

ODR Regulatory Models in the Digital Era: Implications for ODR Rule Harmonisation across the Greater Bay Area (GBA)

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1. Research Scope and Objective

This research examines the existing Online Dispute Resolution (ODR) rules and practices in the US, the EU, the Chinese Mainland, Hong Kong, Macao, with an emphasis on identifying the issues in ODR regulation and providing suggestions on areas of improvement for Hong Kong ODR development. Specifically, the research covers the following aspects:

- The existing domestic and international ODR regulatory frameworks, including laws, regulations, policies, and rules that govern the major ODR platforms all around the world.
- Development/Practice models of major ODR providers, particularly in the US, EU, Hong Kong, Macao and the Mainland.
- Empirical study on the recognition and experience of ODR from the general public in Hong Kong and the Mainland.
- Analyse and compare the advantages and limitations of ODR regulations from different jurisdictions and platforms.

The main objective of this research is to find the legal obstacles and solutions in ODR regulation across different jurisdictions, particularly in the scenario of cross-border ODR services in the Guangdong-Hong Kong-Macao Greater Bay Area (GBA). Within the GBA, there is a diverse set of legal systems. To promote and develop cross-border ODR services in the GBA, it is necessary to explore an ODR regulatory framework that could be applied in Mainland (socialist legal system or civil law system with Chinese characteristics), Hong Kong (common law system) and Macao (civil law system). The exploration of a harmonised ODR regulation also provides a great opportunity for Hong Kong to strengthen its role as the international dispute resolution legal hub in the GBA.

2. Methodology

This research report applies both doctrinal analysis and empirical study to examine the existing ODR regulatory frameworks, including (both domestic and international) laws, regulations, policies and rules

that govern the major ODR platforms all around the world. The doctrinal analysis focuses on theories of the ODR regulation models and designs, while the empirical study explores the development of practice (existing models of major ODR providers) and recognition of ODR from the general public.

After examining worldwide ODR regulatory frameworks through doctrinal and empirical study, the comparative study is conducted on the advantages and limitations of ODR regulations from different jurisdictions and platforms. On this basis, the path to a harmonised ODR regulatory framework is explored (particularly for cross-border ODR services between the Chinese Mainland and Hong Kong), and suggestions on how to improve the ODR procedures are provided for Hong Kong ODR providers and practitioners.

2.1 Doctrinal Analysis

The doctrinal analysis is employed to study the theories of ODR, particularly those on the ODR regulatory models and designs, such as the self-regulation, state-governance and co-regulation (collaborative regulation between governments and ODR industry) models of ODR. Besides, this research analyses from a theoretical perspective the existing domestic laws, regulations, and policies that relate to the regulation of ODR, as well as the international legal instruments and standards (e.g., New York Convention, Singapore Mediation Convention, UNCTRIAL ODR Technical Notes, APEC ODR Framework, etc).¹ It also examines the existing rules (particularly those online arbitration and mediation rules) applied by the major ODR platforms (or ADR platforms that provide ODR services).

After examining relevant laws and rules, the doctrinal analysis is to find the rationale behind the ODR regulatory frameworks, while critically assessing the existing theories on the legislation (or governing) models of ODR. Thus, a theoretical framework, which lays the foundation for this research, is developed concerning the regulatory models and international standards on governing ODR services.

2.2 Empirical Study

Under the theoretical framework built through doctrinal analysis, the empirical study is to bridge the gap between theoretical ODR regulatory models and ODR practices, mainly through the analysis of the cases from major ODR providers in Hong Kong, Mainland (China), Macao, the EU, the US, and other countries and regions where necessary. It provides an in-depth exploration of the categories and nature of ODR cases handled by various service providers, and the effectiveness (including the observation and assessment of efficiency, transparency and flexibility) of ODR in resolving and preventing conflicts.

In addition, an online survey is conducted to investigate the public's attitudes and opinions toward ODR, with participants primarily located in Hong Kong and the Chinese Mainland. For this survey, questionnaires were designed with both open-ended, closed-ended, and multiple-choice questions. The researcher's academic and professional network in the Chinese Mainland and Hong Kong played a crucial role in selecting the "online survey respondents". The opinions collected from the respondents

¹ New York Convention refers to Convention on the Recognition and Enforcement of Foreign Arbitral Awards; Singapore Mediation Convention refers to United Nations Convention on International Settlement Agreements Resulting from Mediation; UNCTRIAL ODR Technical Notes refers to UNCITRAL Technical Notes on Online Dispute Resolution; APEC ODR Framework refers to the APEC Collaborative Framework For ODR of Cross-Border B2B Disputes.

are used to reflect the current ODR application in the surveyed jurisdictions, and to inform future ODR development.

2.3 Data Collection Methods

This research utilises the electronic materials and databases found in the portal websites of ODR platforms, international organisations, and departments of governments to conduct both doctrinal analysis and empirical study. The reading materials covering the theories and the past research outcomes in the field of ODR are found through the search engine and subscribed databases of the HKU library and other portal pages of e-libraries (such as Hong Kong Academic Library Link). A reference list is set out to give a full picture of the reading materials, legislation, cases, databases and websites utilised in this research. In addition, this research refers to the internal research outcomes that have been conducted by the Marketing and Communications Team of eBRAM, and receives strong technical and advisory support from colleagues and experts in eBRAM.

For conducting the online survey, this research utilises the existing social media platforms of eBRAM to post online questionnaires and collect data from participants. In addition, the researcher used personal social networks to reach out to potential participants and distribute the questionnaires through WeChat Mini Programs, Pollfish.com, Facebook Messenger, e-mails, and other available online channels. Given the limited coverage of the personal social network, the researcher encouraged participants to further distribute the links of questionnaires to their contacts, which contributed to a snowball effect. However, the coverage of the online survey may still be relatively limited, considering the relatively small number of collected samples against the base population of Hong Kong, Macao and the Chinese Mainland. This limitation may lead to the data not being sufficiently representative, although this is typical for online surveys done by means of distributing questionnaires to the public in a restricted schedule and group of participants.

2.4 Comparative Study

ODR regulatory mechanisms in different jurisdictions are compared to identify areas for improvements and explore the path of converging ODR rules across the Greater Bay Area (with a focus on the cross-border case between the Chinese Mainland and Hong Kong). On the one hand, international legal instruments, domestic laws, regulations, policies, and rules applied in different ODR platforms are compared. This part shows the similarities and dissimilarities of the ODR regulatory frameworks across various jurisdictions, and the reasons behind them (e.g., cultural backgrounds, legal systems, the progress of information technology development, etc.). On the other hand, regulatory frameworks between public (set or endorsed by governments or public entities) and private (set by e-commerce platforms or private companies) ODR platforms are compared. The purpose of this comparison is to show the complementary roles of public and private ODR platforms, as well as their respective contribution to the development of ODR rules.

3. Research Scope

The definition of ODR is not uniform across scholars. Ahalt argues that ODR is an online version of ADR (e-ADR) that leverages information technology to improve efficiency and cost-effectiveness.² However, some scholars contend that ODR is distinct from the online version of ADR because information technology plays a significant role, acting as a "fourth party" to assist both parties and neutrals in the dispute resolution process.³ Unlike traditional ADR methods, ODR is unique in that it can be conducted without restrictions on location or time. This means ODR can be initiated anytime and anywhere, with or without coordination from neutrals such as arbitrators and mediators. Additionally, ODR can leverage Artificial Intelligence (AI) and blockchain technologies to increase the efficiency and effectiveness of dispute resolution.⁴ From this perspective, ODR is not equivalent to ADR (or e-ADR), but rather a brand-new method that offers a comparative advantage in resolving disputes in cyberspace and e-commerce.

In addition, the application of ODR is not restricted to virtualised society. According to the 2016 UNCITRAL ODR Technical Note, ODR "...can assist the parties in resolving the dispute in a simple, fast, flexible and secure manner, without the need for physical presence at a meeting or hearing. ODR encompasses a broad range of approaches and forms (including but not limited to ombudsmen, complaints boards, negotiation, conciliation, mediation, facilitated settlement, arbitration and others), and the potential for hybrid processes comprising both online and offline elements".⁵ Therefore, while ODR leverages information and internet technologies, it can be applied in both online and offline contexts. This means that ODR is not limited to e-commerce disputes; cases arising from offline scenarios, such as offline trade disputes, civil claims, and family disputes, can also be resolved through ODR.

Despite its original application in e-commerce, ODR has become widely utilised in civil judicial proceedings, particularly in small claims and family disputes, with numerous court-annexed ODR providers emerging worldwide.⁶ Some scholars have thus included court-annexed ODR, or "e-court," within the scope of ODR.⁷

² Ahalt, Arthur M. "What You Should Know About Online Dispute Resolution." *The Practical Litigator*, vol. 20, no. 2, 2009, 21–24.

³ Gabrielle Kaufmann-Kohler and Thomas Schultz, *Online Dispute Resolution: Challenges for Contemporary Justice* (The Hague: Kluwer 2004) 125-126.

⁴ Pietro Ortolani, 'Self-Enforcing Online Dispute Resolution: Lessons from Bitcoin' [2016] 36(3) *Oxford Journal of Legal Studies* 595, 595-629.

⁵ UNCITRAL Technical Notes on Online Dispute Resolution, April 2017, available at <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf> accessed 12 January 2023.

⁶ See generally: Online Dispute Resolution in the United States - Data Visualizations, ABA Center for Innovation, September 2020, available at <<https://www.americanbar.org/content/dam/aba/administrative/center-for-innovation/odrvisualizationreport.pdf>> accessed 13 January 2023; Thomas Frederick, ADR, ODR and AI-DR, or Do We Even Need Courts Anymore? Judicial Commission of New South Wales, September 2022, available at <<https://sites.google.com/view/fcmcdataproject/about?pli=1>> accessed 13 January 2023; Sorabji, John. "The Online Solutions Court - a Multi-Door Courthouse for the 21st Century." *Civil Justice Quarterly*, vol. 36, no. 1, 2017, 86-100.

⁷ Naureen Akhtar et al. Online Dispute Resolution as a Solution to E-Commerce Disputes: A Comparative Study of Pakistan and UK, *Journal of Contemporary Issues in Business and Government* Vol. 28, No. 03, 2022, 149-159. https://cibgp.com/article_17446_95dbf1f5b38e8bf45e76e3eb93c09169.pdf

However, ODR differs significantly from traditional dispute resolution methods such as ADR and court proceedings because it involves both dispute resolution and dispute prevention functions.⁸ For instance, the eBay ODR platform, the largest ODR platform in the world according to the 2016 ODR Conference, successfully prevented 90% of cases from going to court.⁹ ODR provides a platform for parties who are unwilling to go to court, and its function of dispute prevention, delivered through automatic data analysis and prompt suggestions provided by AI technologies,¹⁰ differentiates it significantly from court proceedings. In this regard, some scholars study ODR as an out-of-court dispute resolution method, given its uniqueness and comparative advantages.¹¹

In addition, the international community that focuses on the promotion and development of ODR in e-commerce, represented by organisations such as the United Nations Commission for International Trade Law (UNCITRAL), the National Center for Technology and Dispute Resolution (NCTDR), the Asia-Pacific Economic Cooperation (APEC), and the EU, still regards ODR as an alternative to court proceedings, even with the wide application of information technology in civil claims.

As this research focuses mainly on ODR platforms designed for out-of-court dispute resolution, e-court ODR is not examined or compared with other ODR platforms in this study.

4. Existing Legislation Governing ODR and Worldwide ODR Models

4.1 The US

The ODR rules and models in the US are mainly developed by private entities and e-commerce platforms.

4.1.1 Self-regulation of ODR and Relevant Laws in the US

There are no written laws and regulations for ODR in the US. As mentioned previously, the development of ODR derives from the experimental programmes (e.g., Virtual Magistrate Project (VMAG) and Online Ombuds Office (OOO)),¹² followed by the establishment of numerous ODR platforms in the US. Given its common law system and liberal market economy, the US promotes self-regulation of ODR. In other words, the US sticks to industry self-regulation in ODR services, whereby ODR providers and relevant organisations monitor their own adherence to legal or ethical standards, rather than have governments enforce these standards.

⁸ Ramasastry, Anita & Davis, Benjamin G. (2002), Addressing Disputes in Electronic Commerce, Final Report and Recommendations of the American Bar Association's Task Force on Electronic Commerce and Alternative Dispute Resolution, American Bar Association, 16, available at <<http://www.mmwr.com/wp-content/uploads/2016/02/FinalReport102802.authcheckdam-1.pdf>> accessed 13 January 2023.

⁹ Shivani Verma, The Scope and Relevance of ODR, Juris Centre, 27 April 2021, available at <<https://juriscentre.com/2021/04/27/online-dispute-resolution-relevance-and-future/>> accessed 13 January 2023.

¹⁰ Ortolani, Pietro (2016), Self-Enforcing Online Dispute Resolution: Lessons from Bitcoin, 36 (3) *Oxford Journal of Legal Studies*, 648.

¹¹ See generally: Mania, Karolina. "Online Dispute Resolution: The Future of Justice." *International Comparative Jurisprudence*, vol. 1, no. 1, 2015, 76–86; Katsh, Ethan, & Rule, Colin (2016). What we know and need to know about online dispute resolution. *South Carolina Law Review*, 67(2), 329–344.

¹² See more: Aashit Shah, Using ADR to Resolve Online Disputes, *Richmond Journal of Law and Technology*, 2004, <https://core.ac.uk/download/pdf/232773923.pdf>

The legal basis for filing complaints or lawsuits in e-commerce activities includes over 70 laws at both federal and state levels. Despite the laws targeting various business practices, each state of the US enacted its own laws and related amendments, thus leading to significant variations of state laws for online consumer protection.¹³

4.1.2 Cybersettle and Blind-bidding Model

The “blind-bidding” model was developed and applied in online negotiation and deal-making by Cybersettle – an online settlement company that provides a double-blind bidding process for monetary cases. In this “blind-bidding” model, the parties or their representatives can confidentially submit to Cybersettle their monetary offers for settlement. If the other parties’ offers are equal to or greater than the demands, the monetary dispute is settled online automatically and instantly. If the offers and demands are competently close, Cybersettle suggests a settlement amount for the parties to decide. Besides, the parties may also involve a neutral to facilitate online negotiations via telephone.¹⁴ The following is the description of the “blind-bidding” model from the official website of Cybersettle:

“Contending parties submit confidential offers and demands online from most computers, smartphones or tablets. Cybersettle instantly compares the parties’ submissions to determine if they are in range of a mutually-acceptable settlement. If not, it prompts the parties to submit their next offer. If yes, the parties arrange payment. Neither party sees the other party’s offer or demands (double-blind) unless and until a settlement is reached.”¹⁵

Similarly, Smartsettle One also utilises a virtual blind bidding model where the computer operates as the intelligent neutral and announces a deal when the offers coincide.¹⁶ It is found that decent management and design of online negotiation through information technology can fundamentally change the interaction between the parties, thus contributing to more efficient and effective online dispute resolution.¹⁷ Compared with the double blind-bidding process of Cybersettle, a more complex and unique digital formula is employed in Smartsettle, with its “technology neutral” recognising the most generous party and favouring the earliest party that enters the overlapping area of agreement (defined by both parties).¹⁸ On the basis of the single-issue dispute resolution of Smartsettle One, Smartsettle Infinity is built to deal with multi-issue that involves more parties and a more complex negotiation process.¹⁹ However, Smartsettle expects users to educate themselves on how to use the complex and unique system (without human intervention to ensure technological neutrality), yet it may be difficult for some users to access the system and not intuitive for people that favour a third-party neutral.²⁰

¹³ Zhang Xiaohan, *The Application of the Consumer Protection Principle in the UNCITRAL ODR Rules and Its Implications for the ODR Practice in China*. [University of Hong Kong], 2018, 40.

¹⁴ Online Dispute Resolution: Other ODR Software, School of Law at University of Missouri, available at <<https://libraryguides.missouri.edu/c.php?g=557240&p=3832248#:~:text=Cybersettle%20uses%20a%20patented%20double,or%20greater%20than%20the%20demand.>> accessed 6 February 2023.

¹⁵ Available at <[CyberSettle.com](https://www.cybersettle.com/)> accessed 6 February 2023.

¹⁶ Available at <<https://www.smartsettle.com/>> accessed 6 February 2023.

¹⁷ Bruce Hiebert et al. “ODR and eNegotiation” in *Online Dispute Resolution Theory and Practice*, Mohamed Abdel Wahab, Ethan Katsh & Daniel Rainey (eds.), Eleven International Publishing. The Hague, Netherlands, 2013, 330-350, available at <<https://mediate.com/odr-and-enegotiation/>> accessed 6 February 2023

¹⁸ Larson, David Allen (2011) “Brother Can You Spare a Dime?” Technology Can Reduce Dispute Resolution Costs When Times are Tough and Improve Outcomes,” *Nevada Law Journal*: Vol. 11: Iss. 2, 539-540.

¹⁹ Ibid.

²⁰ Ibid.

Nevertheless, such a blind bidding model has obvious limitations and is only capable of dealing with monetary cases.²¹ It is admitted that the existing ODR provider that adopts a blind-bidding model, such as Cybersettle and Smartsettle One, can provide effective and efficient resolution for single-issue and monetary disputes under “technological neutrality”. The complex blind-bidding model, such as Smartsettle Infinity, which can handle multi-issue disputes, still faces problems in accessibility. In multidimensional and complex negotiations, Smartsettle Infinity still calls for human intervention in facilitation and arbitration services.²² Thus, the blind-bidding model can be a good complement to other ODR processes, such as online mediation and online arbitration, but it is not capable of assessing and identifying the liabilities of parties to the disputes.²³

4.1.3 eBay & PayPal – Tiered ODR System

Both eBay and PayPal adopt a tiered ODR System for resolving online disputes raised in their e-commerce platforms. When online disputes occur, eBay users are encouraged to address them on their own through online communication.²⁴ If online communication does not address the issue (or remains unresolved after 3 business days), the complaint can be filed to eBay Resolution Center. Square Trade provides online mediation and assists online negotiation for eBay users. For the buyers, the eBay Resolution Center provides ODR services to address the complaint within one month (normally 3-5 business for refund after online diagnosis), including online diagnosis, offering solutions, giving refund and online appealing.²⁵ For eBay sellers, the Resolution Center also deals with unpaid item case when online communication between the parties do not work out. The ODR services provided by eBay include requesting buyers to pay with approved method (e.g. PayPal),²⁶ and giving refund (administration fees charged by eBay from sellers) to the sellers when the buyers refuse to pay.²⁷

Similar to the tiered ODR system of eBay, PayPal also encourages the parties to communicate first before filing complaints. After the ODR process initiates, PayPal will temporarily hold on all funds in the transaction until the case is closed.²⁸ For the buyers, PayPal provides ODR services to facilitate online communication with sellers and ensure that the purchase is based on the buyers’ genuine

²¹ Schmitz, Amy J. and Martinez, Janet, ODR and Innovation in the United States (September 3, 2021). This is a Draft August 25, 2020; Edited Version is Amy J. Schmitz and Jan Martinez, ODR and Innovation in the United States, in Online Dispute Resolution: Theory and Practice: A Treatise on Technology and Dispute Resolution (Wahab, Katsh and Eds., 2021)., University of Missouri School of Law Legal Studies Research Paper No. 2021-22, Available at SSRN: <https://ssrn.com/abstract=3916974>

²² Larson, David Allen (2011) ""Brother Can You Spare a Dime?" Technology Can Reduce Dispute Resolution Costs When Times are Tough and Improve Outcomes," *Nevada Law Journal*: Vol. 11: Iss. 2, 557.

²³ Ibid.

²⁴ eBay Customer Service, Resolving issues with sellers, available at <<https://www.ebay.com/help/buying/resolving-issues-sellers/resolving-issues-sellers?id=4011&st=3&pos=2&query=Resolving%20issues%20with%20sellers&intent=dispute%20resolution&luenceai=luenceai&docId=HELP1057>> accessed 8 February 2023.

²⁵ eBay Customer Service, Appeal eBay's decision about a return or missing item for buyers, available at <<https://www.ebay.com/help/buying/returns-refunds/ask-ebay-step-help-buyers?id=4701>> accessed 8 February 2023.

²⁶ How to resolve Unpaid Items issue with buyers, eBay Seller Center, available at <<https://www.ebay.com.my/sellercentre/manage-your-account/case-resolution/unpaid-issue/>> accessed 8 February 2023.

²⁷ Ibid.

²⁸ Resolving disputes, claims, and chargebacks, PayPal, available at <<https://www.paypal.com/tc/webapps/mpp/security/resolve-disputes#:~:text=Once%20a%20dispute%20has%20been,the%20dispute%20to%20a%20claim.>> accessed 8 February 2023.

consent.²⁹ For cases escalated to a claim, PayPal can start investigating the case and provide a decision.³⁰ It is noteworthy that after the decision is made by PayPal, only the seller can appeal the case.³¹

eBay and PayPal ODR systems have achieved great success in resolving C2C online disputes, particularly for low-value and high-volume cases raised on their e-commerce platforms. Their ODR model significantly changes the pattern for customer service, and reduces the cost and time for dispute resolution. In fact, eBay resolved 90 percent of disputes without human intervention, and PayPal saved over 7.5 million in the first year alone by introducing the ODR system.³²

However, only a small proportion of eBay users (8 percent of sellers and 3 percent of buyers) applied ODR services.³³ Second, less than half of eBay users were satisfied with the ODR outcomes.³⁴ Third, the eBay tiered ODR system is similar to PayPal's system, but users are more inclined to apply PayPal ODR services. Unlike eBay, PayPal runs its own ODR system and it can hold the transaction funds (or freeze the accounts of the parties), indicating that users ranked enforceability higher than other factors.³⁵

4.1.4 Amazon Buyer Dispute Programme

Amazon's ODR service – “Buyer Dispute Programme” also encourages buyers and sellers to settle their cases on their own. Even if Amazon intervenes, it acts as a facilitator to foster good faith communication for resolution.³⁶ If the online purchase falls within the scope of Amazon's A-to-z Guarantee (physical goods not received in time or the item is materially different from the description), the seller is responsible to come up with a resolution. Otherwise, the buyer is eligible for a refund or exchange under Amazon's A-to-z Guarantee.³⁷ The Amazon ODR process aims to resolve disputes within 45 days,³⁸ and the losing party (either the buyer or the seller) can appeal the case within 30 days.³⁹

Amazon facilitates online negotiation between both parties, and tries to ensure the outcomes through the restriction or termination of account access.⁴⁰ Amazon also holds onto the funds in the seller's account if the seller does not respond within 10 days.⁴¹ Amazon also punishes the abuse of ODR services by the buyer through the restriction or termination of Amazon Pay (account access privileges).⁴² The limitation is that if the buyer used a credit card to pay through Amazon Pay, the ability

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Hiroki Habuka and Colin Rule, The Promise and Potential of Online Dispute Resolution in Japan, *International Journal of Online Dispute Resolution*, Issue 2, 2017, available at <https://www.elevenjournals.com/tijdschrift/ijodr/2017/2/IJODR_2352-5002_2017_004_002_017/fullscreen> accessed 8 February 2023.

