UNCITRAL

UNITED NATIONS
COMMISSION ON INTERNATIONAL TRADE LAW

UNCITRAL Technical Notes on Online Dispute Resolution

UNITED NATIONS

Further information may be obtained from:
UNCITRAL secretariat, Vienna International Centre
P.O. Box 500, 1400 Vienna, Austria
Telephone: (+43-1) 26060-4060 Telefax: (+43-1) 26060-5813
Internet: www.uncitral.org E-mail: uncitral@uncitral.org

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

UNCITRAL
Technical Notes on Online Dispute Resolution

UNITED NATIONS
New York, 2017

© United Nations: United Nations Commission on International Trade Law. April 2017. All rights reserved, worldwide.

This publication has not been formally edited.

Publishing production: English, Publishing and Library Section, United Nations Office at Vienna.

Preface

Noting the sharp increase of online cross-border transactions and the parallel need for mechanisms for resolving disputes arising from such transactions, the United Nations Commission on International Trade Law (UNCITRAL) agreed, at its forty-third session,[1] to undertake work in the field of online dispute resolution.

UNCITRAL finalized and adopted the Technical Notes on Online Dispute Resolution at its forty-ninth session in 2016. The Technical Notes on Online Dispute Resolution are non-binding, and take the form of a descriptive document, reflecting elements of an online dispute resolution process.

In addition to the representatives of the 60 member States of UNCITRAL, representatives of many other States and of international organizations participated in the deliberations. In preparing the Technical Notes on Online Dispute Resolution, the Secretariat consulted with experts from various legal systems, national and international bodies in the relevant technical fields, as well as international professional associations.

[1] *Official records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 257.

Contents

Page

Preface. . . . . *iii*

Resolution adopted by the General Assembly on 13 December 2016 . . . . . ***vii***

Decision by the United Nations Commission on International Trade Law adopting the Technical Notes on Online Dispute Resolution . . . . . **x**

Technical Notes on Online Dispute Resolution **1**

Section I. Introduction 1

Section II. Principles 2

Section III. Stages of an ODR proceeding 3

Section IV. Scope of ODR process 3

Section V. ODR definitions, roles and responsibilities, and communications 4

Section VI. Commencement of ODR proceedings 5

Section VII. Negotiation 6

Section VIII. Facilitated settlement 6

Section IX. Final stage 7

Section X. Appointment, powers and functions of the neutral 7

Section XI. Language 9

Section XII. Governance 9

Resolution adopted by the General Assembly on 13 December 2016

[on the report of the Sixth Committee (A/71/507)]

71/138. Technical Notes on Online Dispute Resolution of the United Nations Commission on International Trade Law

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recognizing that the sharp increase in online cross-border transactions has raised a need for mechanisms for resolving disputes that arise from such transactions, and recognizing also that one such mechanism is online dispute resolution,

Observing that online dispute resolution 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,

Observing also that online dispute resolution represents significant opportunities for access to dispute resolution by buyers and sellers concluding cross-border commercial transactions, both in developed and developing countries,

Recalling that, at its forty-third session, in 2010, the Commission agreed that a working group should be established to undertake work in the field of online dispute resolution, and that, at its forty-eighth session, in 2015, the Commission decided that the work should take the form of a non-binding descriptive document reflecting elements of an online dispute resolution process,[2]

[2] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 352.

Noting that the Technical Notes on Online Dispute Resolution[3] are non-binding and descriptive and reflect the principles of impartiality, independence, efficiency, effectiveness, due process, fairness, accountability and transparency,

Noting also that the Technical Notes are expected to contribute significantly to the development of systems to enable the settlement of disputes arising from cross-border low-value sales or service contracts concluded using electronic communications,

Convinced that the Technical Notes will significantly assist all States, in particular developing countries and States whose economies are in transition, online dispute resolution administrators, online dispute resolution platforms, neutrals and the parties to online dispute resolution proceedings in developing and using online dispute resolution systems,

Noting with appreciation that all States and interested international organizations were invited to participate in the preparation of the Technical Notes either as members or as observers from the forty-fourth to the forty-ninth sessions of the Commission, including through circulation of the text of the draft Technical Notes for comment to all States as well as to international organizations invited to attend the meetings of the Commission as observers,

Noting that the preparation of the Technical Notes was the subject of due deliberation in the Commission and that the draft text benefited from consultations with Governments and interested intergovernmental and international non-governmental organizations,

[3] Ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), annex I.

