

B2C Online Dispute Resolution (ODR) Legal Frameworkfor
Myanmar



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ปีการศึกษา 2562
ลิขสิทธิ์ของจุฬาลงกรณ์มหาวิทยาลัย

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By Miss Nwe Ni Htun
Field of Study Business Law
Thesis Advisor Piti Elamchamroonlarp, Ph.D.

Accepted by the Faculty of Law, Chulalongkorn University in
Partial Fulfillment of the Requirement for the Master of Laws

..... Dean of the Faculty of Law
(Assistant Professor Pareena Srivanit, Ph.D.)

THESIS COMMITTEE

..... Chairman
(Wimonrat Rukkhaworakul Teriyapirom, Ph.D.)

..... Thesis Advisor
(Piti Elamchamroonlarp, Ph.D.)

..... Examiner
(Assistant Professor WIROTE
WATINPONGPUN, Ph.D.)

..... Examiner
(TIDARAT SINLAPAPIROMSUK, Ph.D.)

จุฬาลงกรณ์มหาวิทยาลัย
CHULALONGKORN UNIVERSITY

แนว นี ทุน :

ต้นแบบการระงับข้อพิพาทออนไลน์สำหรับผู้บริโภคในสาธารณรัฐแห่งสหภาพเมียนมา. (B2C
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สาขาวิชา กฎหมายธุรกิจ

ลายมือชื่อนิติ

ปีการศึกษา 2562

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This thesis examines the applicability of ODR mechanism for consumer disputes in Myanmar especially cross-border disputes. The paper consists of introduction; three main parts and a conclusion. The effect is the appearance of ODR and understanding of what is meant by ODR, how it works and why ODR is needed for consumer. It concludes the review of ODR by both information and communication technology (ICT) and legal view. The paper focuses on case study analysis and compares the legal framework; institutions based on the problem analysis form each case of ODR in the EU and Myanmar. Moreover why use ODR framework based on the cases, the problems resolving process and what laws are driving force behind the ODR and what are the responsibilities for institutions. In chapter four analysis what are the problem started, how to solve this disputes and how to apply legal to their legislation and after applying ODR how much effective to protect consumer right. After that, this chapter will point out the difference facts, ODR legal framework and other relevant ODR law among EU and Myanmar. This paper seeks to address about missing ODR regulation in Myanmar and depend on the results what facts are needed to implement ODR into Myanmar legislation. In Myanmar, given swift develop of e-commerce transactions, consumer protection regimes needs fair, speedy and cost-effective dispute resolution mechanisms like ODR which can resolve disputes by using ICT. The conclusion will include assessments of the issues analyzed from the legal aspect and will try to answer the question is this ODR Regulation an appropriate legal framework for Myanmar.

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Student's Signature

Academic 2019

Advisor's Signature

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.....

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Chapter (1)

Introduction

Increasing internet users, many kinds of disputes are arising from Internet commerce. Moreover, varieties of online shopping and services website have been launched to sell any goods and services by extending their products and services to the global market. On the other hand, lack of law and awareness of technical know-how and misunderstanding information, they did not get enough trust from the consumer. So, numerous websites have been created to solve these kinds of internet disputes. But uncertainty over the traditional litigation cannot enough to resolve the e-commerce dispute which arises from the internet by purchasing products or services. As a result, it is crucial that e-commerce disputes are still remained to resolve adequately.

Online Dispute Resolution (hereinafter ODR) is dispute resolution mechanism which is designed by combining alternative dispute resolution and technology with faster, low cost and conveniently. It mainly includes consultation, mediation or arbitration or all of three are combined. The author has explained that ODR could expand these traditional disputes resolving by implementing the process with innovative systems and online technologies. The field of ODR is broad; it could be used consumer to consumer (C2C), business to consumer (B2C). Moreover, in the order of them, there is no limitation upon the ODR application to resolve the dispute which arises out of online transactions could be the best online resolving. Furthermore, e-commerce disputes are “high-volume, low-cost” technique and the locations of the disputes are Global. There are many reasons selected ODR as a model of resolving method for disputes which arise form e-commerce transactions instead of

an alternative dispute resolution method. Using ODR application method people such as lawyers, consumer, business, provider or third party as well as other stakeholders could get benefit and interest upon them. ODR has essentially three states: There are “in the ODR literature, in the private sector, and in the government sector”¹. The author explains that based on the authors (Lodder and Bol), (Morek), (Cortes), and (Vilalta), specialized new legal principles for online environment are needed and important, according to exploding of e-commerce disputes, online dispute resolution is needed a solid legal framework and with its norms, market, and technology, ODR legal framework for business to consumer disputes are need to increase legal certainty by the ODR literature aspect.²

As the operators, they have been created their own website such as NetNeutrals.com within the regularly framework to solve the e-commerce dispute. By the government side, the government should set up developed regulatory online consumer protection guidelines both mediator and provider (third party) for the regulation of ODR. By working harmonizing of this stakeholder could create effective ODR to solve e-commerce dispute and stimulate trust between key stakeholders in the e-commerce market in Myanmar, and this will lead to more profitable growth in the market, and more stakeholder satisfaction.

Myanmar has also these kinds of disputes which are arising from e-commerce transactions. Most of the problems are related to misunderstandings, mistakes, and fraud between the buyer and seller and where buyers are unsatisfied with the purchase (goods or services). Moreover, Myanmar government is trying to find effective rules

¹ Kananke Chinthaka Liyanage, "The Regulation of Online Dispute Resolution: Effectiveness of Online Consumer Protection Guidelines," Vol 17, No 2 (2012): Page-1, Para-1.

² *ibid.*, page-1,2.

and regulation to solve those disputes. Although consumer complaint website has been launched and Consumer Information and Complaint Center (CICC) has been established in the State and Region and some townships to solve consumer disputes, some disputes are being delayed to make a decision because of the lack of ODR regulation in Myanmar.

The author intends to answer which is to apply ODR rules and regulation in Myanmar in this paper. Chapter two performs comparative analysis by comparing legal regimes of ODR in EU and Myanmar. This comparative shall reveal strengths and weaknesses of ODR regimes. It will explore ODR legal standard, norms and procedure of ADR entity for B2C e-commerce disputes.

Chapter four analyses ODR rules and regulation (legal framework) from each country are how to correlative with existing law in Myanmar. What facts are needed to consider applying ODR in Myanmar? The facts based on the chapter (2 and 3) the reader will read what kind of law and regulation are needed in Myanmar to encourage and development ODR regulation as a tool for resolving the consumer disputes.

1.1 **Research Objectives**

The purpose of this study is

- 1.1.1 To evaluate ODR can more resolve cross-border consumer disputes effectively, fast and low cost than traditional litigation for a fair position.
- 1.1.2 To compare and analysis the ODR legal framework in the EU and Myanmar to get useful standard for Myanmar based on case study analysis.

1.1.3 To determine what specific of ODR rules and regulations is more suitable in Myanmar to solve cross-border consumer disputes.

1.2 Statement of the Problem

Using the internet in Myanmar is increasing rapidly as well as e-commerce. With e-commerce transactions are increasing, e-commerce disputes are arising. Most of the e-commerce problems are misunderstandings, mistakes, and fraud between the seller and buyer who are unsatisfied with the purchase.

This research is of the view that the Myanmar legal system, through the traditional litigation system and the Consumer Protection Law, lacks of legal mechanisms that are capable providing the online consumers with convenient and reliable dispute resolutions means for online transactions.

Furthermore, one of the consumer issues is poor quality/substandard of goods and services, which have most impact on consumers. Consumers in Myanmar most claimed transportation services, public utilities services, electricity supply, health care services, and telecommunication. According to the Myanmar Consumers Union's annual report for consumer, Myanmar has not a specialized alternative dispute resolution mechanism for consumers of telecommunications and a specialized alternative dispute resolution mechanism for ecommerce transactions.³

To begin with, the traditional litigation can be criticized on the ground of ineffectiveness, it lacks consensual for non-adjudicative dispute resolution and the procedure and rules for e-commerce disputes is not efficient because the Court of territoriality does not reach to the global Cyberspace.

³ Myanmar Consumers Union, "Myanmar Consumer Report, August 23. 2016 to September 29.2017, Mechanisms in Myanmar," (2017), page - 54.

Responding to the challenges stemming from the traditional litigation system, the ODR is proposed as a way forward. ODR mechanism is necessary to be established between consumer and traders to build trust and consistency. Consumers do not trust giving their credit card information to the online shopping site and some of the consumers do not want to go to the Court even though they lose their right and benefit by using online shopping for tiny money. Because the consumers are lack of awareness in the law field and the court's procedures are difficult to understand. Furthermore, consumers feel inconvenience, and it is waste of time and high cost for the low value of transactions.

1.3 Scope of the research

The scope of this thesis is to compare the ODR legal framework and examine correlation of the law based on cross-border dispute resolution cases from the EU and Myanmar. This paper will explain the evaluation of e-commerce based on the ODR policies that are consumer protection and e-commerce, UN, UNCITRAL model law and ASEAN guidelines for e-commerce and dispute resolution plan. Some ODR rules and regulations can able to resolve the consumers' disputes by adopting it in Myanmar as an ODR model. Moreover, the author will explores some papers about rules and regulations of B2C e-commerce disputes.

1.4 Methodology

Firstly, the research will examine the definition of consumers and consumers' right, limitations, scope and conceptual framework of ODR. It will explore the basic facts for what Myanmar need for consumer based on cross-border consumer disputes cases. Secondly, it will compare the legal framework of ODR regulation, ADR entity, procedure and institution between EU and Myanmar. Based on this comparative, the

author explains that why EU uses ODR framework for resolving the disputes. This chapter will examine what are the problem started, how to solve this disputes and how to apply legal to their legislation and after applying ODR how much effective to protect consumer right. Then analysis consumer protection law and other relevant ODR law in Myanmar. It will get the results what facts are needed to implement ODR into Myanmar legislation.