³³ Redress & Alternative Dispute Resolution in Cross-Border E-commerce Transactions, EU Policy Department Economic and Scientific Policy, IP/A/IMCO/IC/2006-206, available at <<https://www.europarl.europa.eu/document/activities/cont/201406/20140602ATT84796/20140602ATT84796E N.pdf>> accessed 8 February 2023.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Buyer Dispute Program, Amazon, available at <<https://pay.amazon.com/help/201751580>> accessed 8 February 2023.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Amazon Pay A-to-z Guarantee for Merchants, Amazon, available at <<https://pay.amazon.com/help/201212410>> accessed 8 February 2023.

⁴⁰ Buyer Dispute Program, Amazon, available at <<https://pay.amazon.com/help/201751580>> accessed 8 February 2023.

⁴¹ Ibid.

⁴² Ibid.

to reverse a charge will depend on the bank's policies and the type of dispute.⁴³ The buyer must choose whether to file complaints under Amazon or the credit card issuing bank, not both at the same time.⁴⁴

4.1.5 Modria

Modria is built by Colin Rule, the ODR director of eBay and PayPal from 2003 to 2011. Colin Rule further developed the ODR system to make it applicable to both low-value (high-volume) and high-value cases.⁴⁵ For low-value cases, Modria provides a tiered system, consisting of "online diagnosis", "online negotiation", "online mediation" and "online arbitration" to meet the demands of users at different stages of disputes.⁴⁶ In high-value cases, such as online divorce,⁴⁷ tax and patent disputes, Modria utilised software and AI technologies to efficiently handle the matters, while cooperating with other entities, such as American Arbitration Association (AAA) to further build an ODR platform to expand its application in high-value cases.⁴⁸ It is therefore clear that Modria's approach has been to adopt a more comprehensive model than merely a negotiation-mediation-arbitration tiered ODR system.

4.2 The EU

4.2.1 EU ODR Legislation Development

In 1998, the European Commission issued "Recommendations on the Principles Applicable to the Bodies Responsible for Out-of-Court Settlement of Consumer Disputes" (98/257/EC), establishing seven principles for ODR practice in the EU, namely "Principle of Independence", "Principle of Transparency", "Adversarial Principle", "Principle of Effectiveness", "Principle of Legality", "Principle of Liberty", and "Principle of Representation".⁴⁹ In 2000, the EU Directive on Electronic Commerce (Directive 2000/31/EC) was introduced to encourage the application of ODR in e-commerce disputes, as provided in article 17 of the directive: "*Member States shall ensure that, in the event of disagreement between an information society service provider and the recipient of the service, their legislation does not hamper the use of out-of-court schemes, available under national law, for dispute settlement, including appropriate electronic means.*"⁵⁰ In 2013, the EU introduced Regulation (EU) No. 524/2013 (the Consumer ODR Regulation) and Directive No. 2013/11/EU (the Consumer ADR Directive) to provide the legal basis for ODR regulation. The Consumer ODR Regulation specifies the significance of promoting ODR and the necessity of providing consistent ODR mechanisms for cross-border online transactions, as stated below:

"ODR offers a simple, efficient, fast and low-cost out-of-court solution to disputes arising from online transactions. However, there is currently a lack of mechanisms which allow consumers and traders to resolve such disputes through electronic

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Karim Benyekhlef and Nicolas Vermeys, The End of ODR, Slaw available at <<https://www.slw.ca/2015/10/01/the-end-of-odr/>> accessed 8 February 2023.

⁴⁶ Modria Online Dispute Resolution, available at <<https://www.tylertech.com/products/online-dispute-resolution>> accessed 8 February 2023.

⁴⁷ <https://divorcemediationresources.com/>

⁴⁸ Pablo Cortés, Online Dispute Resolution Services: A Selected Number of Case Studies, Computer and Telecommunications Law Review, 2014, 172-178.

<https://sfinc.ch/wp-content/uploads/2020/11/SFINC-ODR-Case-Studies.pdf>

⁴⁹ 98/257/EC: Commission Recommendation of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes, available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31998H0257>> accessed 9 February 2023.

⁵⁰ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), available at <<https://eur-lex.europa.eu/eli/dir/2000/31/oj>> accessed 9 February 2023.

means; this leads to consumer detriment, acts as a barrier, in particular, to cross-border online transactions, and creates an uneven playing field for traders, and thus hampers the overall development of online commerce.”

The Consumer ODR Regulation aims to achieve a high level of consumer protection in e-commerce activities and provide common standards and principles for cross-border ODR involving different jurisdictions, while contributing to the proper functioning of the internal (digital) market through the establishment of the EU ODR platform (EOP).

This Regulation is to facilitate the independent, impartial, transparent, effective, fast and fair out-of-court resolution of disputes (in the form of ODR or ADR) for claims initiated by the EU consumers and traders in both cross-border and domestic cases. However, this Regulation does not apply to disputes that arise from offline contracts or disputes between traders (sellers).⁵¹

4.2.2 European ODR Early-Stage Initiatives

Before the EOP, some ODR platforms had already been built to protect consumer rights. For example, the European Commission launched the Consumer Complaint Form (CC Form) in 1999, which was designed to deal with complaints from European consumers. The consumers were required to fill in a multiple choice and standardised question form, and the form was available in 11 languages.⁵² It has been indicated that this CC Form is relatively unknown by most European consumers and businesses.⁵³ Other examples include the Electronic Consumer Dispute Resolution (ECODIR) funded by the European Commission,⁵⁴ and the European Consumer Centres Network (ECC-Net) co-financed by the European Commission and the EU member governments.⁵⁵

The past EU ODR initiatives have resulted in limited impact on promoting ODR and cross-border dispute resolution across the EU single market. It is mainly due to insufficient endeavour to advertise the ODR initiatives by the European Commission, and the lack of monitoring mechanisms to maintain the operation of the ODR platforms, which further led to the lack of awareness and recognition by European consumers.⁵⁶ In addition, there was no specific legislation to govern the establishment of these ODR initiatives, making it difficult to promote and monitor these platforms by the European Commission.

⁵¹ Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR), available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0524>> accessed 13 February 2023.

⁵² Cortés, P. (2011). Online dispute resolution for consumers in the European Union. Routledge, 72; The CC Form is also mentioned in the document: Communication from the Commission on "The Out-of-Court Settlement of Consumer Disputes" and Commission recommendations on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes. COM (98) 198 final, 30 March 1998, available at <http://aei.pitt.edu/1179/1/consumer_justice_gp_follow_COM_1998_198.pdf> accessed 15 February 2023.

⁵³ Cortés, P. (2011). Online dispute resolution for consumers in the European Union. Routledge, 73.

⁵⁴ Ibid.

⁵⁵ Ibid., at 74.

⁵⁶ The "Success" of Online Dispute Resolution in Europe, Slaw, 18 Juen 2018, available at <<https://www.slw.ca/2018/06/18/the-success-of-online-dispute-resolution-in-europe/>> accessed 15 February 2023.

4.2.3 Consumer ODR Regulation and the EOP

In 2016, the European Commission launched the EOP as a free and one-stop online dispute resolution hub as per the Consumer ODR Regulation. The Regulation states that “*the ODR platform should take the form of an interactive website offering a single point of entry to consumers and traders seeking to resolve disputes out-of-court which have arisen from online transactions.*”

The EU citizens can use the EOP to resolve their conflicts (build communication with) directly with the trader, or as a facilitator to search for its over 400 ADR/ODR endorsed bodies. For its promotion, the online trader in the EU is obliged to inform the consumer about the EOP, and the information should be easy to identify.⁵⁷ The EOP is available in 27 languages (including 24 EU official languages, Norway, Iceland and Liechtenstein) and provides translation services for users in cross-border disputes.⁵⁸

The European Commission is responsible for developing, operating and maintaining the ODR platform (article 5) to ensure easy access (“design for all”) and data security (“privacy by design”), and shall report to the European Parliament and the Council on the functioning of the ODR platform each year (article 21). The European Commission also shall issue implementing acts as modalities to govern the operation of EOP (article 5.7).

The functions of the EOP include the following: a channel for filing online complaints and communication, a single point of entry to help users find the right ADR entities and online case management, and online translation for digital documents available in 27 languages (as specified in article 5.4). The eligible ADR entities governed by the Consumer ODR Regulation shall be registered electronically with the EOP, after that the ADR entities can be further listed and endorsed by the EOP (article 5.6).

For the facilitation of cross-border ODR services, ODR contact points are built in each EU member state to provide support to their local citizens. Alternatively, the EU member states may confer their responsibilities for the ODR contact points on their centres of the European Consumer Centres Network, consumer associations, or any other body (article 7.1).

It is noteworthy that the EOP has the effect of facilitating e-commerce platforms to build private ODR platforms across its member states. For example, Amazon provides extra services to handle dissatisfied ODR outcomes from users in European countries. For example, Amazon’s German online platform provides a channel for further complaints of ODR dissatisfaction.⁵⁹ This channel is provided only on Amazon’s European websites because it encourages users to resolve online disputes or complaints within its ODR system, instead of resorting to the EOP.⁶⁰

Similar to the function of other ODR providers, the EOP is also responsible for facilitating online communication and negotiation between the consumers and traders. However, the EOP cannot force the trader to engage in the conversation, and the case will be closed if the trader refuses to respond

⁵⁷ Online Dispute Resolution Platform, European Consumer Centres Network, available at <<https://www.eccnet.eu/consumer-rights/how-enforce-my-consumer-rights/online-dispute-resolution-platform>> accessed 13 February 2023.

⁵⁸ Online Dispute Resolution – How It Works, European Commission, available at <<https://ec.europa.eu/consumers/odr/main/?event=main.home.howitworks>> accessed 13 February 2023.

⁵⁹ About the Online Dispute Resolution platform (ODR), Amazon, available at <<https://www.amazon.de/-/en/gp/help/customer/display.html?nodeId=G9NMDH46UFNMFNKN>> accessed 8 February 2023.

⁶⁰ The ODR platform (<https://ec.europa.eu/consumers/odr/> [external link]) is an official website managed by the European Commission to help consumers and traders resolve their disputes out-of-court. See Ibid.

within 30 days.⁶¹ If the trader is willing to talk, the consumer has a maximum of 90 days to reach an agreement with the trader. Both parties may agree upon an ADR entity for dispute resolution by referring to the linkages provided by the EOP.⁶² With mutual consent, the EOP will automatically transfer the case to the agreed ADR entity. If both parties cannot agree upon an ADR entity, the EOP will suggest other dispute resolution channels, such as European Consumer Centres, FIN-NET, national consumer bodies, or courts.⁶³

In summary, the EOP provides a free platform for resolving consumer disputes or referring their cases to any approved ADR entities (if the case is referred to an approved ADR entity, then a small charge will be levied by the ADR entity). The EOP is also a faster and more convenient dispute resolution tool. Compared with the previous ODR initiatives, the EOP makes it easier for users to access online tools and build direct communication with traders with increased efficiency, particularly in the cross-border context. The EOP also provides multiple options for users if they cannot reach an agreement after direct communication and ADR methods, instead of merely resorting to litigation like the ECC-Net. It helps integrate resources to build a network of dispute resolution channels under the Consumer ODR Regulation, which enhances legal certainty and specifies obligations for governments and businesses of each member state.

4.2.4 The EOP Practice and Concerns

In practice, the EOP is not as effective as envisioned in the Consumer ODR Regulation. According to the 2020 statistics report of EOP, the platform received 3.3 million visitors in 2020 (increased from 2.8 million in 2019).⁶⁴ But only a small proportion of visitors submitted complaints (0.53 percent) to the EOP, and 0.92 percent of visitors submitted requests for online communication with the traders.⁶⁵ Half of the complaints involved cross-border transactions, with most cases coming from Germany, Italy, the UK, France and Spain.⁶⁶ It is also noteworthy that only 1 percent of the complaints reached an ADR entity through the EOP, and 89 percent of the cases were automatically closed after the 30-day legal deadline.⁶⁷ Judging from the statistics, the consumer protection effectiveness of the EOP is quite limited, as evidenced by the relatively low percentage of complaints submission and success rate of resolution.

Despite the relatively low adoption rate, the EOP is technically not an ODR provider, but a “clearinghouse”⁶⁸ for its approved ADR entities and a multilingual interface to receive complaints. The EOP itself does not deliver ODR services other than operating as an information hub. It also does not ensure the case is resolved, although there is a binding requirement for the traders to provide a hyperlink to the EOP.⁶⁹ In addition, some ADR entities published on the EOP do not provide ODR services, which

⁶¹ Ibid.

⁶² Ibid.

⁶³ Online Dispute Resolution – Consumer Rights, European Commission, available at <<https://ec.europa.eu/consumers/odr/main/?event=main.consumer.rights#inline-nav-2>> accessed 14 February 2023.

⁶⁴ Functioning of the European ODR Platform – Statistical Report 2020, European Commission, December 2021, available at <<https://commission.europa.eu/system/files/2021-12/2021-report-final.pdf>> accessed 14 February 2023.

⁶⁵ Ibid.

⁶⁶ 2020 was the last year when the ODR platform was accessible for resolving disputes by ADR entities established in the UK, and for disputes involving either UK consumers or traders. See *ibid.*

⁶⁷ Ibid.

⁶⁸ Zheng, J. (2020). *Online Resolution of E-Commerce Disputes: Perspectives from the European Union, the UK, and China*. Springer, 46.

⁶⁹ Ibid.

further limits its effectiveness.⁷⁰ Besides, the duration of the ODR process on the EOP is relatively long. The consumer may need to take 90 days to reach an agreement with traders on the EOP, or even longer if both parties go to the ADR entities after the expiration of the 90-day deadline. Although a period of 90 days for dispute resolution complies with the Consumer ADR Directive, it is a bit long for the ODR process, particularly considering most online consumer complaints are low-value disputes.

The lack of transparency in the EOP makes it difficult to access the case data and evaluate its effectiveness.⁷¹ The most recent available statistics report of the EOP was released in 2021 and reflects the case data summary of 2020 (as previously mentioned). When it comes to the complaints filed from 2021 to 2023, the EOP data report is not available on its official website. The only available up-to-date statistics, as reflected on the webpage of “Online Dispute Resolution Reports and Statistics”, encompasses the “number of complaints by country”, “percentage of national and cross-border complaints”, and “top 10 most complained about sectors”.⁷² Among the 181,340 complaints received by the EOP, less than half of the cases (i.e. 48.01 percent) involve cross-border complaints, and 51.99 percent of the cases are national complaints.⁷³ Detailed data as to the success rate of resolution and how these cases have been resolved (e.g. direction communication on the EOP, bilateral methods on another platform, ADR methods, court proceedings, etc.) is not available on the webpage. It is also noticed that the European Commission has been conducting surveys on the feedback of the EOP users, as mentioned in its latest statistics report, but the detailed and complete data for the survey is not available.⁷⁴ The European Commission also introduced the “Consumer Conditions Scoreboard” to investigate and evaluate the effectiveness of consumer protection.⁷⁵ The latest “Consumer Conditions Scoreboard” report (2019 version) showed that 67.5 percent of consumers filed complaints to the trader, and only 5 percent of them go to the ADR entities.⁷⁶ However, the “Consumer Conditions Scoreboard” survey report does not entail data that focuses on ODR or the EOP application.

4.3 Chinese Mainland

The Chinese Mainland regulates ODR through substantive laws in e-commerce (e.g., e-commerce Law and Consumer Rights Protection Law), civil behaviours and obligations (e.g., the PRC Civil Code and Electronic Signature Law), as well as cybersecurity (e.g., Personal Information Protection Law and Data Security Law). The Ministry of Commerce also introduced E-commerce Model Specifications and Online Shopping Service Standards as regulatory policies to guide e-commerce activities and protect the interests of consumers. According to these laws and rules, the e-commerce platforms and traders

⁷⁰ Ibid.

⁷¹ Schmidt-Kessen, M. J., Nogueira, R., & Cantero Gamito, M. (2020). Success or Failure? —Effectiveness of Consumer ODR Platforms in Brazil and in the EU. *Journal of Consumer Policy*, 43(3), 659–686.

⁷² Online Dispute Resolution EU ODR Platform Reports and Statistics, European Commission, available at <<https://ec.europa.eu/consumers/odr/main/?event=main.statistics.show>> accessed 15 February 2023.

⁷³ Ibid.

⁷⁴ The report only mentions 20% of respondents’ cases had been resolved either on or outside the EOP, and a further 19% continued to discuss with the trader. See: Functioning of the European ODR Platform – Statistical Report 2020, European Commission, December 2021, available at <<https://commission.europa.eu/system/files/2021-12/2021-report-final.pdf>> accessed 15 February 2023.

⁷⁵ Consumer Conditions Scoreboard, European Commission, available at <https://commission.europa.eu/strategy-and-policy/policies/consumer-protection-policy/evidence-based-consumer-policy/consumer-scoreboards_en#monitoringconsumeroutcomes> accessed 15 February 2023.

⁷⁶ Consumer Conditions Scoreboard Consumers at home in the Single Market, European Union, 2019, available at <https://commission.europa.eu/system/files/2020-07/consumers-conditions-scoreboard-2019_pdf_en.pdf> accessed 15 February 2023.

shall comply with a series of standards to protect consumers' rights in online shopping, such as "unconditional return of commodities within seven days",⁷⁷ "providing necessary information concerning the commodities and businesses",⁷⁸ "recognition and enforcement of electronic contract",⁷⁹ "safeguarding information security in online payment",⁸⁰ "consulting and obtaining consent from consumers before processing personal information",⁸¹ etc.

Compared with the EU ODR regulation, the Chinese Mainland does not provide a separate law or rule to govern ODR service, nor assign any executive body to oversee the operation of ODR providers. Instead, only common standards are provided to protect the rights of consumers in online shopping and build the rule-of-law environment in e-commerce activities. Although the Supreme People's Court (SPC) has issued several documents (judicial interpretation) to regulate online litigation,⁸² it has yet to be seen whether any procedural laws or rules will be released to guide ODR services. By comparison, the EU has established the EOP to integrate the legal and social resources to build the cross-border network of ODR. The European Commission shall oversee the operation of the ODR platform while ensuring the privacy of the users is respected from the design stage (article 5 of Consumer ODR Regulation). Considering the Chinese Mainland relies on statutory law (such as its 2021 Civil Code) to regulate e-commerce and dispute resolution, it still lacks a specific law (or a set of procedural rules) to provide legal certainty in ODR services, and a designated body to facilitate and oversee the development of ODR (particularly in cross-border context).

Unlike the self-regulation model in the US, the ODR regulation in the Chinese Mainland involves government intervention and guidance. Taking online arbitration development as an example, the Central Committee of the Communist Party of China and the State Council issued "Several Opinions on Improving the Arbitration System and Improving the Credibility of Arbitration" on 16 April 2019, which states that the corresponding bodies shall actively develop online arbitration and refine online arbitration rules.⁸³ Subsequently, Hangzhou Arbitration Commission launched the Hangzhou Internet Arbitration Court on 5 July 2019, and took the lead in releasing the "Hangzhou Arbitration Commission Smart Arbitration Platform Simple Case Electronic Written Trial and Arbitration Rules".⁸⁴ On 18 July 2019, Ningbo Arbitration Commission launched China's first Internet Arbitration Electronic Evidence Platform to implement this government-released document.⁸⁵ Qingdao Arbitration Commission also

⁷⁷ Article 16 of Consumer Rights Protection Law and article 25 of Administrative Measures for Online Transaction.

⁷⁸ Article 28 of Consumer Rights Protection Law.

⁷⁹ Article 469 of the PRC Civil Code.

⁸⁰ Article 6.4 of E-commerce Model Specifications.

⁸¹ Article 14 of Personal Information Protection Law

⁸² Online litigation is not studied in this report, but the Hangzhou Internet Court is regarded as a significant step to expedite the online dispute resolution development in the Chinese Mainland. Online case administration and litigation by the internet courts accumulate practical experience in information technology applications in dispute resolution. See more: Qian Zhou, Dispute Resolution in China: Litigation, Arbitration, and Mediation, China Briefing, 7 September 2022, available at <<https://www.china-briefing.com/news/dispute-resolution-in-china-litigation-arbitration-and-mediation/>> accessed 20 February 2023.

⁸³ The General Office of the Central Committee of the Communist Party of China issued the "Several Opinions on Improving the Arbitration System and Improving the Credibility of Arbitration", State Council, 16 April 2019, available at <http://www.gov.cn/zhengce/2019-04/16/content_5383424.htm> accessed 20 February 2023.

⁸⁴ The first Internet Arbitration Court in Zhejiang Province was established in Hangzhou, Zhejiang Provincial People's Government, 11 July 2019, available at <http://sft.zj.gov.cn/art/2019/7/11/art_1659556_35622857.html> accessed 20 February 2023.

⁸⁵ Ningbo Arbitration Commission's Internet Online Arbitration Platform and the National First Arbitration Electronic Evidence Platform Official Operation Conference was successfully held, Ningbo Arbitration

followed the step to release its online evidence platform, which serves as China's first electronic evidence platform based on 5G Network Slicing technology.⁸⁶ In fact, this government-released document to drive the development of online arbitration was implemented by all the arbitration commissions in the Chinese Mainland.

It is noteworthy that the national and local arbitration commissions themselves are not governmental departments or bodies, but they are endorsed or funded by governments. For example, the China International Economic and Trade Arbitration Commission (CIETAC) was established according to the decision of the State Council in 1954, with its headquarters located in Beijing and sub-commissions all around the country.⁸⁷ Among the CIETAC sub-commissions, CIETAC Shenzhen Sub-Commission is the first arbitration institution set in the GBA, and further developed into the Shenzhen Court of International Arbitration (SCIA).⁸⁸ The local arbitration commissions, such as Guangzhou Arbitration Commission (GZAC), are non-profit institutions set up by Guangzhou Government as per the Arbitration Law. On the one hand, these ADR entities enjoy government endorsement and recognition by the public. On the other hand, some of the ADR entities are also ODR service providers and ODR rule-makers according to the existing laws and policies.

4.3.1 GZAC - Guangzhou Arbitration Commission

Guangzhou Arbitration Commission (GZAC) has introduced a one-stop ODR mechanism to boost the efficiency of case filing and management, including the application of AI and blockchain technology to provide high-volume online hearings and secured digital evidence storage. In 2019, GZAC launched its GZAC ODR Arbitration Platform.⁸⁹ This ODR Platform ensured the services were accessible to the public all day at less cost, while providing sustainable online hearings that were not affected by the COVID-19 quarantine policies. The GZAC has been promoting its own ODR rules to the GBA, namely the "Guangzhou Standard". The "Guangzhou Standard" refers to the Online Arbitration Recommended Standard released by GZAC in 2020, which aims to promote and regulate the ODR Services on its ODR Online Arbitration Platform.⁹⁰ GZAC further introduced an updated version of "Guangzhou Standard", namely "Guangzhou Standard II", as a complement to the previous version in August 2022.⁹¹

The GZAC one-stop ODR model consists of online negotiation, online mediation and online arbitration (following the order of negotiation first, then mediation, and finally arbitration), but the three stages are all non-required procedures, meaning the parties can choose to skip the negotiation stage and move to

Commission, 18 July 2019, available at <<https://www.nbac.org.cn/html/xinwendongtai/zhuyaoxinxi/2019/0719/1776.html>> accessed 20 February 2023.