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for preparing and adopting the Technical Notes on Online Dispute Resolution as annexed to the report of the Commission on the work of its forty-ninth session;[4]

2. *Requests* the Secretary-General to publish the text of the Technical Notes through all appropriate means, including electronically, in the six official languages of the United Nations, and to disseminate that text broadly to Governments and other interested bodies;

3. *Recommends* that all States and other stakeholders use the Technical Notes in designing and implementing online dispute resolution systems for cross-border commercial transactions;

4. *Requests* all States to support the promotion and use of the Technical Notes.

62nd plenary meeting
13 December 2016

[4] Ibid., *Seventy-first Session, Supplement No. 17* (A/71/17).

Decision by the United Nations Commission on International Trade Law adopting the Technical Notes on Online Dispute Resolution[5]

The United Nations Commission on International Trade Law,

Recalling its mandate under General Assembly resolution 2205 (XXI) of 17 December 1966 to further the progressive harmonization and unification of the law of international trade, and in that respect to bear in mind the interests of all peoples, and in particular those of developing countries, in the extensive development of international trade,

Noting that the sharp increase of online cross-border transactions has raised a need for mechanisms for resolving disputes which arise from such transactions, and that one such mechanism is online dispute resolution ("ODR"),

Observing that 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,

Also observing that ODR represents significant opportunities for access to dispute resolution by buyers and sellers concluding cross-border commercial transactions, both in developed and developing countries,

Recalling that at its forty-third session, in 2010, the Commission agreed that a working group should be established to undertake work in the field of ODR,[6]

Expressing appreciation to Working Group III (Online Dispute Resolution) for having prepared the draft Technical Notes on Online Dispute Resolution,

Noting further that the Technical Notes on Online Dispute Resolution are non-binding, descriptive, and reflect principles of impartiality, independence, efficiency, effectiveness, due process, fairness, accountability and transparency,

---

[5] *Official records of the General Assembly, Seventy-first Session, Supplement No.17* (A/71/17), para. 217.

[6] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 257.

Noting additionally that the Technical Notes on Online Dispute Resolution are expected to contribute significantly to the development of systems to enable the settlement of disputes arising from cross-border low-value sales or service contracts concluded using electronic communications,

Being convinced that the Technical Notes on Online Dispute Resolution will significantly assist all States, in particular developing countries and States whose economies are in transition, ODR administrators, ODR platforms, neutrals, and the parties to ODR proceedings in developing and using ODR systems,

1. *Adopts* the Technical Notes on Online Dispute Resolution, as they appear in annex I to the report of UNCITRAL on its forty-ninth session;

2. *Requests* the Secretary-General to publish the text of the Technical Notes on Online Dispute Resolution, including electronically, in the six official languages of the United Nations, and to disseminate that text broadly, including through electronic means, to Governments and other interested bodies;

3. *Recommends* that all States and other stakeholders use the Technical Notes on Online Dispute Resolution in designing and implementing ODR systems for cross-border commercial transactions; and

4. *Requests* all States to support the promotion and use of the Technical Notes on Online Dispute Resolution.

Technical Notes on Online Dispute Resolution

Section I — Introduction

Overview of online dispute resolution

1. In tandem with the sharp increase of online cross-border transactions, there has been a need for mechanisms for resolving disputes which arise from such transactions.

2. One such mechanism is online dispute resolution ("ODR"), which 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. As such, ODR represents significant opportunities for access to dispute resolution by buyers and sellers concluding cross-border commercial transactions, both in developed and developing countries.

Purpose of the Technical Notes

3. The purpose of the Technical Notes is to foster the development of ODR and to assist ODR administrators, ODR platforms, neutrals, and the parties to ODR proceedings.

4. The Technical Notes reflect approaches to ODR systems that embody principles of impartiality, independence, efficiency, effectiveness, due process, fairness, accountability and transparency.

