties or by an arbitral institution.
- An award is deemed to be made at the place of arbitration, even if it is the product of hearings or deliberations conducted elsewhere or held remotely.
- An arbitral proceeding is usually governed by the arbitration law of the jurisdiction where it is seated, and the resulting award is deemed to be made in that jurisdiction.
- An award must state the place of arbitration.

[79] UNCITRAL Guide for MSMEs, supra note 2.
[80] UNCITRAL Secretariat, Legal issues related to the digital economy – dispute resolution in the digital economy, A/CN.9/1064/Add.4,para. 55, https://undocs.org/A/CN.9/1064/Add.4.
[81] See Gary Born, International Arbitration: Law and Practice, 2021 at 40, 370, 374-5.

As to the determination of the place of arbitration, the UNCITRAL Model Law on International Commercial Arbitration provides (Article 20(1)):

> "The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties."

As to the ability of the Tribunal to meet at any place, including remotely, the UNCITRAL Model Law provides (Article 20(2)):

> "Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members …."

As to the applicability of an economy's arbitration law, Article 1 of the UNCITRAL Model Law provides:

> "The provisions of this Law, except articles 8, 9, 17 H, 17 I, 17 J, 35 and 36 apply only if the place of arbitration is in the territory of this State."

The exceptions deal with recognition of arbitration agreements, interim measures that may be enforced cross-border, and recognition and enforcement of awards.

Finally, the UNCITRAL Model Law requires in Article 31(3) that the award state the place of arbitration.[82] APEC economies implementing the Model Law follow these provisions almost verbatim or substantially similarly. [83] Additionally, China; [84] Indonesia;[85] the United States;[86]and Viet Nam[87] generally follow the same approach.

In sum, APEC economy laws provide the parties substantial flexibility in determining the seat of arbitration, including in online proceedings.

---

[82] UNCITRAL Model Law on International Commercial Arbitration, supra note 18, Art. 31(3).

[83] See e.g., Australia, International Arbitration Act, supra note 49, Arts.1, 20 of Sch. 2; Brunei Darussalam Arbitration Act, supra note 59, Part IV, Sch. 1, Arts. 1, 20; Chile Law on International Commercial Arbitration, supra note 61, Arts. 1(2), 20; Hong Kong, China, Arbitration Ordinance, supra note 63, Secs. 5(2), 48; Japan Arbitration Act, supra note 65, Arts 1, 3, 28, 39(3); Korean Arbitration Act, supra note 66, Arts. 2(1), 21; Malaysia Arbitration Act, supra note 67, Secs. 3(3), 22; Mexico Commercial Code, supra note 68, Arts. 1415, 1436; New Zealand Arbitration Law, supra note 69, Sec. 6, Art. 20 of Sch. 1; Papua New Guinea Arbitration (International) Act 2024, supra note 28, Secs. 5(2), 41; Peru Arbitration Act, supra note 71, Arts. 1, 35**;** the Philippines ADR Act, supra note 72, Sec. 30, Art. 1 of App. A; Russia Law on International Commercial Arbitration, supra note 73, Arts. 1(1), 20; Singapore International Arbitration Act, supra note 74, Arts. 1(2), 20, First Sch.; Chinese Taipei Arbitration Law, supra note 75, Arts. 20-21, 47; Thailand Arbitration Act, supra note 76, Secs. 26, 41.

[84] See Guo Yu, People's Republic of China, in Gary Bell, The UNCITRAL Model Law and Asian Arbitration Law (2018), 271, 287 (noting there is no express provision on the free agreement of the place of arbitration in the Chinese Arbitration Law, but such freedom is recognized in practice).

[85] The Indonesian Arbitration Law, supra note 40, provides (Art. 37): "(1) Unless the parties have themselves determined the venue of the arbitration, the same shall be determined by the arbitrator or arbitration tribunal. (2) The arbitrator or arbitration tribunal may hear witness testimony or hold meetings, if deemed necessary, at a place or places outside the place where the arbitration is being held.").

[86] The U.S. Federal Arbitration Act, supra note 41, states (Sec. 206): "a court having jurisdiction with regard to [agreements falling within the scope of the New York Convention], may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States."

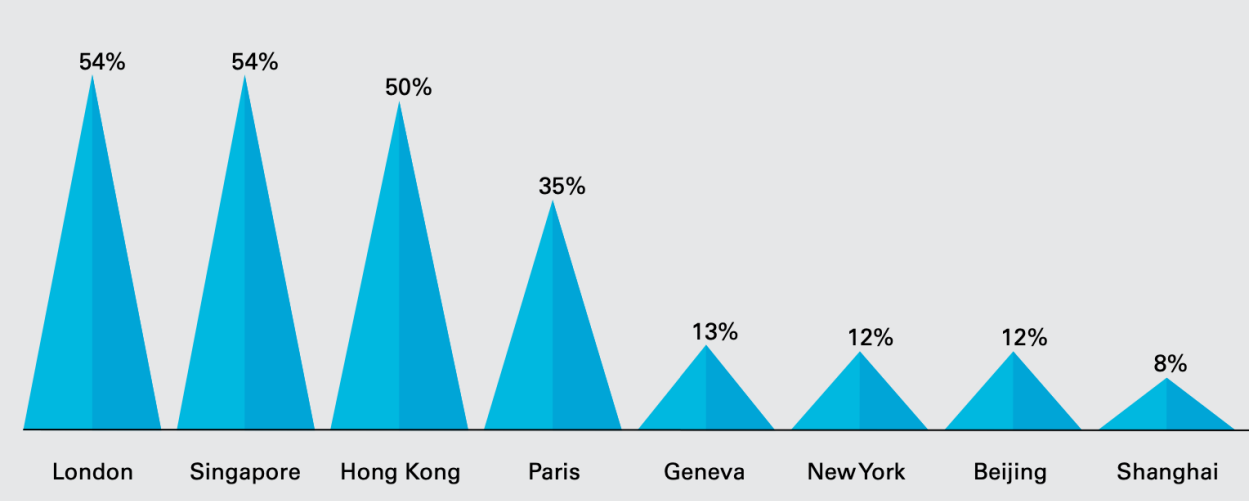
[87] The Viet Nam Law on Commercial Arbitration, supra note 42 provides (Art. 11): "The parties may reach agreement on venue for dispute settlement. If no agreement is made, the arbitration council shall decide on such venue. A venue for dispute settlement may be within or outside the Vietnamese territory."

Some arbitral institutions in the APEC region state in their rules that the place of arbitration for online arbitration will be in their jurisdiction unless the parties agree otherwise. For example, the CIETAC Online Arbitration Rules (2009), in Article 8, provide for the place of arbitration to be "[w]here the parties have agreed on the place of arbitration." In the absence of such an agreement, the Rules provide that "the place of arbitration shall be the location of CIETAC [in Beijing]."[88] The Russian Arbitration Association (RAA) Online Arbitration Rules (2015) similarly provide "unless the parties have agreed otherwise, the place of arbitration shall be Moscow, Russia."[89]

The eBRAM APEC ODR Rules follow the same approach stating that "The Hong Kong SAR shall be the place of arbitration (known as the seat of arbitration) unless the parties have agreed in writing otherwise."[90]

Note: Surveys show that five of the top eight places of arbitration chosen by parties globally are in the APEC region, reflecting the strength of these APEC economies' arbitration laws.

CHART THREE: Preferred Seats of Arbitration



Source: Queen Mary, 2021 International Arbitration Survey: Adapting Arbitration to a Changing World, at 6, https://arbitration.qmul.ac.uk/research/2021-international-arbitration-survey/.

[88] CIETAC Online Arbitration Rules (2009), https://arbitrationlaw.com/sites/default/files/free_pdfs/CIETAC_Online_Arbitration_Rules.pdf.
[89] Russian Arbitration Association (RAA) Online Arbitration Rules (2015), Art. 1.4, https://arbitration.ru/upload/medialibrary/21a/arbitraj_block_01_20_fin.pdf.
[90] eBRAM APEC ODR Rules, supra note 7, Art. 18. The eBRAM (online) Arbitration Rules also provide "[i]f the parties have not previously agreed on the place of arbitration (being the seat of the arbitration), the place of arbitration shall be Hong Kong unless the arbitral tribunal, having regard to the circumstances of the case, consider that another place of arbitration would be more appropriate. The award shall be deemed to have been made at the place of arbitration." eBRAM (online) Arbitration Rules, Art. 18, https://ebram.org/arbitration_rules/. See also Avineet Chawla, Determining the Seat of Arbitration in Online Arbitration (2023), https://medium.com/cadre-odr/determining-the-seat-of-arbitration-in-online-arbitration-d413a8e4a4df; Ji Yoon Park, Jae Hoon Choi, The Issue of the Seat of Arbitration in ODR Arbitration (2020), https://arbitrationblog.kluwerarbitration.com/2020/08/05/the-issue-of-the-seat-of-arbitration-in-odr-arbitration/.

IV. Notices of Arbitration Served Electronically

The APEC ODR Model Procedural Rules, consistent with the UNCITRAL Technical Notes on ODR, provide for the commencement of proceedings through electronic communication from the ODR provider. Both texts provide:

> "ODR proceedings shall be deemed to commence when, following communication to the ODR provider of the notice …, the ODR provider notifies the parties [at their designated electronic address] of the availability of the commencement notice at the ODR platform."[91]

However, the UNCITRAL Secretariat has recently noted that in practice (emphasis added), "a notice of arbitration continues to be communicated by **delivery of a paper-based original** or copy **with proof of service …** to mitigate the risk of notices of arbitration served electronically being found ineffective and of awards resulting from proceedings initiated by such notices of arbitration being rendered unenforceable." It further stated:

> "After receipt of a notice of arbitration and, the response thereto, and the communication between the parties and the arbitral tribunal has started, there is little risk that documents exchanged over emails in this ongoing process will end up not being correctly received."
>
> "In contrast, the communication of a notice of arbitration is a significant initial step of an arbitral proceeding, which cannot be overlooked to ensure due process. According to Article V(1)(b) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and Article 34(2)(a)(ii) of the UNCITRAL Model Law on International Commercial Arbitration, the lack of proper service of the notice of arbitration may result in the award not being enforceable."[92]

But, in APEC, every economy permits the parties to agree that proceedings can be commenced using electronic communications. Additionally, in practice, arbitral institutions in APEC commonly commence proceedings through electronic communications.