⁸⁶ Qingdao Arbitration Commission Launches Internet Arbitration Platform, Sina, 24 August 2019, available at <https://k.sina.com.cn/article_2647556885_9dce831500100iayc.html> accessed 20 February 2023.

⁸⁷ Introduction of CIETAC is available at <<http://www.cietac.org/index.php?m=Page&a=index&id=34&l=en>> accessed 20 February 2023.

⁸⁸ Introduction of SCIA is available at <<http://www.scia.com.cn/en/index/aboutdetail/id/15.html>> accessed 20 February 2023.

⁸⁹ The GZAC ODR Platform is available at <<https://newodr.gzac.org/en/>> accessed 7 August 2023.

⁹⁰ Recommendatory Standard for Internet Arbitration (Guangzhou Standards), Guangzhou Arbitration Commission Official Website, available at <<https://www.gzac.org/nr/5556>> accessed 7 August 2023.

⁹¹ Guangzhou Standard II refers to two supplementary standards regarding "identity verification and digital delivery of awards in online arbitration award", the two supplementary documents are available at Guangzhou Arbitration Commission Official Website: <<https://www.gzac.org/nr/5932>>; <<https://www.gzac.org/nr/5933>> accessed 7 August 2023; find more: Guangzhou Arbitration Commission Formulates Rules for Global Internet Arbitration and Launches "Guangzhou Standard II", Guangzhou People's Government, available at <https://www.gz.gov.cn/ysgz/xwdt/ysdt/content/mpost_8535177.html> accessed 20 February 2023.

mediation directly, as per article 4 of GZAC One-stop Diversified Dispute Resolution Platform Procedure Guidelines (hereinafter the GZAC Guidelines).⁹² For the initiation of ODR proceedings, the parties need to register and log in to the GZAC ODR Platform and make an online application to select either the APEC-ODR proceedings (the GZAC is an APEC-ODR provider) or the GZAC ODR proceedings.

If the parties select the GZAC ODR proceedings, the GZAC ODR platform will decide whether to accept the disputed application within three days after receiving the application (article 7 of the GZAC Guidelines). Once accepted by the GZAC, the respondent will receive the notification from the ODR platform, and shall log on to the platform to submit a reply within seven days (article 8). After the respondent responds and notifies the claimant, the negotiation phase begins. The negotiation period is 10 days (article 10). During the negotiation phase, if both parties reach a settlement, the content of the settlement agreement recorded on the platform shall be confirmed, and the procedure will be terminated automatically. The parties may request the Commission to issue a mediation statement or award based on the settlement agreement (article 14).

Based on article 13 of the GZAC Guidelines, under any of the following circumstances, online mediation shall be initiated immediately: (i) one or both parties choose not to enter the negotiation stage; (ii) during the negotiation stage, one or both parties request to directly enter the mediation stage; and (iii) the respondent fails to submit a response to the applicant's notification as required. After the mediation stage begins, the GZAC shall designate an authorised mediation institution or designate a mediator to conduct mediation. The GZAC will notify both parties of the mediator's information and the expiry date of the mediation stage after the mediator is determined (article 15). If the parties fail to resolve the dispute through mediation within 10 days after receiving the notice of the appointment of the mediator, the dispute shall immediately enter the arbitration stage. With the mutual consent of both parties, the mediator has the right to appropriately extend the time limit for mediation (article 20). If both parties reach a mediation settlement agreement, the record on the ODR platform shall be confirmed and the mediation procedure shall be terminated automatically.

If both parties have agreed that the Association will resolve the dispute, and the dispute remains unresolved after mediation (or at any point in the negotiation or mediation, if one or both parties request to enter the arbitration stage), it will enter into an arbitration procedure, and the arbitration will be conducted in accordance with the “GZAC Arbitration Rules”. If the parties fail to reach a mediation agreement at the mediation stage, the mediator shall not act as an agent in the arbitration stage, nor as an arbitrator in the case in principle, unless both parties agree (article 25).

By comparison, if the parties select the APEC-ODR proceedings, the negotiation and mediation proceedings are similar to that provided in the GZAC Guidelines, with a 10-day maximum duration for each stage, but the APEC-ODR proceedings provide a specific deadline for online arbitration (20-day maximum after the expiry of the mediation stage) instead of resorting to the “GZAC Arbitration Rules”.⁹³

In addition, the PRC Ministry of Justice has issued three Arbitration Guidance Cases, including one cross-border online arbitration case handled by the GZAC ODR Platform (a housing lease contract

⁹² Guangzhou Arbitration Commission’s One-stop Diversified Dispute Resolution Platform Procedure Guidelines (Trial), GZAC, available at <<https://newodr.gzac.org/introduce/knowledgeRule/>> 27 March 2023.

⁹³ Model Procedural Rules for the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes, available at <<https://newodr.gzac.org/introduce/apecRule/>> 27 March 2023.

dispute between a state-owned enterprise and a Hong Kong resident).⁹⁴ As of October 2022, the GZAC has handled 251 cases through its ODR platform, with the total case value at 4.9 billion yuan. 134 cases have been settled through online mediation, and the average duration to conclude a case is 38 days.⁹⁵ By far, all four typical online arbitration cases (two cross-border and two domestic cases) in Guangdong Province, as listed in the “Public Legal Services of China” case database, are all handled by the GZAC ODR Platform.⁹⁶

4.3.2 CIETAC - China International Economic and Trade Arbitration Commission

Compared with the GZAC ODR Model, the advantage of CIETAC ODR services relies primarily on its domain name dispute resolution. As mentioned previously, China International Economic and Trade Arbitration Commission (CIETAC) is established according to the documents issued by the State Council. CIETAC further launched its Domain Name Dispute Resolution Center in December 2000. Domain name dispute resolution refers to addressing disputes over a registered domain name ownership between a trademark owner and an alleged cyber-squatter.⁹⁷ The dispute resolution process involves a panel consisting of domain name experts to make decisions on the ownership of the contested domain name, and the decisions are subsequently enforced by corresponding authorities, such as the Internet Corporation for Assignment of Names and Numbers (ICANN).⁹⁸

In 2002, CEITAC and the Hong Kong International Arbitration Centre (HKIAC) jointly established the Asian Domain Name Dispute Resolution Center (ADNDRC). Since then, CIETAC and its Domain Name Dispute Resolution Center have been operating as the Beijing Office of ADNDRC.⁹⁹ Specifically, the CIETAC Domain Name Dispute Resolution Center deals with the cases of the following categories:¹⁰⁰

- i.) “.CN domain names” (including the former Chinese-character domain names) and “keywords” managed and maintained by China Internet Network Information Center (CNNIC);
- ii.) “Generic Top-Level Domains” (gTLDs) (e.g., .com, .org, .net, etc.); and
- iii.) “New gTLDs” disputes approved by the ICANN.¹⁰¹

⁹⁴ Ministry of Justice Issues Arbitration Guidance Cases, Ministry of Justice, available at <http://www.moj.gov.cn/pub/sfbgw/gwxw/xwyw/202301/t20230111_470637.html> accessed 27 March 2023.

⁹⁵ Ibid.

⁹⁶ “Public Legal Services of China” case database, available at <<http://alk.12348.gov.cn/LawMultiSearch?searchField=%E6%A1%88%E4%BE%8B%E5%85%A8%E6%96%87&keywords=ODR>> accessed 27 March 2023.

⁹⁷ Shang, Shu and Guo, Wenli (2020), The Rise of Online Dispute Resolution-Led Justice in China: An Initial Look ANU, *Journal of Law and Technology* Vol.1 Issue. 2, 26, 28.

⁹⁸ Ibid.

⁹⁹ ADNDRC was jointly established by the China International Economic and Trade Arbitration Commission (CIETAC) and the Hong Kong International Arbitration Centre (HKIAC) in 2002. It was established as a charitable institution in Hong Kong and remains today the same status. See: History of ADNDRC, available at <https://www.adndrc.org/about_us> accessed 21 February 2023.

¹⁰⁰ Introduction of CIETAC, available at <<http://www.cietac.org/index.php?m=Page&a=index&id=34&l=en>> accessed 21 February 2023. Also see: Li Hu, CIETAC Online ADR Practice Domain Name Dispute Resolution System, available at <https://www.softic.or.jp/symposium/open_materials/11th/en/LiHudomain.pdf> accessed 21 February 2023.

¹⁰¹ The New gTLD Program has enabled hundreds of new top-level domains in ASCII characters and in different scripts (Internationalized Domain Names) to enter into the Internet's root zone since the first delegations occurred

It is regarded that the CIETAC domain name dispute resolution established an online arbitration model for other intellectual property disputes in cyberspace, particularly in a cross-border context.¹⁰² First, CIETAC applies a clear and uniform rule framework specifically focused on domain name dispute resolution, as the dispute resolution process is governed by a series of rules collectively formulated by CNNIC, CIETAC, ADNDRC and ICANN, including: “CNNIC Domain Name Dispute Resolution Policy”, “the Rules for CNNIC Domain Name Dispute Resolution Policy”, “CIETAC Supplemental Rules to CNDRP”, “CNNIC Keyword Dispute Resolution Policy”, “CIETAC Rules for CNNIC Keyword Dispute Resolution Policy”, “the Uniform Domain Name Policy (UDRP)”, “the Rules for Uniform Domain Name Policy (UDRP Rules)”, and “ADNDRC Supplemental Rules to UDRP”. In 2009, CIETAC released the Online Arbitration Rules and amended it in 2014. Second, the decisions of dispute resolution, as approved by CNNIC (in “.CN domain name disputes”), can be executed directly and automatically, which ensures enforceability and efficiency in online arbitration.¹⁰³ Third, this online arbitration model can resolve cross-border disputes occurring in and out of cyberspace. CIETAC closely collaborates with other entities in and outside the Chinese Mainland, such as HKIAC, CNNIC and ICANN, and this collaborative network in cyberspace can help effectively enforce the decisions of online arbitration. This model that relies upon collaborative authorities, which is capable of delivering expertise through the internet, becomes an asset that can be extended to resolve both online and offline disputes in a cross-border context.¹⁰⁴

In addition to domain name dispute resolution, CIETAC also provides online arbitration services for other disputes where the parties agreed to do so. The parties may agree to apply the 2014 CIETAC Online Arbitration Rules (CIETAC OAR) or make certain modifications to the Rules when submitting the case to CIETAC (article 4 of CIETAC OAR).¹⁰⁵ The parties can access the CIETAC ODR Center website to participate in the online arbitration proceedings.¹⁰⁶ While the jurisdiction and applicable law are based on the agreement by both parties, the arbitral tribunal can decide the applicable law if a consensus cannot be reached (article 7 of CIETAC OAR). Upon the agreement or request of the parties, the arbitral tribunal may conduct online or offline mediation during the arbitration proceedings (article 37 of CIETAC OAR).

4.3.3 SCIA - Shenzhen Court of International Arbitration

The Shenzhen Court of International Arbitration (SCIA) is the first arbitration institution established in the GBA in 1983.¹⁰⁷ It issued the first Chinese arbitral award that was enforced in a foreign jurisdiction as per the New York Convention in 1989.¹⁰⁸ The main advantage of SCIA lies in its international panel of arbitrators (with 36.78 percent of international arbitrators) and its innovative cooperation mechanism with Hong Kong ADR entities.¹⁰⁹ The SCIA took the lead in accepting investor-state dispute arbitration

in October 2013. See more: About the Program – New gTLD, ICANN, available at <<https://newgtlds.icann.org/en/about/program>> accessed 21 February 2023.

¹⁰² Li Hu, CIETAC Online ADR Practice Domain Name Dispute Resolution System, available at <https://www.softic.or.jp/symposium/open_materials/11th/en/LiHudomain.pdf> accessed 21 February 2023.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ The modification of rules shall not impede the operation of dispute resolution process and not in conflict with the PRC Arbitration Law. See more:

¹⁰⁶ CIETAC ODR Center website is available at <<http://www.cietacodr.org/#/login>> accessed 22 February 2023.

¹⁰⁷ Introduction of SCIA is available at <<http://www.scia.com.cn/en/index/aboutdetail/id/15.html>> accessed 22 February 2023.

¹⁰⁸ Ibid.

¹⁰⁹ Liu Xiaochun, Shenzhen Court of International Arbitration (SCIA), Guide to Regional Arbitration (volume 10 - 2022), available at <<https://globalarbitrationreview.com/survey/the-guide-regional->

and exploring the optional appellate arbitration procedure in the Chinese Mainland.¹¹⁰ These innovative measures were adopted in the form of introducing new arbitration rules following international standards, such as the 2021 SCIA Arbitration Rules, the SCIA Guidelines for the Administration of Arbitration under the UNCITRAL Arbitration Rules, and the SCIA Guidelines for the Optional Appellate Arbitration Procedure.¹¹¹

It is noticed that the SCIA ODR platform (Cloud Online Arbitration) aims to provide one-stop ODR services, including online negotiation, online mediation and online arbitration. The Online arbitration services on the SCIA ODR platform are available 24 hours a day. According to the 2021 statistics, the SCIA ODR platform handled 7,887 cases in 2021. Among them, 883 cases are heard online, and 40,524 delivery times have been completed through the SCIA Online Case Management System.¹¹² However, the SCIA only issued Online Arbitration Rules (amended in 2022) to regulate its ODR services. SCIA Online Arbitration Rules also mentions the SCIA provides online mediation services, but no separate online mediation rule is not available.¹¹³ Besides, the SCIA ODR platform (website) is only available in simplified Chinese, making it difficult for non-Chinese speaking users to access its ODR services.¹¹⁴

The SCIA also leads the number of cross-border cases involving Hong Kong in the Chinese Mainland, dealing with 849 cases (total value of objects at 72.3 billion RMB) from 2019 to 2022.¹¹⁵ The SCIA established the South China International Arbitration Center (HK) (SCIAHK) within Hong Kong in 2019, and further published its arbitration rules based on the 2013 UNCITRAL Arbitration Rules and UNCITRAL Recommendations.¹¹⁶ Unlike SCIA, SCIAHK has yet to launch an ODR or online arbitration platform.

4.3.4 Taobao Model

Although learning from the experience of eBay in both operation and dispute resolution, Taobao has developed its unique ODR model. Founded in 2003, Taobao is China's largest e-commerce retail marketplace, with over 77 percent of users coming from the Chinese Mainland and more than 5 percent of users located in Hong Kong.¹¹⁷ Similar to the ODR model in eBay, Taobao also encourages users to resolve disputes through peaceful online conversation, while separating the cases according to the

arbitration/2022/organization-profile/shenzhen-court-of-international-arbitration-scia> accessed 20 February 2023.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Liu Xiaochun, Shenzhen Court of International Arbitration (SCIA), Guide to Regional Arbitration (volume 10 - 2022), available at <<https://globalarbitrationreview.com/survey/the-guide-regional-arbitration/2022/organization-profile/shenzhen-court-of-international-arbitration-scia>> accessed 10 August 2023.

¹¹³ SCIA Online Arbitration Rules (only available in Chinese), <<http://www.scia.com.cn/index.php/Home/index/rule/id/814.html>> accessed 23 February 2023.

¹¹⁴ SCIA Cloud Online Arbitration Platform is available at <<https://sso.scia.com.cn/>> accessed 23 February 2023.

¹¹⁵ The Convergence of Rules has Spawned a New "Shenzhen + Hong Kong" Arbitration Model, Liaison Office of State Council in Hong Kong, 2 August 2022, available at <http://www.locpg.gov.cn/jsdt/2022-08/02/c_1211672637.htm> accessed 22 February 2023.

¹¹⁶ South China International Arbitration Center (Hong Kong) Arbitration Rules ("Rules"), SCIA, available at <<https://www.scia.org.hk/en/arbitration/rule>> accessed 20 February 2023.

¹¹⁷ Taobao.com, Similarweb ranking, available at <<https://www.similarweb.com/website/taobao.com/#overview>> accessed 27 February 2023.

reaction of users to boost efficiency.¹¹⁸ But Taobao provides more options for users. For example, Taobao has both staff mediation and crowdsourcing public jury for the users to choose from. eBay may distribute its ODR services to other private entities, such as PayPal or SquareTrade, and relies upon their investigation to make decisions. Taobao ODR model, however, does not rely upon the decision-making of other entities.¹¹⁹

Compared with public ODR providers (endorsed by governments and public entities), such as the previously mentioned GZAC, CIETAC and SCIA, private ODR providers represented by Taobao have their comparative advantages, including “free access to ODR services”, “efficient processing for high-volume and low-value cases”, and “self-enforceable results”. The legal basis for setting private ODR providers by e-commerce platforms is article 63 of E-Commerce Law, which states that “An e-commerce platform business may establish an online dispute settlement mechanism, develop and publish dispute settlement rules, and equitably and impartially settle the disputes between parties according to the principle of voluntariness.”¹²⁰ Almost all the e-commerce platforms in the Chinese Mainland provide free ODR services, such as Taobao, Jindong, Pinduoduo, Xianyu, etc. In addition, private ODR providers aim to efficiently deal with online transaction disputes, since the success rate of dispute resolution relates closely to the market reputation of their affiliated e-commerce platforms. In the example of Taobao ODR, the consumer is responsible for providing evidence within 3 days. After that, the consumer may apply for online staff mediation and the case shall be closed within 3 business days.¹²¹ In addition, Taobao members are encouraged to use Alipay as the payment intermediary (similar to the function of PayPal in eBay). In comparison, PayPal may review the transaction records and require the parties to provide proof of proper contract performance.¹²² Unlike the role of PayPal in ODR, Alipay does not make its own judgment on the case, but simply implements the decisions of Taobao staff. After authorisation, Alipay can irrevocably transfer the money according to the result of dispute resolution (Part III, Article 4 of the 2022 Alipay Service Agreement).¹²³ Thus, the Taobao ODR outcomes are self-enforceable through the secured and irrevocable money transfer by Alipay.

4.4 Hong Kong

There are no specific laws governing the online conduct of business activities. However, several laws are provided to regulate general commercial practices and therefore relevant to online business activities. Specifically, ODR in Hong Kong is primarily regulated through the existing legal framework on ADR and e-commerce, including Arbitration Ordinance (Cap. 609), Mediation Ordinance (Cap. 620) and

¹¹⁸ Liu Y, Wan Y. Consumer Satisfaction with the Online Dispute Resolution on a Second-Hand Goods-Trading Platform. *Sustainability*. 2023; 15(4):3182

¹¹⁹ Zhou Xiang. Description and Explanation: Taobao Dispute Resolution Mechanism—Observation of ODR in China[J]. *Journal of Shanghai Jiaotong University (Philosophy and Social Sciences Edition)*, 2021, 29 (04):97-108.

¹²⁰ E-Commerce Law of the People's Republic of China, PRC Ministry of Commerce, available at <<http://mg.mofcom.gov.cn/article/policy/201912/20191202923971.shtml>> accessed 20 February 2023.

¹²¹ Taobao Help Center, Taobao, available at: <<https://world.taobao.com/helper/knowledge.htm?kid=5984593>> accessed 20 February 2023.

¹²² Unauthorized transactions, PayPal, available at <<https://www.paypal.com/tc/webapps/mpp/security/authorized-transactions>> accessed 20 February 2023.

¹²³ 2022 Alipay Service Agreement, available at <<https://render.alipay.com/p/yuyan/180020010001196791/preview.html?agreementId=AG00000006>> accessed 20 February 2023.

other separate laws governing consumer protection and e-commerce activities. The separate laws include the following:¹²⁴

- a) Trade Descriptions Ordinance (Cap. 362)
- b) Unconscionable Contracts Ordinance (Cap. 458)
- c) Consumer Goods Safety Ordinance (Cap. 456)
- d) Personal Data (Privacy) Ordinance (Cap. 486)
- e) Unsolicited Electronic Messages Ordinance (Cap. 593)
- f) Electronic Transaction Ordinance (Cap. 553)
- g) Payment Systems and Stored Value Facilities Ordinance (Cap. 584)
- h) Misrepresentation Ordinance (Cap. 284)
- i) Weights and Measures Ordinance (Cap. 68)
- j) Toys and Children’s Products Safety Ordinance (Cap. 424).

These laws can be applied for consumer protection and governing ODR activities in e-commerce. For example, Trade Descriptions Ordinance (Cap. 362) prohibits unfair practices conducted by businesses (e.g., misleading actions or omissions, aggressive commercial practices, and bait advertising); Unconscionable Contracts Ordinance (Cap. 458) provides consumer protection in contracts (that are set aside, altered, or partially enforced) for the supply of services or the sale of goods that are unconscionable; Consumer Goods Safety Ordinance (Cap. 456) provides that consumer goods must comply with approved and general safety standards or specifications; Personal Data (Privacy) Ordinance (Cap. 486) regulates the use and processing of personal data (e.g., online processing or collection of personal data and direct marketing activities); Unsolicited Electronic Messages Ordinance (Cap. 593) regulates the sending of unsolicited electronic messages (e.g. by voice, text, image or video message, fax or email) for promotional or marketing purposes; Electronic Transaction Ordinance (Cap. 553) recognises electronic records as having a legal effect and regulates the use of electronic and digital signatures; Payment Systems and Stored Value Facilities Ordinance (Cap. 584) regulates stored value facilities and retail payment systems, including digital and electronic payment services; Misrepresentation Ordinance (Cap. 284) provides for statutory remedies relating to fraudulent, negligent and innocent misrepresentation; Weights and Measures Ordinance (Cap. 68) prohibits the possession and use of false or defective weighing and measuring equipment for the purpose of trade; Toys and Children’s Products Safety Ordinance (Cap. 424) requires manufacturers, importers and suppliers of toys and specified children’s products to ensure that the goods they supply for local consumption satisfy the stipulated safety standards or requirements.

4.4.1 HKIAC

The Hong Kong International Arbitration Centre (HKIAC) is the only arbitration entity certified by the China National Network Information Center (CCNIC) in Hong Kong. HKIAC and CIETAC jointly established the Asian Domain Name Dispute Resolution Centre (ADNDRC), which has offices in Beijing, Hong Kong, Kuala Lumpur, and Seoul. HKIAC provides Domain Name Dispute Resolution (DNDR) services concerning generic top-level domains (“gTLDs”), new gTLDs and certain country-code top-level domains (“ccTLDs”) under the following policies and procedures: (i) Uniform Domain Name Dispute Resolution Policy (“UDRP”); (ii) Uniform Rapid Suspension System (“URS”); (iii)

¹²⁴ Consumer Protection – Legislation, Commerce and Economic Development Bureau, available at <[https://www.cedb.gov.hk/en/policies/consumer-protection.html#:~:text=The%20Trade%20Descriptions%20Ordinance%20\(Cap,switch%2C%20and%20wrongly%20accepting%20payment.>](https://www.cedb.gov.hk/en/policies/consumer-protection.html#:~:text=The%20Trade%20Descriptions%20Ordinance%20(Cap,switch%2C%20and%20wrongly%20accepting%20payment.>) accessed 6 March 2023.

