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12 November 2020

By Email (esnliu@legco.gov.hk)

The Hon Cheung Kwok Kwan, JP
 Chairman

Panel on Administration of Justice and Legal Services
 Legislative Council, HKSAR

Dear Sir,

**Re: Panel on Administration of Justice and Legal Services
 Meeting on 23 November 2020**

Online Dispute Resolution and Deal-Marking Platform

I refer to the letter to the Law Society dated 4 November 2020 on the captioned meeting on 23 November 2020 to discuss the “*Recent developments on the online dispute resolution and deal-marking platform supported by the Government*”. I thank you for your invitation.

At the time of this letter, we have not received any papers from the LegCo Secretariat. By way of preliminary observations, we could however set out the following.

It is the long-standing position of the Law Society that Online Dispute Resolution (“ODR”), as a mechanism for resolving disputes through the use of electronic communications and other information and communications technology, should be supported. The use of this platform should also be expanded. In this regard, we could for example refer you to a President’s Message appearing in the November 2017 issue of our monthly publication, the *Hong Kong Lawyer*.

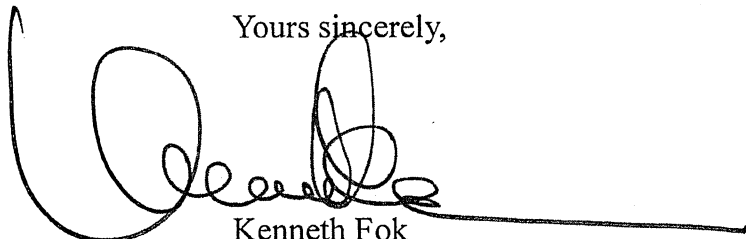
I take the pleasure to enclose a copy of the above Message for your reference.

The above could equally be said of the providing of platform(s) that facilitate commercial discussions, trade negotiations and deal-makings.

The Law Society of Hong Kong

COVID-19 pandemic has quickened the opening up of other avenues for dispute resolution and deal-making. It makes an on-line platform for ODR and deal-making to be more relevant.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kenneth Fok', with a long horizontal line extending to the right.

Kenneth Fok
Director of Practitioners Affairs
The Law Society of Hong Kong

Encl.

President's Message | November 2017

Online Dispute Resolution



Online Dispute Resolution (“ODR”) is a mechanism for resolving disputes through the use of electronic communications and other information and communications technology. It usually involves expedited models of mediation and arbitration which may or may not involve a third party neutral (eg, mediator) to assist the process.

ODR has increasingly been adopted in various jurisdictions.

APEC, of which Hong Kong is a member economy, places increasing attention on developing ODR in the region. At the recent APEC Economic Committee held during the last week of August 2017 in Ho Chi Minh City, one day was spent on ODR. It well showed the increasing importance of ODR in the region.

In 2016, UNCITRAL published the UNCITRAL’s Technical Notes on ODR to provide guidance to states to develop their ODR platforms. Further, the Organisation of American States (“OAS”) has proposed to establish the OAS ODR regional platform which will establish a model law/cooperative framework and procedural rules to govern ODR proceedings. In October 2016, the OAS Inter-American Juridical Committee adopted a resolution to focus its efforts on issues relating to mechanisms for online settlement of disputes arising from cross-border consumer transactions.

In addition, the European Union (“EU”) has set up an online platform to help unsatisfied customers who live within the EU to find a neutral third party (“dispute resolution body”) to assist in resolving consumer disputes. The dispute resolution body will then assist the parties with deciding which dispute resolution model (eg, mediation, arbitration, adjudication) to adopt and the neutral to appoint for their dispute. Usually, the dispute resolution process must be completed within 90 days after the appointment of the dispute resolution body.

Mexico has already established a government-run ODR platform for B2C. Participation is mandatory for domestic vendors. A complainant can file an online application with basic information on the parties and the dispute, after which the platform administrator will appoint a conciliator and arrange an online conciliation with the parties.

In Hangzhou, China, the Supreme People's Court launched its first internet court in August 2015 to hear Internet-related cases online. The parties to the dispute attend hearings via video link. The verdict is delivered online and enforced as a court order.

The rising popularity of ODR may largely be due to the convenience this mechanism offers in resolving cross-border disputes, which are on the rise.

An effective ODR platform must be supported by an appropriate legal framework and an effective information technology infrastructure in order to facilitate the dispute resolution process and ensure a smooth enforcement of the outcome. As a result, most of the existing ODR services are provided by governments or authorised bodies which have the resources to provide the necessary support including resources to tackle issues on platform accessibility, privacy and confidentiality, communication problems (eg, use of different languages by parties to a dispute), governance and oversight of the operation of the platform (eg, quality of the neutrals) and enforceability of the outcome of the resolution process.

In Hong Kong, the existing ODR platform offered by the Hong Kong International Arbitration Centre is for domain name disputes. There is certainly room for expansion to other areas.

In anticipation of the rise of cross-border transactions as a result of the development of the Belt & Road Initiative, the Law Society, together with other stakeholders, is actively exploring the eBRAM (eBelt and Road Arbitration and Mediation) platform.

Spearheaded by Teresa Cheng SC, the eBRAM Initiative aims at providing an online dispute resolution platform providing full arbitration and mediation services over the Internet for countries in the Belt & Road region. Based on the experience gathered in operating ODR platforms in other jurisdictions, the key factors to consider when designing the platform are, among others, security of the data shared and stored on the platform and ease of communication among parties from different regions. Users of the platform must be given full confidence that there are effective supporting tools to help break down any communication barrier caused by the difference in languages used by the parties and that all information provided via the platform will be kept strictly private and confidential. In addition to strong technical support in all aspects, Hong Kong has a mature personal data protection regime through the Personal Data (Privacy) Ordinance enforced by the Office of the Privacy Commissioner for Personal Data. Hong Kong is well positioned to host an international ODR platform to serve the Belt & Road countries.

The Law Society has been actively reaching out internationally to our counterparts on collaborative efforts to capitalise on the opportunities arising from the Belt & Road Initiative. The fact that 38 organisations from 23 jurisdictions signed the Hong Kong Manifesto initiated by the Law Society in May 2017 is evidence of our strength to act as a focal point to build connectivity and facilitate collaboration. The legal profession has an important role to play in the development of the Belt & Road Initiative, and we will continue our best efforts to promote that role for our members.

Thomas So

President, The Law Society of Hong Kong



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