Moreover, the author analysis ODR rules and regulation (legal framework) from the EU that how to correlative with existing law in Myanmar. Eventually, the author will determine the most suitable ODR legal framework for Myanmar. On that occasion, this paper will present what laws need to amend or enact for ODR mechanism, what are the liability and accountability for ODR stakeholders (government, mediators, arbitrator, trader, providers) and what is needed frequently updated to reflect the changing legal framework for sustainable improvement.

As the literature survey, it will refer and recourse valuable books and articles which were written by some eminent scholars and the relevant legal documents, reports and articles. Addition to this, the paper will use books and internet sources from the Library of Chula University and case studies are also important sources for the paper.

1.5 Hypothesis and research questions

The Consumer Protection Law (2019) appears inadequate and ineffective to resolve cross-border e-commerce disputes as it lacks specific provision on ODR mechanisms.

The research questions are as following,

- 1.5.1 What are the legal problems to resolve cross-border consumer disputes for Myanmar and the ways how to resolve the cross-border disputes based on the cases from the EU and Myanmar?
- 1.5.2 To figure out the suitable ODR platform to resolve B2C e-commerce disputes as far as possible from EU
- 1.5.3 How to apply ODR rules/regulation in Myanmar?

1.6 Contributions of the research

Consumer protection law (2019) is not adequate to resolve online cross-border disputes between consumers and traders and cannot enable ODR regulation. Moreover, current existing laws relevant to the ODR in Myanmar are not adequate to solve in consumers disputes, ODR will be needed to solve online and offline disputes. By using ODR, it can stimulate trust between key stake-holders such as (consumers, traders, mediators, government, and arbitrators) in the e-commerce market in Myanmar. The reasons are that ODR can promise with low cost, access to justice for small dispute, reduce the time-consuming, and decrease the negative effects of difference places and time (24 hours services) without going to the court. ODR platform maybe reduces a load of burden to the court and more convenient for consumers. Then this will lead to a more profitable growth in the marker and more stakeholder satisfaction. The reason is most of the sellers SMEs form Myanmar need to get a new market in local and abroad to sell their products or goods. If the government set up Instructions (rules and regulation) to SMEs for e-commerce market, they will do online business easily than ODR does not exist and more profitable growth in the market.

Chapter (2)

ODR and e-commerce disputes

2.1 B2C E-commerce disputes in Myanmar

Using the internet in Myanmar is increasing rapidly as well as e-commerce. With e-commerce transactions are increasing, e-commerce disputes are arising. Generally the problems are advertisement, misunderstandings, misrepresentation, unfair and fraud between the sellers and buyers who are unsatisfied purchasing goods and services from online market. Furthermore, one of the consumer issues is lack of information to provide the consumer such as poor quality and substandard of goods and services, delivery service, extra charge, advertisement, misrepresent which is most impact on consumers. Consumers in Myanmar most claimed transportation services, public utilities services, electricity supply, health care services, misrepresentation for goods and services, payment, beauty products and services, medicine products and telecommunication.

Some of cases had been reached the final settlement and some did not by the Dispute Settlement Body organized under consumer protection law. The reason is that existing Dispute Settlement Body under consumer protecting law does not have the specific ADR rules to resolve the consumer disputes especially in cross-border e-commerce disputes. Moreover, according to the Myanmar Consumers Union's annual report for consumer, Myanmar has not a specialized alternative dispute resolution mechanism for consumers of telecommunications and a specialized alternative dispute resolution mechanism for e-commerce transactions.⁴ Therefore, Myanmar

⁴ Union, "Myanmar Consumer Report, August 23. 2016 to September 29.2017, Mechanisms in Myanmar," page - 54.

government is cooperating with the government of Singapore to implement for resolving consumer disputes such as assisting technology know-how and laws with ODR specialists.

2.1.1 B2C E-commerce in Myanmar

Business in today is chaining by using internet based on the information system and technology between the traders/providers and customers such as e-commerce and internet marketing. Electronic commerce is developing nowadays in Myanmar and electronic commerce transactions have become a booming on online trading platforms.

Booming the e-commerce makes the stakeholders easily doing business, less costs, easy to penetrate the products to the global market. 74 percent of Myanmar business owners have an offline shop and also launch their own websites. 57 percent of Myanmar Small and Medium Enterprise (SME) (hereinafter SME) are currently involved local areas, 15 States and Regions. The population of Myanmar is nearly 40 million and 56.57 million are using mobile smart phones on the mobile payment platform. E-commerce usage is that 26 present of user has financial account, 0.06 present has credit account, 0.7 present has mobile banking account, 3.6 present are purchasing online and 4.5 present makes online transactions according to the Digital 2019 Myanmar.⁵

According to the Myanmar Consumer Report, most of e-commerce types in Myanmar are (i) Online shopping (ii) e-banking/Credit/Debit/ATM (iii) e-payment or mobile payment (iv) mobile money transfer/withdrawal (v) Purchasing of prepaid

⁵ Hootsuite (DataReportal), "Digital 2019 Myanmar," DataReportal, https://www.slideshare.net/DataReportal?utm_campaign=profiletracking&utm_medium=sssite&utm_source=ssslideview.

card (vi) payment for goods and services via services provider (vii) online registration for mobile phone/internet services.⁶

In Myanmar, the online websites are shop.com.mm, spree.com.mm, myanmarbook.com, myanmartravel.net and rgo47.com. Some are selling on Facebook in their own account and page. Some are purchasing products and goods from neighboring countries such as Thailand, Singapore, China and Korea then finding pre-order on their own website and Facebook account. Some are involved in cross-border transactions directly. Ministry of Commerce (www.commerce.gov.mm) has opened trading of retail and wholesale to the foreign-owned company and joint ventures by allowing not the trade of any commodity manufactured in Myanmar and also imports from overseas on 14.5.2018. As a result, most foreign countries try to invest both online and offline transaction in Myanmar. For Example, the Alibaba group has established a foothold in Myanmar e-commerce with a website called shop.com.mm and Pakistan and Bangladesh also have established e-commerce site called Barlolo.com. A domestic online marketplace platform focuses on Business to Business (B2B), Consumer to Consumer (C2C) and Business to Consumer (B2C) services.

2.1.1.1 Nature of e-commerce disputes

Nowadays, e-commerce is rapidly growing in businesses and the disputes are arisen in local and international e-commerce environment. Cross-border e-commerce, international online trading increases the importance of all over the world for selling or purchasing the potential products from the home to other countries via internet

⁶ USAID and Myanmar Consumer Union, "Myanmar Consumer Report: E-Commerce Survey Report and Other Consumer Issues (2018-2019)," (Myanmar Consumers Union's website: USAID and Myanmar Consumer Union, 2019), Page - 60, 3.3.10 Perspectives of Consumers on Regulatory Activities and Making Complaints.

market. For example: buyer and seller are in the difference location (countries or different state/region) and sale or purchase the products and services across the borders. Shopping the online website makes consumer easy to access, choice and compare with other products or price in local and international online market. However, the seller cannot provide adequate information to their customers therefore misrepresentation, misunderstanding, fraud problems are come out between consumer and seller. E-commerce transaction is intangible and consumers have to make a decision to purchase the products and services based on adequate information conducted by traders' offering. In this situation consumers are always weak person who are lack of awareness for e-contracts and need to protect them. When the conflict or problem arise consumers are always be force take action than the other parties (seller, services).⁷

In the cross-border disputes, consumer is always weak person and need to protect legally. OECD recommends for Business to consumer (B2C) e-commerce that the trader sells the products on line and accepts the order. Then Consumer can enter the internet access to see the online products in B2C transaction. In this condition, the Government need to set up national policy for consumer protection in the e-commerce area with good practices such as “information disclosure, contract terms, secure payment mechanism, consume privacy and data secure and dispute resolution mechanism and redress”.⁸ Cross border e-commerce includes difference languages,

⁷ Michael D'AUBREY Michiel BEEK, Justine GARZANITI, "Consumer Disputes in a Cross Border E-Commerce Context," ed. Ilse COUWENBERG4 (Competition in Lisbon, Portugal on the subject of European Cooperation In Civil Matters., 2016), Page - 2, para - 2.

⁸ UNCTAD secretariat, "Consumer Protection in Electronic Commerce," ed. Trade and development commission (United Nation: UNCTAD 2017), Page - 3, No - 7.

currency and jurisdiction based on countries. Increasing the cross-border e-commerce is great beneficial for the stakeholders (consumer, trader, government, business, third party) as easy to access, convenient from transactions, lower investment cost and time saving. On the other hand they concern from their side. Consumer worried about the e-transactions that something wrong with the trader from other country, they may not be unable to get their right form the trader. Some of consumers do not have confidence in online transactions and feel no trust in online transactions in cyber world. Moreover, they are needed to provide a suitable environment for the misleading, unfair practices, unclear information and fraud.

In addition e-commerce business can be easily to set up with low cost, fast and without clear regularly control especially in cross-border market. On the other hand, B2C commercial disputes are arising based on the quality, delivery or delivery costs, lack of information for products and services, hidden costs, breach of privacy policy, security issues for personal information, product return issues. Cristina Coteanu states that the consumers need special protection from abuse or wrongdoing from the large companies (traders).⁹ The reason is that consumer are weak party and do not have a power to be able the burden of proof for requesting their compensation (rights) against the traders. However, trader can commit wrongdoing acts which can disappear and shut down quickly their business on online. Lack of consumers' knowledge and awareness for online business make more difficult and complex condition to purchase goods and services on online.