Trademark Post-Delegation Dispute Resolution Procedure (“TM-PDDRP”); (iv) Transfer Dispute Resolution Policy (“TDRP”); (v) Sunrise Dispute Resolution Policies (“SDRP”); (vi) Charter Eligibility Dispute Resolution Policies (“CEDRP”); and (vii) Uniform Dispute Resolution Policy for Frograms Addresses (“UDRP-F”).¹²⁵

Compared with CIETAC, HKIAC serves as a DNDR service provider in its own capacity for ccTLDs under the following policies:¹²⁶

- (i) Hong Kong Domain Name Dispute Resolution Policy for “.hk” and “. 香港”;
- (ii) China ccTLD Dispute Resolution Policy for “.cn” and “. 中国”;
- (iii) dotPH Uniform Domain Name Dispute Resolution Policy for “.ph”.

The ODR (in the field of domain name dispute resolution) of CIETAC and HKIAC is under a similar structure. As mentioned in “CIETAC Model”, domain name disputes relating to “.cn” and “. 中国” domain names are regulated by the CNNIC Domain Name Dispute Resolution Policy (CNDRP), the Rules for the CNNIC ccTLD Domain Name Dispute Resolution Policy, and the CIETAC Supplemental Rules to CNDRP. Similarly, if a third party complains about their registration or use of the domain name with country code “.hk” or “. 香港”, registrants are contractually bound to submit an online arbitration to the HKIAC. The HKIAC will then resolve the dispute according to the Hong Kong Domain Name Dispute Resolution Policy (HKDRP), the HKIAC Domain Name Dispute Supplemental Rules, and the Arbitration Ordinance.¹²⁷

HKIAC has significant experience handling domain name disputes under the UDRP. Since 2002, HKIAC has administered over 1,400 UDRP cases. Each year, most domain name disputes filed at HKIAC are administered under the UDRP (almost 70% in 2021). To succeed under the UDRP, a Complainant must show that: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and (iii) the domain name has been registered and is being used in bad faith.¹²⁸

4.4.2 ICC

International Chamber of Commerce (ICC) International Court of Arbitration is the world’s leading arbitral institution and has been resolving commercial disputes since 1923.¹²⁹ The rule of arbitration in the ICC International Court of Arbitration is based on the (2021) ICC Rules of Arbitration, which

¹²⁵ Guide to HKIAC Domain Name Dispute Resolution 2nd ed., 2022, available at <https://www.hkiac.org/sites/default/files/ck_filebrowser/DNDR_Guide_2nd_ed.pdf> accessed 14 March 2023.

¹²⁶ Ibid.

¹²⁷ Lee, Jyh-An, Domain Name Dispute Resolution in Mainland China and Hong Kong (September 21, 2020). The Cambridge Handbook of International and Comparative Trademark Law (Irene Calboli & Jane Ginsburg eds., Cambridge University Press, 2020), The Chinese University of Hong Kong Faculty of Law Research Paper No. 2020-22, 400.

¹²⁸ Guide to HKIAC Domain Name Dispute Resolution 2nd ed., 2022, available at <https://www.hkiac.org/sites/default/files/ck_filebrowser/DNDR_Guide_2nd_ed.pdf> accessed 14 March 2023.

¹²⁹ ICC International Court of Arbitration, ICC, available at <<https://iccwbo.org/dispute-resolution-services/icc-international-court-arbitration/>> accessed 16 March 2023.

defines and regulates the management of ICC cases from 1 January 2021 on.¹³⁰ Although the ICC has yet to provide online arbitration, it launched the “ICC Case Connect” on 12 October 2022 - an online case management platform - that enables parties, arbitral tribunals and the ICC Secretariat to manage arbitration cases.¹³¹ ICC Case Connect enables more streamlined communication and file-sharing for users and arbitrators. The new digital platform efficiently stores all case documents and data in one centralised, easily accessible location, using swift and user-friendly document sharing and new time-saving online forms for arbitrators. Through this platform, case documents/data formerly duplicated across different document storage and sharing systems by parties or sent via different communication channels have been centralised in a single platform, providing a one-stop-shop to manage ICC Arbitration cases.¹³²

The ICC Case Connect provides a digital platform for the ICC to realise online case management with increased efficiency, while for users to have easier access to the system without restrictions on time and geographical locations. For cases registered as of October 2022, the ICC Secretariat will communicate principally via ICC Case Connect, and the digital platform is available at no additional charge for ICC arbitrations.¹³³ The ICC Case Connect is built into a one-stop-shop to manage ICC Arbitration cases, documents and data that are formerly duplicated across different document storage and sharing systems by parties or sent via different communication channels.¹³⁴

Specifically, the ICC Case Connect provides the following online services: first, it enables parties to conveniently track the status and overview of their current and closed ICC cases (registered as of October 2022); second, it enables arbitrators and counsel to swiftly and securely transfer case files with the support information technology applied in the system; third, it provides arbitrators with updatable online forms to replace the currently used forms; Fourth, it facilitates simplified case tracking by providing an overview of documents and recent activity across all ongoing ICC Case Connect cases.¹³⁵

The launch of the ICC Case Connect is a key milestone as ICC starts to provide ODR services, but it remains to be seen how the digital platform and the information technology will be applied in the development of online arbitration in the ICC. The objective of introducing the ICC Case Connect is to enhance the efficiency of case management and allows case filing and management without the restrictions of time and location. Since the ICC is determined to further develop the digital platform and its digital services in 2023,¹³⁶ the ICC Case Connect has provided a solid foundation for developing online arbitration services based on the existing online case management model. According to the 2021 ICC Arbitration Rules (Appendix IV: Case Management Techniques) that the arbitral tribunal and the parties can apply certain case management techniques for controlling time and cost, particularly for cases of low complexity and low value. One of the methods is to use “*telephone or video conferencing for procedural and other hearings where attendance in person is not essential and use of IT that enables*

¹³⁰ 2021 Arbitration Rules, ICC, available at <<https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/>> accessed 16 March 2023.

¹³¹ ICC launches online case management platform, available at <[https://uk.practicallaw.thomsonreuters.com/w-037-2575?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-037-2575?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 16 March 2023.

¹³² Ibid.

¹³³ File your Request via ICC Case Connect, available at <<https://iccwbo.org/dispute-resolution-services/arbitration/file-your-request-via-icc-case-connect/#use-icc-connect>> accessed 16 March 2023.

¹³⁴ ICC launches ICC Case Connect: Secure online case management made easy, ICC, available at <<https://iccwbo.org/media-wall/news-speeches/icc-launches-icc-case-connect-secure-online-case-management-made-easy/>> accessed 16 March 2023.

¹³⁵ Ibid.

¹³⁶ Ibid.

*online communication among the parties, the arbitral tribunal and the Secretariat of the Court.*¹³⁷ In this sense, online arbitration should be the future direction of development for the ICC.

4.4.3 eBRAM

eBRAM International Online Dispute Resolution Centre (eBRAM) is a non-profit ODR platform supported by the Hong Kong Government.¹³⁸ Compared with other ADR/ODR entities in the GBA, eBRAM is the only government-endorsed entity that concentrates on ODR services. It employs blockchain to provide tamper-resistance for signed documents and machine-learning based technologies to support ODR services.¹³⁹ The current ODR services at eBRAM are provided through four separate platforms, namely online mediation platform, online arbitration platform, APEC ODR service and COVID-19 Scheme. Parties can commence ODR proceedings directly through these four platforms of eBRAM, and depending on the rules selected, opt for an online negotiation, online mediation, online arbitration, or a combination of all three.¹⁴⁰

The four ODR platforms are complemented by four respective rules, namely “eBRAM Arbitration Rules”,¹⁴¹ “eBRAM Mediation Rules”,¹⁴² “eBRAM APEC Rules”,¹⁴³ and “eBRAM Rules for the COVID-19 ODR Scheme”.¹⁴⁴ eBRAM also establishes its own ODR panels comprising professional arbitrators, mediators, and neutrals. Panel members are required to comply with corresponding codes and guidelines, namely “Code of Ethics for Arbitrators of eBRAM”,¹⁴⁵ “The Hong Kong Mediation

¹³⁷ The Future of International Arbitration following the Pandemic: The Hybrid Hearing? 09 October 2020, available at <<https://www.ciarb.org/resources/features/the-future-of-international-arbitration-following-the-pandemic-the-hybrid-hearing/>> accessed 13 March 2023.

¹³⁸ Our Profile, eBRAM, available at <<https://www.ebram.org/overview.html>> accessed 13 March 2023.

¹³⁹ Keynote Speech of Dr James Ding Commissioner, LAWASIA Risk Management & Indemnity Insurance Conference 2019, Inclusive Dispute Avoidance and Resolution Office, Department of Justice, HKSAR, 31 May 2019. Available at <https://www.doj.gov.hk/en/community_engagement/speeches/pdf/lo20190531e1.pdf> accessed 3 June 2022. APEC ODR Services CIETAC, CIETAC. Available at <<https://casettle.odrcloud.cn/CIETAC.html>> accessed 3 June 2022. First ODR platform for APEC member economies launched in Guangzhou, Ministry of Justice of China. Available at <http://en.moj.gov.cn/2021-02/04/c_587662.htm#:~:text=The%20Guangzhou%20Arbitration%20Commission%20recently,in%20the%20APEC%20member%20economies.> accessed 20 February 2023.

¹⁴⁰ Ibid.

¹⁴¹ eBRAM Arbitration Rules, available at <<https://www.ebram.org/download/rules/20230214%20eBRAM%20Arbitration%20Rules%202021.pdf>> accessed 13 March 2023.

¹⁴² eBRAM Mediation Rules, available at <<https://www.ebram.org/download/rules/20230214%20eBRAM%20Mediation%20Rules%202021.pdf>> accessed 13 March 2023.

¹⁴³ eBRAM APEC Rules, available at <<https://www.ebram.org/uploads/rules/eBRAM%20APEC%20Rules.pdf?v=1.1>> accessed 13 March 2023.

¹⁴⁴ eBRAM Rules for the COVID-19 ODR Scheme, available at <https://www.ebram.org/uploads/rules/Covid-19%20Rules_English_20210531.pdf> accessed 13 March 2023.

¹⁴⁵ Code of Ethics for Arbitrators of eBRAM, available at <https://www.ebram.org/download/Codes_and_Guidelines/Code_of_Ethics_Arbitrators.pdf> accessed 13 March 2023.

Code”,¹⁴⁶ “eBRAM Guidelines on Neutral's Expenses”,¹⁴⁷ and “eBRAM Procedures for Complaint Removal and Renewal of Panel Member”.¹⁴⁸

eBRAM’s approach to ODR is an end-to-end approach, meaning that the online aspect covers the entire proceedings. Taking online mediation as an example, users who want to commence online mediation proceedings are required to submit a request, which shall contain all the details set out in Article 5.1 of the eBRAM Mediation Rules.¹⁴⁹ Article 5.2 and Appendix of the eBRAM Mediation Rules provide the standards of fees for online filing and administration. After submission of the request, eBRAM will promptly appoint a mediator with relevant and direct experience from its panel of mediators in case the parties are unable to agree on a mediator.¹⁵⁰ In preparation for the mediation proceeding, the parties will exchange and upload all relevant documents and submissions on the e-mediation platform of eBRAM. All documents, including communications between the parties and the mediator, will be securely stored and centralised on the e-Mediation Platform. Documents can be translated into other languages using machine-learning based translation.¹⁵¹ The e-mediation sessions will be conducted through the video-conferencing system. If a settlement agreement is reached during the mediation process, the parties may use the e-signing system to sign the agreement. Once signed by both parties, it becomes legally binding.¹⁵² The mediated settlement agreements reached as per eBRAM mediation procedures are enforceable before a competent court or tribunal (article 15.3 of eBRAM mediation rules).

Similar to the e-Mediation process, the e-Arbitration Platform can utilise the LawTech services to boost efficiency and its proceedings shall also comply with corresponding ODR rules. The arbitral proceeding is initiated after the submission of the Notice of Arbitration at the eBRAM online case filing portal, which shall contain all the details set out in Articles 3.4 and 3.5 of the eBRAM Arbitration Rules.¹⁵³ If the nomination is not made by the parties, eBRAM will promptly appoint an arbitrator with relevant experience and qualifications from its panel of arbitrators.¹⁵⁴ Documents exchange and uploading, including evidence exhibition and submission, can be conducted on the e-Arbitration platform, and all documents and communications will be centralised in one place.¹⁵⁵ Hearings can also be conducted through the eBRAM video-conferencing system, and the issued arbitral award which shall be in writing is final and legally binding (article 34.2 of eBRAM arbitration rules), which is enforceable internationally under the New York Convention if it was made in a New York Convention jurisdiction

¹⁴⁶ The Hong Kong Mediation Code, available at <https://www.ebram.org/download/Codes_and_Guidelines/The_Hong_Kong_Mediation_Code.pdf> accessed 13 March 2023.

¹⁴⁷ eBRAM Guidelines on Neutral’s Expenses, available at <https://www.ebram.org/download/Codes_and_Guidelines/eBRAM_Guidelines_on_Neutral's_Expenses.pdf> accessed 13 March 2023.

¹⁴⁸ eBRAM Procedures for Complaint Removal and Renewal of Panel Member, available at <https://www.ebram.org/download/Codes_and_Guidelines/eBRAM's_Procedures_for_Removal_and_Renewal_of_a_Panel_Member.pdf> accessed 13 March 2023.

¹⁴⁹ Online Mediation Platform, eBRAM, available at <https://www.ebram.org/online_mediation.html> accessed 13 March 2023.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Online Arbitration, eBRAM, available at <https://www.ebram.org/online_arbitration.html> accessed 14 March 2023.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

according to the agreed seat of the arbitration.¹⁵⁶ In addition, the e-Arbitration Platform provides a digital cost calculator for the users to get an idea of the likely costs of the arbitration proceedings.¹⁵⁷

eBRAM brings innovative ODR rule-making efforts to ensure legal certainty and enforceability. The eBRAM online mediation and arbitration platforms are used in all eBRAM administered cases and are available for *ad hoc* mediations and arbitrations.¹⁵⁸

4.5 Macao

Similar to the situation in Hong Kong, there are no specific ODR laws and regulations in Macao, but the ODR services can be regulated through relevant laws in e-commerce, consumer protection, and ADR. It is noted that e-commerce is not specifically regulated in Macao.¹⁵⁹ Decree-Law No. 64/99/M was the only piece of legislation on e-commerce, but it was revoked by Law No. 5/2005. When it was revoked, Law No. 5/2005 was enacted and provides the legal regime for documents and electronic signatures.¹⁶⁰ In this regard, Macao has no specific legal framework governing other e-commerce matters, such as distance selling, and there is no legal distinction between online selling to consumers and online selling to businesses.¹⁶¹ For the protection of the interests and rights of the consumers, Macao passed Law No. 9/2021 to update the previous regime established by Law No. 12/88/M.¹⁶² Online arbitration in Macao is regulated by Law No. 19/2019, i.e. the “New Arbitration Law”, which was promulgated on 5 November 2019 (came into force on 4 May 2020). The New Arbitration Law unifies the laws governing domestic and international arbitrations seated in Macao, as it replaces Decree-Law 29/96/M (for domestic arbitrations) and Decree-Law 55/98/M (for international commercial arbitrations).¹⁶³ In addition, the “New Arbitration Law” is formulated based on the 2006 UNCITRAL Model Law on International Commercial Arbitration, which includes provisions that mirror those appearing in the arbitration statutes in Hong Kong and Singapore.¹⁶⁴ The enforcement of arbitration

¹⁵⁶ Ibid.

¹⁵⁷ Estimated costs of the Arbitration for claims or counterclaims under the eBRAM Arbitration Rules, eBRAM, available at <<https://arbitration-staging.ebram.org/calculator.html>> accessed 14 March 2023.

¹⁵⁸ eBRAM International Online Dispute Resolution Centre Limited, Paris Arbitration Week, available at <<https://parisarbitrationweek.com/partner/ebam-international-online-dispute-resolution-centre-limited/>> accessed 14 March 2023.

¹⁵⁹ E-commerce Basics, Linhares & Brasil Lawyers, 5 January 2021, available at <<https://llb-lawyers.com/news/e-commerce-basics>> accessed 20 March 2023.

¹⁶⁰ Hugo Maia Bandeira et al. Doing Business in Macau: Overview, Thomson Reuters, 2023, available at <[https://uk.practicallaw.thomsonreuters.com/w-013-7754?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-013-7754?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 20 March 2023.

¹⁶¹ Ibid.

¹⁶² Consumer Protection in Macau: What changed? LexisNexis, 5 November 2021, available at <<https://www.lexisnexis.com.hk/insights-and-analysis/research-and-whitepapers/consumer-protection-in-macau-what-changed>> accessed 20 March 2023.

¹⁶³ Chiraag Shah et al., Macau Ups Its Game: A Discussion on the New Arbitration Law 2019, Kluwer Arbitration Blog, available at <<https://arbitrationblog.kluwerarbitration.com/2020/01/21/macau-ups-its-game-a-discussion-on-the-new-arbitration-law-2019/#:~:text=The%20New%20Arbitration%20Law%20unifies,with%20the%20UNCITRAL%20Model%20Law.>>> accessed 20 March 2023.

¹⁶⁴ Macau Arbitration Law, Debevoise Update, 23 April 2020, available at <<https://www.debevoise.com/insights/publications/2020/04/macau-arbitration-law>> accessed 20 March 2023.

proceedings in Macao is regulated by the New Arbitration Law, Decree-Law No. 55/99/M (Macao Civil Procedure Code) and the New York Convention.¹⁶⁵

4.5.1 Macao Consumer Mediation and Arbitration Centre

The Macao Consumer Mediation and Arbitration Centre (MCMA), previously known as Macao Consumer Arbitration Centre, was established in 1998 and renamed according to Dispatch of the Chief Executive No. 228/2020 in 2020. The MCMA aims to solve civil or business disputes between consumers and traders that arise from the supply of goods or services.¹⁶⁶ Both consumers and traders may seek assistance from the MCMA and solve consumer disputes through mediation or arbitration.¹⁶⁷ For the claims involved that do not exceed MOP100,000, the arbitration and mediation services provided by the MCMA are free of charge. However, the MCMA will charge fees as per its fee schedule if the claims involved exceed the maximum amount prescribed by the Court of First Instance.¹⁶⁸ The arrangement of MCMA mediation is voluntary and a solution is reached through negotiation by both parties. If both parties cannot reach a mediation settlement agreement or mediation fails, then the MCMA will suggest they solve the problem through arbitration or litigation. When it comes to arbitration in the MCMA, both parties whether to appoint a lawyer or not, and the Arbitral Tribunal is formed by independent arbitrators with arbitration proceedings governed by the “MCMA Regulations” and Law No. 19/2019.¹⁶⁹

In accordance with the MCMA Regulations, both parties can choose either mediation or arbitration, or both to resolve their dispute after negotiation. The dispute will be resolved through the “mediation first, then arbitration” process when the latter option is chosen, and the arbitration award has the same legal weight and effect as a judiciary court order (article 30).¹⁷⁰ For the convenience of the parties to the disputes, the MCMA Regulations allow the use of video conferencing to carry out mediation (article 23) or arbitration (article 29). The duration of arbitration proceedings shall not exceed 90 days but may be extended up to two times (each extension of 90 days) for complex cases (article 33). In 2018, the MCMA (under the Macao Consumer Council) launched its cross-border ODR (primarily online arbitration and online mediation) and expanded the service with Zhuhai, Jiangmen, Foshan, Zhuhai (Hengqin New Area) and Hong Kong.¹⁷¹ In particular, the Macao Consumer Council and the Consumer Association of Hengqin New Area of Zhuhai have worked together to launch the “Cross-border video conferencing mediation platform” to enhance the efficacy and applicability of cross-border ODR services. The first case of this platform (involving a Macao resident purchasing real estate in Hengqin

¹⁶⁵ International Arbitration Laws and Regulations Macau 2022-2023, available at <<https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/macau>> accessed 20 March 2023.

¹⁶⁶ Macao Consumer Mediation and Arbitration Centre, Macao Consumer Council, 2020, available at <<https://www.consumer.gov.mo/CAC/Intro.aspx?lang=en>> accessed 20 March 2023.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Regulations of Macao Consumer Mediation and Arbitration Centre, Macao Consumer Council, available at <<https://www.consumer.gov.mo/CAC/regulation.aspx?lang=en>> accessed 20 March 2023.

¹⁷⁰ Regulations of Macao Consumer Mediation and Arbitration Centre No restriction on dispute amount, arbitration open to liberal professionals, Consumer Council, 14 December 2020, available at <<https://www.gcs.gov.mo/detail/en/N20LNxzIgy;jsessionid=6FB14D8338E1A006F0C129D9C87F4F63.app03>> accessed 20 March 2023.

¹⁷¹ Cross-border arbitration service between Macao and Hengqing First case solved in half an hour, Consumer Council, 8 November 2018, available at <<https://www.gov.mo/en/news/103854/>> accessed 20 March 2023.

and a real estate agent located in Henqin) took less than half an hour and the consumer is reported to have stated that the service is convenient.¹⁷²

4.5.2 World Trade Center Macau Arbitration Center

Formerly known as the "World Trade Center Macau Voluntary Arbitration Center", the World Trade Center Macau Arbitration Center (WTCMAC) was established in 1998 according to Order 48/GM/98.¹⁷³ It aims to promote the application of arbitration and mediation for dispute resolution as alternatives to court proceedings, particularly for cross-border cases.¹⁷⁴

Compared with the MCMA, the WTCMAC focused more on cross-border commercial cases (with contested issues at a relatively higher value). The advantage of the MCMA lies within the field of consumer disputes, since the consumers could file a unilateral arbitration claim (free of charge for arbitration proceedings) if the retail business had already joined the 'Adherent/Certified Shop' scheme.¹⁷⁵ For consumer disputes with claims over MOP50,000, however, the cases are more likely to be handled by the WTCMAC.¹⁷⁶

5. Empirical Study on Public Opinions Towards ODR Application

An online survey (with the questionnaire and detailed data report available in the Annexes) has been conducted to investigate 200 participants (target respondents are mostly Mainland and Hong Kong residents) on the application of ODR. The online survey mainly focuses on the following: i) the percentage of GBA residents who may have experience with e-commerce and online disputes; ii) the arrangement of dispute resolution and opinions on its improvements; iii) awareness and acceptance of ODR among all the available dispute resolution options; iv) preferences of regulation patterns and key features of ODR; and v) perspectives on cross-border ODR and rule harmonisation.

It is found that their experience with e-commerce and online disputes is quite common. 96.5 percent have experienced e-commerce activities and purchased items online. 37 percent conducted business online, while 55 percent have taken part in cross-border e-commerce activities. The incidence of avoiding dispute resolution relates mostly to the low value of the item, high expenditure, or time-consuming process. "Customer services" (over 72 percent), "online negotiation" (over 47 percent) and "online mediation" (over 47 percent) are the three most popular methods applied by the respondents, while the fewest people resort to litigation in online disputes. Online negotiation and mediation are preferred ODR options compared with online arbitration in e-commerce disputes. ODR platforms can consider providing staff coordination as an alternative, particularly human intervention when the users are not satisfied with their cases being handled by AI robots.