The New York Convention does not elaborate on the formal notice requirements to commence an arbitration.[93] Therefore, what constitutes proper notice will depend on the arbitration laws of the economy where the award is sought to be set aside or enforced. The UNCITRAL Model Law provides the parties may agree on the means

---

[91] APEC ODR Model Rules, Art. 4; UNCITRAL Technical Notes on ODR, supra note 32, paras. 30, 33-34.
Both the Rules (Art. 4) and Notes (Art. 33) further state: "The notice shall include:
(a) The name and electronic address of the claimant and the claimant's representative (if any)…
(b) The name and electronic address of the respondent and the respondent's representative (if any)…
(h) The [electronic] signature or other means of identification and authentication of the claimant and/or the claimant's representative."

[92] UNCITRAL Secretariat, Stocktaking of Developments in Dispute Resolution in the Digital Economy, A/CN.9/1154 (2023) at para. 20, https://uncitral.un.org/en/commission.

[93] See New York Convention Guide, supra note 38, Art. V(1)(b) paras. 8-27 (noting that "drafters of the New York Convention did not add a requirement that notice be in writing or in another other specific form.").

of commencing a proceeding. It states (Article 3) (emphasis added): "**(1) Unless otherwise agreed by the parties:** (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at the addressee's place of business, habitual residence, or mailing address …."[94] Most APEC economies follow the UNCITRAL Model Law approach and grant the parties the freedom of contract to determine the means of commencing a proceeding.[95]

Some APEC economies, such as Indonesia,[96] and Malaysia,[97] have clarified in their arbitration laws that using electronic communications (email) to commence the arbitral proceeding is permitted. Peru and Papua New Guinea permit electronic communications for notification or communication if the other party has designated an electronic address.[98] Additionally, Viet Nam (consistent with the APEC Model ODR Rules and UNCITRAL Technical Notes on ODR) provides that the claimant shall submit the notification of arbitration to the arbitration center, the time of commencing the proceeding being the time the arbitration center receives the notice. The Viet Nam law further provides that the notices and documents may be sent by the arbitration center or council by email or other modes that provide a record of the attempt to deliver it.[99]

Further, the ability to use electronic notices to initiate ODR and online arbitration may depend on an economy's e-commerce laws and their scope. For example, the UNCITRAL Model Law on Electronic Commerce (Article 1) applies to "commercial transactions" (which may not apply to initiating arbitral proceedings). Still, an alternative text on scope provides that "This Law applies to any kind of information in the form of a data message …."[100] The World Bank has recommended that APEC economies expand the scope of their e-transactions laws, consistent with the alternate text on scope in the Model Law.[101] The Philippines ADR Act states that its Electronic Signature and E-Commerce Act "shall apply to proceedings in the act." The law would appear to authorize electronic communications during ODR proceedings, including those to initiate ODR and arbitration.[102] On the other hand, the Electronic Communications Convention may not apply to electronic communications used to initiate ODR and online arbitration proceedings since its scope of application is limited

[94] Article 21 of the Model Law further provides (emphasis added): "**Unless otherwise agreed by the parties,** the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."
[95] See e.g., Australia, International Arbitration Act, supra note 49, Arts. 3, 21 of Sch. 2; Brunei Darussalam Arbitration Act, supra note 59, Part IV, Schedule 1, Arts. 3, 21; Chile Law on International Commercial Arbitration, supra note 61, Arts. 3, 21; China Arbitration Law, supra note 39, Art. 23-24 (written application submitted to tribunal); Hong Kong China, Arbitration Ordinance, supra note 63, Secs. 10(1), 49; Japan Arbitration Act, supra note 65, Arts. 12, 29.1 (court may also send document); Korean Arbitration Act, supra note 66, Arts. 4, 22(1); Mexico Commercial Code, supra note 68, Art. 1418, 1437; New Zealand Arbitration Law, supra note 69, Arts. 3(1)(a), 21 of Sch. 1; the Philippines ADR Act, supra note 72, Art. 3, 21 of App. A; Russia Law on International Commercial Arbitration supra note 73, Arts. 3, 21; Singapore International Arbitration Act, supra note 74, Arts. 3, 21, First Sch.; Chinese Taipei Arbitration Law, supra note 75, Art. 18; Thailand Arbitration Law, supra note 76, Secs. 7, 27.
[96] Indonesian Law on Arbitration, supra note 40, Art. 8(1).
[97] Malaysia Arbitration Act, supra note 67, Secs. 6(2) and 23 ("Unless otherwise agreed by the parties, a written communication sent electronically is deemed to have been received if it is sent to the electronic mailing address of the addressee.").
[98] Peru Arbitration Act, supra note 71, Arts. 12(b), 33; Papua New Guinea Arbitration (International) Act 2024, supra note 28, Secs. 11, 42(1).
[99] Viet Nam Law on Commercial Arbitration, supra note 42, Arts. 12(3), 30-32.
[100] Model Law on Electronic Commerce, supra notes 19, 46-47.
[101] See, e.g., World Bank, Digital Market Regulations for Promoting Business Innovation and Digitalization in Viet Nam (2022) at 34-35. Viet Nam subsequently expanded the scope of its e-transactions law in Decree 85/2021/ND-CP (Decree 85) (2021). See Report of APEC Workshop on Implementing ODR, January 2024, supra note 4, at 17 (Mr. Anh Duong Nguyen commenting that the amended Law on Electronic Transactions in Viet Nam broadened the scope of coverage and provided a concrete framework for legal recognition of the sending and receipt of data messages, e-certificates, e-signatures, trust services, and e-contracts).
[102] The Philippines ADR Act, supra note 72, Sec. 4.

to "the use of electronic communications in the formation or performance of a contract."[103]

Finally, deference should be shown to the rules of procedure of the arbitral institution incorporated by reference into the parties' agreement to arbitrate. In this regard, the UNCITRAL Arbitration Rules (2021) provide (Article 2) (emphasis added):

> "**A notice, including a notification, communication, or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission."**
>
> "If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address and, if so provided, shall be deemed to have been received. **Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized."[104]**

Most major arbitral institutions in APEC follow the UNCITRAL Arbitration Rules and permit (or require) notification of requests for arbitration and subsequent communications during the arbitration to take place electronically. In some institutional arbitrations, the claimant submits the notice to the institution, which is then responsible for delivering the request for arbitration to the respondent:

- ACICA Arbitration Rules (2021) (Australia) (claimant shall submit a notice of arbitration to ACICA by electronic means and a notice to the respondent including by electronic means);[105]
- AAA-ICDR (2021) (United States) (claimant may initiate arbitration online through AAA WebFile and by providing notice including by electronic communication to respondent's last known address);[106]
- AIAC Arbitration Rules 2023 (Malaysia) (notice by electronic communications permitted to designated address);[107]
- BANI Arbitration Rules (2022) (Indonesia) (claimant submits request for arbitration to Secretariat (may be by email), Secretariat submits copy of request to respondent to initiate proceedings);[108]
- CIETAC Arbitration Rules (2024) (China) ("electronic means of delivery includes service of arbitration documents … via the digitalized information exchange system of CIETAC …, [a]rbitration documents may be served by electronic communications as preferred means");[109]

---

[103] See discussion supra notes 20, 46-48 and accompanying text.
[104] The UNCITRAL Arbitration Rules (2021) are available at https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration.
[105] Australian Center for International Commercial Arbitration (ACICA) Arbitration Rules (2021), Arts. 4(1), 6(1), 6(5), https://acica.org.au/wp-content/uploads/2022/11/ACICA_Rules_2021-WFF7.pdf.
[106] International Center for Dispute Resolution (ICDR) Procedures (2021), Arts. 2(1), 11, https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules_1.pdf?utm_source=icdr-website&utm_medium=rules-page&utm_campaign=rules-intl-update-1mar.
[107] Asian International Arbitration Center (AIAC) Arbitration Rules (2023), Art. 2, https://admin.aiac.world/uploads/ckupload/ckupload_20230825011746_12.pdf.
[108] Indonesian National Board of Arbitration (BANI) Arbitration Rules (2022), Arts. 4(3)(a), 6(1), 8(1), https://baniarbitration.org/arbitration-rules.
[109] CIETAC Arbitration Rules (2024), Art. 8, https://www.acerislaw.com/wp-content/uploads/2024/01/2024-CIETAC-Arbitration-Rules.pdf. See also CIETAC APEC ODR Rules, supra note 9, Arts. 3-4.

- CPR Rules for Administered Arbitration of International Disputes (2019) (United States) (notice permitted by email, arbitration deemed commenced when CPR receives electronic notice of arbitration);[110]
- KCAB International Arbitration Rules (2016) (Korea) (claimant submits notice to KCAB including by electronic communications, KCAB submits notice to respondent including by electronic communication at designated electronic address);[111]
- PDRIC Arbitration Rules (2021) (The Philippines) (notice of arbitration submitted to PDRCI including by electronic communications, PDRCI submits notice to the respondent, including to designated electronic address);[112]
- RAA Online Arbitration Rules (Russia) (notices sent to email addresses specified in arbitration agreement deemed properly delivered, claim submitted through RAA system);[113]
- SIAC Arbitration Rules (Singapore) (claimant submits notice to SIAC and respondent, including by electronic communications);[114]
- VIAC Rules of Arbitration (Viet Nam) (claimant submits notice to VIAC, VIAC sends to respondent including by electronic communications).[115]

Thus, subject to any mandatory rules of law,[116] APEC ODR providers may initiate proceedings by providing the notice of ODR to the respondent's designated electronic address.[117]

To avoid uncertainty as to the parties' intent, APEC ODR providers may wish to supplement their APEC ODR Rules with a provision such as provided in the eBRAM APEC ODR Rules:

"In agreeing to use the eBRAM APEC Rules, a party has agreed to accept that transmission by electronic means through the eBRAM platform constitutes valid service of any communication."[118]