⁹ Cristina Coteanu, *Cyber Consumer Law and Unfair Trading Practices*, ed. Geraomt Howells, 1 vols., vol. Val-1 (British Library Cataloguing in Publication Data: Gower House, Ashgate Publishing Limited, 2005), Page- 7, 1.1.2.1 Legal approach.

2.1.1.2 Stakeholders

In e-commerce transactions, there are differences stakeholders and has a difference roles. There are four main groups such as (i) “national government and international agencies (ADR entity, dispute settlement body, Law enforcement body) (ii) trade association and industry bodies (iii) business within the ecosystem (e-commerce vendors, payment service providers, and logistics service providers, among other (iv) consumers and the public”¹⁰ including implementing in the scope of the ODR process. They want to use ODR in difference objectives. Government wants ODR to protect consumer rights legally and increase the economic by boosting the e-commerce. Among these stakeholders, law enforcement body has to create strong and fair ODR legal and regularly framework in the e-commerce industry. If Law enforcement body cannot conduct it, trust will not be got among the stakeholders and cannot archive ODR mechanism. ODR legal and regularly framework includes the capacity of ADR bodies, intellectual property right, enact and amend ODR related law (consumer protection law, transactions, data protection, privacy and cyber security) in e-commerce transactions.¹¹

Business institutions or organization use ODR to resolve the disputes with fast, efficient and increase trust for their benefic. Business institutions should undertake to provide adequate information of product and goods descriptions, “transaction support over a wide range of e-payment choices, assure efficient, reliable, and timely logistics and delivery services, deploy innovative technological solutions to improve the quality of client services and operational efficiency, and avoid

¹⁰ 2018 Asian Development Bank, "Embracing the E-Commerce Revolution in Asia and the Pacific," (JUNE 2018).

¹¹ Ibid., Page - 2, para - 3.

fraudulent practices”.¹² Moreover, ODR process can support them by dissuading some consumers from increasing their complaints.¹³ Some of the traders want ODR for their dignity of business to get trust from their customers. Consumer organization wants ODR as an effective mechanism for redress system and to resolve those disputes that are inadequate resolving through another dispute settlement system. ODR provider wants to assist by giving advices to consumer against the other parties via ODR services. The same thing is all of the stakeholders want to develop the ODR mechanism policies based on their benefits.¹⁴

Each stakeholder has to undertake their specific sectors by enforcing, conducting and monitoring ODR related rules and regulations by the Government. The keywords for ODR regulation are trust and confidence for all involving parties. The main key factor is ADR/ODR providers, for ADR entity who are legal entities and must have to be eligible for resolving disputes between the parties with amicability, impartiality, and skillful in their specific sectors. ODR providers are also legal entity and fulfill ODR redress when the third parties claim their rights.¹⁵

2.1.2 **Dispute settlement mechanisms**

Dispute Settlement mechanism in Myanmar is created under the consumer protection law and the purpose is only to protect the consumer. It contains three main bodies that are commission for consumer protection, committee for consumer

¹² Ibid., Page - 2, para - 4.

¹³ RAFAL MOREK, "Regulation of Online Dispute Resolution: Between Law and Technology," (2005): page-67, Para-2.

¹⁴ Pablo Cortés, *Online Dispute Resolution for Consumers in the European Union* (the Taylor & Francis e-Library, 2010/2011), Page-189, Para - 1.

¹⁵ Aura Esther Vilalta, "Legal Framework and Harmonization of Adr/Odr Methods," *Journal of Law and Conflict Resolution* pp. 103-107, Vol. 2(7), (August 2010): Page-4, second colum, para-2,3,4.

protection (Ministry of Consumer Affairs and Dispute Settlement Body) and the official inspector for investigation the consumer disputes. Submitting the complaint is accepted two ways in the Dispute Settlement Mechanism that are online (website, social media and mobile) and offline (documents, phone and in personal) in the Dispute Settlement Body, CICC located in head of Consumer Office and relevant State and Division.

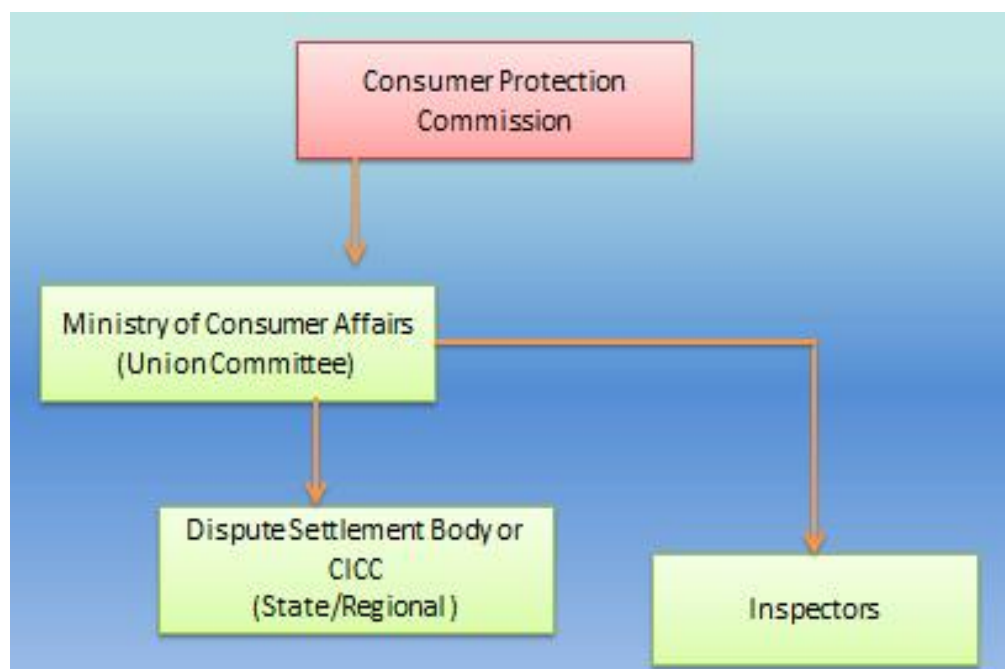


Figure 1 (Forming Dispute Settlement mechanism)

According to the consumer protection law, chapter (19) states that the procedure of complaint system and mediation process.

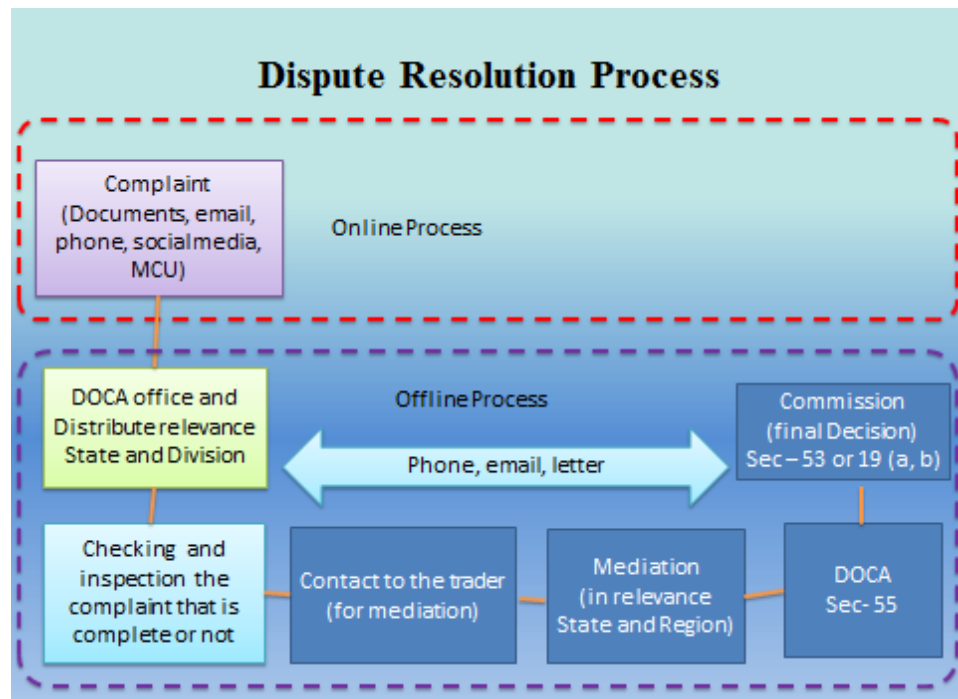


Figure 2 Dispute Resolution Process

Online and offline Process: The process of the dispute Settlement mechanism is simple. Consumer files the complaint form on the website or mobile app or phone or personally submits it to the Consumer Information and Complaint Center (CICC) where is relevance State and Regions and head of office.

Offline Process: After receiving the complaint form, the person from CICC records and submits it to the Dispute Settlement body (DSB). Then DSB instructs the inspector starts to check the relevance documents which has been complete or not as an evidence. The inspector makes a call or in person both consumer and trader to investigate the case that is accurate or not. If the inspector cannot contact with the consumer or trader, the inspector records and the case will be closed or transfer to the policy as the cyber-cases. If the complaint is completed, dispute-settlement body makes a call or meets and investigates the business owner (entrepreneur) accused of a violation. Then negotiates them according to the eye-witness, documents and based

on the investigator's result. If an entrepreneur is found out the violation, the dispute-settlement body can take action to the business owner such as a warning or severe warning, forbidding the selling and preventing goods delivery within the limitation of period, pausing to recollect the goods in the market, destroying the goods and revoking the license temporary or permanently of business permit according to the consumer protection law.¹⁶ The objectives of the committee are to resolve consumer dispute between consumer and trader, and to confirm and making a decision for these disputes. This committee (dispute-settlement body) is organized in all of State and Regions and committee can establish the inspection team to investigate the entrepreneurs' goods or services which can cause damage or risk to the consumer or misleading labeled goods to consumer.