¹⁷² Ibid.

¹⁷³ About us, World Trade Center Macau Arbitration Center, available at <<http://www.wtc-macau.com/arbitration/eng/index.htm>> accessed 20 March 2023.

¹⁷⁴ Arbitration Procedures and Practice in Macau: Overview, Thomson Reuters, 2023, available at <[https://uk.practicallaw.thomsonreuters.com/w-018-7833?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-018-7833?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 20 March 2023.

¹⁷⁵ Cathy Cheang, Macau | Arbitration decision from outside Macau will have a legal effect within the city, Macau Business, 19 May 2018, available at <<https://www.macaubusiness.com/macau-arbitration-decision-from-outside-macau-will-have-a-legal-effect-within-the-city/>> accessed 20 March 2023.

¹⁷⁶ Ibid.

The satisfaction rate on dispute resolution is relatively low - merely 14.7 percent. Over half of the respondents (50.3 percent) complain that the methods are not efficient or fast enough, and 49.7 percent found the existing methods are not easy to use. The prolonged process (over 78 percent) and complicated procedures (over 68 percent) are claimed to be the major reasons for dispute resolution failures. Over 37 percent complained that the dispute resolution results are not enforceable. Other areas that need to be improved include “insufficient opportunities and difficulties to produce evidence”, “mediators' lack of professionalism” and “biased results”. Hence there is room for improvement in terms of enhancing efficiency, accessibility and enforceability. The ODR services should be easy to use, and the procedures should be simple.

As for the awareness and acceptance of ODR, 45 percent of the respondents have experience using ODR, and 63.5 percent claimed that they would use ODR if it is available in their places of residence. Nearly half of the respondents (91 out of 200) agreed that ODR is a viable alternative to ADR and courts for dispute resolution. That indicates the potential of ODR markets and further development, but extensive efforts are needed to increase public awareness of ODR with more and more e-commerce platforms starting to provide ODR services.

Concerning the preferences of regulation patterns and key features of ODR, 80 percent of the respondents consider it important for the intervention of governments in ODR regulation, but “government regulation pattern” is the least popular option in both domestic (25 percent) and cross-border (26 percent) when compared with “self-regulation” and “co-regulation”. By comparison, the self-regulation pattern is selected by most respondents in the domestic context (39 percent). When it comes to cross-border cases, almost half favour the co-regulation pattern. Thus, many respondents accept the intervention of governments in ODR regulation, but they prefer co-regulation instead of pure government regulation to ensure sufficient flexibility.

With regard to perspectives on cross-border ODR and rule harmonisation, 168 out of the 200 respondents consider the “enforceability of ODR outcomes” as the most significant benefit brought by ODR regulation, and “increased efficiency” as the dominant feature of ODR services. Over 63 percent of the respondents consider it necessary to establish cohesive or harmonised rules for the promotion of cross-border ODR. 164 respondents consider legal system diversities across the GBA as the major obstacle to cross-border ODR. Most respondents perceive “governments and legal departments” (154 votes) and “legal professionals” (136 votes) as the primary stakeholders of ODR rule harmonisation in the GBA. More respondents consider it important to reach collaborative agreements among the GBA cities (35 percent) and establish a uniform or at least cohesive ODR rule framework (30 percent) to facilitate ODR rule harmonisation in the GBA. Another 20 percent of respondents are in favour of developing reliable and secure platforms

To enhance the credibility and awareness of ODR (particularly the cross-border ODR) in the GBA, the enforceable outcomes across three GBA jurisdictions should be ensured with increased efficiency compared to the traditional methods. Most respondents recognise the non-uniform legal system as a major obstacle to rule harmonisation in the GBA. It is suggested that the GBA governments and legal departments should provide corresponding measures to facilitate ODR rule harmonisation. In this regard, most respondents believe that “reaching collaborative agreements among the GBA cities” and “establishing uniform cohesive ODR rule frameworks” would accomplish the goal.

6. Pending Issues in the GBA ODR Rule Harmonisation and Cross-border ODR Application

6.1 Limitations in the Existing ODR Models

As mentioned in the previous ODR providers and models, there are restrictions to the application of ODR in practice. For example, the simple blind bidding model (e.g., Cybersettle and Smartsettle One) is only capable of dealing with monetary cases, while the complex blind-bidding model (such as Smartsettle Infinity) may be difficult for the public to have access to the services. It is found that the blind-bidding model can be a good complement to other ODR processes but is not capable of assessing and identifying the liabilities of parties to the disputes.¹⁷⁷

In the example of eBay, it directs part of its ODR services to Square Trade, but a relatively small ratio of eBay users (8 percent of sellers and 3 percent of buyers) apply Square Trade ODR services.¹⁷⁸ In addition, less than half of eBay users were satisfied with the ODR outcomes.¹⁷⁹ eBay users favours ODR services in PayPal instead of that in eBay, since PayPal can hold the transaction funds (or freeze the accounts of the parties) and make the ODR outcome enforceable.¹⁸⁰ Similarly, the limitation of ODR in Amazon, as the implementation of ODR outcomes (such as reversing a charge through Amazon Pay with a credit card) may depend on the credit card company's policies and the nature of the dispute.¹⁸¹ The implementation procedures may become complicated for the user, since the user is required to choose between filing complaints under Amazon or the credit card company.¹⁸²

It is also found in the online survey of GBA residents that only 14.7 percent of respondents were satisfied with their dispute resolution experience in online disputes. With over half the respondents complain that the methods are not efficient or fast enough, and 49.7 percent found the existing methods are not easy to use. The prolonged process and complicated procedures are claimed to be the major reasons for dispute resolution failures. Thus, ODR platforms could consider providing staff coordination as an alternative, particularly human intervention when users are not satisfied with their cases being handled by AI robots.

For small claims and low-value online disputes, a long duration of ODR proceedings would discourage consumers to use ODR. For example, the EOP allows 90 days for online communication (in accordance with the Consumer ADR Directive), which could be too long for most small-value disputes brought to the platform. A similar situation also occurs in the example of the Macao Consumer Mediation and Arbitration Centre (MCMA), where it sets the duration of arbitration (including online arbitration), according to the MCMA Regulations, at a maximum of 90 days, but may be extended up to two times (each extension of 90 days) for complex cases. In comparison, GZAC provides a 10-day maximum duration for each stage of ODR, and its APEC-ODR proceedings provide a 20-day maximum deadline

¹⁷⁷ Ibid.

¹⁷⁸ Redress & Alternative Dispute Resolution in Cross-Border E-commerce Transactions, EU Policy Department Economic and Scientific Policy, IP/A/IMCO/IC/2006-206, available at <<https://www.europarl.europa.eu/document/activities/cont/201406/20140602ATT84796/20140602ATT84796EN.pdf>> accessed 8 February 2023.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Ibid.

for online arbitration.¹⁸³ The average duration of GZAC ODR proceedings to conclude a case is 38 days.¹⁸⁴ In this regard, the rules governing ODR proceedings should be specifically formulated with sufficient consideration of the nature of ODR cases instead of resorting to the ADR rules.

As witnessed in the EU ODR initiatives before the EOP, such as the Consumer Complaint Form (CC Form), The Electronic Consumer Dispute Resolution (ECODIR) and the European Consumer Centres Network (ECC-Net), ODR (particularly cross-border ODR in the EU) was not sufficiently advertised and appropriated monitored in operation.

The existing operation of the EOP is governed by the European Commission as per the Consumer ODR Regulation, but the awareness and recognition of the EOP are still low, and its monitoring mechanism has yet to contribute to sufficient publicity by consumers. In addition, the uneven development of the EU member states determines that the quality of ODR services may vary greatly in different entities. Although the traders are required to add hyperlinks to the EOP in their online businesses, the EOP cannot ensure to provide the users the ODR services they need as some of its approved ADR entities do not provide online services.

According to the online survey of the GBA residents, 40 percent of the respondents claimed that they have not used ODR, and another 15 percent did not know what ODR is. However, it is admitted that the relatively small number of collected samples may lead to the data not being sufficiently representative. Based on a previous eBRAM online survey on “Awareness and Attitude Study on Online Dispute Resolution Service” of 1000 Hong Kong residents, 33 percent of respondents indicated that it is highly likely to use online arbitration or mediation when a dispute arises, 57 percent are neutral to somewhat likely, and around 10 percent indicated that they are unlikely to use online dispute resolution services to resolve disputes.¹⁸⁵ The awareness of online dispute resolution services and the institution providing the online service is moderate at 28 percent and 21 percent respectively. Thus, the previous online survey (with a larger sample of 1000 respondents) also found that the awareness of ODR is relatively low in Hong Kong.

6.2 Absence of Specific ODR Legislation and Uniform ODR Standards

6.2.1 Lack of Specific ODR Laws

As noted above, due to the self-regulation tradition, there is no domestic law legislation specifically regulating ODR services.¹⁸⁶ In the example of the US, there are over 70 separate laws regulating various business practices (including e-commerce activities) at both federal and state levels, and each state enacted its own laws and related amendments, thus leading to significant variations of state laws for online consumer protection. The EU as a regional economy has introduced some binding legal instruments, such as the EU Regulation No. 524/2013 and Directive No. 2013/11/EU, to provide common standards and principles for regulating ODR services, but the EU member states have not yet introduced separate laws to govern ODR.

¹⁸³ Model Procedural Rules for the APEC Collaborative Framework for ODR of Cross-Border B2B Disputes, available at <<https://newodr.gzac.org/introduce/apecRule/>> 27 March 2023.

¹⁸⁴ Ibid.

¹⁸⁵ The online survey was conducted in September 2022 by eBRAM Marketing and Communication Team, with a sample size of 1000 Hong Kong residents aged from 20 to 54, and soft quota control in the target respondents concerning gender, age and monthly household income.

¹⁸⁶ APEC Economic Committee, *Stocktake of APEC Online Dispute Resolution Technologies* (APEC Project: EC 02 2020S, February 2022) <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/stocktake_of_apec_odr_technologies.pdf> accessed 31 December 2022.

When it comes to the GBA, it still lacks specific ODR legislation across the three jurisdictions. In the Chinese Mainland, ODR is indirectly regulated by the legal framework governing traditional dispute resolution (i.e., ADR and court proceedings), such as the Arbitration Law, the Civil Procedure Law, and the People's Mediation Law. Similar to the practice of the EU, the Chinese Mainland also introduced some binding legal instruments to regulate ODR, as witnessed in Provisions of the Supreme People's Court (SPC) on Several Issues Concerning the Trial of Cases by Internet Courts, and the People's Court Online Mediation Rules (SPC Judicial Interpretation). Given the rapid development of e-commerce and legislation lagging behind, the Chinese Mainland applied regulatory policies to provide standardisation for ODR services in e-commerce activities, particularly during the period from 2008 to 2014.¹⁸⁷ On this basis, the Chinese e-commerce industry has adapted to globalisation with cross-border e-commerce platforms developing in an integrated and orderly manner.¹⁸⁸ In addition to regulatory policies, the Chinese Mainland also regulates ODR through separate laws governing e-commerce activities, such as the E-commerce Law and Electronic Signature Law. By comparison, ODR in Hong Kong and Macao is primarily regulated through ADR and e-commerce legal frameworks. Hong Kong regulates ODR through the Cap. 609 Arbitration Ordinance and the Cap. 620 Mediation Ordinance, coupled with other separate laws governing e-commerce activities. ODR in Macao is governed by the Electronic Documents and Signatures Law (EDS Law) of Macao SAR (Law no. 5/2005) and Consumer Rights and Interests Protection Law (Law no. 9/2021).

6.2.2 Lack of Uniform ODR Standards

The lack of uniform ODR rules may lead to legal uncertainty in e-commerce and ODR activities. The e-commerce marketplaces are flooded with a large number of electronic contracts for conducting online business (mostly online transactions where one party is a consumer). Due to the large number of consumers with varied demands, the parties usually do not spend a lot of time negotiating the terms of the contract in low-value transactions. The common practice of e-commerce marketplaces is to set up standard contracts, in which (online) dispute resolution clauses are included,¹⁸⁹ as witnessed in the practice of eBay, Amazon and Taobao. However, consumers would complain that they do not have equal bargaining power and passively accept the terms proposed by the e-commerce platforms. In this regard, article 10.1 of the EU Consumer ADR Directive states that “Member States shall ensure that an agreement between a consumer and a trader to submit complaints to an ADR entity is not binding on the consumer if it was concluded before the dispute has materialised and if it has the effect of depriving the consumer of his right to bring an action before the courts for the settlement of the dispute.” In other words, the EU member states do not recognise the validity of (dispute resolution) terms of standard contracts agreed upon prior to the initiation of a dispute.¹⁹⁰ Although the pre-dispute agreement is considered valid in China, it brings legal uncertainty in cross-border ODR activities when EU citizens are involved.

In the context of the GBA, the lack of uniform ODR standards would make it challenging to conduct cross-border ODR proceedings, as domestic laws in different jurisdictions may vary greatly. For example, an *ad hoc* arbitration award is not considered valid in the Chinese Mainland unless it is converted into an institutional arbitration award (or by means of the authentication procedures of ADR

¹⁸⁷ Hongfei Yue, *National Report on E-Commerce Development in China* (UNIDO Working Paper Series 17, 2017) <https://www.unido.org/sites/default/files/2017-10/WP_17_2017.pdf> accessed 22 December 2022.

¹⁸⁸ *Ibid.*

¹⁸⁹ Cui Yi, *The Legal Issues Research on Online Dispute Resolution in Cross-Border E-Commerce in the Context of the “Belt and Road” Initiative*, Southwest University of Political Science and Law (Master Thesis), 2021, 33-34.

¹⁹⁰ *Ibid.*

entities). Although the Chinese courts are obliged to recognise and enforce foreign *ad hoc* arbitration awards as per the New York Convention, the domestic *ad hoc* arbitration awards are considered invalid under the existing Chinese legal framework.¹⁹¹ In this regard, the lack of uniform ODR standards in the GBA would limit the development of cross-border online arbitration and affect the credibility of online *ad hoc* arbitration conducted in Chinese ADR/ODR entities.

6.3 Professionalism and Awareness of ODR

As noted previously, the public awareness of ODR and entities providing ODR services is low, and their knowledge about online arbitration and mediation is also limited. Hence there is room for improving public awareness and knowledge of the service and especially about the online dispute resolution service.

As for the professionalism of ODR, the parties to the disputes may question the competence of online mediators in private ODR platforms, as some of them are not legal professionals. For example, it is criticized that the Taobao ODR model lacks professionalism and may lead to biased adjudication.¹⁹² A collective corruption of Taobao staff during the ODR process was once disclosed, as they use their authorised power for their own benefits, involving a huge amount of money. Alibaba Group has made a high-profile anti-corruption statement and dismissed several senior managers and directors in Taobao.¹⁹³ Apart from staff corruption, the eligibility of staff mediators is also questioned since some of them are not legal professionals. Compared with the arbitrators and mediators in the major ADR entities, the Taobao staff mediators may lack professional skills and experience. As witnessed in mainstream e-commerce platforms, biased ODR decision-making against traders is quite common in practice.¹⁹⁴ Admittedly, Taobao and other e-commerce platforms can rely upon its marketplace resources to develop innovative and flexible mechanisms with expertise in low-value and high-volume B2C cases. In this sense, the application of the Taobao ODR model is restricted to the low-value and high-volume e-commerce disputes raised within the e-commerce platforms. It is difficult to develop collaborative mechanisms between different private ODR providers. The private ODR mechanisms focus on serving their respective affiliated e-commerce marketplace, which is not necessarily applicable to other platforms. In addition, the highly competitive relationships between different e-commerce platforms may lead to a lack of motivation for developing collaborative mechanisms in ODR.

7. Summary of ODR Models Comparison and Observation

Based on the comparison above, it appears that the US, the EU and China have each taken different approaches in relation to the regulation of ODR.

¹⁹¹ Jian Zhang, Does China Recognize *Ad Hoc* Arbitration? China Justice Observer, 6 October 2019, available at <<https://www.chinajusticeobserver.com/a/does-china-recognize-ad-hoc-arbitration>> 28 March 2023.

¹⁹² Zheng, Jie (2020), Online Resolution of e-Commerce Disputes: Perspectives from the European Union, the UK, and China, Springer International Publishing AG., 248-249.

¹⁹³ Why "Taobao Xiaoer" Collective Corruption: Power Checks and Balances without Deterrence, Beijing Daily, 16 May 2012, available at <http://www.chinadaily.com.cn/dfpd/shehui/2012-05/16/content_15310324.htm> accessed 1 March 2023.

¹⁹⁴ Dal Pubel, Luca (2018) E-Bay Dispute Resolution and Revolution: An Investigation on A Successful ODR Model, Conference Paper: Collaborative Economy: Challenges & Opportunities, 148-149.

In the US, self-regulation is the main trend. The ODR industry in the US is expected to set its own standards and monitor its own legal compliance. In the context of self-regulation of ODR, the US ODR rules and models are mainly developed by private entities and e-commerce platforms. Be that as it may, the self-regulation of ODR in the US has also developed some restrictions, perhaps not so much in terms of the creation of rules and best practices, but more directly as a result of the practical operation of some ODR models. For example, the basic blind bidding model, such as Cybersettle and Smartsettle One, is limited to handling monetary cases exclusively. On the other hand, the advanced blind bidding model, like Smartsettle Infinity, might pose challenges to public accessibility to its services. One significant problem of the self-regulation pattern is that it may lead to the lack of uniform guidance and rules in ODR services. In addition, the US has over 70 separate laws regulating various business practices at both federal and state levels, and each state enacted its own laws and related amendments, and the various developing ODR best practices will likely need more time to align with these overarching laws and also more time to converge on acceptable industry standards.

By comparison, the EU adopted a regulation approach with more state governance. This is effectively at the other end of the spectrum compared with the US. The EU has introduced the Consumer ODR Regulation and the Consumer ADR Directive to provide the legal basis for ODR regulation. Despite these binding legal instruments introduced at the inter-government level, it is also noted that the EU member states have not yet introduced separate laws to govern ODR. It is also found that the EOP may still not be efficient enough to deal with low-value cases, and 90 days for online communication would discourage consumers to use it. Of course, compared with the US approach, the EU approach is more rigid and may be more limiting on the development of ODR.

Compared with the US self-regulation and the EU state-governance regulation patterns, China (including Chinese Mainland, Hong Kong and Macau) utilises yet another approach. In some ways, the Chinese approach is more in the middle of the spectrum between industry self regulation and formal regulation through state governance. At the national level, China does not have a separate law in ODR and instead relies more on the framework created by existing ADR laws and rules. For example, in the GBA, Guangdong, Hong Kong and Macau all have their respective ADR laws and rules, and they respectively rely upon the existing ADR legal framework to regulate ODR. The GBA also lacks uniform ODR standards, which would make it challenging to conduct cross-border ODR proceedings. The private entities that provide ODR services can make their own rules, but should comply with the binding laws and rules formulated by governments.

It is noteworthy that common across the US, the EU, and China, all the jurisdictions examined face the problem of a general lack of awareness of ODR from the public, regardless of the level of regulation involved. There appears to be some limited awareness in the case of where private entities, such as Taobao or Amazon, have implemented custom ODR solutions specific to their platforms. However, the development of ODR is relatively limited on a societal level and custom solutions from private companies tend to be less consistent and there are also concerns that such private ODR services lack professionalism and may lead to biased adjudication.

After comparing and observing the various ODR regulation patterns in the US, EU and China, this paper proposes that a fourth approach – a co-regulation approach can be adopted. This can be done in the GBA to address the pending issues raised previously (limitations in the existing ODR models, absence of specific ODR legislation, professionalism and awareness of ODR). The objective of this co-regulation pattern is different from the existing patterns, as it involves a combination of self-regulation from the ODR industry and some degree of state governance, and it should provide uniform standards and rules in ODR across different jurisdictions. Details of this co-regulation approach is elaborated in Part 8.

8. Co-regulation Approach to Address the Problems

8.1 Strengthening Collaboration between ADR/ODR Entities and Promoting ODR Rule Harmonisation

8.1.1 Establishment of the GBA ODR Collaboration Platform

Based on the comparison and observation between different ODR models, a GBA ODR Collaboration Platform should be built to integrate the ODR resources and promote cross-border ODR services. To be specific, this Platform is an online collaboration platform for dispute resolution institutions in the GBA, which integrates existing arbitration and mediation resources and establishes a long-term cooperation mechanism among ADR/ODR entities. Taking Hong Kong as an example, the Hong Kong Department of Justice (DoJ) has set up eBRAM to provide ODR services, which utilises machine learning-based translation, electronic signing, and cloud-based legal services. Meanwhile, each GBA city has built its own ADR entities, some of which have varying degrees of ODR capabilities.

Against this backdrop, building the GBA ODR Collaboration Platform can provide a long-term cooperation mechanism for integrating and sharing legal and market resources among all the arbitration and mediation centres in the GBA (9+2) cities. This Platform would provide a negotiation forum for the industry to formulate rules, allocate market resources, and share dispute resolution resources among all ADR/ODR entities in the GBA, ultimately providing users with an integrated ODR mechanism. After agreeing to choose an arbitration or mediation institution in a GBA city, users can access legal services from relevant counterparts in other cities through the Platform. Since the existing ODR platforms have various limitations, the ADR/ODR entities in the GBA need to collaborate to develop and promote advanced ODR mechanisms in accordance with international standards. In this regard, establishing an online collaboration platform in the GBA could provide a channel for the ADR/ODR entities to negotiate and formulate rules, which would facilitate the integration of arbitration and mediation resources to promote cross-border ODR. In addition, the efforts of integrating ODR resources and promoting cross-border ODR would enhance rule harmonisation across different jurisdictions in the GBA. Through the GBA ODR Collaboration Platform, the ADR/ODR could potentially work out common ODR standards and principles that afford greater flexibility to the disputing parties. The common ODR rule structure among the ADR/ODR entities would also simplify and expedite the dispute resolution process in the GBA.

For strengthening legal exchanges and collaboration, the “Joint Conference Mechanism” was established among the GBA legal departments in 2019.¹⁹⁵ The following outcomes have been achieved in terms of ADR/ODR rule convergence:

- In December 2020, the Proposal to set up the Greater Bay Area Mediation Platform was issued, while the three parties (legal departments from three regions) established the Working Group on the GBA Mediation Platform.¹⁹⁶
- In December 2021, “GBA Mediator Accreditation Standards” and “GBA Mediator Code of Conduct Best Practice” were released for rule harmonisation and promotion of mediation, as

¹⁹⁵ ‘First Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference held in Hong Kong’ (*Hong Kong Government Press Releases*, 12 September 2019) <<https://www.info.gov.hk/gia/general/201909/12/P2019091200646.htm?fontSize=1>> accessed 1 February 2023.