5. The Technical Notes are intended for use in disputes arising from cross-border low-value sales or service contracts concluded using electronic communications. They do not promote any practice of ODR as best practice.

---

* The order of the list of approaches or forms in brackets is presented in increasing order of formality, reflecting the approach taken in the description of commonly-used, methods for settling disputes contained in UNCITRAL's Legislative Guide on Privately Financed Infrastructure Projects (2000), available at www.uncitral.org/uncitral/uncitral_texts/procurement_infrastructure.html. Furthermore, the terms are illustrative only, relative formality may vary from system to system, and relevant processes in some jurisdictions may be known by more than one of the terms contained in the list itself.

Non-binding nature of the Technical Notes

6. The Technical Notes are a descriptive document. They are not intended to be exhaustive or exclusive, nor are they suitable to be used as rules for any ODR proceeding. They do not impose any legal requirement binding on the parties or any persons and/or entities administering or enabling an ODR proceeding, and do not imply any modification to any ODR rules that the parties may have selected.

Section II — Principles

7. The principles that underpin any ODR process include fairness, transparency, due process and accountability.

8. ODR may assist in addressing a situation arising out of cross-border e-commerce transactions, namely the fact that traditional judicial mechanisms for legal recourse may not offer an adequate solution for cross-border e-commerce disputes.

9. ODR ought to be simple, fast and efficient, in order to be able to be used in a "real world setting", including that it should not impose costs, delays and burdens that are disproportionate to the economic value at stake.

Transparency

10. It is desirable to disclose any relationship between the ODR administrator and a particular vendor, so that users of the service are informed of potential conflicts of interest.

11. The ODR administrator may wish to publish anonymized data or statistics on outcomes in ODR processes, in order to enable parties to assess its overall record, consistent with applicable principles of confidentiality.

12. All relevant information should be available on the ODR administrator's website in a user-friendly and accessible manner.

Independence

13. It is desirable for the ODR administrator to adopt a code of ethics for its neutrals, in order to guide neutrals as to conflicts of interest and other rules of conduct.

14. It is useful for the ODR administrator to adopt policies dealing with identifying and handling conflicts of interest.

Expertise

15. The ODR administrator may wish to implement comprehensive policies governing selection and training of neutrals.

16. An internal oversight/quality assurance process may help the ODR administrator to ensure that a neutral conforms with the standards it has set for itself.

Consent

17. The ODR process should be based on the explicit and informed consent of the parties.

Section III — Stages of an ODR proceeding

18. The process of an ODR proceeding may consist of stages including: negotiation; facilitated settlement; and a third (final) stage.

19. When a claimant submits a notice through the ODR platform to the ODR administrator (see section VI below), the ODR administrator informs the respondent of the existence of the claim and the claimant of the response. The first stage of proceedings — a technology-enabled negotiation — commences, in which the claimant and respondent negotiate directly with one another through the ODR platform.

20. If that negotiation process fails (i.e. does not result in a settlement of the claim), the process may move to a second, "facilitated settlement" stage (see paras. 40-44 below). In that stage of ODR proceedings, the ODR administrator appoints a neutral (see para. 25 below), who communicates with the parties in an attempt to reach a settlement.

21. If facilitated settlement fails, a third and final stage of ODR proceedings may commence, in which case the ODR administrator or neutral may inform the parties of the nature of such stage.

Section IV — Scope of ODR process

22. An ODR process may be particularly useful for disputes arising out of cross-border, low-value e-commerce transactions. An ODR process may apply to disputes arising out of both a business-to-business as well as business-to-consumer transactions.

23. An ODR process may apply to disputes arising out of both sales and service contracts.

Section V — ODR definitions, roles and responsibilities, and communications

24. Online dispute resolution, or "ODR", is a "mechanism for resolving disputes through the use of electronic communications and other information and communication technology". The process may be implemented differently by different administrators of the process, and may evolve over time.

25. As used herein a "claimant" is the party initiating ODR proceedings and the "respondent" the party to whom the claimant's notice is directed, in line with traditional, offline, alternative dispute resolution nomenclature. A neutral is an individual that assists the parties in settling or resolving the dispute.

