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Online dispute resolution for cross-border electronic commerce transactions

Submission by Israel

Note by the Secretariat

The Government of Israel has submitted to the Secretariat a document regarding draft provisions for Recommended Standards for ODR Administrators. The text received by the Secretariat is reproduced as an annex to this note in the form in which it was received.



Annex

Draft provisions for Recommended Standards for ODR Administrators

Further to the mandate given to UNCITRAL Working Group III at the 2015 Commission session,¹ and building upon the notes submitted at that session,² the State of Israel submits the following draft provisions that could be included in a non-binding ODR instrument, for the Working Group's consideration. For the sake of convenience, the instrument will be referred to as the "Recommended Standards for ODR Administrators" (the "**ODR Recommended Standards**") (it can also be entitled "ODR Notes", if the Working Group so decides).

It is envisaged that the scope of the ODR Recommended Standards would be limited to the types of claims as agreed by the Working Group (non-delivery, late delivery, non-payment, etc., in low-value transactions), and that they would focus on transparency, independence, expertise, confidentiality and procedural fairness as key principles according to which ODR administrators should to govern themselves.

What follows are some draft illustrative provisions that could be included in such an instrument with respect to each of these key principles. The proposals herein are intended as a platform to facilitate a broader discussion and are not necessarily reflective of Israel's specific or definitive position on each item. Furthermore, they do not preclude the development of another instrument, such as a non-binding technical Note describing elements of an ODR process, consistent with the Working Group's mandate.

Transparency³

1. "It is recommended that the ODR administrator disclose its roster of neutrals and a short summary of their nationality and credentials. In addition, it is advisable to disclose any contractual relationship between the ODR administrator and a particular vendor, so that users of the service are informed of potential conflicts of interest."
2. "The ODR administrator may wish to publish anonymized data or statistics on its decisions, in order to enable parties to assess its overall record."
3. "All relevant information should be available on the ODR administrator's website in a user-friendly and accessible manner."

¹ Report of the United Nations Commission on International Trade Law, Forty-eighth session (29 June-16 July 2015), A/70/17, para. 352.

² Notes by the State of Israel (A/CN.9/857), and by Columbia, Honduras and the United States (A/CN.9/858).

³ Based on the UNCITRAL Secretariat's Note — Online dispute resolution for cross-border electronic commerce transactions: draft guidelines — A/CN.9/WG.III/WP.128, par.23-32.

Independence

4. “It would be advisable 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.”⁴

5. “It would be useful for the ODR administrator to adopt internal policies dealing with identifying and handling conflicts of interest.”⁵

Expertise

6. “The ODR administrator may wish to implement comprehensive policies governing selection and training of neutrals.”⁶

7. “An internal oversight/quality assurance process could help the ODR administrator to ensure that neutrals’ decisions conform with the standards it has set for itself.”

Confidentiality

8. “Adequate data protection measures and practices, covering inter alia the confidentiality of communications between the parties to the proceedings and the ODR administrator and neutral, are an important component of the ODR administrator’s relationship with the parties and help foster a trusting environment for the ODR process occur.”⁷

Procedural fairness

9. “The applicable rules surrounding the ODR process should be clear, straightforward and fair, with the different stages of the process being clearly delineated, and with expedited yet flexible time frames.”

10. “The applicable rules would typically be expected to include provisions regarding the notification of commencement of proceedings, response and counterclaims, and the manner of providing evidence.”⁸

11. “One or more model ODR clauses, for use by prospective parties, should be published on the ODR administrator’s website, and the technical means by which the parties can signal their informed consent should be provided.”

12. “Where relevant and feasible, the ODR administrator could offer mechanisms to (a) facilitate a settlement between the parties without the intervention of a neutral, (b) enable the parties to object to a neutral’s appointment, and (c) appoint a replacement neutral.

⁴ While no consensus was achieved in previous Working Group 3 regarding the adoption of a Code of Ethics per se, various iterations of the draft ODR Rules contemplated, in the preamble, the inclusion of “Guidelines and minimum requirements for neutrals”.

⁵ A/CN.9/WG.III/WP.128, par.18.

⁶ A/CN.9/WG.III/WP.128, par.31.

⁷ A/CN.9/WG.III/WP.128, par.33-35.

⁸ Recent versions of the Draft ODR Rules (WP.133, WP.133/Add.1) contained detailed provisions regarding these matters, which achieved general consensus. While the proposed ODR Recommended Standards need not include detailed procedural provisions, certain key elements from these provisions could be incorporated as well.

13. It is recommended that the ODR administrator provide the ODR services in a language which the users can understand, to the extent feasible.”