¹⁹⁶ ‘Second Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference held Virtually’ (*Hong Kong Government Press Releases*, 11 December 2020) <<https://www.info.gov.hk/gia/general/202012/11/P2020121100579.htm?fontSize=1>> accessed 1 February 2023.

they provided unified accreditation standards and code of conduct best practice for the mediators in the GBA.¹⁹⁷

- In December 2022, “Cross-Boundary Disputes Mediation Model Rules” was released to facilitate the further alignment of the mediation mechanisms in the three places.¹⁹⁸ In conjunction with the GBA Mediator Accreditation Standards and the GBA Mediator Code of Conduct Best Practice, the Mediation Model Rules will have a demonstrative effect for reference and voluntary adoption of the mediation institutions and mediators within the GBA.¹⁹⁹

Based on existing practices, it is recommended that the Hong Kong government and the DoJ discuss feasible cooperation plans to promote cross-border ODR and rule harmonisation with their counterparts in Guangdong and Macau. Meanwhile, relevant policies should be introduced to encourage Hong Kong ADR/ODR entities to sign MoU with other entities in Guangdong and Macao. The policies may include the following: “collaborations to establish the GBA ODR Collaboration Platform”, “specific collaboration plans to integrate legal resources between the ADR/ODR entities in the GBA”, “promotion of joint formulation on common ODR standards in the GBA”, “facilitation of technological resource sharing and assistance between ADR/ODR entities”, “mutual recognition and inclusion of arbitrators and mediators among ADR/ODR entities” and other relevant policies to establish long-term cooperation and resource-sharing mechanism between ADR/ODR entities from legal technological and professional perspectives.

In the long run, the GBA legal departments in Guangdong, Hong Kong, and Macau should collaboratively enact common standards and principles through the existing “Joint Conference Mechanism”, which could provide a legal basis and guidance for the establishment of the GBA ODR Collaboration Platform. The EU practice has demonstrated that in a multi-jurisdictional context, governments can mobilise ADR/ODR entities (through its EOP) to integrate legal and market resources in a top-down approach. The EU has introduced binding legal instruments to provide guidelines for institutional collaboration and conducting cross-border ODR, enabling local legal departments and ADR/ODR entities from different jurisdictions to formulate specific rules that comply with their own legal systems based on these guidelines and common standards. The common standards and principles in ODR would also serve to integrate legal resources, promote ODR rule harmonisation, and facilitate a long-term cooperation mechanism among ADR/ODR entities. Although local policies can fill the regulatory gaps in cross-border digital governance in the short term, legislation can fundamentally resolve regional legal conflicts derived from the coexistence of multiple legal systems. On the one hand, legislation can provide certainty and stability to ODR rules, and clarify the effectiveness of cross-border ODR services. On the other hand, legislation in the regional cooperation of opening the ODR services market would provide a legal basis for the management of cross-border digital governance, while maintaining the long-term prosperity and stability of Hong Kong and Macau, which is of great significance to enriching the practice of “One Country, Two Systems.”

¹⁹⁷ ‘GBA Mediator Accreditation Standards and GBA Mediator Code of Conduct Best Practice Officially Released’ (*Hong Kong Government Press Releases*, 30 December 2021) <<https://www.info.gov.hk/gia/general/202112/30/P2021123000225.htm?fontSize=1>> accessed 1 February 2023.

¹⁹⁸ Fourth Guangdong-Hong Kong-Macao Greater Bay Area Legal Departments Joint Conference achieves good progress in mediation, arbitration and other areas, (*Hong Kong Government Press Releases*, 16 December 2022) <<https://www.info.gov.hk/gia/general/202212/16/P2022121600605.htm>> accessed 1 February 2023.

¹⁹⁹ GBA Cross-Boundary Disputes Mediation Model Rules officially released, (*Hong Kong Government Press Releases*, 30 December 2022) <<https://www.info.gov.hk/gia/general/202212/30/P2022123000287.htm>> accessed 1 February 2023.

Thus, the establishment of the GBA ODR Collaboration Platform requires joint legislation by the GBA legal departments through the “Joint Conference Mechanism”. It is recommended to add a session on “Cross-border Digital Policies and Laws” under the existing “GBA Legal Departments Joint Conference”, focusing on introducing relevant laws for establishing the GBA ODR Collaboration Platform. The relevant laws may cover the following: “fundamental principles and objectives of the establishment of the GBA ODR Collaboration Platform”, “the operation standards of the Platform”, “regulatory and monitoring mechanism”, “agencies to monitor the operation of the Platform”, etc.

8.1.2 Strengthening the Role of Hong Kong as the International Dispute Resolution Centre Through ODR Rule Harmonisation

The Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area explicitly calls for the establishment of a diverse dispute resolution mechanism that integrates legal resources across Guangdong, Hong Kong, and Macao. Guangzhou's integrated transport hub and Shenzhen's role as a special economic zone are fully leveraged, while Macao is developed into a tourism and leisure centre. Hong Kong aims to become a centre for international legal and dispute resolution services in the Asia-Pacific region. To promote the application of ODR, the Hong Kong government has appointed eBRAM to provide speedy and cost-effective ODR services to the general public and businesses in the forms of e-negotiation, e-mediation, and e-arbitration.

In the process of establishing a GBA ODR Collaboration Platform, it is a great opportunity for Hong Kong to further strengthen its role as the centre of international dispute resolution and advance Hong Kong's integration into the GBA development. The GBA comprises three different legal systems of the Chinese Mainland, Hong Kong and Macao. In this regard, the ADR/ODR models, systems, and development are also different among the three regions. Under the “one country, two systems” principle, the GBA legal departments have been making efforts to converge ADR/ODR rules. These efforts further promote the extensive application of ADR/ODR while enhancing the rule-of-law business environment in the GBA. To facilitate the establishment of the GBA ODR Collaboration platform, the ADR/ODR entities in the GBA cities need to sign a memorandum of cooperation, which aims to create an ADR/ODR alliance to integrate and mobilise legal resources in the region.

Against this backdrop, the Hong Kong government and the legal department may propose the establishment of a GBA ODR Collaboration Platform through the “Joint Conference Mechanism”, while promoting ODR rule harmonisation through bilateral cooperations between eBRAM and its GBA counterparts. Currently, the GBA ADR/ODR entities have been gradually promoting cross-border ODR through bilateral cooperation. For example, eBRAM works with other GBA entities to explore innovative ODR mechanisms. eBRAM is one of the qualified institutions under the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region. Under this arrangement, Hong Kong is the first and the only jurisdiction (outside the Chinese Mainland) where parties to arbitral proceedings administered by specified arbitral institutions (including eBRAM), can apply to the courts (located in the Chinese Mainland) for interim measures.²⁰⁰ In addition, eBRAM signed an MoU and a cooperative agreement with the SCIA in 2021, which aims to promote online

²⁰⁰ eBRAM launches an innovative and cost-effective online platform to resolve COVID-19 related disputes, eBRAM, available at <https://www.ebram.org/news_event_item.html?id=13&language=en> accessed 14 March 2023.

dispute resolution and LawTech, as well as develop the GBA's position as an international legal hub and dispute resolution centre.²⁰¹

Based on the existing practice, it is recommended that the Hong Kong government introduce relevant policies to encourage the Hong Kong ADR/ODR entities (e.g., eBRAM) to sign memoranda of cooperation with their counterparts in Guangdong and Macau. The policies may cover the following: “proposals to promote and establish the GBA ODR Collaboration Platform through the Joint Conference Mechanism”, “specific plans for cross-border ODR cooperation between Hong Kong ADR/ODR entities and their counterparts in Guangdong and Macau”, “the establishment of a resource mechanism in cross-border ODR services”, etc. It is noteworthy that the Hong Kong government has been working with its GBA counterparts to promote ODR to deal with insurance complaints. The Hong Kong Insurance Authority has entered into a MoU with the Insurance Complaints Bureau (ICB) to expedite the handling of claim-related disputes in 2022.²⁰² On 30 June 2023, the ICB signed a Quadripartite MoU on Insurance Dispute Resolution Mechanism with its counterparts in Guangzhou, Shenzhen and Macao.²⁰³ This Quadripartite MoU on Insurance Dispute Resolution Mechanism aims to study the establishment of an integrated ODR platform for cross-border insurance disputes in the GBA.²⁰⁴ To keep the momentum going, the Hong Kong government may consider to introduce more policies to support eBRAM and other ADR/ODR entities in Hong Kong to sign MoU with their GBA counterparts to establish a one-stop ODR platform for online mediation and online arbitration.

8.2 Formulating Uniform ODR Standards in the GBA

Although Guangdong, Hong Kong and Macao each have local legislation governing ADR (also applicable to ODR) and e-commerce activities, the legislation belongs to three different legal systems and is difficult to apply in cross-border cases. Against this backdrop, the efforts to bridge the gap of converged legislation in ADR have been witnessed in the cooperation of enforcing arbitration awards and interim measures, such as “the 1999 Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the HKSAR” (and the 2020 Supplement Arrangement), “the 2013 Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards Between the HKSAR and the Macao SAR”, and “the 2019 Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and the HKSAR”. In addition, the Mediation Mechanism for Investment Disputes, which is under the Mainland and Hong Kong Closer Economic Partnership Arrangement (“CEPA”) and the CEPA Investment Agreement, provides a mediation mechanism for investment disputes with mediators and institutions respectively designated and mutually agreed by the Mainland and Hong Kong.²⁰⁵

²⁰¹ eBRAM signed an MoU and a cooperative agreement with Shenzhen Court of International Arbitration (SCIA), 4 January 2022, available at <https://hklegalcloud.ebram.org/news_en/ebam-signed-an-mou-and-a-cooperative-agreement-with-shenzhen-court-of-international-arbitration-scia/> accessed 14 March 2023.

²⁰² HKIA inks MoU with the Insurance Complaints Bureau, Insurance Asia, available at <<https://insuranceasia.com/insurance/news/hkia-inks-mou-insurance-complaints-bureau>> accessed 12 July 2023.

²⁰³ Hong Kong: Insurance Complaints Bureau signs MoU on dispute resolution in Greater Bay Area, Insurance Asia, 30 June 2023, available at <<https://www.asiainsurancereview.com/News/View-NewsLetter-Article?id=85008&Type=eDaily>> accessed 12 July 2023.

²⁰⁴ Guangdong, Hong Kong, Macao and Shenzhen establish a four-party cooperation mechanism to resolve cross-border insurance consumer disputes, Guangdong Financial Supervisory Authority, 3 July 2023, available at <http://gdjr.gd.gov.cn/gdjr/jrzx/jryw/content/post_4210388.html> accessed 12 July 2023.

²⁰⁵ ‘Legal and Dispute Resolution Services - Mediation’ (Hong Kong Department of Justice, 2022) <https://www.doj.gov.hk/en/legal_dispute/mediation.html#:~:text=The%20CEPA%20Investment%20Agreement%20provides,investor%20of%20the%20other%20side.> accessed 12 July 2023.

The motivation for exploring the ODR rule harmonisation in the GBA comes from the recent GBA legislative and rule-making efforts. In this regard, the legal efforts to promote ODR rule harmonisation will encourage the application of ODR services in the business sector (particularly e-commerce) and the general public. A harmonised ODR regulatory framework will help resolve cross-border disputes and liberalise legal service markets across the GBA. This harmonised ODR regulatory framework should also give full play to the complementary functions of different ODR providers while strengthening legal resources integration for developing cross-border legal service markets in Hong Kong.

The GBA legal departments should focus on formulating uniform ODR standards to enhance the credibility of ODR proceedings. It is noticeable that the existing cooperation between the GBA legal departments focuses on the convergence of ADR rules, and it takes further efforts from the legal departments for further ODR rule harmonisation. For example, as stated in the “Several Opinions on Improving the Arbitration System and Improving the Credibility of Arbitration” issued by the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council issued, the development of China’s arbitration should meet the realistic needs of the coordinated development of the GBA. Besides, the GBA legal regime for recognizing the validity of *ad hoc* arbitration in the Chinese Mainland should be explored.²⁰⁶ In addition, the existing public ADR/ODR entities in the Chinese Mainland, such as the GZAC, the SCIA and Zhuhai Arbitration Commission, have their respective rules to recognise or authenticate *ad hoc* arbitration awards.

The objective of ODR rule harmonisation is to integrate the legal and social resources across the GBA, giving full play to their own unique advantages related to their market conditions and professional development in ODR. In this regard, resorting to the respective domestic laws from the three jurisdictions does not fully realise the comparative advantage of the “one country two systems”, let alone the specific law on ODR is still lacking. Thus, it calls for the GBA legal departments to formulate harmonised ODR rules that provide uniform standards.

The Hong Kong government should employ the Joint Conference Mechanism to negotiate common ODR standards with other GBA local governments. The international practice of ODR does not reflect a detail-oriented rule formulation and unification. Instead, international organisations (e.g., UNICTRAL, APEC, and NCTDR) focus on providing the standards and model laws for ODR services that can be accommodated to specific legal systems and fields. As reflected from the EU experience, it introduced binding legal instruments (i.e., Regulation No. 524/2013, Directive No. 2013/11/EU and other related legal instruments) to enhance legal certainty and efficiency for ODR services. These binding legal instruments provide common ODR standards and principles that can be further accommodated into domestic laws in the EU member states. Over and above, the European Commission has further established an EOP to integrate all the ODR resources based on the previously mentioned legal framework, with electronic links connecting all the e-shops, consumers and endorsed ODR/ADR entities.

Learning from the experience of the EU, the GBA legal departments could employ the existing “Joint Conference Mechanism” to provide general ODR standards and principles in a multi-jurisdiction context, and then formulate specific laws and regulations applicable in the respective legal departments. In this way, the GBA legal departments and ODR platforms can explore an optimal path for ODR rule

²⁰⁶ Jian Zhang, Does China Recognize *Ad Hoc* Arbitration? China Justice Observer, 6 October 2019, available at <<https://www.chinajusticeobserver.com/a/does-china-recognize-ad-hoc-arbitration>> 12 July 2023.

harmonisation, while accommodating the converged principles to their respective legal and cultural environments.

8.3 Enhancing ODR Awareness and Professionalism

The GBA local governments should adopt measures and policies to raise the awareness of the public in ODR.

Taking Hong Kong as an example, the Hong Kong DoJ launched a Project Office for Collaboration with UNCITRAL (“DoJ Project Office”) on 2 November 2020. The DoJ Project Office aims to provide support to the Inclusive Global Legal Innovation Platform on ODR (“iGLP on ODR”), composed of experts from around the world, to facilitate studies on ODR-related issues internationally. In July 2021, the UNCITRAL endorsed the suggestion of the Secretariat to continue to collaborate with the DoJ Project Office and to take part in iGLIP on ODR, to utilise the expertise, resources, and connections available to co-operate in promoting, raising awareness and capacity-building in ODR.²⁰⁷ In order to promote cross-border ODR services in the GBA, extensive and collaborative efforts are called for the GBA governments to introduce measures that would raise the awareness of the GBA residents in ODR. As mentioned previously, the Hong Kong government should propose in the Joint Conference Mechanism to introduce measures applicable to the GBA to raise ODR awareness, including the proposals to build a GBA ODR Collaboration Platform, a GBA Online Mediation Platform and formulate uniform ODR standards in the GBA.

In addition, the lack of awareness and professionalism in ODR services can be addressed through the systemic training of ODR professionals organized by GBA ADR/ODR entities. The GBA ADR/ODR entities should also collaborate to adopt a standardized code of conduct for online mediators, coupled with incentive and punishment mechanisms.²⁰⁸ The GBA ODR entities are the major force for promoting ODR and enhancing ODR professionalism. For example, the GZAC has held 61 seminars and press conferences to collect opinions and suggestions from scholars, e-commerce traders, and parties on how to improve the perception of its APEC-ODR platform.²⁰⁹

Whilst eBRAM has provided Online Dispute Resolution training sessions to local legal professionals and jointly organised webinars with chambers of commerce to promote ODR to businesses in the APEC. It has also been engaged in advertising campaigns, research in the local community, and polling during webinars to raise awareness and promote the use of ODR. eBRAM created a dedicated webpage with ODR model clauses to encourage MSMEs to include an ODR Model Clause in their contracts. Businesses can copy the model clause in just one click. In addition, the eBRAM Board of Directors and

²⁰⁷ Online Dispute Resolution (ODR) and LawTech, available at <https://www.doj.gov.hk/en/legal_dispute/online_dispute_resolution_and_lawtech.html> accessed 12 July 2023.

²⁰⁸ Yue Zhang and Qihao Shen, ‘Legal Logic of Online Dispute Resolution Mechanism and Its Suggestions: Taking ODR Practice of Zhejiang as an Example’ [2022] 22(1) Journal of Zhejiang Shuren University 72, 72-80.

²⁰⁹ Workshop on Implementing the APEC ODR Collaborative Framework, APEC Economic Committee, March 2022, available at <https://www.apec.org/docs/default-source/publications/2022/3/workshop-on-implementing-the-apec-odr-collaborative-framework/222_ec_workshop-on-implementing-the-apec-odr-collaborative-framework.pdf?sfvrsn=ad0fa23_2> accessed 12 July 2023; Study on Best Practices in Using ODR, APEC Economic Committee, January 2023, available at <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> accessed 12 July 2023.

Management Team contributed thought-leadership articles in notable publications to advocate the benefit of ODR in the international arena.²¹⁰

The next step to promote the GBA cross-border ODR services, however, requires collaborative measures from the GBA ADR/ODR entities to share the training and advertising resources, while collectively facilitating the promotion of ODR across the GBA. For example, eBRAM can support the establishment of the GBA ODR Collaboration Platform, and then through this online platform negotiate and reach MoU with its GBA counterparts (arbitration and mediation entities). The objective of strengthening collaborations between the GBA ADR/ODR entities through the GBA ODR Collaboration Platform is to integrate the ODR resources, promote cross-border ODR services, and facilitate the adoption of GBA legal instruments (e.g., “GBA Mediator Accreditation Standards” and “GBA Mediator Code of Conduct Best Practice” and “Cross-Boundary Disputes Mediation Model Rules”) to enhance the professionalism of ODR in practice.

9. Conclusion

In order to promote ODR application and rule harmonisation across the GBA, the following measures need to be considered:

Firstly, the Hong Kong government should propose to build a GBA ODR Collaboration platform, while strengthening the role of Hong Kong as the dispute resolution centre in the GBA. Referring to the experience of the EOP, the establishment of the GBA ODR Collaboration Platform calls for joint efforts by the Guangdong, Hong Kong, and Macau legal departments. After agreeing to choose an arbitration or mediation institution in a GBA city, users should be able to access legal services from relevant counterparts in other cities through the Platform. As for strengthening the role of Hong Kong as the dispute resolution centre in the GBA, the Hong Kong government and legal department may propose the establishment of a GBA ODR Collaboration Platform through the “Joint Conference Mechanism”, while promoting ODR rule harmonisation through bilateral cooperations between eBRAM and its GBA counterparts.

Secondly, the GBA local governments should implement measures and policies to increase public awareness of ODR. Extensive and collaborative efforts are required from the GBA governments to introduce measures that will increase awareness of ODR among GBA residents. These measures should also encourage the capacity building and promotion of ODR by the GBA’s ADR/ODR entities, such as regularly organizing relevant seminars and capacity-building sessions, advocating cross-border ODR services with shared training and advertising resources, etc. In addition, eBRAM can support the establishment of the GBA ODR Collaboration Platform and reach MoU with its GBA counterparts. In this way, eBRAM can facilitate the integration of the ODR resources, promotion of cross-border ODR services, and adoption of common ODR rules in the GBA. These efforts aim to provide more cost-effective and efficient ODR services for the users of the GBA ODR Collaboration Platform, strengthening professionalism and increasing awareness of ODR.

Thirdly, GBA legal departments should provide uniform ODR standards to enhance the credibility of ODR proceedings. Existing cooperation between GBA legal departments focuses on the convergence of ADR rules, but further efforts are needed to harmonise ODR rules. The standards and

²¹⁰ Ibid.

guidelines for ODR practice developed by the international community can be utilised as a reference when formulating uniform ODR standards in the GBA, such as the UNCITRAL Technical Notes, APEC ODR Framework and 2022 ODR Standards developed by ICODR and NCTDR. The objective of developing uniform ODR standards is to facilitate ODR rule harmonisation and specific ODR legislation, and to promote cross-border ODR services with enhanced consistency, efficiency and fairness. The uniform ODR standards should aim to encourage ADR/ODR entities to refine the ODR process as a response to complaints about (found in the online survey) the “prolonged processes”, “complicated procedures”, “insufficient opportunities and difficulties to produce evidence”, “mediators’ lack of professionalism” and “biased results”. The uniform ODR standards should also bridge the rule gap of different jurisdictions.

Fourthly, the GBA Legal Departments should employ the existing “Joint Conference Mechanism” to facilitate rule harmonisation and ODR legislation in the GBA. Compared with government regulation and self-regulation, the co-regulation of ODR accommodates the GBA cross-border ODR to the co-regulation pattern. The objective of ODR rule harmonisation is to integrate legal and social resources across the GBA, allowing their unique advantages related to market conditions and professional development in ODR to be fully utilised. Relying on respective domestic laws from the three jurisdictions does not fully realise the comparative advantage of "one country, two systems," and a specific law on ODR is still lacking. In this sense, the co-regulation of ODR ensures sufficient flexibility for party autonomy and legal certainty that adapts to different legal systems.

Specifically, the GBA can utilise the existing “Joint Conference Mechanism” to provide general ODR standards and principles in a multi-jurisdiction context, and then formulate specific laws and regulations applicable to the respective legal departments. With the Joint Conference Mechanism, the GBA legal departments and ODR platforms can explore the optimal path for ODR rule harmonisation, while accommodating the converged principles to their respective legal and cultural environments.

Annexes

Annex 1 - Action Plan for the Research

<u>Actions</u>	<u>Responsible Person(s)</u>	<u>Due Date</u>
<p><u>Stage 1: Doctrinal Study and Online Survey</u></p> <ul style="list-style-type: none"> • Research Methodology • Literature Review • Design questionnaires for the online survey • Disseminate and collect questionnaires <p><i>Sample Size:</i> 100-200 adult participants from Hong Kong and the Chinese Mainland</p>	Research Specialist or designated person	01/2023 - 02/2023
<p><u>Stage 2: Data Analysis and Empirical Study</u></p> <ul style="list-style-type: none"> • Analysing data collected from the online survey • Application of data analysis to the report • ODR legislation and rules • Investigate and summarize practice models of major ODR Providers 	Research Specialist or designated person	02/2023 - 03/2023
<p><u>Stage 3: Comparative Study and Solutions</u></p> <ul style="list-style-type: none"> • Compare ODR regulatory models in different jurisdictions • Areas of improvement for Hong Kong ODR development • Explore a path for rule harmonisation between Hong Kong and Mainland 	Research Specialist or designated person	03/2023 - 04/2023
<p><u>Stage 4: Production of the Research Report</u></p>	Research Specialist or designated person	04/2023 - 05/2023
<p><u>Stage 5: Follow-up press conference/seminar/ dissemination event</u></p>	Research Specialist or designated person	06/2020

Annex 2 - Informed Consent Form for Adult Participants (For Online Survey/Questionnaire)

Research Title: *ODR Regulatory Models in the Digital Era: Implications for ODR Rule Harmonisation across the Greater Bay Area (GBA)*

You are invited to participate in a research study conducted by Mr. Hui CHEN at *eBRAM International Online Dispute Resolution Centre Limited*.