The disputes settlement mechanism cannot conduct effectively the online e-commerce disputes that are lack of information providing for consumer and dispute settlement process is delay to reach final decision because data transferring among the parties is lacking the ODR regulation. Online regulation process is only submitting the complaint and records it. There is no data transferring, database and regulation for ODR regulation such the specific rules and regulation for stakeholders. All of the dispute settlement process are making on phone and personal negotiation. This fact is no doubt according to the Picture – 2 (Dispute Resolution Process) under the Consumer Protection Law. Dispute Settlement Mechanism cannot conduct ODR contact point that makes consumers easy to inquire when they want to know the process and condition of their cases and where the cases are reached or ongoing

¹⁶ Department of Consumer Affairs Ministry of Commerce, "Consumer Protection Law_2019," in *9/2019*, ed. Department of Consumer Affairs (<http://www.myanmar-law-library.org>: Ministry of Commerce, 2019).

process. Lack of ODR regulation makes unclear and no transparency the dispute settlement process among the parties. This is one of the reasons that consumers and traders do not trust to enter current Dispute Settlement Mechanism.

Moreover, Dispute Settlement Body cannot manage the cases how the dispute had been resolved and why the ADR process cannot resolve the disputes whenever consumers inquire their cases on phone them. Therefore, it is not success when the Dispute Settlement Body (DSB) resolved the consumer disputes. It cannot able to attract the stakeholders voluntarily to use Dispute Settlement Mechanism. Consumers and traders do not know how long the dispute resolution process will take time to be reached the final stage, and both consumers and trader do not know the ADR procedure and process clearly. Current Dispute Settlement Mechanism cannot conduct quick respond among the parties by sending e-mail or message. Among the CICC form States and Regions, data transferring flow is sent on phone and via e-mail (G-mail) which does not work through ODR platform.

Myanmar Consumer Report emphasized that based on the e-commerce disputes, consumers complaint their problem to the police station and other respective services organizations such as Government Organization (Dispute Settlement Body/CICC) and Non-Government Organization, Myanmar Consumer Union (MCU/CPAM). Only 3.12 percent (2 responses out of 64 responses) complained their problems to the Consumer Protection (Government/NGO). Among theses the most common sectors is on phone, Facebook, in person and e-mail. The services providers were taken action by the Dispute Settlement Body to satisfy consumers.¹⁷

¹⁷ Union, "Myanmar Consumer Report: E-Commerce Survey Report and Other Consumer Issues (2018-2019)," page - 60, 3.3.10 Perspectives of Consumers on Regulatory Activities and Making Complaints.

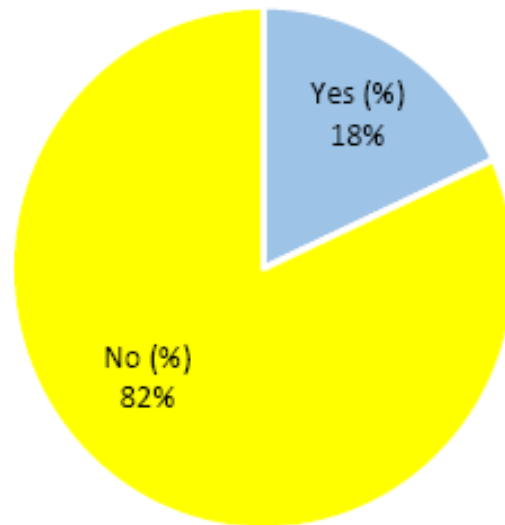


Figure 3 Informing Problems by Respondents Use E-Commerce during Previous 2 years

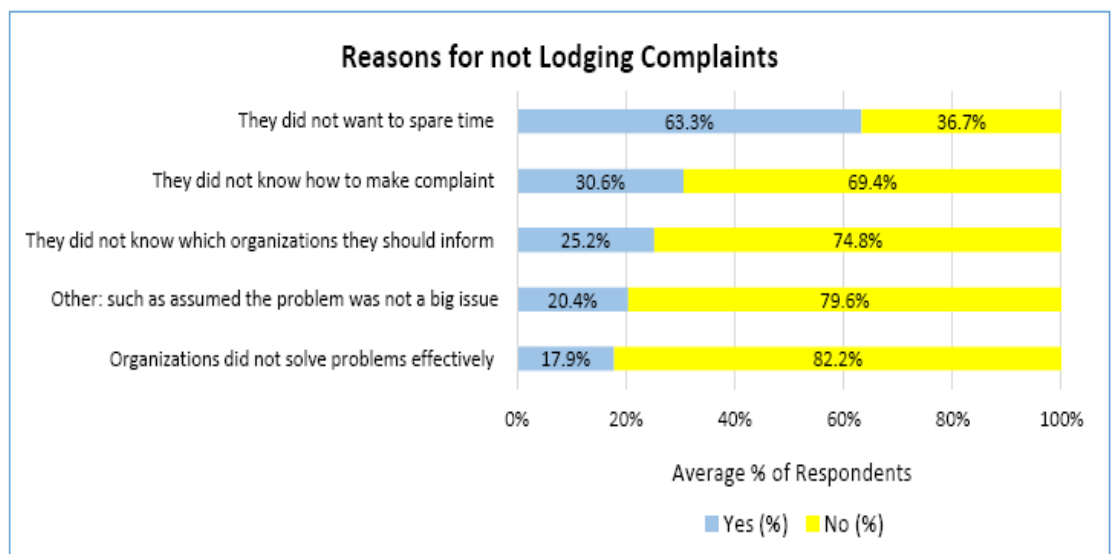


Figure 4 Reasons for not Lodging Complaints Using E-Commerce by Respondents
 (Source : E-Commerce Survey Report and Other Consumer Issues (2018-2019))

Some of consumers were lack of knowledge on how to make complaints and other are trying to lode their complaint on website. However, the responsible organizations take time to get solution and inquire asking many questions to the

consumers. Some consumers request the other consumer who is well-know about complaints made to submit consumer protection committees. Nevertheless, most did not claim their problems to dispute settlement body because they already have known to get final decision is taking time and do not want spend time for this action and they do not trust the activities of Dispute Settlement Body (DSB) and regulation process that is not effective. Most of the e-commerce cases are not resolved by the DSB because Government does not manage online registration for shopping website, lack of interchanging cases management system and does not able to trace the transaction process. Most of the e-commerce cases are transferred to the police station as a cybercrime cases under the electronic transactions law. Last year (2018) January to December, there are (22) e-commerce cases, among them, (10) cases have been resolve by DSB and Committee. Three cases do not reach the solution and the left (9) cases have been transferred to the police station as cyber-crime cases under the electronic transactions law.

2.1.2.1 Roles of the court

There is no small claim Court for people in Myanmar. All of civil cases are making under the Civil Procedure Code¹⁸. It does not provide small claim procedures. During the colonial days, small cause courts had been established. However, it was abolished in 1974. Current civil procedure code provides civil cases (Civil Regular Suit) for the payment of money in section 26. However, the process is complicate and there are many process and procedures such as plaint, written statement, investigation, ISSUES, evidence .etc. Therefore it is difficult to understand and the process is same action like civil cases which take long time, at least one and half year to reach the

¹⁸ Preliminary, "Civil Procedure Code," in *MMR-1979-L-93079* (1979).

final statement. Should it deserve for small claim? 100 present of people in Myanmar do not want to go to the court because they have already known the complex procedures and taking time for the civil cases. If the court can handle the small claim cases (within the limited monetary), consumer can claim easy to access the court. The result is that consumers trust that they get fully protection form administrative and legal action whenever they are purchasing goods or services on online. Moreover, by the traditional litigation, to begin with, it can be criticized on the ground of ineffectiveness, it lacks consensual for non-adjudicative dispute resolution and the procedure and rules for consumer disputes especially for small claim procedures is not efficient because the Court of territoriality does not reach to the global Cyberspace.

2.1.2.2 Roles of the Consumer Protection Commission

A Commission for consumer protection was formed by the Cabinet under Consumer Protection law, chapter (3). The members of consumer commission are the Minister, the level of Minister from other Ministry, consumer protection expert, the representative form consumer protection organization, the Director General. According to the Consumer Protection Law, chapter (4), it conducts the responsibility of the Commission is that (i) implementation and fulfill the ambition of Consumer Protection Law, (ii) suggestion and submitting the documents that is related to the consumer protection to the Cabinet, (iii) setting up the action plan (policy and regulation) for consumer protection, (iv) reporting the activities and action to the Cabinet when the special situation is occurring (v) setting up the priority category for goods and services to make guarantee for being safety to consumer, (vi) can able setting up the consumer committee, (vii) making decision regarding to the special activities, financial compensation and process that are submitted by the committee

and (viii) Making final decision for appeal and administrative action. According to the Consumer Protection Law (2019), section 83 (a,b), the Consumer Protection Commission and Ministry has a power to enact or amend the specific rules and regulations related consumer protection. Ministry can impose the directives upon the arbitrator to collaborate with them for implementing the ODR mechanism in order to the agreement of the Cabinet. In conclusion, Consumer Protection Law needs reviewing effective specific rules to cover e-commerce environment and resolve cross-border e-commerce disputes.