[110] CPR Rules for Administered Arbitration of International Disputes, Arts. 2-3, https://drs.cpradr.org/rules/international/arbitration/2019-international-administered-arbitration-rules. See also CPR APEC ODR Rules, supra note 11.
[111] Korean Commercial Arbitration Board (KCAB) International Arbitration Rules (2016), Arts 4, 8, http://www.kcabinternational.or.kr/common/index.do?jpath=/contents/sub020101&CURRENT_MENU_CODE=MENU0008&TOP_MENU_CODE=MENU0007.
[112] Philippines Dispute Resolution Centre Inc. (PDRCI) Arbitration Rules (2021), Arts 2(1), 2(2), 2(5), 4(1), 5(1), https://pdrci.org/arbitration-rules-3/ - 58.
[113] RAA Online Arbitration Rules, supra note 89, Art. 1.3.
[114] Singapore International Arbitration Center (SIAC) Arbitration Rules (2016), Arts. 2.1, 3.1, 3.4, https://siac.org.sg/siac-rules-2016.
[115] Viet Nam International Arbitration Center (VIAC) Rules of Arbitration (2017), Arts. 3(2), 5 and 7-8, https://www.viac.vn/en/rules-of-arbitration.html.
[116] The UNCITRAL Arbitration Rules (Art. 1(3)) provide: "These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail." The APEC ODR Rules contain a substantially identical provision in Art. 1. Mandatory rules are extremely limited in modern arbitration statutes.
[117] See ICC, Leveraging Technology for Fair, Effective, and Efficient International Arbitration Proceedings (2022) at 17 (reporting that in responses to 36 economy questionnaires, notes of caution about relying on electronic communications were limited. One response stated that Nigeria required notification by post for the commencement of an arbitration. Also a few respondents in other economies suggested that service by mail in addition to electronic notification was recommended, even if not strictly required.).
[118] eBRAM APEC Rules, supra note 7, Art. 3(4).

V. Parties Freedom to Determine Rules Governing Conduct of Proceedings

As noted, the recent UNCITRAL Guide for MSMEs, states with respect to ODR mechanisms such as the APEC Collaborative Framework, that economies may need to amend their domestic laws to ensure that they do not require the parties' physical appearance or written submission of documents.[119] The APEC ODR Model Procedural Rules do not provide for the physical appearance of the parties or the physical written submission of documents. Instead, they generally provide for a documents-only decision based upon the electronic submission of documents and the possible use of remote hearings if the neutral so decides.[120] Every APEC economy recognizes the parties' basic freedom of contract to agree to conduct the proceedings as provided in the APEC ODR Procedural Rules, including through documents-only decisions or remote hearings.

A. Basic Freedom of Parties and Tribunal Over Conduct of Proceedings

Every APEC economy gives parties and the arbitral tribunal widespread autonomy in determining the procedural rules for international arbitration seated in its jurisdiction. The New York Convention (Article V(1)(d)) stipulates that recognition and enforcement of an arbitral award may be refused where "the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the [economy] here the arbitration took place."

The UNCITRAL Model Law on International Commercial Arbitration provides (Article 19):

> "(1) "Subject to the provisions of this law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. (2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate."

Economies following the Model Law have enacted these provisions uniformly.[121]

Other economies that do not generally follow the Model Law have nonetheless adopted similar provisions. For example, the Indonesian Arbitration Act makes clear

[119] UNCITRAL Guide for MSMEs, supra notes 2, 35 and accompanying text.
[120] The APEC ODR Model Rules (Art 13.3) state: "Subject to any objections under Article 11, paragraph 8, the neutral shall conduct the ODR proceedings on the basis of all communications made during the ODR proceedings, the relevance of which shall be determined by the neutral. The ODR proceedings shall be conducted on the basis of these materials only unless the neutral decides otherwise."
[121] Australia International Arbitration Act, supra note 49, Arts. 18-19 of Sch. 2; Brunei Darussalam Arbitration Act, supra note 59, Part IV, Schedule 1, Arts. 17-18; Chile Arbitration Act, supra note 61, Arts. 18-19; Hong Kong China, Arbitration Ordinance, supra note 63, Secs. 46-47; Japan Arbitration Act, supra note 65, Arts. 25-26; Korean Arbitration Act, supra note 66, Arts. 19-20; Malaysia Arbitration Act, supra note 67, Secs. 20-21; Mexico Commercial Code, supra note 68, Arts. 1434-35; New Zealand Arbitration Law, supra note 69, Arts. 18-19 of Sch. 1; Papua New Guinea Arbitration (International) Act 2024, supra note 28, Secs. 38, 40; Peru Arbitration Act, supra note 71, Art. 34; the Philippines ADR Act, supra note 72, Art. 18-19 of App. A: Russia Law on International Commercial Arbitration, supra note 73, Arts. 18-19; Singapore International Arbitration Act, supra note 74, Arts. 18-19, First Sch.; Chinese Taipei Arbitration Law, supra note 75, Arts. 19, 23; Thailand Arbitration Law, supra note 76, Sec. 25.

that an arbitral institution's rules prevail over the procedural provisions in the Arbitration Act if agreed by the parties. The Act provides (Article 34):

> "(1) Resolution of a dispute through arbitration **may be referred to a domestic or international arbitration institution if so agreed upon by the parties."**
>
> "(2) Resolution of a dispute through **institutional arbitration**, as contemplated in paragraph (1), **shall be done according to the rules and procedures of such designated institution**, except to the extent otherwise agreed upon by the parties."[122]

The Viet Nam Law on Commercial Arbitration provides that where the parties have agreed to conduct an arbitration at an arbitration institution, the parties' agreement or the arbitration institution's procedural rules take precedence.[123]

In the United States, the Federal Arbitration Act is silent on the matter. However, U.S. Courts uniformly confirm the parties' freedom to agree on the arbitral procedures, subject only to very limited requirements of procedural fairness.[124]

B. Documents-Only Decisions or Remote Hearings

Every APEC economy's law also recognizes the ability of the parties to agree to documents-only decisions or remote hearings as provided in the APEC ODR Model Procedural Rules.

The UNCITRAL Model Law on International Commercial Arbitration provides in Article 24 that (emphasis added):

> "**Subject to any contrary agreement by the parties**, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, **or whether the proceedings shall be conducted on the basis of documents and other materials**."

Economies following the UNCITRAL Model Law have uniformly enacted this provision.[125]

---

[122] Indonesia Arbitration Act, supra note 40, Art. 34.
[123] Viet Nam Law on Commercial Arbitration, supra note 42, Art. 40.
[124] See Gary Born, International Commercial Arbitration, 2d ed. (Kluwer Law International 2014) at 2134-35 (Sec.15.03). https://www.icann.org/en/system/files/files/irp-afilias-legal-authorities-15nov19-en.pdf. He states: "In the United States, the FAA does not contain provisions addressing the subject of arbitral procedures or providing a basic procedural framework for arbitrations; rather, the FAA effectively leaves all issues of procedure entirely to the parties and arbitrators. The FAA does so by providing for the validity of agreements to arbitrate, including their procedural terms, in §2, and by providing for orders to compel arbitration, in accordance with the provisions of the parties' arbitration agreement, in §4; both provisions require giving effect to the parties' agreed arbitral procedures and, in the absence of any such agreement, leaving the arbitral procedures by default to the arbitrators' general adjudicative authority, without imposing any statutory limitations on that authority."
[125] Australia International Arbitration Act, supra note 49, Art. 24 of Sch. 2; Brunei Darussalam Arbitration Act, supra note 59, Part IV, Sch. 1, Art. 24; Chile Arbitration Law, supra note 61, Art. 24(1); Hong Kong China, Arbitration Ordinance, supra note 63, Sec. 52; Japan Arbitration Act, supra note 65, Art. 32; Korea Arbitration Act, supra note 66, Art. 25(1); Malaysia Arbitration Act, supra note 67, Sec. 26; Mexico Commercial Code, supra note 68, Art. 1440; New Zealand Arbitration Law, supra note 69, Art. 24 of Sch.1; Papua New Guinea Arbitration (International) Act 2024, supra note 28, Sec. 45; Peru Arbitration Act, supra note 71, Art. 42; the Philippines ADR Act, supra note 72, Art. 24 of App. A; Russia Law on International Commercial Arbitration, supra note 73, Art. 24; Singapore International Arbitration Act, supra note 74, Art. 24 of First Sch.; Chinese Taipei Arbitration Law, supra note 75, Art. 21; Thailand Arbitration Law, supra note 76, Sec. 30.

Economy laws not generally based on the UNCITRAL Model Law are consistent with this requirement. The Indonesia Arbitration Act mirrors the APEC ODR Model Procedural Rules by providing for documents-only decisions unless the neutral decides otherwise. Article 36 states:

> "(1) The arbitral hearings of the dispute shall be done by written documents.
> (2) Verbal hearings may be conducted with the approval of the parties concerned or if deemed necessary by the arbitrator or arbitration tribunal."[126]

Similarly, under the Viet Nam Law on Commercial Arbitration, an arbitral tribunal may make a documents-only decision with the parties' consent. Article 56(3) of the Law provides that:

> "At the parties' request, the arbitration council may base itself on the dossiers (documents and evidence) to hold a dispute settlement meeting without the parties' presence."[127]

As to the ability to hold remote hearings in international arbitration, UNCITRAL recently observed:

> "The UNCITRAL instruments do permit for remote hearings, even if they are not explicitly stated. This has been clarified in the UNCITRAL Expedited Arbitration Rules, whereby the explanatory note for article 3 states that article 3(3) 'emphasizes the discretion provided to the arbitral tribunal to make use of a wide range of technological means to conduct the proceeding, including when communicating with the parties and when holding consultations and hearings.' Furthermore, the explanatory note states that '[T]he inclusion of such a rule in the Expedited Rules does not imply that the use of technological means is available to arbitral tribunals only in expedited arbitration,' and further states that parties should be given 'an opportunity to express their views on the use of such technological means and consider the overall circumstances of the case, including whether such technological means are at the disposal of the parties.' Nonetheless, the availability of virtual hearings provides contract parties with the possibility of continuing its arbitration proceedings without physical obstacles."[128]

[126] Indonesian Arbitration Act, supra note 40, Art. 36.
[127] Viet Nam Law on Commercial Arbitration, supra note 42, Art. 56(3). The China Arbitration Law, supra note 40, Art. 39, similarly provides that if the parties agree not to have an oral hearing, the arbitral tribunal may give the award on a documents-only basis. In China, conducting an arbitration case by resorting to remote hearings or on a documents-only basis is a well-established practice, as demonstrated by CIETAC. See notes 9 supra and 135 infra.
[128] UNCITRAL Secretariat, Exploratory Work on the impact of COVID-19 on international trade law, A/CN.9/1144 (2023) at 25, https://undocs.org/A/CN.9/1144.For the UNCITRAL Expedited Arbitration Rules, see https://uncitral.un.org/en/content/expedited-arbitration-rules. The Expedited Arbitration Rules are an appendix to the UNICITRAL Arbitration 2021 Rules, supra note 104, and apply to the arbitration where the parties so agree. UNCITRAL Arbitration Rule Art. 1(5).