PURPOSE OF THE ONLINE SURVEY

This online survey is to obtain opinions from the general public on Online Dispute Resolution (ODR) in Chinese Mainland, Hong Kong and Macao. The information collected from you could help inform future ODR development in Hong Kong and the Chinese Mainland.

PROCEDURES

You are invited to fill out brief self-report questionnaires through Pollfish.com concerning your recognition, knowledge, experience and suggestions (if any) of ODR services. The procedure may take between 15-20 minutes.

POTENTIAL RISKS / DISCOMFORTS AND THEIR MINIMIZATION

The research and online survey generally will not cause any risks or discomforts greater than what are commonly encountered in everyday life to you. Please note that this online survey is to obtain your opinions on Online Dispute Resolution (ODR), and the information obtained in the questionnaires will be used for research purposes only. All data collected from you, including but not limited to your personal and identifiable data (if any), will be kept in the secured disk and encrypted to ensure data security and confidentiality and will not be released to anyone except in aggregate and non-individually identifiable form. You could withdraw the questionnaire anytime if you decided to do so.

COMPENSATION FOR PARTICIPATION

Participation is voluntary. Due to the limited funding resource, there will be no compensation.

CONFIDENTIALITY

Any of your personal and identifiable data provided will be kept strictly confidential. The information obtained in the questionnaires will be used for research purposes only and will not be released to anyone except in aggregate and non-individually identifiable form.

DATA RETENTION

The data containing personal identifiers will be kept 2 years after the publication of the research report. Thereafter, the personally identifiable information in the questionnaires (if any) will be removed and the questionnaires will be retained in aggregate and non-individually identifiable form.

PARTICIPATION AND WITHDRAWAL

Your participation is voluntary. This means that you can choose to stop at any time.

QUESTIONS AND CONCERNS

If you have any questions about the research, please feel free to contact Mr. Hui CHEN (e-mail: hui.chen@ebram.org).

SIGNATURE

I _____ (Name of Participant)

understand the procedures described above and agree to participate in this study.

I wish/ do not wish to be identified.

Signature of Participant Date

Date of Preparation: [Date]

Annex 3 - Questionnaires

Q1

Have you been informed of relevant information as elaborated in the **Informed Consent Form for Adult Participants** and voluntarily answered the following questions:

- A. Yes
- B. No

Q2

Where is your **usual place of residence**?

- A. Chinese Mainland
- B. Hong Kong
- C. Macao
- D. Other (please elaborate): _____

Q3

Do you have any of the **following experiences**? (*You may select more than one option*)

- A. Online shopping
- B. Doing business online (such as online negotiation, online deal-making, online selling, etc.)
- C. Cross-border e-commerce activities
- D. None of the above (please go to Q11)

Q4

Have you encountered **conflicts or disputes** in e-commerce activities?

- A. Yes (please go to Q5)
- B. No (please go to Q11)

Q5

If you answered “yes” to Q4, **how did you attempt to resolve it**? (*You may select more than one option*)

- A. Online negotiation (with the other party through e-commerce platforms or social media)
- B. Online mediation (e.g., through an online shopping platform customer service)
- C. Intervention of customer service
- D. Online arbitration

E. File complaints to administrative or public entities (e.g. HK Consumer Council, China Consumers Association)

F. Court proceedings

G. Other channels (please elaborate): _____

H. I did not make any attempt to resolve the dispute (please go to Q9)

Q6

If you made any attempt in Q5 to resolve the dispute, do you consider that the dispute was ultimately resolved?

A. Yes (please go to Q7)

B. No (please go to Q8)

Q7

In which aspects do you think your applied dispute resolution methods should be improved? (**You may select more than one option**)

A. Not fast enough

B. Not easy to use

C. Too expensive

D. Others (please elaborate): _____

E. I am satisfied with the existing dispute resolution methods.

Q8

Why do you hold the view that your attempt to resolve the dispute failed? (**You may select more than one option**)

A. The result has not been successfully enforced.

B. It took too long, and I gave up.

C. The procedure was too complicated, and I gave up.

D. Others (please elaborate): _____

Q9

What was the reason that made you avoid making an attempt to resolve the dispute? (**You may select more than one option**)

A. The available options were not convenient to apply.

B. The amount was not substantial; it was not worth spending too much to resolve it.

C. Time-consuming

D. I did not know these options.

E. Other reasons (please elaborate): _____

Q10

Have you ever used **Online Dispute Resolution (ODR)**?

A. Yes

B. No

C. I don't know what ODR is.

Q11

ODR is a process that utilises information technology to provide a full spectrum of online services for dispute resolution and prevention, including but not limited to online diagnosis, online negotiation, online mediation, and online arbitration.

Do you consider ODR **to be a viable alternative to traditional offline dispute resolution** methods (such as court proceedings, arbitration and mediation)?

A. Yes

B. No

C. That depends on the context (please elaborate): _____

D. I am not sure.

Q12

Would you use ODR if it was available in your place of residence?

A. Yes

B. No

C. I'm not sure.

Q13

Which form of ODR **is most popular** in your place of residence? (*You may select more than one option*)

A. Online Mediation

B. Online Arbitration

C. Online Negotiation

D. Other (please elaborate) _____

E. Not available in my place of residence

Q14

How important do you think it is for ODR to be **recognised and regulated by governments**?

- A. Very important
- B. Somewhat important
- C. Not important
- D. I'm not sure.

Q15

What pattern would you prefer that ODR should be **regulated with**?

- A. State/Government regulation (with laws, regulations and policies)
- B. Self-regulation (ODR industry sets its own standards and monitors legal compliance)
- C. Co-regulation (self-regulation but with government intervention)

Q16

In a **cross-border context**, what ODR **regulatory pattern** would you prefer?

- A. State/Government regulation
- B. Self-regulation
- C. Co-regulation

Q17

In your opinion, what could be the **main benefits of regulating ODR**? (*You may select more than one option*)

- A. Legal certainty
- B. Enforceable outcomes
- C. Transparent procedures
- D. Due process and fairness
- E. Others (please elaborate) _____

Q18

Which **features** do you view are most important in ODR services? (*You may select more than one option*)

- A. Confidentiality and privacy
- B. Flexible procedures
- C. Efficiency (less time-consuming)

- D. Easy to access and use
- E. Low fees and costs
- F. Fair and just
- G. Internet connectivity
- H. Others (please elaborate) _____

Q19

What do you think could be the **main benefits** of **cross-border ODR** between Hong Kong, Macao and the Chinese Mainland? (*You may select more than one option*)

- A. Providing more channels for cross-border dispute resolution
- B. Promoting harmonisation (less legal conflict across jurisdictions)
- C. Saving time and costs
- D. Consistent and enforceable outcomes in both jurisdictions
- E. Others (please elaborate) _____

Q20

What do you think are the **main difficulties** in providing **cross-border ODR** services between Hong Kong, Macao and the Chinese Mainland? (*You may select more than one option*)

- A. Political and cultural differences
- B. Different legal systems
- C. Lack of an international standard and rules in ODR
- D. Lack of an ODR cooperative framework to enforce outcomes
- E. Technical difficulties
- F. Others (please elaborate) _____

Q21

Do you think it is necessary to **create cohesive or harmonised rules** to promote cross-border ODR services?

- A. Yes
- B. No
- C. I'm not sure.

Q22

What are the primary stakeholders of ODR rule harmonisation in the Greater Bay Area? (*You may select more than one option*)

- A. Governments and legal departments
- B. Courts
- C. Legal Professionals
- D. Businesses
- E. Consumers
- F. Others (please elaborate) _____
- G. I am not sure

Q23

In your view, what is the most important step for ODR rule harmonisation in the Greater Bay Area?

- A. Reaching collaborative agreements among the GBA cities
- B. Establishing a uniform or at least cohesive ODR rule framework
- C. Developing reliable and secure platforms
- D. Promoting public education and awareness
- E. Others (please elaborate) _____
- F. I am not sure

Annex 4 - Data Report of Online Survey

Background

This online survey aims to investigate public opinions on the application of Online Dispute Resolution (ODR). The survey targets residents in the Greater Bay Area (GBA), with most respondents located in Hong Kong and the Chinese Mainland. The data collected from this survey is used in the research report “ODR Regulatory Models in the Digital Era: Implications for ODR Rule Harmonisation across the GBA,” primarily to examine the following:

- a) The percentage of GBA residents with experience in e-commerce and online dispute resolution
- b) The arrangement of dispute resolution and opinions on its improvement
- c) The awareness and acceptance of ODR as a dispute resolution option
- d) The regulation patterns and key features of ODR preferred by respondents
- e) The perspectives on cross-border ODR and rule harmonisation

This data report presents a summary of the survey's results and key findings.

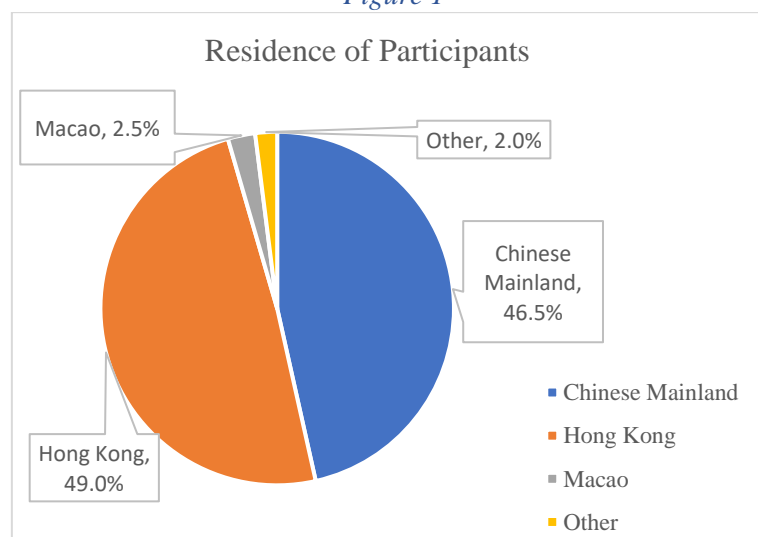
Q1

All the 200 participants in this online survey have been informed of relevant information elaborated in the Informed Consent Form for Adult Participants, and voluntarily answered the following questions.

Q2

This online survey was conducted from February 13 to March 12, 2023, and obtained responses from 200 participants. The majority of participants reside in the GBA, with 49% residing in Hong Kong and 46.5% residing in the Chinese Mainland (refer to Figure 1).

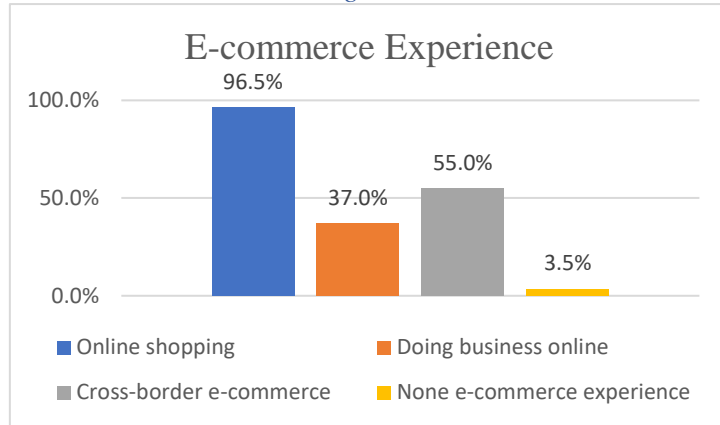
Figure 1



Q3

The majority of participants have experience in e-commerce activities, with 96.5% reporting having made online purchases, and 37% reporting having engaged in online business activities such as negotiation, deal-making, and selling. More than half of the participants (55%) have also participated in cross-border e-commerce activities.

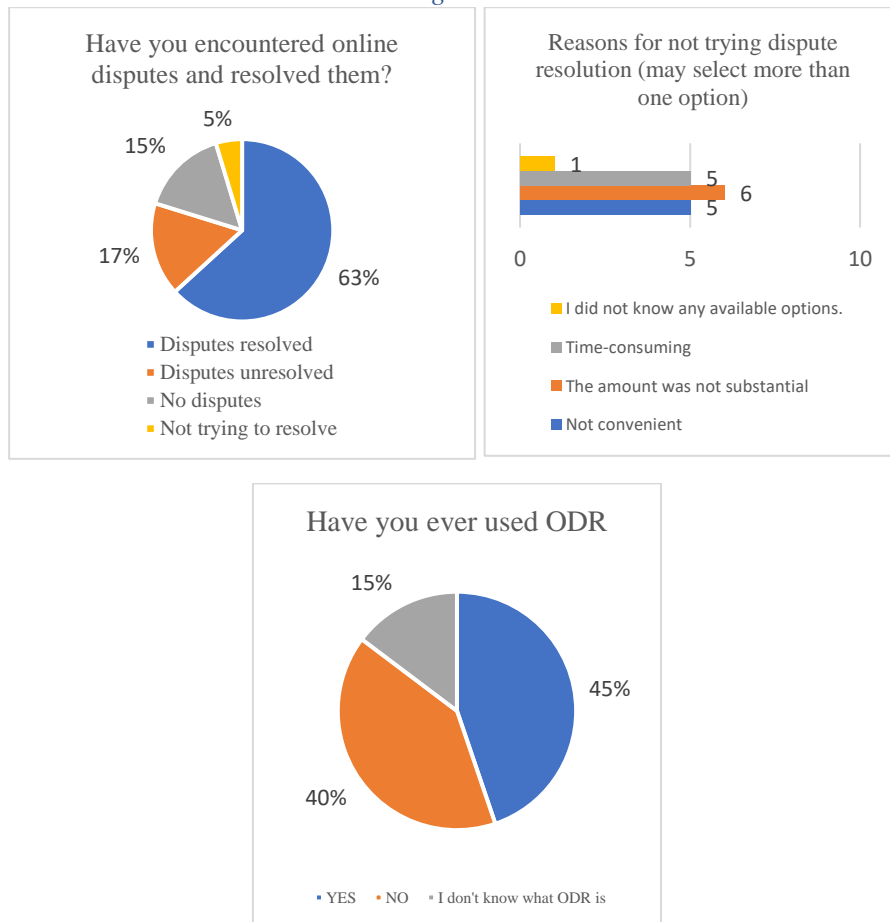
Figure 2



Q4-5, Q9, Q10

Disputes are common in e-commerce activities, with 81.5% (163 out of 200) of participants reporting having encountered them. However, 15% (32 respondents) were not able to resolve their disputes, while 5% (9 respondents) did not attempt to resolve them at all. Of the 9 who did not try to resolve their disputes, 5 cited the time-consuming and inconvenient nature of available options, while 6 felt that the amount involved was not worth the effort. One respondent was unsure of any available options for dispute resolution. As for ODR experience, 73 out of 163 respondents reported having used it, while 24 were not familiar with the concept of ODR.

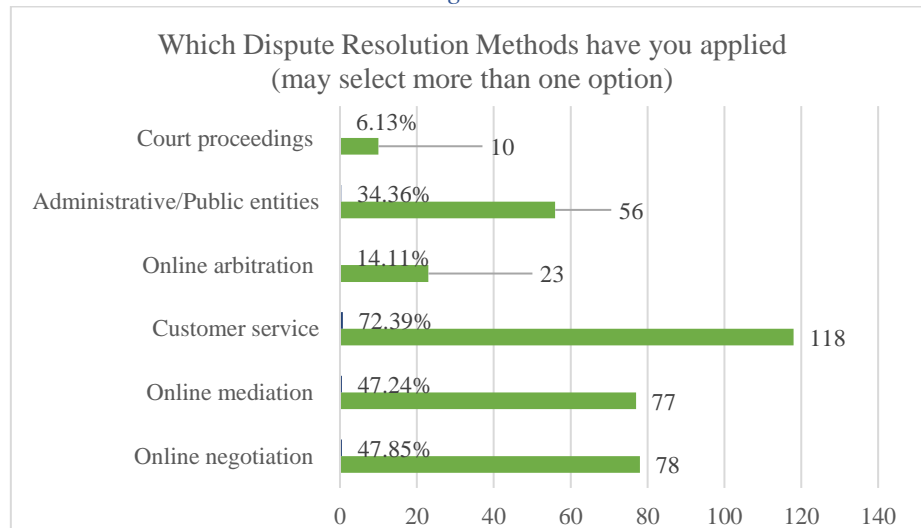
Figure 3



Q6

Regarding the methods used to resolve e-commerce disputes, Figure 4 illustrates that the top three methods employed by participants were "customer services," "online negotiation," and "online mediation." Among the 163 respondents who attempted to resolve their disputes, over 72% sought the intervention of customer services, while the use of online negotiation (47.85%) and online mediation (47.24%) was equally popular. Alternatively, respondents may file complaints with administrative or public entities (34.36%), such as the Hong Kong Consumer Council and the China Consumers Association. By comparison, online arbitration (14.11%) and court proceedings (6.13%) were much less commonly used.

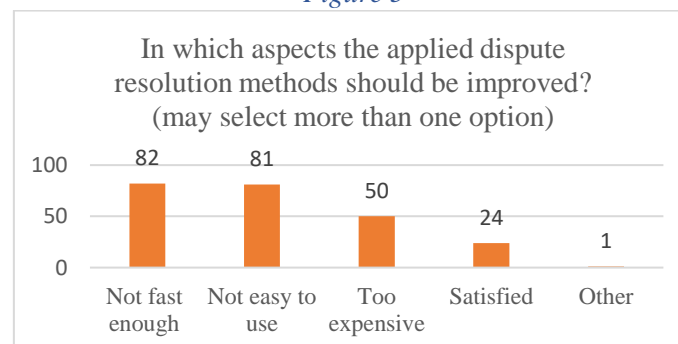
Figure 4



Q7

The satisfaction rate with existing dispute resolution methods is relatively low, with only 24 respondents reporting satisfaction. Among those dissatisfied, 82 respondents found the methods to be inefficient or slow, while 81 respondents found them difficult to use. One respondent stated that customer service was efficient, but pursuing other channels would be time-consuming if customer service failed to resolve the issue. Additionally, 50 respondents deemed the methods to be too expensive.

Figure 5

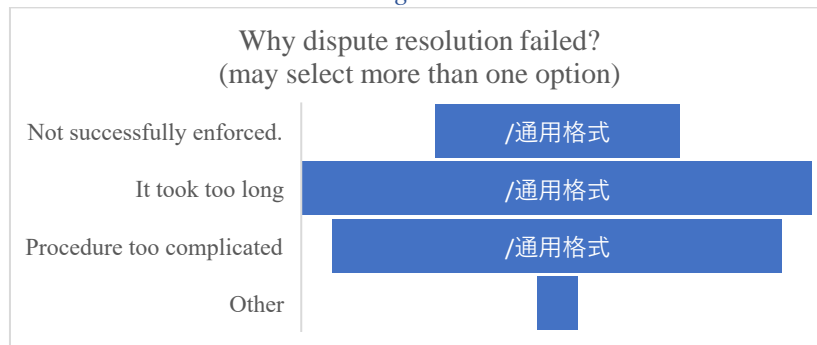


Q8

The primary reasons for dispute resolution failures are attributed to the lengthy process and complicated procedures. Of the 32 respondents who were unable to resolve their disputes, 25 cited the protracted process as the reason for failure. Additionally, 22 respondents found the methods to be too complicated,

while 12 respondents felt that they were unenforceable. One respondent stated that it was difficult to produce evidence during the ODR process and that some mediators were unprofessional. Another respondent complained that some e-commerce platforms did not provide adequate opportunities for consumers to provide evidence (e.g., due to platform limitations on uploading pictures), and that neutrals (third parties) were not always legal professionals and may render biased decisions.

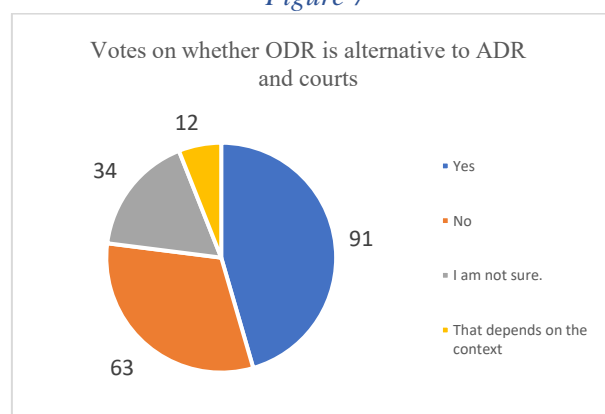
Figure 6



Q11

After being introduced to the definition of ODR in Question 11, participants were asked, “Do you consider ODR to be a viable alternative to traditional offline dispute resolution methods (such as court proceedings, arbitration, and mediation)?” Nearly half of the respondents (91 out of 200) answered “Yes,” while 63 respondents disagreed. Thirty-four respondents found it difficult to decide. Another 12 respondents claimed that whether ODR is a viable alternative to traditional methods depends on the nature of the case. Specifically, seven of the 12 respondents indicated that simple cases involving low-value claims may be conveniently addressed through ODR, but people are more inclined to use ADR or courts when it comes to complex or high-value cases. Another three respondents mentioned the necessity of face-to-face communications in some cases and believed that people may revert to ADR or courts when ODR does not work for them. One respondent deemed that ODR is only applicable to online disputes, while another respondent raised concerns over the accessibility of ODR for people who are not proficient internet users, such as the elderly.

Figure 7

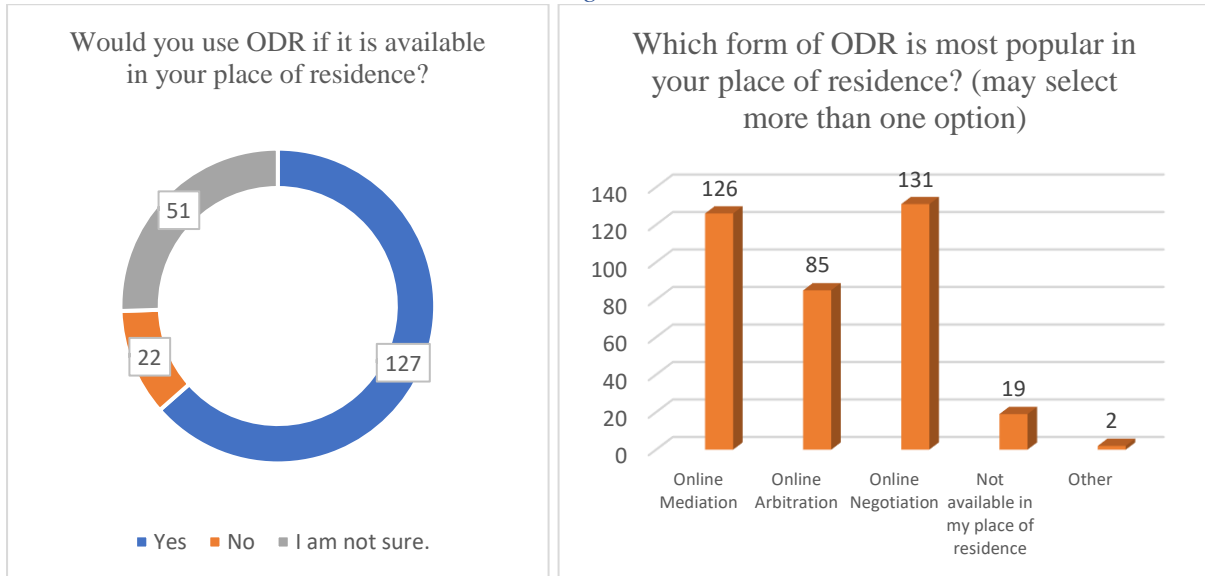


Q12, 13

Most respondents maintain a positive attitude towards ODR, with 63.5% indicating that they would use it if it were available in their place of residence. According to the respondents, the most popular form of ODR in the GBA is online negotiation (131 votes), followed by online mediation (126 votes) and

online arbitration (85 votes). Two respondents selected online court proceedings, while another 19 respondents claimed that ODR is not available in their jurisdictions.