2.2 ODR and E-commerce disputes

Online disputes resolution (ODR) is a resolving dispute mechanism to solve e-commerce disputes arising from online/offline transactions and update on Alternative disputes resolutions to be equality, effectiveness, fast. Mainly, ODR is created resolving specific dispute applications such as online and offline arguments. Generally, two principal domains of the modish ODR landscape have tools and systems. The current form of ODR procedure and making decision is (i) effectiveness (ii) efficiency (iii) fair and protects the consumer.¹⁹ It includes negotiation, mediation, and arbitration by using web-based technology, internet platform or online via mail, videoconferencing, and other software like message. There are various ways techniques and difference level of integrations into proceedings in ODR. Four types of ODR mechanism are “online settlement, online arbitration, online resolution of consumer complaints and online mediation.”²⁰ Among of those mechanisms online

¹⁹ Coteanu, *Cyber Consumer Law and Unfair Trading Practices*, Val-1, Page - 85, chapter 5, online dispute resolution.

²⁰ Esther van den Heuvel, "Online Dispute Resolution as a Solution to Cross-Border E-Disputes :An Introduction to Odr" (Law, the University of Utrecht, 2012), Page-9, chapter-3.

settlement and online mediation are used widely nowadays. The future of ODR could be expanding array of tools for third parties opening up new option.

“ODR system provides an integrated ADR solution to consumers and businesses conducted online”²¹; an authorized trader can make a link it to their e-commerce site for disputes resolution services on the ODR platform by centralizing. By adding the ODR link on the website, this e-commerce site is like a trust mark display and has been recognized identifying as the ODR services. This ODR platform functions as an online framework by transferring information and the disputes proposal between the parties to resolve disputes.

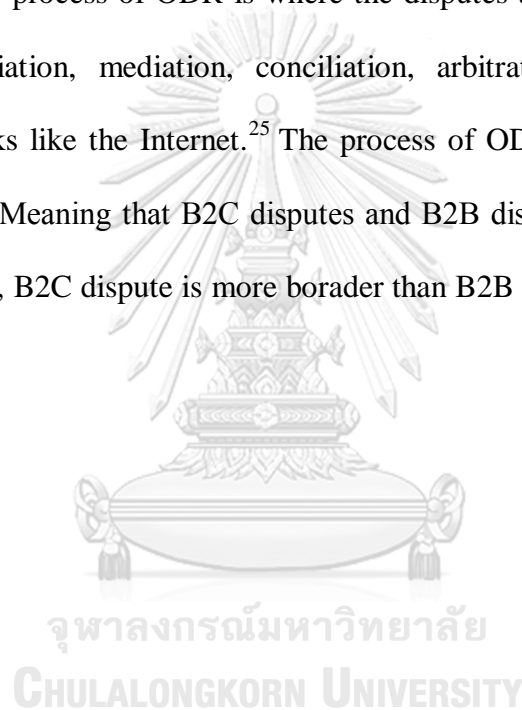
“ODR system provides ODR services to any parties who agree to use it”²²; which is like an agreement and can get access on the ODR platform for the parties by implanting in their contracts. The parties can practice one or more ODR services which involve negotiation, mediation or arbitration. The skillful third impartial parties can utilize online mediation and arbitration. The scope of ODR is broad and use ‘hybrid process’ for online and offline disputes. This technical Notes on ODR are “non-binding”, the documents form are reflected “on principles of impartiality, independence, efficiency, effectiveness, due process, fairness, accountability and transparency.”²³

²¹ Urša Jeretina, "Consumer Online Dispute Resolution (Odr) as a Key Cultural Change – Mechanism for Innovative Public Administration in Eu," (2018): Page-5, Para-1.

²² *ibid.*, Page-5, Para-2.

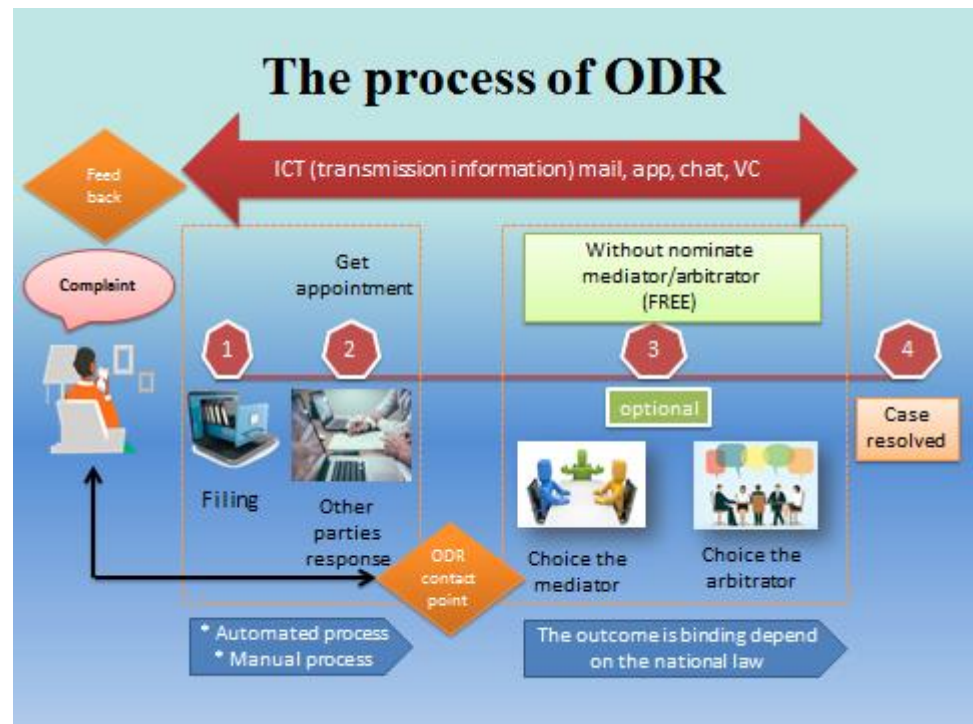
²³ UNITED NATIONS, "Uncitral Technical Notes on Online Dispute Resolution," ed. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, V1700382 (United Nations Office at Vienna: UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, 2017), Page-10, Para-1.

The regulation of ODR could be difference depend on the user's desire. Base on (E. Katsh & J. Rifkin, 2001), (D. Larson, 2006) and (E. Katsh & L. Wing, 2001) the authors explain that realizes in this way, although ODR does not work itself as a sharp system but it can assist to the mediators/negotiators and arbitrators as a supporting system by addressing specific disputes. In the ODR mechanism, the mediators and arbitrators are more facilities using the technology without requiring face to face.²⁴ The process of ODR is where the disputes are substantially controlled within the negotiation, mediation, conciliation, arbitration or combine through electronic networks like the Internet.²⁵ The process of ODR is different way by the provider's desire. Meaning that B2C disputes and B2B disputes are difference in the regulation process, B2C dispute is more borader than B2B disputes and the regulation as well.



²⁴ Orna Rabinovich-Einy and Ethan Katsh, "Lessons from Online Dispute Resolution for Dispute Systems Design," (2013): page -2.

²⁵ Dr Lee A Bygrave, "Online Dispute Resolution – What It Means for Consumers," (2002): page-1, para-1.



Picture 5. The Process of ODR

The process of ODR has three main parts which are filing, alternative dispute resolution process and outcome or enforcement. The complaint is completely submitted through the internet, the computer (provider) automatically checks and records it as a settlement proposal. Then it informs to the buyer directly with communication tool such as email or software and records the sending date. If the seller accepts the complaint, computer inform to the buyer and checks the settlement is success or not within the limited day. After reseving the respond form the seller, the provider inform the consumer to get appointment for resolveing the dispute. In this stage, if the settlement is reached, the mediator addressing is a legal binding. For the arbitration process the decision of the arbitratr is final.

If the settlement is not succeeded within the limitation days, the buyer has a options to request getting advices from the mediator through the web-based application tool. OR other way is of inform the buyer and the buyer complain to the

provider through website. In this part could be two ways which is depend on the provider. The provider will suggest how to do next step-by-step. The process will go to the mediation or arbitration depend on the buyer's wish. In the mediation or arbitration process, the party connect with other party through internet. The outcome must be fair, transprancy, effective and speedy.

E-commerce disputes are mostly arising selling and buying the products or services using internet in difference places located global or local. The internet is powerful technology and can able to use dispute resolution process with fist communication, both international and local, and fist and secure data changing one place to another place.²⁶ Increasing internet users, many kinds of disputes are arising from Internet commerce. Moreover, varieties of online shopping and services website have been launched to sell any goods and services by extending their products and services to the global market. On the other hand, lack of law and awareness of technical know-how and misunderstanding information, they did not get enough trust from the consumer. So, numerous websites have been created to solve these kinds of internet disputes. But uncertainty over the traditional litigation cannot enough to resolve the e-commerce dispute which arises from the internet by purchasing products or services. As a result, it is crucial that e-commerce disputes are still remained to resolve adequately.