In 2022, the International Council for Commercial Arbitration (ICCA) analyzed the laws of 78 jurisdictions (including 13 APEC economies) and found that arbitral tribunals could conduct remote hearings in almost every jurisdiction. The ICCA report concludes that "no jurisdiction expressly recognizes a right to a physical hearing in international arbitration, and only a handful recognizes such a right by inference and, even then, it is typically circumscribed."[129]

C. Rules of Arbitral Institutions in APEC Provide for Documents-Only Decisions and Virtual Hearings

Arbitration rules issued by arbitral institutions in APEC follow the UNCITRAL Expedited Arbitration Rules, and broadly provide for the use of documents-only decisions and remote hearings (consistent with the APEC ODR Model Procedural Rules):

- AAA-ICDR International Dispute Resolution Procedures (U.S.);[130]
- ACICA Arbitration Rules (Australia);[131]
- AIAC Arbitration Rules (Malaysia);[132]
- BANI Arbitration Rules (2022) (Indonesia);[133]
- CAA Arbitration Rules (Chinese Taipei);[134]
- CIETAC Arbitration Rules (China) (2024);[135]
- KCAB International Arbitration Rules (Republic of Korea);[136]
- PDRIC Arbitration Rules (The Philippines);[137]
- SIAC Arbitration Rules (Singapore);[138]
- THAC Rules on Online Dispute Resolution) (Thailand);[139]
- VIAC Rules of Arbitration (Viet Nam).[140]

These providers could benefit from partnering with APEC under the Collaborative Framework to extend their reach.

[129] ICCA, Does a Right to a Physical Hearing Exist in International Arbitration (2022), https://cdn.arbitration-icca.org/s3fs-public/document/media_document/Right-to-a-Physical-Hearing-General-Report.pdf.
[130] ICDR Dispute Resolution Procedures, supra note 106, Art. 26(2) (virtual hearings permitted); International Expedited Procedures Art. E-8 (expedited proceedings based on written submissions permitted, arbitrator may require hearing if deemed necessary).
[131] ACICA Expedited Arbitration Rules, supra note 105, Art. 24.6 (no hearing unless exceptional circumstances), Art. 24(8) (virtual hearings permitted).
[132] AIAC Arbitration Rules, supra note 107, Schedule 4 – AICA Fast Track Procedures Procedure, Clause 3 (Tribunal may use any technological means it considers appropriate to conduct proceedings), Clause 10 (Tribunal may decide no hearing).
[133] BANI Arbitration Rules, supra note 108, Art 18(1) (documents-only decision sole discretion of Tribunal). See also Bani Rules and Procedures on Electronic Arbitration (2022), Art. 4 (virtual hearings permitted).
[134] Chinese Arbitration Association (CAA) Arbitration Rules (Chinese Taipei) Chap. VI, Expedited Procedure (documents-only decision if parties agree, decision within three months), http://en.arbitration.org.tw/arbitration_why.aspx.
[135] CIETAC Arbitration Rules, supra note 109, Art. 35(2) (documents-only decision), Art. 37.5 (virtual hearings permitted).
[136] KCAB International Arbitration Rules, supra note 111, Chap. 6, Expedited Procedure, Art. 47 (if claim does not exceed KRW 50,000,000, documents-only decision unless Tribunal decides otherwise).
[137] PDRCI Arbitration Rules supra note 112, Art. 41(4) (remote hearings permitted), Art. 57 Expedited Procedure (documents-only decision unless tribunal decides otherwise or parties agree otherwise).
[138] SIAC Arbitration Rules, supra note 114, Art. 5, Expedited Procedure (Tribunal decides whether documents-only decision), Art. 21.2 (Tribunal may hold hearings by any means it considers expedient). See also SIAC Guide, Taking Your Arbitration Remote (2020).
[139] Thailand Arbitration Center (THAC) ODR Rules (B.E. 2563, 2020) (Talk DD) (providing for online negotiation, mediation, and arbitration mirroring the APEC ODR Rules).
[140] VIAC Rules of Arbitration, supra note 115, Art. 37, Expedited Procedure (documents-only decision, virtual hearings permitted).

VI. Enforcement of Online Arbitration Awards Including Those Issued Digitally

The APEC ODR Model Procedural Rules and the UNCITRAL Model Law on International Commercial Arbitration both require that an award contain the following content and form:

(1) Be in writing and signed by the neutral/arbitrator;
(2) State the brief grounds/reasons on which it is based;
(3) State the date and place of arbitration;
(4) After it is made, deliver a copy signed by the neutral/arbitrator to each party. [141]

Similar requirements are found in the arbitration laws of every APEC economy, although the technical requirements for the form of the award may vary slightly.[142]

One variance between the APEC ODR Model Procedural Rules and the UNCITRAL Model Law, however, concerns the use of digital awards. Under Article 8(5) of the APEC Rules, the contracting parties' consent to awards being issued and signed electronically:

> "5. The requirement in paragraph 4 for:
>
> (a) The award to be in writing shall be met where the information contained in the award is accessible so as to be usable for subsequent reference; and
> (b) The award to be signed shall be met where data is used to identify the neutral and to indicate his or her approval of the information contained in the award."[143]

As noted above, every APEC economy law generally follows the UNCITRAL Model Law on International Commercial Arbitration approach and requires that an arbitration

[141] Arts. 8(3), 8(4), and 8(6) of the APEC ODR Model Procedural Rules; Art. 31 of the UNCITRAL Model Law on International Commercial Arbitration. The APEC Rules also parallel the requirements of the UNCITRAL Model Law on International Commercial Arbitration concerning decision-making and issuing an arbitral award. Both the APEC Rules (Art. 8(11) and the UNCITRAL Model Law (Art. 28) provide that the neutral/arbitrator shall decide following the rules of law designated by the parties as applicable to the substance of the dispute. All APEC economies permit the parties to choose the applicable law, consistent with international standards on the choice of law. See note 142 infra.

[142] Australia, International Arbitration Act, supra note 49, Sch. 2, Arts. 28 (choice of law), 31 (form); Brunei Darussalam Arbitration Act, supra note 59, Part IV, Sch. 1, Arts. 28 (choice of law), 31 (form); China Arbitration Law, supra note 39, Art. 54 (form), (choice of law determined under other law); Chile Arbitration Law, supra note 61, Arts. 28 (choice of law), 31 (form); Hong Kong China, Arbitration Ordinance, supra note 63, Secs. 64 (choice of law), 67 (form); Japan Arbitration Act, supra note 65, Arts. 36 (choice of law), 39 (form); Indonesia Arbitration Act, supra note 40, Arts. 54 (form with minor additions), 56(2) (choice of law); Korea Arbitration Act, supra note 66, Arts. 29 (choice of law), 32 (form); Malaysia Arbitration Act, supra note 67, Secs. 30 (choice of law), 33 (form); Mexico Commercial Code, supra note 68, Arts. 1445 (choice of law), 1448 (form); New Zealand Arbitration Law, supra note 69, Sch. 1, Arts. 28 (choice of law), 31 (form); Papua New Guinea Arbitration (International) Act 2024, supra note 28, Secs. 50 (choice of law), 54 (form); Peru Arbitration Act, supra note 71, Arts. 57(2) (choice of law), 55(1) (form); the Philippines ADR Act, supra note 72, App. A, Arts. 28 (choice of law), 31 (form); Russia Law on International Commercial Arbitration, supra note 73, Arts. 28 (choice of law), 31 (form); Singapore International Arbitration Act, supra note 74, First Sch., Arts. 28 (substance), 31 (form); Chinese Taipei Arbitration Law, supra note 75, Arts. 33-34 (form), (choice of law is determined under other law); Thailand Arbitration Law, supra note 76, Secs. 34 (choice of law), 37 (form); and Viet Nam Law on Commercial Arbitration, supra note 42, Arts. 14 (choice of law), 61 (form with minor additions). The U.S. Federal Arbitration Act, supra note 41, does not contain choice of law or form requirements, but U.S. courts have interpreted the FAA as permitting choice of law and requiring that an award be in writing. See CMS, International Arbitration Law and Rules in New York, https://cms.law/en/int/expert-guides/cms-expert-guide-to-international-arbitration/new-york. For the international standards on choice of law, see Hague Conference, Principles on Choice of Law in International Contract (2015), Art. 2 – Freedom of Choice, https://www.hcch.net/en/instruments/conventions/full-text/?cid=135.