26. ODR requires a technology-based intermediary. In other words, unlike offline alternative dispute resolution, an ODR proceeding cannot be conducted on an ad hoc basis involving only the parties to a dispute and a neutral (that is, without an administrator). Instead, to permit the use of technology to enable a dispute resolution process, an ODR process requires a system for generating, sending, receiving, storing, exchanging or otherwise processing communications in a manner that ensures data security. Such a system is referred to herein as an "ODR platform".

27. An ODR platform should be administered and coordinated. The entity that carries out such administration and coordination is referred to herein as the "ODR administrator". The ODR administrator may be separate from or part of the ODR platform.

28. In order to enable ODR communications, it is desirable that both the ODR administrator and the ODR platform be specified in the dispute resolution clause.

29. The communications that may take place during the course of proceedings have been defined as "any communication (including a statement, declaration, demand, notice, response, submission, notification or request) made by means of information generated, sent, received or stored by electronic, magnetic, optical or similar means."

30. It is desirable that all communications in ODR proceedings take place via the ODR platform. Consequently, both the parties to the dispute, and the ODR platform itself, should have a designated "electronic address". The term "electronic address" is defined in other UNCITRAL texts.

31. To enhance efficiency it is desirable that the ODR administrator promptly:

(a) Acknowledge receipt of any communication by the ODR platform;

(b) Notify parties of the availability of any communication received by the ODR platform; and

(c) Keep the parties informed of the commencement and conclusion of different stages of the proceedings.

32. In order to avoid loss of time, it is desirable that a communication be deemed to be received by a party when the administrator notifies that party of its availability on the platform; deadlines in the proceedings would run from the time the administrator has made that notification. At the same time, it is desirable that the ODR administrator be empowered to extend deadlines, in order to allow for some flexibility when appropriate.

Section VI — Commencement of ODR proceedings

33. In order that an ODR proceeding may begin, it is desirable that the claimant provide to the ODR administrator a notice containing the following information:

(a) The name and electronic address of the claimant and of the claimant's representative (if any) authorized to act for the claimant in the ODR proceedings;

(b) The name and electronic address of the respondent and of the respondent's representative (if any) known to the claimant;

(c) The grounds on which the claim is made;

(d) Any solutions proposed to resolve the dispute;

(e) The claimant's preferred language of proceedings; and

(f) The signature or other means of identification and authentication of the claimant and/or the claimant's representative.

34. ODR proceedings may be deemed to have commenced when, following a claimant's communication of a notice to the ODR administrator, the ODR administrator notifies the parties that the notice is available at the ODR platform.

35. It is desirable that the respondent communicate its response to the ODR administrator within a reasonable time of being notified of the availability of the claimant's notice on the ODR platform, and that the response include the following elements:

(a) The name and electronic address of the respondent and the respondent's representative (if any) authorized to act for the respondent in the ODR proceedings;

(b) A response to the grounds on which the claim is made;

(c) Any solutions proposed to resolve the dispute;

(d) The signature or other means of identification and authentication of the respondent and/or the respondent's representative; and

(e) Notice of any counterclaim containing the grounds on which the counterclaim is made.

36. As much as is possible, it is desirable that both the notice and response be accompanied by all documents and other evidence relied upon by each party, or contain references to them. In addition, to the extent that a claimant is pursuing any other legal remedies, it is desirable that such information also be provided with the notice.

Section VII — Negotiation

37. The first stage may be a negotiation, conducted between the parties via the ODR platform.

38. The first stage of proceedings may commence following the communication of the respondent's response to the ODR platform and:

(a) Notification thereof to the claimant; or

(b) Failing a response, the lapse of a reasonable period of time after the notice has been communicated to the respondent.

39. It is desirable that, if the negotiation does not result in a settlement within a reasonable period of time, the process proceed to the next stage.

Section VIII — Facilitated settlement

40. The second stage of ODR proceedings may be facilitated settlement, whereby a neutral is appointed and communicates with the parties to try to achieve a settlement.