Online Dispute Resolution (hereinafter ODR) is dispute resolution mechanism which is designed by combining alternative dispute resolution and technology with faster, low cost and conveniently. It mainly includes consultation, mediation or arbitration or all of three are combined. The author has explained that ODR could

²⁶ Aura Esther Vilalta*, "Odr and E-Commerce," vol-1 (2006): page - 1, para - 1.

expand these traditional disputes resolving by implementing the process with innovative systems and online technologies. The field of ODR is broad; it is used consumer to consumer (C2C), business to consumer (B2C). Moreover, in the order of them, there is no limitation upon the ODR application to resolve the dispute which arises out of online transactions could be the best online resolving. Furthermore, e-commerce disputes are “high-volume, low-cost” technique and the locations of the disputes are Global. There are many reasons selected ODR as a model of resolving method for disputes which arise form e-commerce transactions instead of an alternative dispute resolution method. Using ODR application method people such as lawyers, consumer, business, provider or third party as well as other stakeholders could get benefit and interest upon them. ODR has essentially three states: There are “in the ODR literature, in the private sector, and in the government sector”²⁷. The author explains that based on the authors (Lodder and Bol), (Morek), (Cortes), and (Vilalta), specialized new legal principles for online environment are needed and important, according to exploding of e-commerce disputes, online dispute resolution is needed a solid legal framework and with its norms, market, and technology, ODR legal framework for business to consumer disputes are needed to increase legal certainty by the ODR literature aspect.²⁸

2.2.1 ODR in the context of e-commerce disputes

With the e-commerce is growing fast, it creates the disputes among the countries based on the seller and buyer. Most of the disputes are small value and

²⁷ Liyanage, "The Regulation of Online Dispute Resolution: Effectiveness of Online Consumer Protection Guidelines," Page-1, Para-1.

²⁸ *ibid.*, page-1,2.

contain clearly imbalance power between the parties.²⁹ In the small claim disputes contain claim for disproportionate cost and unfair practices in cross-border e-commerce transactions. In the e-commerce environment consumer disputes are increasing day by day and remain to resolve them. Most of the e-commerce disputes come from inadequate information for products and services on online shopping. The reason is that consumer from the world can purchase products or services via internet in the global market without physically contact.

Mainly, ODR is created resolving specific dispute applications such as online and offline arguments. Generally, two principal domains of the modish ODR landscape have tools and systems. The current form of ODR procedure and making decision is (i) effectiveness (ii) efficiency (iii) fair and protects the consumer.³⁰ It includes negotiation, mediation, and arbitration by using web-based technology, internet platform or online via mail, videoconferencing, and other software like message. There are various ways techniques and difference level of integrations into proceedings in ODR. Four types of ODR mechanism are “online settlement, online arbitration, online resolution of consumer complaints and online mediation.”³¹ Among of those mechanisms online settlement and online mediation are used widely nowadays. The future of ODR could be expanding array of tools for third parties opening up new option.

²⁹ Julia Hornle, *Cross-Border Internet Dispute Resolution*, 1 vols., vol. vol - 1 (cambridgewww.cambridge.org/9780521896207: cambridge university press, 2009), page-25, 3.2.4. Conclusion.

³⁰ Coteanu, *Cyber Consumer Law and Unfair Trading Practices*, Val-1, Page - 85, chapter 5, online dispute resolution.

³¹ Heuvel, "Online Dispute Resolution as a Solution to Cross-Border E-Disputes :An Introduction to Odr," Page-9, chapter-3.

As the operators, they have been created their own website such as NetNeutrals.com within the regularly framework to solve the e-commerce dispute. By the government side, the government should set up developed regulatory online consumer protection guidelines both mediator and provider (third party) for the regulation of ODR. By working harmonizing of this stakeholder could create effective ODR to solve e-commerce dispute and stimulate trust between key stakeholders in the e-commerce market in Myanmar, and this will lead to more profitable growth in the market, and more stakeholder satisfaction.

“ODR system provides an integrated ADR solution to consumers and businesses conducted online”³²; an authorized trader can make a link it to their e-commerce site for disputes resolution services on the ODR platform by centralizing. By adding the ODR link on the website, this e-commerce site is like a trust mark display and has been recognized identifying as the ODR services. This ODR platform functions as an online framework by transferring information and the disputes proposal between the parties to resolve disputes.

“ODR system provides ODR services to any parties who agree to use it”³³; which is like an agreement and can get access on the ODR platform for the parties by implanting in their contracts. The parties can practice one or more ODR services which involve negotiation, mediation or arbitration. The skillful third impartial parties can utilize online mediation and arbitration. The scope of ODR is broad and use ‘hybrid process’ for online and offline disputes. This technical Notes on ODR are “non-binding”, the document form are reflected “on principles of impartiality,

³² Jeretina, "Consumer Online Dispute Resolution (Odr) as a Key Cultural Change – Mechanism for Innovative Public Administration in Eu," Page-5, Para-1.

³³ *ibid.*, Page-5, Para-2.

independence, efficiency, effectiveness, due process, fairness, accountability and transparency.”³⁴

2.2.2 ODR and ADR

ODR is the dispute resolution tool by assisting with technology to the Alternative Dispute Resolution (ADR) without going to court. The reason is that to boost e-commerce and resolve the e-commerce disputes without going to the Court. Philippe (2014)³⁵ states that ODR is a mechanism of dispute resolution to facilitate through by using electronic communication and communication. Mania (2015)³⁶ the model of online settlement is ODR which is used based on alternative methods for resolving dispute. Moreover, Bygrave (2002)³⁷ the author has stated that the significant of ODR is to assist effectively the features of ADR which is relative to the litigation of the court.

Alternative Dispute Resolution (ADR) is offline dispute resolution for resolving the dispute between the parties without going to court such as family, financial, commercial but not includes criminal cases. However, ADR cannot resolve consumer e-commerce dispute because the location of the business is out of the country and the traditional judicial mechanism does not offer an adequate solution for cross-border e-commerce dispute. The principle of ADR has independence, transparency, effectiveness, legality, liberty and representation.

³⁴ NATIONS, "Uncitral Technical Notes on Online Dispute Resolution," Page-10, Para-1.

³⁵ Faye Fangfei Wang, *Law of Electronic Commercial Transactions*, ed. Routledge, second edition ed., Contemporary Issues in the Eu, Us and China (British Library Xataloguing in Publication Date: Routledge, 2014).

³⁶ Karolina Mania, "Onlind Sispute Resolution: The Future of Justice," *International comparative jurisprudence* vol-1 (2015).

³⁷ Bygrave, "Online Dispute Resolution – What It Means for Consumers."

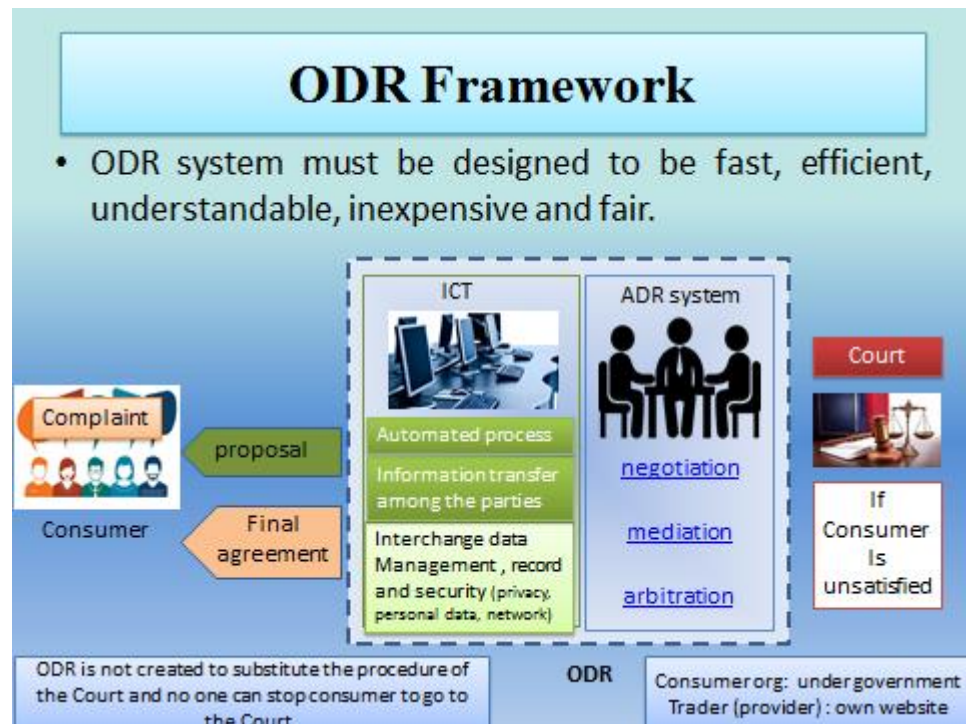


Figure 5 Picture 6. ODR Framework

In addition, online dispute resolution (ODR) is called wholly operating online by some of the entities. ODR is used variety ways for dispute resolution such as Domain Name dispute, online/offline dispute. ODR also helps consumer to solve disputes between consumer and trader when they have a problems with online purchase that they bought (a products or services). Moreover, ODR is not only protecting the consumer but also accessing internet market for business with secure, confidence and fast.³⁸ Generally, the capacities of ADR and ODR abilities are 'low-cost, simple and fast' techniques to benefit both of consumers and businesspeople,

³⁸ Coteanu, *Cyber Consumer Law and Unfair Trading Practices*, Val-1, Page - 85, 5.1.1 European framework for ODR.

who want to stay away from the court and its procedures.³⁹ As a rule, ODR involves negotiation, mediation or arbitration process.