[143] Art. 8(5) of the APEC ODR Model Procedural Rules. Compare with Art. 31(1) of the UNCITRAL Model Law on International Commercial Arbitration (requiring that the award be in writing and signed with no stated exceptions).

award be signed and in writing. APEC economy laws have no parallel provision (such as for arbitration agreements) that expressly provides for the recognition of arbitration awards concluded electronically.[144] Additionally, as noted above, the Electronic Communications Convention providing for the recognition of e-documents and e-signatures may not apply to digital awards since its scope of application (Article 1(1)) is limited to "electronic communications in connection with the formation or performance of a contract." Similarly, for economies that have implemented the UNCITRAL Model Law on Electronic Commerce, it may not apply to digital awards if the scope of application is limited to commercial transactions.[145]

Economy laws also generally follow Article IV 1(a) of the New York Convention and Article 35(2) of the 1985 UNCITRAL Model Law, requiring that the party relying on an award or applying for its enforcement shall supply "the duly authenticated original award or a duly certified copy thereof."[146]

UNCITRAL recently summarized the issue as follows:

> "Although the UNCITRAL instruments do allow for remote hearings, work remains to be done on issues such as electronic signatures and awards for international arbitration.… [A]lthough the [Electronic Communications Convention] explicitly refers to the New York Convention and while the application of the Electronic Communications Convention to arbitral agreements is undisputed, its application to arbitral awards is not."
>
> "This is likewise the case for the Model Law on International Commercial Arbitration [concerning Article 7 and its application to arbitration agreements and not awards] …. In addition, Article 34(2) and (4) of the UNCITRAL Arbitration Rules require awards to be made in writing and signed by the arbitrators. Considering the strong move towards digitalization of the economy and the growing acceptance of electronic signatures in lieu of wet-ink signatures, the formal need for a wet-ink signature on an arbitral award only serves as an additional hurdle for parties, especially in the case of a global emergency. However, due to the lack of harmonization of the acceptance of electronic signatures, the signing of an arbitral award using an electronic signature may risk it being unenforceable, depending on the [Economy's] regulations governing electronic signatures."[147]

[144] See discussion supra notes 53-78 and accompanying text.
[145] See discussion supra notes 100-103 and accompanying text.
[146] For economies generally following the 1985 version of the UNCITRAL Model Law/ Article IV 1(a) of the New York Convention see Brunei Darussalam Arbitration Act, supra note 59, Art. 43(1); Chilean Arbitration Law, supra note 61, Art. 35(2); Hong Kong China, Arbitration Ordinance, supra note 63, Sec. 88; Indonesian Arbitration Act, supra note 40, Art. 67(2); Japan Arbitration Act, supra note 65, Art. 46 (2); Malaysia Arbitration Act, supra note 67, Sec. 38(2); Mexico Commercial Code, supra note 68, Art. 1461; New Zealand Arbitration Law, supra note 69, Art. 35(2)(a) of Sch.1; Papua New Guinea Arbitration (International) Act 2024, supra note 28, Sec. 60; Peru Arbitration Act, supra note 71, Art. 48(4)(b); the Philippines ADR Act, supra note 72, Sec. 42; Russia Law on International Commercial Arbitration, supra note 73, Art. 35(2); Singapore Law on International Commercial Arbitration, supra note 74, Sec. 30(1)(a); Chinese Taipei Arbitration Law, supra note 75, Art. 48(1); Thailand Arbitration Law, supra note 76, Sec. 42(1). Because of questions concerning what constitutes a duly authenticated or duly certified copy of an award, UNCITRAL Model Law Art. 35 was amended in 2006 to require only that (emphasis supplied) "the party relying on an award or applying for its enforcement shall supply the original award or a copy thereof," but the amendment has not been widely adopted in APEC. For economies following the 2006 version of the UNCITRAL Model Law, see Australia (International Arbitration Act, supra note 49, Art. 35 of Sch. 2) and Korea Arbitration Act, supra note 66, Art. 37(3)).
[147] Exploratory Work on the impact of COVID-19 on international trade law, supra note 128, at 26-27.

As UNCITRAL notes, from a policy standpoint, if an arbitral award is rendered digitally, it may save costs by eliminating courier and printing costs, save time because the participants can access the reward remotely, and promote a green economy by eliminating transportation costs.

Although most rules of arbitral institutions in APEC do not provide for digital awards, some do:

- AAA ICDR International Dispute Resolution Procedures (U.S.);[148]
- ACICA Arbitration Rules (2021) (Australia);[149]
- CIETAC Arbitration Rules (2024) (China);[150]
- BANI Rules and Procedures on Electronic Arbitration (Indonesia);[151]
- THAC Rules on Online Alternative Dispute Resolution Proceeding (Thailand);[152]
- SIAC Arbitration Rules (consultation draft) (Singapore).[153]

While the parties using the APEC ODR Model Procedural Rules agree to the issuance of digital awards, that agreement is subject to mandatory law under the Rules.[154] APEC ODR Providers should therefore review awards to ensure that the award will withstand the scrutiny of setting aside proceedings under the New York Convention (Article VI) and the UNCITRAL Model Law (Article 34). They should refrain from rendering a digital award where the applicable mandatory law does not permit it.[155] The law at the place of arbitration usually not only explicitly stipulates the requirements for the form and content of the award but also sets the framework for the setting-aside regime.[156] Hence, there should generally be some clarity concerning the relevant form requirement.[157]

---

[148] ICDR International Dispute Resolution Procedures, supra note 106, Art. 32(4) ("An order or award may be signed electronically, unless (a) the applicable law requires a physical signature, (b) the parties agree otherwise, or (c) the Arbitral Tribunal or Administrator determines otherwise.").

[149] ACICA Arbitration Rules, supra note 105, Arts. 42.4 ("Unless the parties agree otherwise, or the Arbitral Tribunal or ACICA directs otherwise, any award may be signed electronically…."), 42.5 ("transmission may be made by any electronic means").

[150] CIETAC Arbitration Rules, supra note 109, Art. 52(7) ("An electronic signature of an arbitrator bears the same effect of his/ her handwritten signature"), 56(10) ("Where the parties agree, or where CIETAC deems it necessary, the arbitral award may be delivered to the parties in electronic form.").

[151] BANI Rules and Procedures on Electronic Arbitration, supra note 108, Art. 10 ("Arbitration award in electronic arbitration may be pronounced electronically by the Arbitration Tribunal/Sole Arbitrator.").

[152] THAC ODR Rules, supra note 139. See also Report of APEC Workshop on Implementing ODR, January 2024, supra note 4, at 22 (Ms. Thunpicha Rungcheewin, THAC, commenting that the THAC ODR Rules broadly provide for electronic communications, including through the use of digital awards; however, it is uncertain whether Thai courts will enforce awards issued electronically with a digital signature).

[153] SIAC Arbitration Rules (consultation draft, 7th Ed.), Art. 52.2 ("The Tribunal may, after considering the views of the parties, and in consultation with the Registrar, determine that it is appropriate for (a) the award to be signed in counterpart; or (b) the award to be signed electronically."). The London Court of International Arbitration (LCIA) Rules (Art. 26) also provides that an award may be signed electronically.

[154] See discussion supra, note 116.

[155] See Kevin Ongenae, Electronic Arbitral Awards: Yea or Nay? A Glimpse Inside the Minds of Arbitral Institutions, 40 J. Int'l Arb. 263 (paras. 94-95) (2023), http://hdl.handle.net/1854/LU-01H16Z388M743PNMFBJ9YDVC4W (In a survey of arbitral tribunals, 61 percent responded that issuing electronic awards without paper originals was too risky under the current legal framework for international arbitration and a majority stated that an express rule allowing electronic awards would be necessary to overcome this obstacle).

[156] See Gary Born, International Arbitration: Law and Practice (2021) at 374-375; Venus Wong and Dalibor Valinčić, Global Arbitration Review, The Arbitral Award: Form, Content, Effect (2023), (Law governing the award), https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/3rd-edition/article/the-arbitral-award-form-content-effect; Felipe Volio Soley, Signing the Arbitral Award in Wet Ink: Resistance to Technological Change or A Reasonable Precaution? Kluwer Arbitration Blog (2020), https://arbitrationblog.kluwerarbitration.com/2020/11/06/signing-the-arbitral-award-in-wet-ink-resistance-to-technological-change-or-a-reasonable-precaution/.

[157] The ICC Commission on Arbitration and ADR suggests that "One cautious approach would be to produce and retain at least one hand-signed physical original of an award, of which certified true copies can be made through hand-signed notarizations.

Consistent with the foregoing, eBRAM modified Article 8 of the APEC Model ODR Procedural Rules, providing that using a digital award is subject to an economy's legal requirements. The eBRAM APEC Rules provide (bold indicates modifications):

"8.4 **Save as otherwise required by law,** the requirement in Article 8.3(d) for:
(a) the award to be in writing shall be met where the information contained in the award is accessible **electronically** so as to be usable for subsequent reference; and
(b) the award to be signed shall be met where data is used to identify the neutral and to indicate his or her approval of the information contained in the award…"

"8.9 Should any party require an original signed paper copy of the award, this will be couriered to the party upon receipt by eBRAM of an online request communicated via the eBRAM Platform."[158]

Additionally, eBRAM scrutinizes draft awards prepared by neutrals appointed in its APEC ODR cases before the awards are notified to the parties and provides an award preparation checklist to its neutrals, to ensure enforceability of its awards.

VII. Enforcement of Settlement Agreements

Under the APEC ODR Model Rules (Article 10), settlement agreements reached at any stage of the ODR Proceedings will be recorded on the ODR platform, at which point the proceedings will automatically terminate. To protect against defaults, the 2018 Singapore Convention on Mediation[159] provides for expedited enforcement of mediated settlement agreements (phase two of the APEC ODR Model Procedural Rules). However, only Japan and Singapore have implemented the Convention thus far.

While full implementation of the Singapore Convention is highly desirable, several options exist to protect against defaults. First, the parties may wish to include an ODR clause in the settlement agreement, automatically referring any dispute relating to the settlement agreement to ODR under the APEC ODR Collaborative Framework. Another option to protect against default is for the parties to request that the settlement agreement be converted into an arbitral award. Such awards by consent generally have the same legal effect as an arbitral award under every APEC economy's law and are considered enforceable under the New York Convention.[160] The UNCITRAL Model Law on International Commercial Arbitration provides (Article 30):

This does not mean that electronic copies of an award or originals signed with qualified electronic signatures in accordance with the laws of the relevant [economy or economies] could not *also* be communicated and used for other purposes." ICC, Leveraging Technology for Fair, Effective, and Efficient International Arbitration Proceedings (2022) at 28-29.

[158] eBRAM APEC ODR Rules, supra note 7, Art. 8.

[159] For the Singapore Convention see note 21 and accompanying text. The UNCITRAL Model Law on International Commercial Conciliation (2002) was also amended in 2018 with the addition of a new section on international settlement agreements and expedited enforcement (Sec. 3). With the amendment, it was renamed as "The UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation." See https://uncitral.un.org/en/texts/mediation for the Model Law.