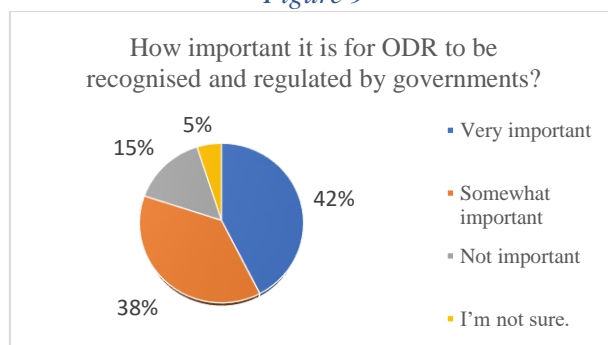
Figure 8

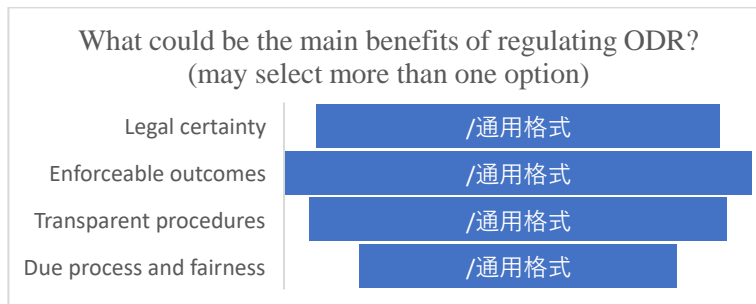
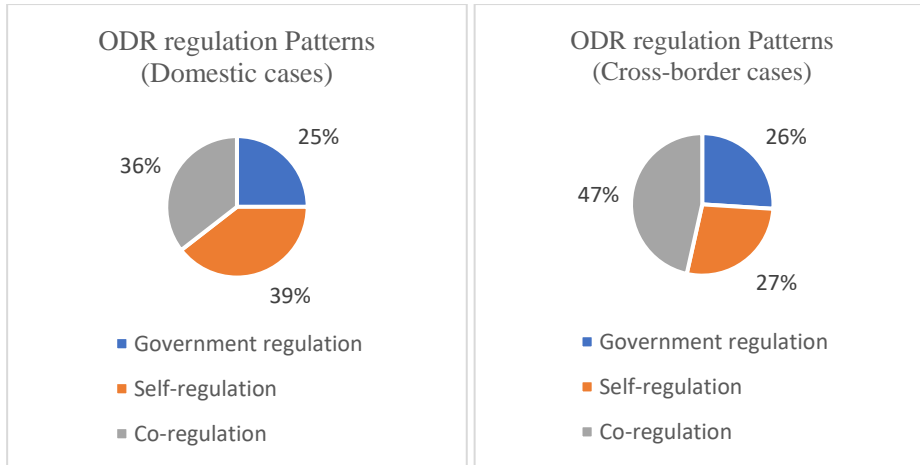


Q14, 15, 16, 17

Many respondents perceive it as important for ODR to be regulated by governments, with 42% selecting “very important” and 38% selecting “somewhat important.” Only 15% consider government intervention to be unimportant, while another 5% did not provide a definite answer. Despite considering the role of governments important for ODR regulation, state/government regulation (with laws, regulations, and policies) is the least popular option for respondents in both domestic (25%) and cross-border (26%) contexts. By comparison, most respondents in domestic cases (39%) selected self-regulation, where the ODR industry sets its own standards and monitors legal compliance, while almost half favored co-regulation (i.e., self-regulation but with government intervention) for cross-border cases. Regarding the benefits of ODR regulation, respondents considered “enforceability of ODR outcomes” to be the most significant benefit (168 votes) among all available options, followed by “transparent procedures” (150 votes), “legal certainty” (145 votes), and “due process and fairness” (114 votes).

Figure 9

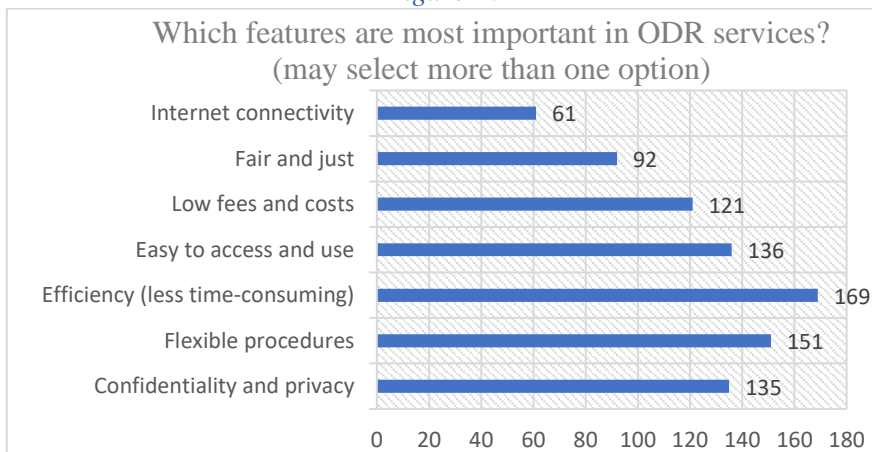




Q18

Increased efficiency is viewed as the dominant feature of ODR services, with 169 votes indicating that it is less time-consuming compared to traditional methods. Respondents also view the “flexible procedures of ODR” as a significant advantage, with 151 votes. Other notable features of ODR include being “easy to access and use” (136 votes), ensuring “confidentiality and privacy” (135 votes), having “low fees and costs” (121 votes), and being perceived as “fair and just” (92 votes). In contrast, “internet connectivity” receives much less recognition, with only 61 votes compared to other more significant features.

Figure 10

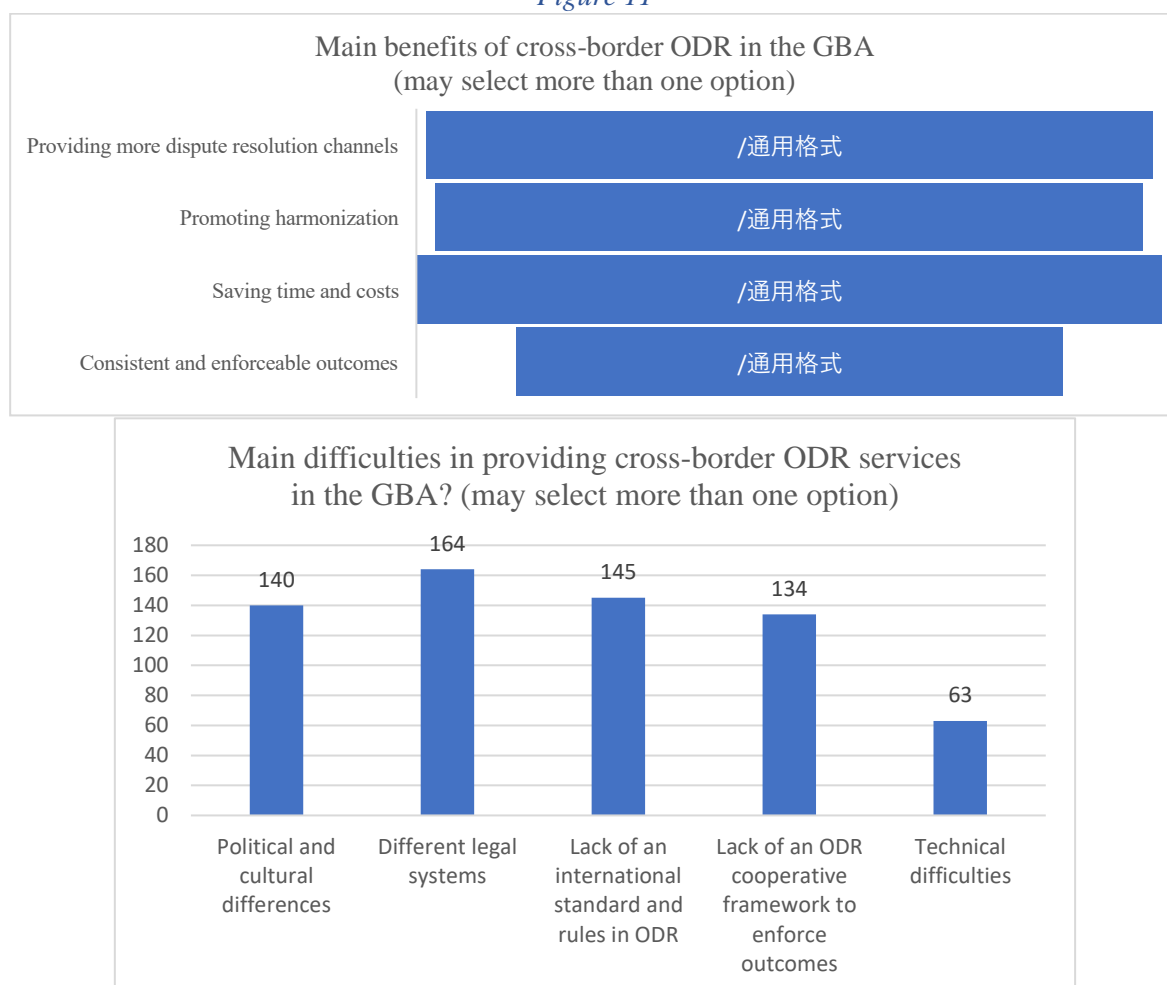


Q19, 20

Regarding the main benefits of cross-border ODR in the GBA, providing “more channels for dispute resolution,” promoting “harmonisation (less legal conflict across jurisdictions),” and “saving time and costs” receive roughly the same level of recognition. “Consistent and enforceable outcomes” are considered less noticeable among all available options.

When it comes to the difficulties of cross-border ODR in the GBA, most respondents (164 votes) identified the major obstacle as the differences between the three legal systems across Guangdong, Hong Kong, and Macao. Other significant difficulties include “lack of an international standard and rules in ODR” (145 votes), “political and cultural differences” (140 votes), and “lack of an ODR cooperative framework to enforce outcomes” (134 votes). “Technical difficulties” receive much less concern from respondents (63 votes) compared to other difficulties.

Figure 11

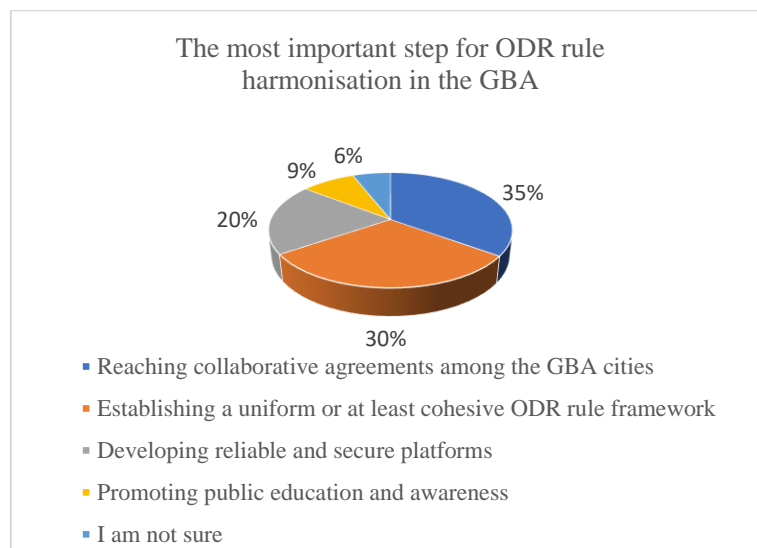
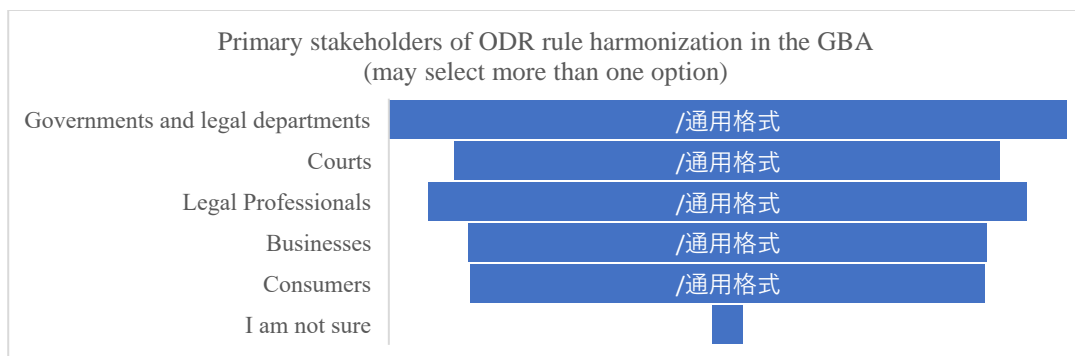
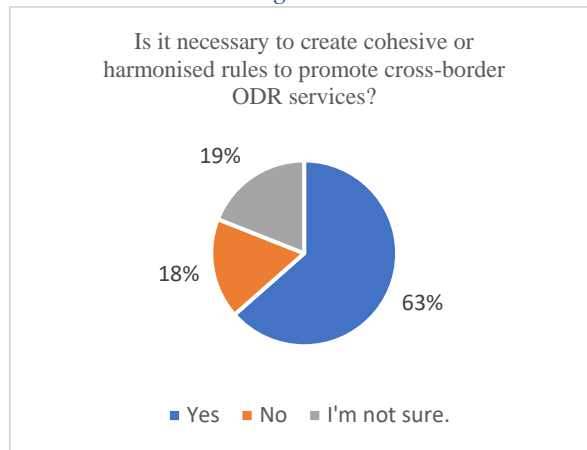


Q21, 22, 23

In promoting cross-border online dispute resolution (ODR), the majority of respondents (63%) consider the establishment of cohesive and harmonised rules necessary, while 18% disagree. Survey participants identified governments and legal departments (154 votes) and legal professionals (136 votes) as the primary stakeholders responsible for ODR rule harmonisation in the Greater Bay Area (GBA), with relatively fewer votes for courts (124 votes), businesses (118 votes), and consumers (117 votes). Regarding facilitating ODR rule harmonisation in the GBA, 35% of respondents believe that reaching collaborative agreements among GBA cities is more important, while 30% view establishing a uniform

or at least cohesive ODR rule framework as a priority. Another 20% believe that developing reliable and secure platforms is crucial. The promotion of public education and awareness is deemed less urgent by most respondents (supported by only 9%), and 6% are indecisive regarding the importance of each measure.

Figure 12



Data Summary

Experience with E-Commerce and Online Disputes

Nearly all participants (96.5%) have engaged in e-commerce activities, with all who had such experience having made online purchases. Of those who participated in e-commerce, 37% also conducted business online, while 55% engaged in cross-border e-commerce activities.

Online dispute experiences were also common among participants, with 163 reporting encountering online disputes. Of those, 15% were unsuccessful in resolving disputes, and another 5% did not attempt to resolve them. The reasons for avoiding the dispute resolution process included the amount at stake being insubstantial (6 votes), the available options being time-consuming (5 votes), the process being inconvenient (5 votes), and unawareness of available dispute resolution options (1 vote).

Arrangement of Dispute Resolution and Opinions on Improvements

The top three dispute resolution methods adopted by participants are customer services, online negotiation, and online mediation, with around 3 in 4 (72.39%) utilizing customer services. The percentage of respondents using online mediation (47.85%) is almost the same as that of online negotiation (47.24%). A smaller percentage of participants filed administrative complaints (34.36%), while even fewer resorted to online arbitration (14.11%) or court proceedings (6.13%).

The overall satisfaction rate (14.7%) with dispute resolution is relatively low. Over half of the respondents (50.3%) reported that the methods are not efficient or fast enough, and 49.7% found the existing methods not easy to use. Additionally, 30.7% deemed the methods too expensive. One respondent raised concerns about the potentially time-consuming process of resorting to other channels if customer service fails to resolve the conflict.

The prolonged process (over 78%) and complicated procedures (over 68%) of dispute resolution methods are claimed to be the major reasons for dispute resolution failures. Furthermore, 37.5% of respondents complained that the dispute resolution results are not enforceable. Other areas that require improvement include insufficient opportunities and difficulties in producing evidence, mediators' lack of professionalism, and biased results.

Awareness and Acceptance of ODR

Most respondents (63.5%) maintain an open attitude towards ODR, with 73 out of the 163 respondents who tried to address their disputes using ODR. However, 24 of those participants did not know the concept of ODR. Online negotiation is the most popular form of ODR (131 votes), followed by online mediation (126 votes) and online arbitration (85 votes).

After being introduced to the definition of ODR, nearly half of the respondents (91 out of 200) agreed that ODR is a viable alternative to ADR and courts for dispute resolution, while 31.5% disagreed. 17% found it difficult to decide, and another 6% claimed that this issue should be considered on a case-by-case basis. Seven respondents indicated that simple cases of low-value claims may be conveniently addressed through ODR, but people are inclined to use ADR or courts when it comes to complex or high-value cases. Additionally, three respondents mentioned the necessity of face-to-face communications in some cases, and people may revert to ADR or courts when ODR is not working for them. One respondent believes that ODR is only applicable to online disputes, while another raised concerns over the accessibility of ODR for people, such as the elderly, who are not proficient internet users.

Preferences of Regulation Patterns and Key Features of ODR

A significant majority of respondents (80%) consider government intervention important in ODR regulation, with 42% selecting "very important" and 38% selecting "somewhat important". 15% of

respondents consider government intervention not important for ODR, while another 5% do not provide a definite answer. However, it is found that the "government regulation pattern", when compared with "self-regulation" and "co-regulation", is the least popular option in both domestic (25%) and cross-border (26%) cases, despite government intervention being considered important by most respondents.

By comparison, most respondents in the domestic context (39%) selected the self-regulation pattern. When it comes to cross-border cases, almost half of the respondents favored the co-regulation pattern. Most respondents (168 votes) considered "enforceability of ODR outcomes" the most significant benefit brought by ODR regulation, followed by "transparent procedures" (150 votes), "legal certainty" (145 votes), and "due process and fairness" (114 votes).

The majority of respondents (169 votes) viewed "increased efficiency" as the dominant feature of ODR services, followed by "flexible procedures" (151 votes). Other solid features of ODR include "easy to access and use" (136 votes), "confidentiality and privacy" (135 votes), "low fees and costs" (121 votes), and "fair and just" (92 votes). "Internet connectivity" received much less recognition (61 votes) compared to other more significant features.

Perspectives on Cross-Border ODR and Rule Harmonisation

A majority of respondents (63%) consider it necessary to establish cohesive or harmonised rules for the promotion of cross-border ODR, while 18% disagree with that. Legal system diversities across the GBA were considered the major obstacle to cross-border ODR by most respondents (164 votes). Other significant difficulties include "lack of an international standard and rules in ODR" (145 votes), "political and cultural differences" (140 votes), and "lack of an ODR cooperative framework to enforce outcomes" (134 votes). "Technical difficulties" (63 votes) were much less concerning to respondents compared to other difficulties.

The following benefits of cross-border ODR received roughly the same level of support from respondents: "providing more channels for dispute resolution", "promoting harmonisation (less legal conflict across jurisdictions)", and "saving time and costs". However, "consistent and enforceable outcomes" were considered less noticeable among all available options.

Most respondents (154 votes) perceived "governments and legal departments" and "legal professionals" (136 votes) as the primary stakeholders of ODR rule harmonisation in the GBA, with fewer votes for "courts" (124 votes), "businesses" (118 votes), and "consumers" (117 votes).

Regarding facilitating ODR rule harmonisation in the GBA, 35% of respondents considered it more important to reach collaborative agreements among the GBA cities. 30% viewed "establishing a uniform or at least cohesive ODR rule framework" as more important, while another 20% favored developing reliable and secure platforms. Only 9% viewed "promoting public education and awareness" as significant, and another 6% could not decide which measure was more important.

Conclusions and Recommendations

Almost all participants have experience with e-commerce and online disputes, and disputes are often avoided due to low item value, high expenditure, or a time-consuming process. The three most popular methods of dispute resolution applied by respondents are customer services, online negotiation, and online mediation, while litigation is the least popular method. In this sense, online negotiation and mediation are preferred ODR options compared to online arbitration in e-commerce disputes.

The satisfaction rate (14.7%) on dispute resolution is relatively low, with over half of the respondents (50.3%) complaining that the methods are not efficient or fast enough, and 49.7% finding the existing methods not easy to use. The prolonged process (over 78%) and complicated procedures (over 68%) are claimed to be the major reasons for dispute resolution failures. Hence, there is room for improvement in terms of enhancing efficiency and accessibility. The ODR services should be easy to use, and the procedures should be simple. ODR platforms could consider providing staff coordination as an alternative, particularly human intervention when users are not satisfied with their cases being handled by AI robots.

Most respondents (63.5%) maintain an open attitude towards ODR, and nearly half of the respondents (91 out of 200) agreed that ODR is a viable alternative to ADR and courts for dispute resolution. This indicates the potential of ODR markets and further development, but extensive efforts are needed to increase public awareness of ODR as more and more e-commerce platforms start to provide ODR services.

The majority of respondents consider government intervention important in ODR regulation, although the "government regulation pattern" is the least favored option in both domestic (25%) and cross-border (26%) contexts, compared to "self-regulation" and "co-regulation". In the domestic context, most respondents choose the self-regulation pattern (39%), whereas almost half of the respondents favor the co-regulation pattern in cross-border cases. This finding suggests that while many respondents accept government intervention in ODR regulation, they prefer co-regulation over pure government regulation to ensure flexibility.

According to the majority of respondents, the "enforceability of ODR outcomes" is the most significant benefit brought by ODR regulation, while "increased efficiency" is recognized as the dominant feature of ODR services. Over three in five (63%) of the respondents believe that it is necessary to establish cohesive or harmonised rules to promote cross-border ODR. Most respondents view legal system diversities across the GBA as the primary obstacle to cross-border ODR, with "governments and legal departments" and "legal professionals" considered the primary stakeholders of ODR rule harmonisation in the GBA.

More respondents consider it important to reach collaborative agreements among the GBA cities and establish a uniform or at least cohesive ODR rule framework to facilitate ODR rule harmonisation in the GBA. Therefore, cross-border ODR should ensure enforceable outcomes across the three GBA jurisdictions and bring increased efficiency compared to traditional methods. Since most respondents recognise legal system diversity as a significant obstacle, the GBA governments and legal departments should provide corresponding measures to facilitate ODR rule harmonisation. In this regard, respondents believe that "reaching collaborative agreements among the GBA cities" and "establishing uniform cohesive ODR rule frameworks" would accomplish that goal.