Automate negotiation and mediation: ODR mechanism provides technical assistance for the negotiation. Negotiation is a settlement method which tries to get an agreement between the dispute parties based on their offer and demand by technology through the internet such as email, videoconferencing and web-based communication tool. Most of developed countries are significantly using automate negotiation so called blind-bidding for the first initiative. It is very useful for those countries that uses automate negation in difference way, some uses it technology only; some are hybrid (third party and technology). However, some lawyers have a few doubts that the ability of ODR for resolving the dispute quickly and efficiently with providing parties and the dispute without the parties could need human activity physically. According to the authors' deification ODR is a broad and each ODR from can use a different technological system and also use individual operation process. Automate negotiation is designed to settle monetary disputes with computing process and it can examine the offer and demand within the scope of the program then calculate and advice the parties where the settlement is. If computer can find the settlement, it gives advice to the parties. In this condition the importance one for consumer is to carefully read the terms and conditions because if consumer accepts the output form the computer, it could be a legally binding.⁴⁰

³⁹ European Commission Brussels, "Alternative Dispute Resolution and Online Dispute Resolution for Eu Consumers: Questions and Answers," European Commission, http://europa.eu/rapid/press-release_MEMO-12-994_en.htm.

⁴⁰ Coteanu, *Cyber Consumer Law and Unfair Trading Practices*, Val-1, page - 94, 5.2.3, automated settlement system.

For example; one of ODR tool is automate negotiation which conducts itself as a human being (third party) like a ‘negotiator or arbitrator’ for making a decision. “Square Trade’s”⁴¹ or “Ecodir’s”⁴² are using this automate negotiation for resolving disputes at initial stage and also Cybersettle⁴³ supplies web-based claim resolution services using double-blind for insurance carriers and legal professionals. Software, “negotiation support system”⁴⁴ is another tool that supports the parties' consulting to determine their own profits for leading a commonly reasonable resolution that is the highest collective interest for all parties.⁴⁵

Online mediation: Mediation is voluntary or private to help and discuss the third party and try to resolve the disputes by a specialist mediator or volunteer. However, the mediator has no power for making a decision. The mediator can considers and assists the party to resolve the disputes according to the setup policy. Online mediation automated process starts with email: meaning that the basic information is send among the parties via mail. The parties and mediator have been using virtual meeting room so-called “Video conferencing, chat room”. Online arbitration is less popular than online mediation.

The negotiation process is also a voluntary furthermore, the mediator helps and suggests both parties via delivering the information, communication with email or video conferencing, and announcing a settlement at a certain time by using ODR

⁴¹ See< <https://www.squaretrade.com/about-us>> last updated 2019

⁴² See< <https://www.arbitration-adr.org/resources/?p=serviceproviders&a=show&id=40>> Ecodir, last updated 2019

⁴³ See< <http://www.cybersettle.com/>> last updated 2017

⁴⁴ See< <https://www.igi-global.com/dictionary/online-dispute-resolution/20039>> What is negotiation support systems (SNS) last updated 2019

⁴⁵ Katsh, "Lessons from Online Dispute Resolution for Dispute Systems Design," page-3.

platform. The responsibility of mediator is trying to reach a settlement by negotiation and facilitating between the parties who agree to submit their dispute to mediation. However, the mediation always cannot resolve the disputes when attending to get compromise from the case and the mediator is coerced.⁴⁶

In conclusion, mediation is a crucial and can assist the parties for resolving their disputes except the case is lend themselves to a compromise. If the dispute lead to a settlement and the parties are agree with it, it is a legal order.

Online arbitration: Arbitration is a difference from the mediation and it is private adjudication form because the arbitrator can make a decision based on hearing arguments and looking at the evidence for the dispute. Thus, the arbitrator, neutral third party can make a decision which is binding and enforcement legally under the applicable law according to the international arbitration rules laid down by Institutes of arbitration. Online arbitration is a, in deed, reflects the offline arbitration.

Online arbitration is starting with the offering from the parties and all of the process are working via ODR platform. All of the parties such as the arbitrator and the parties are harmonizing work together on online via e-mail, video conferencing. Consumer file a complaint which is registered via online platform. The arbitrator must follow the rules and regulation such as the arbitration rules form UNCITRAL model law on International Commercial Arbitration and The Green Paper on Alternative Dispute Resolution in Civil and Commercial Law was established by EU. At the final stage for decision is enforced mostly by the Treaties which is the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Online arbitration is important in the dispute resolution process of ODR

⁴⁶ Hornle, *Cross-Border Internet Dispute Resolution*, vol - 1, Page - 57, para - 3.

especially in cross-border e-commerce disputes because the place of business is located in the world. Most of international arbitration guideline has not provide the procedure for online arbitration yet.⁴⁷

In conclusion, By using ODR, the mediation or arbitration process is faster, convenience and less cost without going to court than traditional litigation. All these mediation or arbitration process are making entirely online technology such as video conferencing, email, other third party software. ODR is useful and effective for resolving dispute by facilitating ADR process should be established for e-commerce B2B and B2C disputes between the parties to boost digital trading with secure.

2.2.3 ODR and E-commerce disputes in Myanmar

Some types of services available the problems, difficulties and barriers in using E-Commerce. There are how consumers want to solve problems and gaps in solving the problems. According to the Myanmar Consumer Union's survey⁴⁸ discovered that only two out of ten respondents received information on consumer protection and, rights and responsibilities during the previous three years. The commonest respondent channels received information form Facebook, telephone, website, brochures, posters, etc. Some consumers even did not know existence of Department of Consumer Affairs and the Consumer Protection Law. Lack of knowledge for both consumers and service providers would have contributed many problems and inadequate informing problems to regulators of consumer affairs. Advertising and ordering method for online shopping is Facebook as a major media

⁴⁷ DAFNA LAVI, "Three Is Not a Crowd: Online Mediation-Arbitration in Business to Consumer Internet Disputes," *U. Pa. J. Int'l L.* Vol. 37:3 (2016).

⁴⁸ Union, "Myanmar Consumer Report: E-Commerce Survey Report and Other Consumer Issues (2018-2019)."

some of consumers use cash for payment of online shopping. Online disputes have over 100 disputes per year, with three of the largest and small online shopping, mobile payment and phone operator services in Myanmar.

According to the survey highlighted kinds of e-commerce (online shopping) in Myanmar are internet banking or mobile Banking, Credit/Debit and ATM, e-payment and mobile payment, mobile money transfer, mobile money withdrawal, purchased of prepaid card, payment for goods and service through service provider, online registration and Mobile phone/Internet services) to organizations/service providers.⁴⁹

Sometimes consumer pays money by using mobile application such as OK pay and wave money. Most of consumers informed their problems to the service providers or law enforcement bodies was low across all types of E-Commerce and was less than 20% of them making complaints. Majority of them informed their problems to service providers other than regulatory bodies and received most of responses from their respective service providers. It also reported that barriers for solving complaints and ways forward. It was found that existing laws in Myanmar cannot effectively protect consumers and law enforcement body cannot conduct to resolve e-commerce disputes effectively.

Based on these facts, the disputes are arising from e-commerce transactions. Most of the problems are related to misunderstandings, mistakes, and fraud between the buyer and seller and where buyers are unsatisfied with the purchase (goods or services). Therefore, Myanmar government is trying to find effective rules and regulation to solve those disputes. Although consumer complaint website has been launched and Consumer Information and Complaint Center (CICC) has been

⁴⁹ Ibid., page - 60, para - 2.

established in the State and Region and some townships to solve consumer disputes, some disputes are being delayed to make a decision because of the lack of ODR regulation in Myanmar.

2.3 Legal dimensions of ODR

E-commerce disputes are started from the transactions on internet. ODR is set up from the eBay platform, the largest auction site, in the US for B2C e-commerce dispute at the end of 1998. At that time, some of the authors have already aware that there is no space on internet. The authors explain that the communications on global get over the borders of territorial. Besides, communication on the internet is a new frame and all of the working processes are on screen. It is a difference in the real world. This new cyberspace creates new law and legal institution, and the phenomenon deeply threatens to territorial jurisdictions.⁵⁰ The author argues that it is adequate issue to consider cyberspace is different area to be created its own law or rules.

The traditional dispute resolution includes the court, judge who makes a decision between the parties. Although Alternative Dispute Resolution (ADR) is out of court process, it contains the procedure of the ADR, enforcement and jury or third parties as a neutral person based on the disputes and contract.⁵¹ The method of the dispute resolution is to get equal treatment and fairness between the parties and the

⁵⁰ David G. Post David R. Johnson, "Law and Borders - the Rise of Law in Cyberspace.," Vol-48, No-5 (1996): page-3, para-1.

⁵¹ Ph. D Fahimeh Abedi and Shaik Ahmad Yusoff, Associate Professor, "Consumer Dispute Resolution: The Way Forward," (2011): page-5, 5. Emergence of ADR and ODR.

range of the dispute resolution method is “where the parties have full control of the process to the methods and where a third party controls the process and outcomes.”⁵²

ODR is created a verity design depend on its scope. For example, the regulation and processing could be different among B2C, B2B, C2C, family, domain name and online/offline disputes resolution. Moreover, ODR regulation and rule could change depend on applicable law on each country. Mostly dispute resolution process is based on the ADR entity, procedure, rules and regulation under the applicable law, international arbitration law and Treaties for commercial disputes between the countries. ODR regulation makes sure to record and facilitate the dispute systematically by using computer technology with secure and convenience between the parties.

ODR for B2C is started from the consumer protection policy and boosting e-commerce transactions to the global market. In the B2C disputes, the consumer is weak party whenever they purchase goods and services on online website when the dispute will rise between the consumer and trader who treat unfair to the consumer. Moreover, Alternative Dispute Resolution (ADR) cannot resolve effectively such kind of disputes because the legislation power does not reach outside of the country. There is a treaty or business agreement is needed in the e-commerce to resolve disputes between the countries. Furthermore, ODR contact points such as ODR network or organization is needed when consumer disputes are resolved especially cross-border disputes to interchange the data and information among them. E-payment securities and personal data protection are crucial in the e-commerce transactions for protection consumers' interest and e-commerce business.