[160] Center for Transnational Litigation, Arbitration and Commercial Law, Arbitrable Awards Enforceable under the NY Convention, What Are and What May Be, https://blogs.law.nyu.edu/transnational/2011/11/arbitral-awards-under-the-new-york-convention-what-are-and-what-may-be/.

> "If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms."
>
> "An award on agreed terms shall be made in accordance with the provisions of Article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case."

Similar provisions have been implemented in almost every APEC economy.[161]

Hong Kong, China adopts the text of UNCITRAL Model Law Article 30 in its Arbitration Ordinance but adds a provision that may be helpful if a settlement is reached during the negotiation stage (i.e. before a neutral is appointed):

> "If, in a case other than that referred to in article 30 of the UNCITRAL Model Law, given effect to by subsection (1), the parties to an arbitration agreement settle their dispute and enter into an agreement in writing containing the terms of settlement (*settlement agreement*), the settlement agreement is, for the purposes of its enforcement, to be treated as an arbitral award."[162]

While the APEC ODR Model Procedural Rules do not address the issue, APEC ODR Providers in their Rules generally add a provision providing for conversion of the settlement agreement into a consent award. For example, the eBRAM, CIETAC and GZAC ODR Rules expand on the APEC ODR Rules to provide that if the parties reach a settlement after the appointment of a neutral, the settlement may be recorded in the form of an award by consent, if so, requested by the parties. Additionally, the eBRAM and CIETAC Rules say that if a settlement is reached before the appointment of a neutral, the parties may request the appointment of a neutral to issue an award by consent, recording the parties' settlement.[163]

Another related issue concerns the use of the same neutral for online mediation and arbitration. Under the APEC ODR Model Procedural Rules, the parties consent to the use of a single neutral during the mediation and arbitration stages as part of their agreement to use the APEC Rules.[164] While the UNCITRAL Model Law on International Commercial Arbitration is silent on the issue, some APEC economies such as Japan and Viet Nam expressly permit a single neutral to act as a mediator

[161] Australia, International Arbitration Act, supra note 49, Art. 30 of Sch. 2; Brunei Darussalam Arbitration Act, supra note 59, Sec. 28; China Arbitration Law, supra note 39, Arts. 49-52; Chile Law on International Commercial Arbitration, supra note 61, Art. 30; Hong Kong China, Arbitration Ordinance, supra note 63, Sec. 66(1); Japan Arbitration Act, supra note 65, Art. 38; Indonesia Arbitration Act, supra note 40, Art. 45; Korea Arbitration Act, supra note 66, Art. 31; Malaysia Arbitration Act, supra note 67, Sec. 32; Mexico Commercial Code, supra note 68, Art. 1447; New Zealand Arbitration Law, supra note 69, Art. 30 of Sch.1; Papua New Guinea Arbitration (International) Act 2024, supra note 28, Sec 52; Peru Arbitration Act, supra note 71, Art. 50; the Philippines ADR Act, supra note 72, Sec. 17; Russia Law on International Commercial Arbitration supra note 73, Art. 30; Singapore International Arbitration Act, supra note 74, Sec. 18; Chinese Taipei Arbitration Law, supra note 75, Arts. 44-45; Thailand Arbitration Law, supra note 76, Sec. 36; Viet Nam Law on Commercial Arbitration supra note 42, Arts. 9, 38, 58.

[162] Hong Kong China, Arbitration Ordinance, supra note 63, Sec. 66(2).

[163] eBRAM APEC ODR Rules supra note 7, Art. 10; CIETAC APEC ODR Rules, supra note 9, Art. 10; GZAC Guidance on APEC ODR Rules, supra note 8, Art.11(7). Other arbitral centers in APEC allow mediated settlement agreements to be treated as arbitral awards for enforcement. See, for example, the Singapore Mediation Centre and the Singapore International Arbitration Centre (SMC-SIAC Med Arb Services).

[164] APEC ODR Model Procedural Rules, Art. 11.

and arbitrator, provided the parties have agreed to do so in their ADR agreements.[165] The arbitration laws of Brunei Darussalam; Hong Kong, China; and Singapore similarly provide:

> "[Where an] arbitration agreement provides for the appointment of a [mediator] and further provides that the person so appointed is to act as an arbitrator, in the event [of the mediation proceedings failing to produce a] settlement acceptable to the parties … no objection [may be made against] the person [acting] as an arbitrator, … solely on the ground that the person had acted previously as a [mediator]…."[166]

VIII. Application of the Collaborative Framework to B2C Disputes

The APEC EC has undertaken to review the application of the Collaborative Framework to B2C disputes.[167] The current APEC ODR Model Procedural Rules provide the legal framework for using ODR for cross-border B2C disputes (if the provider and parties extend the Framework to B2C transactions), subject to mandatory requirements in the domestic laws of economies. Applying the Collaborative Framework to B2C cross-border disputes could benefit consumers and economies significantly.

A. The APEC ODR Model Procedural Rules Can Be Applied to B2C Disputes

While the Collaborative Framework was initially designed to benefit APEC businesses, in particular MSMEs, to resolve B2B cross-border disputes, there is an inherent flexibility built into its Model ODR Procedural Rules that permits their application in B2C disputes or domestic disputes, provided the parties and provider agree. Partnering APEC ODR Providers have already begun using the Collaborative Framework for B2C disputes with the parties' agreement. The Conclusions and Recommendations from the January 2024 APEC ODR Workshop observed (emphasis added):

> "Some listed ODR providers are also providing services to consumers in the context of B2C disputes using the Model Procedural Rules under the Collaborative Framework with the parties' agreement. This is permissible due to the inherent flexibility in the Collaborative Framework and its Model Procedural Rules, which do not limit its application to B2B or cross-border disputes. Article 1.2 of the Model Procedural Rules explicitly provides that the parties may modify any provision of the Model Procedural Rules by agreement, including modifying the provisions to cover non-cross border or non-B2B disputes, **to the extent allowed by the applicable law**. ODR Providers are therefore recommended, where the parties concerned agree to resolve their dispute, which is not limited

[165] Japanese Arbitration Act, supra note 65, Art. 38(4) (If the consent of both parties has been obtained, an Arbitral Tribunal … may attempt to arrange a settlement for the civil dispute which has been referred to any arbitral procedure) and (5); Viet Nam Law on Commercial Arbitration, supra note 42, Arts. 9, 42.1(d), 58 (same).
[166] Singapore International Arbitration Act, supra note 74, Secs. 16(3), 17(1); Brunei Darussalam Arbitration Act, supra note 59, Secs. 26(3) and 27; Hong Kong Arbitration Ordinance, supra note 63, Secs. 32(3), 33.
[167] The EC held a policy dialogue to consider the issue at EC 1, March 4-5, 2024, See Report by the Chair of the Economic Committee on EC 1 2024, supra note 4 at 5-6.

> to cross-border B2B, to adapt the Model Procedural Rules clearly for that purpose consistent with the applicable law**."**[168]

Limitations on Arbitration

As the Conclusions and Recommendations from the January 2024 Workshop recognize, there is a limitation on the autonomy of the parties and the ODR provider to agree to arbitration in a consumer transaction. The APEC ODR Model Procedural Rules state in Article 1(1) (emphasis added): "These Rules shall govern the ODR proceedings subject to such modifications as the parties may agree, **except that where any of these Rules is in conflict with a provision of the law applicable to the ODR proceedings from which the parties cannot derogate, that provision shall prevail**." Thus, the APEC ODR Model Rules bind the parties to the extent that domestic law allows and cannot override applicable mandatory law at the domestic level (which could include applicable consumer protection laws concerning arbitration of future disputes). The provision in the APEC ODR Rules on mandatory law follows the UNCITRAL Arbitration Rules.[169]

Most APEC economy's arbitration law recognizes arbitration agreements between businesses and consumers to resolve future disputes as binding.[170] However, the laws of several APEC jurisdictions limit the ability of consumers to agree to submit future disputes to arbitration. For example, Japan, in its Supplementary Provisions to the Arbitration Law, states that:

> "For now … a consumer may cancel a consumer arbitration agreement. Provided, this shall not apply if the consumer is a claimant in arbitral proceedings based on the consumer arbitration agreement."[171]

[168] Report of APEC Workshop on Implementing ODR, January 2024, supra note 4, at 33. The EC Chair similarly concluded after the Policy Dialogue on ODR at EC 1 in March 2024: "The reference to "B2B" in the title of the Collaborative Framework does not prevent parties from applying the Collaborative Framework to B2C disputes by agreement in accordance with the applicable law since the Model Procedural Rules allows parties to modify any provision by agreement." Report by the Chair of the Economic Committee on EC 1 2024, supra note 4 at 6.

[169] See discussion supra, note 116. As noted therein, mandatory provisions are extremely limited in international arbitration statutes.

[170] Responses to Questionnaire from APEC economies on implementing ODR in courts and ODR platforms (2022) (responses from Hong Kong, China; Indonesia; Korea; Malaysia; Russia; the Philippines; Chinese Taipei; Thailand; and the United States). See Gary Born, International Arbitration: Law and Practice (2021), at 99.

[171] Japan Arbitration Law Supplementary Provisions, Art. 3(2) – Exception Relating to Arbitration Agreements Concluded between Consumers and Businesses, available at https://japan.kantei.go.jp/policy/sihou/arbitrationlaw.pdf (unofficial translation).

Similar provisions are found in the arbitration laws of Hong Kong, China;[172] New Zealand;[173] Viet Nam;[174] and Canada in Alberta,[175] Ontario,[176] and Quebec.[177] For foreign small businesses transacting with consumers via e-commerce in these jurisdictions it may be impossible to know whether the buyer is purchasing an item (e.g. a computer) for business or personal purposes. Additionally, in Viet Nam the definition of a consumer extends to small businesses.[178]

Whether these laws prohibiting agreements to arbitrate future disputes are "applicable" would depend on the law to which the parties have subjected the arbitration agreement or the law to which the arbitration award is made (i.e., the place of arbitration).[179] UNCITRAL has commented as follows:

> "The requirements of substantive validity of arbitration agreements are governed by "the law to which the parties have subjected it or, failing any indication thereon, under the law of the [economy] where the award was made" (Article V(1)(a) [of the New York Convention]). One of the main questions for consideration is whether there was a consent to arbitration by the parties. That question is left to be dealt with by applicable domestic law, and online arbitration agreements may not necessarily raise specific issues. Regarding B2C agreements, the question is whether those arbitration agreements or pre-dispute arbitration agreements are recognized as valid under the applicable national laws. That question has received different responses depending on the

[172] See Hong Kong, China, Arbitration Ordinance, Sec. 20(3) and the Control of Exemption Clauses Ordinance, Sec. 15 (Consumer disputes may be resolved by arbitration, provided that the party dealing as a consumer (i) consents in writing to arbitration after the dispute has arisen, or (ii) institutes arbitration proceedings under the arbitration agreement).