41. That stage may commence if negotiation via the platform fails for any reason (including non-participation or failure to reach a settlement within a reasonable period of time), or where one or both parties to the dispute request to move directly to the next stage of proceedings.

42. Upon commencement of the facilitated settlement stage of proceedings, it is desirable that the ODR administrator appoint a neutral, and notify the parties of that appointment, and provide certain details about the identity of the neutral as described in paragraph 46 below.

43. In the facilitated settlement stage, it is desirable that the neutral communicate with the parties to try to achieve a settlement.

44. If a facilitated settlement cannot be achieved within a reasonable period of time, the process may move to a final stage.

Section IX — Final stage

45. If the neutral has not succeeded in facilitating the settlement, it is desirable that the ODR administrator or neutral informs the parties of the nature of the final stage, and of the form that it might take.

Section X — Appointment, powers and functions of the neutral

46. To enhance efficiency and reduce costs, it is preferable that the ODR administrator appoint a neutral only when a neutral is required for a dispute resolution process in accordance with any applicable ODR rules. At the point in an ODR proceeding at which a neutral is required for the dispute resolution process, it is desirable that the ODR administrator "promptly" appoint the neutral (i.e., generally at the commencement of the facilitated settlement stage of proceedings). Upon appointment, it is desirable that the ODR administrator promptly notify the parties of the name of the neutral and any other relevant or identifying information in relation to that neutral.

47. It is desirable that neutrals have the relevant professional experience as well as dispute resolution skills to enable them to deal with the dispute in question. However, subject to any professional regulation, ODR neutrals need not necessarily be qualified lawyers.

48. With regard to the appointment and functions of neutrals, it is desirable that:

(a) The neutral's acceptance of his or her appointment operates to confirm that he or she has the time necessary to devote to the process;

(b) The neutral be required to declare his or her impartiality and independence and disclose at any time any facts or circumstances that might give rise to likely doubts as to his or her impartiality or independence;

(c) The ODR system provides parties with a method for objecting to the appointment of a neutral;

(d) In the event of an objection to an appointment of a neutral, the ODR administrator be required to make a determination as to whether the neutral shall be replaced;

(e) There be only one neutral per dispute appointed at any time for reasons of cost efficiency;

(f) A party be entitled to object to the neutral receiving information generated during the negotiation period; and

(g) If the neutral resigns or has to be replaced during the course of the ODR proceedings, the ODR administrator be required to appoint a replacement, subject to the same safeguards as set out during the appointment of the initial neutral.

49. In respect of the powers of the neutral, it is desirable that:

(a) Subject to any applicable ODR rules, the neutral be enabled to conduct the ODR proceedings in such a manner as he or she considers appropriate;

(b) The neutral be required to avoid unnecessary delay or expense in the conduct of the proceedings;

(c) The neutral be required to provide a fair and efficient process for resolving disputes;

(d) The neutral be required to remain independent, impartial and treat both parties equally throughout the proceedings;

(e) The neutral be required to conduct proceedings based on such communications as are before the neutral during the proceedings;

(f) The neutral be enabled to allow the parties to provide additional information in relation to the proceedings; and

(g) The neutral be enabled to extend any deadlines set out in any applicable ODR rules for a reasonable time.

50. While the process for appointment of a neutral for an ODR proceeding is subject to the same due process standards that apply to that process in an offline context, it may be desirable to use streamlined appointment and challenge procedures in order to address the need for ODR to provide a simple, time-, and cost-effective alternative to traditional approaches to dispute resolution.

Section XI — Language

51. Technology tools available in ODR can offer a great deal of flexibility regarding the language used for the proceeding. Even where an ODR agreement or ODR rules specify a language to be used in proceedings, it is desirable that a party to the proceedings be able to indicate in the notice or response whether it wishes to proceed in a different language, so that the ODR administrator can identify other language options that the parties may select.

Section XII — Governance

52. It is desirable for guidelines (and/or minimum requirements) to exist in relation to the conduct of ODR platforms and administrators.

53. It is desirable that ODR proceedings be subject to the same confidentiality and due process standards that apply to dispute resolution proceedings in an offline context, in particular independence, neutrality and impartiality.

V.17-00382