[173] The New Zealand Arbitration Law, supra note 69, Sec. 11 provides if "a person enters into that contract as a consumer, —the arbitration agreement is enforceable against the consumer only if—…the consumer, by separate written agreement entered into by the consumer and the other party to the contract after a dispute has arisen out of, or in relation to, that contract, certifies that, having read and understood the arbitration agreement, the consumer agrees to be bound by it."

[174] Viet Nam, in its recent July 2023 Consumer Protection Law, highlights the importance of express consent on the part of consumers. It states in Article 67 (Effect of arbitration clauses): "1. Traders must notify arbitration clauses before entering into any contract and obtain the consumer's consent. 2. If the trader specifies an arbitration clause in the standard form contract or general trading conditions, the consumer is entitled to select another method of dispute settlement when a dispute arises." Viet Nam Law No.19/2023/QH15, On Protection of Consumers' Rights, June 20, 2023 (unofficial translation). The Viet Nam Law on Commercial Arbitration, supra note 42, Art. 17, has a similar provision.

[175] The Alberta Consumer Protection Act, RSA 2000 states (Art. 16) "an arbitration clause in a consumer transaction or an arbitration agreement with a consumer is void and unenforceable…[unless] (a) an arbitration agreement voluntarily entered into between a supplier and a consumer after a dispute has arisen, or (b) an arbitration agreement or an arbitration clause in a consumer transaction if the agreement or clause allows the consumer to decide after a dispute has arisen, whether the consumer will use arbitration or an action in court to resolve the dispute." Available at https://www.canlii.org/en/ab/laws/stat/rsa-2000-c-c-26.3/latest/rsa-2000-c-c-26.3.html.

[176] The Ontario Consumer Protection Act of 2002 provides (Art. 7(2)) "any term or acknowledgment in a consumer agreement or a related agreement that requires or has the effect of requiring that disputes arising out of the consumer agreement be submitted to arbitration is invalid insofar as it prevents a consumer from exercising a right to commence an action in the Superior Court of Justice given under this Act." Available at https://www.canlii.org/en/on/laws/stat/so-2002-c-30-sch-a/latest/so-2002-c-30-sch-a.html - sec1_smooth.

[177] The Quebec Consumer Protection Act (Art. 11.1) states, "Any stipulation that obliges the consumer to refer a dispute to arbitration … is prohibited. If a dispute arises after a contract has been entered into, the consumer may then agree to refer the dispute to arbitration." Available at https://www.legisquebec.gouv.qc.ca/en/document/cs/P-40.1.

[178] The Viet Nam Consumer Protection Law, supra note 174, defines "consumer" as "a person who purchases or uses products, goods, and services to meet consumption or domestic needs of individuals, families or organizations and for non-commercial purposes." (emphasis supplied). See also Report on APEC Workshop on Implementing ODR, January 2024, supra note 4, at 17 (Mr. Anh Duong Nguyen, Viet Nam noting that under the new Viet Nam Consumer Protection Law, the definition of consumers also covers small businesses).

[179] See Art. 34(2)(a)(i) of the UNCITRAL Model Law on International Commercial Arbitration following New York Convention Art. V(1)(a).

particular jurisdiction, and there is no harmonized approach to the matter."[180]

In most cases, the parties do not choose any law to govern the substantive validity of an agreement, and the governing law will depend on the law of the place of arbitration. As noted above, under every APEC economy's law, arbitration legislation is territorial in scope, regulating arbitrations that have their seat within that jurisdiction and not arbitrations that have their seat in other jurisdictions. For example, under Japanese law (Articles 1 and 3 of the Japanese Arbitration Act following Article 1 of the UNCITRAL Model Law) if the place of arbitration is in Japan, then the provisions of the Japanese arbitration law would generally apply, including the provision allowing the consumer to cancel a future agreement to arbitrate where the business is the claimant. If the ODR proceedings reach the third stage (online arbitration), the respondent could assert that he or she is a consumer and that the agreement to arbitrate is invalid. If the respondent establishes that he or she is a consumer under Japanese law (i.e. that the goods were not purchased for commercial purposes),[181] an ODR Provider should apply Japanese law and find an agreement to arbitrate a future dispute invalid.

However, if the parties have chosen another law to govern the validity of the arbitration agreement, or in the absence of a choice, the place of arbitration is outside of Japan, the Japanese arbitration law by its terms would not apply. Again, the application of the Japanese Arbitration Act (Articles 1 and 3) is territorial and generally limited to situations where the place of arbitration is in Japan (consistent with Article 1 of the UNCITRAL Model Law on International Commercial Arbitration).[182] In that case, the ODR provider/neutral should apply the law chosen by the parties or the law of the place of arbitration (which, in most jurisdictions in APEC, will recognize agreements to arbitrate future consumer disputes).

Consumers in jurisdictions where agreements to arbitrate future disputes are not considered binding would not be required to accept enforcement of an award under their domestic legislation. Japanese law, for example, would permit the consumer to object to the recognition and enforcement of any foreign arbitral award in a Japanese court, possibly because the arbitration agreement is invalid[183] or the award is contrary to public policy in Japan.[184]

Issues concerning the use of pre-dispute binding arbitration in B2C disputes are often academic since, in practice, (1) most APEC economies permit pre-dispute binding arbitration, and (2) the consumer will be the party that initiates the dispute since the business will have already received payment and no laws exclude consumers from

[180] Note by the UNCITRAL Secretariat, Online dispute resolution for cross-border electronic commerce transactions: issues for consideration in the conception of a global ODR framework, UN Doc. A/CN.9/WG.III/WP.110 (2011), para. 43 (emphasis added). See also, e.g., A. van den Berg, The New York Arbitration Convention of 1958, 126 (1981); J. Lew, L. Mistelis and S. Kröll, Comparative International Commercial Arbitration, paras. 6-54, 6-55 (2003); Gary Born, International Arbitration: Law and Practice (2021) at 66-70.

[181] The Japanese Arbitration Act, supra note 65, refers to Art. 2, paragraph (1) of the Consumer Contract Act (Law No. 61 of 2000) for the definition of a consumer. The Consumer Contract Act defines a consumer as "an individual (excluding, however, any individual who becomes a party to a contract in the course of, or for the purpose of his/her business)," https://www.japaneselawtranslation.go.jp/en/laws/view/3231/en - :~:text=Article 1 The purpose of this Act is, or the spreading of damage to, other consumers (unofficial translation).

[182] Japan Arbitration Act, Art. 3. See also discussion supra, Part III Place of Arbitration.

[183] Japanese Arbitration Act, Art. 45(2)(ii) (following Art. V(1)(a) of the New York Convention).

[184] Japanese Arbitration Act, Art. 45(2)(ix) (following Art. V(2)(b) of the New York Convention).

pursuing arbitration post-dispute. In the event that a business submits a claim against a consumer from a jurisdiction that prohibits pre-dispute binding arbitration, the neutral would have to determine whether the ODR arbitration clause is binding.

B. Use of the Collaborative Framework for B2C Disputes Would Benefit Consumers

As noted, in most B2C e-commerce disputes, the business is paid at the time of the order, and the consumer is the party seeking a remedy. Most B2C e-commerce disputes involve goods or services that were not received or do not conform to what was ordered.[185]

Generally, courts do not provide an adequate remedy for cross-border disputes. The biggest motivation for creating the APEC ODR Collaborative Framework was that courts do not work well for cross-border B2B disputes. At the time, it was observed that:

> "Domestic courts are too tied to geography, jurisdiction, and in-person enforcement. Even if special domestic courts were created or systems were made more efficient, the costs of local legal practitioners and travel plus culture and language barriers make access to redress a fiction for MSMEs transacting online with foreign companies."[186]

Courts do not work well for cross-border B2C disputes either. The ASEAN ADR Guidelines for Consumer Protection explain that:

> *"Importance of a contractual ADR clause*: Unlike 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 so 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 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. 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 laws problems. ..."

[185] See Ron Brand, Online Dispute Resolution (2019) at 30-32. https://scholarship.law.pitt.edu/cgi/viewcontent.cgi?article=1456&context=fac_articles.
[186] Report of 2018 Workshop for Developing an APEC Collaborative Framework for ODR, at 10-11, https://mddb.apec.org//Documents/2019/EC/EC1/19_ec1_009.pdf.

> "[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."[187]

The subsequent 2022 ASEAN 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."[188] 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 jurisdictional reach and enforcement of decisions beyond [domestic] borders."[189]

In sum, permitting consumers to bring claims under the Collaborative Framework in cross-border disputes would provide a remedy when consumers generally have none today. From a policy perspective, applying the Collaborative Framework to B2C transactions would be beneficial to consumers.

C. Growing Need for a Redress Mechanism in Cross-Border B2C Disputes

When it was drafted, the APEC ODR Collaborative Framework excluded consumer transactions because, at the time, the average value of B2C disputes was small, and most e-commerce disputes were B2B transactions. That situation is changing.

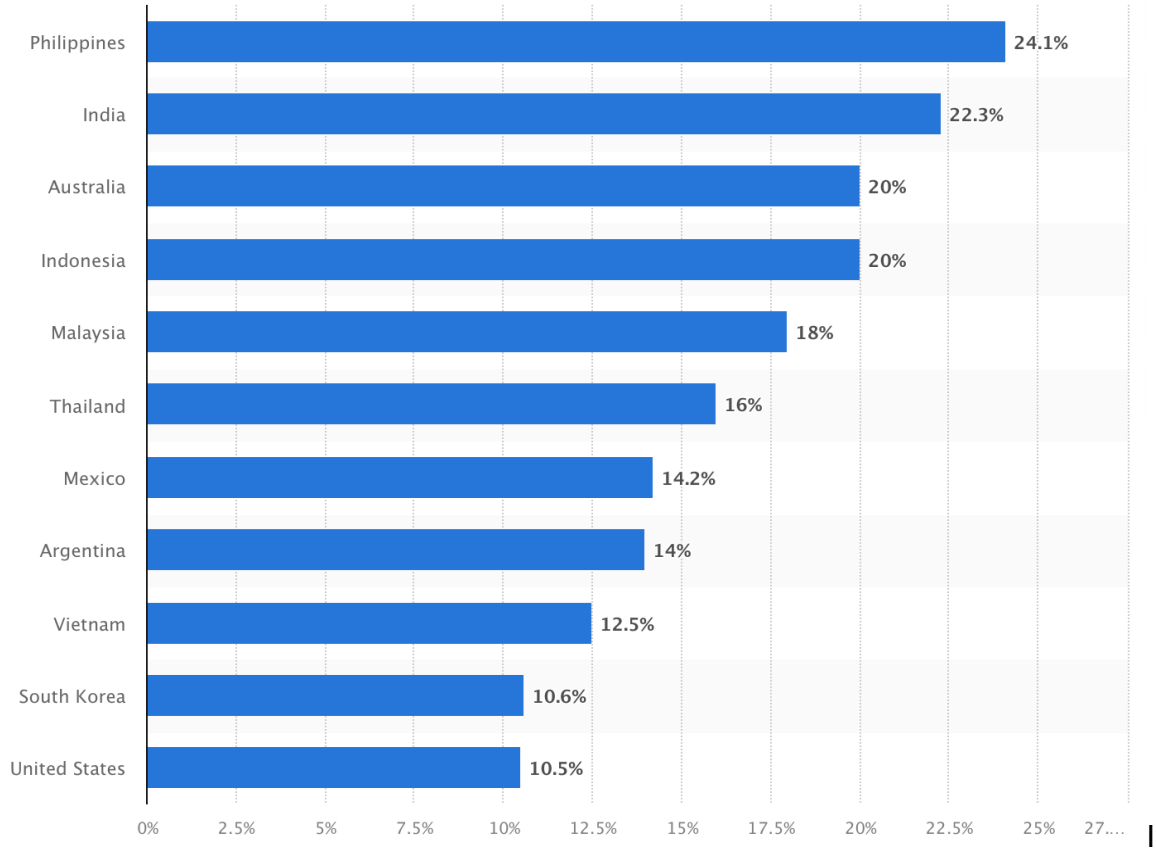
Retail E-commerce is continuing to grow rapidly in the APEC region. In 2023, nine out of the top 11 economies in the world for retail e-commerce growth were APEC economies.

[187] 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. 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) (entered into force 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 the other Contracting Parties. However, no APEC economy has implemented the Convention. See https://www.hcch.net/en/instruments/conventions/status-table/?cid=137.

[188] ASEAN Guidelines on Online Dispute Resolution (2022) at para. 23, https://asean.org/book/asean-guidelines-on-online-dispute-resolution-odr.

[189] Id. at para. 83. The International Standards Organization working group on online dispute resolution (ISO/TC321/WG 3) is also developing standards for using ODR, including on e-platforms. See ISO/TC 321/Working Group 3, Online Dispute Resolution, https://www.iso.org/committee/7145156.html.

CHART FOUR: Leading Economies Based on Retail E-commerce Sales Growth – May 2023



Source: Statista https://www.statista.com/statistics/266064/revenue-growth-in-e-commerce-for-selected-countries/ - :~:text=The Philippines and India would top the list,with a growth rate of about 14 percent.

At the January 2024 APEC ODR Workshop, some economies called for expressly extending the Collaborative Framework to B2C transactions.[190] One of the conclusions of the Workshop was:

> "Retail e-commerce is rapidly expanding in the APEC region. An ODR framework to resolve B2C disputes across borders would offer more adequate protection to consumers by facilitating their access to justice."[191]

Economies at the March 2024 EC Policy Dialogue on ODR "welcomed the provision of [additional] statistics from economies and ODR Providers on B2C disputes … to facilitate further discussion and consideration in the EC on this issue."[192]

[190] Report on APEC Workshop on Implementing ODR, January 2024, supra note 4, at 32.
[191] Id. at 33.
[192] Report by the Chair of the Economic Committee on EC 1 2024, supra note 4, at 6,

IX. Are Further Legislative Initiatives Necessary?

As this Study has demonstrated, the existing APEC economy legal frameworks, which are based on the New York Convention and UNCITRAL instruments, provide a suitable basis for implementing ODR under the Collaborative Framework. Legislative initiatives concerning digital awards would be welcome; however, the present APEC ODR Model Procedural Rules can accommodate differences in approach through deferral to applicable mandatory law.

Some have suggested modifying economy laws to expressly regulate ODR technology, including artificial intelligence (AI) and distributed ledgers.[193] While it may be desirable to do so in the future, it may not be appropriate at present, given the rapidly evolving nature of these modern technologies. As pointed out in the APEC Study on Best Practices in Using ODR, endorsed by the EC in January 2023:

> "Modern technologies such as artificial intelligence should be incorporated into the design of ODR platforms whenever possible. APEC economies declined to offer more specific guidance on the use of modern technologies in the context of the APEC ODR Collaborative Framework because the direction in which technology will evolve cannot be anticipated and planned for. Our 'exponential age' of technological development prevents policy development certainty."[194]

Nonetheless, the APEC Best Practices on Using ODR state that AI and algorithms must be based on ethical principles and be free of bias or other features that would lead to unfairness in its decision-making process. The use of AI in ODR Platforms must also be auditable. The APEC Best Practices on ODR quotes the NCTDR/ICODR ODR Guidelines:

> "ODR platforms must be auditable, and the audit made available to users ... includ[ing] human oversight of i) traceability of the originality of documents and the path to the outcome when artificial intelligence is employed, ii) determination of the relative control given to human and artificial decision-making strategies, iii) outcomes, and iv) the process of ensuring availability of outcomes to the parties…. ODR system design must include proactive efforts to prevent any artificial intelligence decision-making function from creating, replicating, or compounding bias in process or outcome. Human oversight is required in ODR system design and auditing to identify bias, make findings transparent to ODR providers and users, and eliminate bias in ODR processes and outcomes.... The sources and methods used to gather any data that influence any decision made by artificial intelligence must be disclosed to all parties. ODR that uses artificial intelligence must publicly affirm compliance with jurisdictionally relevant legislation, regulations, or, in their absence, guidelines on transparency and fairness of artificial intelligence systems. ODR must clearly disclose the role

[193] See UNCITRAL Secretary, Stocktaking of Developments in Dispute Resolution in the Digital Economy, UN Doc. A/CN.9/1155 (2023), paras. 13-21, https://uncitral.un.org/en/commission, (observing that "the stocktaking activities have yet to identify any cases in which AI was used in decision-making in international arbitration").
[194] APEC, Study on Best Practices in Using ODR (2023), at 10, https://www.apec.org/docs/default-source/publications/2023/1/study-on-best-practices-in-using-odr/223_ec_study-on-best-practices-in-using-odr.pdf?sfvrsn=1bb06f15_2.

> and magnitude of technology's influence on restricting or generating options and in final decisions or outcomes."[195]

The APEC Best Practices in Using ODR highlight another fundamental guiding principle: the need for ODR Providers and neutrals to provide safeguards and maintain confidentiality and data security. Proactive attention to cybersecurity and data privacy is essential to ensure a fair, neutral, and orderly process that underlies public trust in the ODR process. The APEC Best Practices on ODR state:

> "Security / Confidentiality
>
> ODR Systems Should Be Created Securely with Built-in Encryption and Security for Communications. ODR Providers Should Maintain Appropriate Cybersecurity and Data Protection Protocols. Users Must Be Informed About Unintended Breaches of Security Promptly, along with the Steps Taken to Prevent Reoccurrence."[196]

Under the Collaborative Framework, failing to keep all information confidential and maintain secure databases and websites amounts to grounds for the removal of an ODR Provider from the list of partnering providers.[197]

Of course, ODR providers must also comply with data protection and privacy laws that apply to collecting, retaining, and processing data in ODR.

X. Conclusion

ODR e-justice is an essential component of economic growth. It can help markets expand across borders. The APEC ODR Collaborative Framework can bring effective dispute resolution remedies to millions of small businesses and consumers without recourse.

APEC economy legal frameworks strongly support the use of ODR under the Collaborative Framework based on their universal implementation of the New York Convention and widespread implementation of other relevant UNCITRAL instruments, such as the UNCITRAL Model Law on Electronic Commerce and the UNCITRAL Model Law on International Commercial Arbitration. Every APEC economy's legal framework recognizes the validity of international arbitration agreements concluded under the Collaborative Framework, including those concluded electronically. Moreover, every economy's arbitration law provides broad freedom of contract to determine the procedural rules governing the proceedings, including the place of arbitration, using documents-only decisions, and virtual hearings.

The broader implementation of the Electronic Communication Convention, the Singapore Convention on Mediation, and the UNCITRAL Model Law on International

---

[195] Id. at 10-11. The National Center for Technology and Dispute Resolution (NCTDR) and the International Council for Online Dispute Resolution (ICODR) collaboratively developed the ODR Standards, https://odr.info/wp-content/uploads/2022/05/NCTDR_and_ICODR_ODR_Standards_2022.pdf.
[196] Study on Best Practices in Using ODR, supra note 195, at 22-23.
[197] APEC ODR Collaborative Framework, paras. 4.2, 5.1.

Commercial Arbitration by APEC economies could further refine their respective legal frameworks.

Most importantly, all APEC economies' legal frameworks are conducive to the implementation of the APEC ODR Collaborative Framework. APEC businesses may already use the ODR providers from economies that have opted into the Framework. Economies that have not already done so should strongly consider opting into the APEC ODR Collaborative Framework to enable their ODR Providers to participate and their businesses to benefit from using ODR Providers from their own economy.

Working together, APEC economies can turn ODR into the cornerstone of the next global justice system.