⁵² *ibid.*, page-5, 5. Emergence of ADR and ODR, para-2.

2.4 Importance and flexibility of ODR

Today, very high numbers of disputes which is anyone cannot predict occurring on online activities. Over this period of time some people trying to use ODR for responding the disputes arising online, how and when to expand without ignoring such online issues.⁵³

According to the above statements, the authors' notes and the conference records, and recommendations ODR is needed as a mechanism to solve the consumer disputes. Moreover, using the internet is increasing in the world, people have established numerous websites and extended to get a new market for buying and selling their products online nowadays. With increasing e-commerce transactions, on the other hand, misunderstanding disputes are arising between consumers and traders. Furthermore, traditional litigation is not adequate to resolve these kinds of disputes. The reason is that the adjudication in courts is not efficient in resolving these disputes between the territory of Court and global Cyberspace. Jeretina (2018)⁵⁴ the author explains that the strength of ODR is that ODR is more appropriate for small value disputes with faster, low cost and cross-border disputes which the traditional resolution procedure is inadequate to solve.⁵⁵

Additionally, the ODR platform does not substitute the proceedings of consumer's right. But one of the desires is that the parties will be assist by ODR platform resolving these kinds of disputes without the procedure of the court with impartiality, transparency and effectiveness more than a traditional court. The main

⁵³ Ethan Katsh, "Odr: A Look at History," vol-1 (2012): page-4, para-2.

⁵⁴ Jeretina, "Consumer Online Dispute Resolution (Odr) as a Key Cultural Change – Mechanism for Innovative Public Administration in Eu."

⁵⁵ *ibid.*, page-7, para-2.

stakeholder of ODR is Government, business organization, consumer organization and institution of dispute resolutions. Government accepts the ODR mechanism because they know that traditional litigation cannot yet provide fully to resolve such kind of disputes and stimulate the e-commerce transactions for developing the country's economy.⁵⁶

Business organizations demand an ODR mechanism for resolving disputes and avoid court procedures. They want it with private, fast, inexpensive, convenient and to assist their business effectively and efficiently for resolving disputes. Their aspiration for ODR framework is self-regulation privately to resolve the disputes. They expect it that ODR can create the consumers' trust and extend their business to the global market.

Consumer organizations want the ODR mechanism to protect consumers' rights. They aspire ODR as a fair, sufficient and transparency system for a large number of consumers' low-value disputes. Institutions of dispute resolutions understand that ODR is a new service which assists to be more effective for traditional mediation, arbitration by using technology. Moreover, it is one challenge to their situation to get a professional skill for resolving such disputes. All of stakeholder perceive and recommend ODR mechanism with a difference ways to resolve e-commerce disputes. In addition, it has still requirement in ODR mechanism to resolve effectively consumer disputes depend on their desire. They do not have a suspicion that ODR can assist in successful e-commerce business and support justice system conveniently.

⁵⁶ Thomas Schultz Gabrielle Kaufmann-Kohler, *Online Dispute Resolution: Challenges for Contemporary Justice* (Published by Kluwer Law International B.V.. Copyright. : The Hague : Kluwer Law International ; Zürich : Schulthess 2004., 2004), Page-83, Para-1,2,3,4.

2.5 Legal status of ODR

Jeretina, the author describes that ODR is the first priority policy in nowadays and it is being used to resolve consumer disputes effectively by promoting ADR system.⁵⁷ Heuvel, the author states that ODR is a different form of dispute resolution mechanism and used it interracially based on ADR method.⁵⁸ ODR provides ADR disputes especially e-disputes to resolve firstly and enough through internet. The author also noted that ADR has major advantages that ADR has an official power to solve the disputes and making decisions. ADR could be swift and provided with necessary guarantees with no cost for e-consumer.⁵⁹

Generally ADR is used many ways of resolving disputes such as family, commercial, financial, health, etc. ADR is organized with mediation, conciliation and arbitration. Mostly arbitration is used for resolving of regional and international commercial disputes. The nature of ADR is based on the contract that is created by two parties when they make commercial contract with the local or foreign countries. The arbitral award is made or determined by one or one more persons who help consumer to solve disputes between consumer and traders when they have problems with products or services that consumer bought it from online. ADR entities involve impartial party as a “mediator, conciliator, mediator, arbitrator, ombudsman, complaints board etc.”⁶⁰ The process of ADR is that the first process is mediation to

⁵⁷ Jeretina, "Consumer Online Dispute Resolution (Odr) as a Key Cultural Change – Mechanism for Innovative Public Administration in Eu."

⁵⁸ Heuvel, "Online Dispute Resolution as a Solution to Cross-Border E-Disputes :An Introduction to Odr."

⁵⁹ *ibid.*, page-5, para-6.

⁶⁰ Brussels, "Alternative Dispute Resolution and Online Dispute Resolution for Eu Consumers: Questions and Answers".

get an agreement for resolving disputes between the parties with amicable and the mediator is individual trained in negotiation. If the dispute is reached the settlement, an agreement is binding and both of two parties have to follow on it. In this duration, the mediator can follow international mediation rules which are setup by the international institution such as UNCITRAL Conciliation Rules and ICC rules of Conciliation.

The mediation process cannot resolve the disputes, arbitration proceeding process can be used only an agreement by the parties that they refer their dispute to use arbitration. Without an agreement of parties to use arbitration method in the contract, there can never be arbitration. Most of the commercial contract expresses that if the dispute arises out of the contract between the parties, to use arbitration to cover the disputes. There is so many international arbitration rules and protocol such as the Geneva Protocol and Convention, UNCITRAL and ICC arbitration rules to be chosen by the parties depend on an agreement of expression on the contract. However, if the parties agree to cease the arbitration agreement and submit to the jurisdiction of the court, the case will be decided by the court.⁶¹ Arbitration includes two characteristic of which is contractual element based on contract and judicial element. In most case, the parties agree to appoint on arbitrator by each party, if the case is failed to settle the dispute by two arbitrators, the two arbitrators can select a third arbitrator as a chairman of arbitration tribunal and the selected arbitrator can give the decision.

⁶¹ U Kyaw Aye, *An Introduction to the Law of Arbitration*, vol. 1 (wisdom house publishing: wisdom house publishing, 2017), page - 9.

According to the agreement, the place of arbitral proceeding is conducted in countries where the parties have their business place or substantial assets.⁶² It is important to choose a place where the arbitration law provides a suitable legal framework for international cases.⁶³ In some cases, the parties agree on a place in third State as the venue for conduction the arbitration proceedings. The reason is that the parties consider that the arbitration takes place might have advantages over the other party. The arbitral award may not be exactly like an order or a decree of court. However, it is the nature of a court's order or decree. Enforcement of arbitral award comes from the arbitrator's realization as directed therein by him and such kind of award must be failed with a court of competent jurisdiction. The legal value of an arbitral award is determined by the fact that it is enforceable in the State concerned; otherwise, it will be just a paper without any legal value.

The above statement of condition expresses that ADR comes from contract or agreement between two parties for resolving their disputes. Although contract is made perfectly by an agreement of two parties, the unexpected and unforeseen problem will be come out in the future. At that time the dispute resolution mechanism is needed. ADR can resolve the dispute fast, cheaper and convenience than litigation outside of the court.

In e-commerce consumer dispute involves to protect the consumer who is weaker in both education and awareness of their right. In the offline process consumer enter the trader's offering to buy products or services which can be seen and checked in the real place. It is kind of agreement however, it was like making on paper. On the

⁶² Ibid., page - 42.

⁶³ Ibid., page - 13.

internet, consumer can see and check the product or services on screen based on the trader information. Therefore, misunderstand, misrepresentation arise from international transactions between the parties. Such kind of problem for consumer is that court does not access to justice because the limitations of traditional court litigation cannot reach outside of country to resolve it especially in cross-border e-commerce dispute. ODR come out to resolve these problem arise form internet transactions by facilitate the ADR process to be more effective, speed, free of charges and confidential for consumer who need to protect.

The reason ODR mechanism has come out as an international process is to overcome currently the gap of ADR by providing an effective way. Liyanage (2012) defines that ODR has arisen recently as a set of technology tools to support by technology for resolving online disputes which come out form electronic commerce activities. The gap is a barrier between traditional and online trade such as “time, geographical distance and language especially cross border disputes.”⁶⁴

However, ODR contains three main parts which are automated negotiation, online mediation and arbitration. The whole process of ODR is conducted on online only such as email, message, application, video conferencing among the parties. Mediation consists of a neutral third party to resolve amicably the dispute between the parties by using online platform. The online platform has various technology usages such as communication, discussion with private chat room, video conferencing and voice.⁶⁵ In the offline arbitration the party can chose the arbitrator and it is the same

⁶⁴ Vilalta*, "Odr and E-Commerce."

⁶⁵ Hornle, *Cross-Border Internet Disputte Resolution*, vol - 1, Page - 79.

with online arbitration. The trader can also select the ADR entity in their relevance sector.

However, between online and offline ADR process is difference that in the ADR process, each parties can make agreement or contract by personally and arbitral award is binding both parties. For the ODR process the final decision is binding only rely on the trader because normally when consumer purchases the product or services form internet without protection and before buying the product, consumer has to decide to buy it based on the trader's information.

International cross-border e-commerce dispute for offline and online arbitrator has the same condition that they must follow the rules, procedure and framework which is established by international institution of arbitration. However, there is legal instruction on online-mediation and arbitration which is laid down under the online dispute resolution regulation to cover e-commerce environment. Most of international arbitrations set up by international arbitration institution cannot provide clearly for online arbitration. UN Commission on International Trade Law adopted online dispute resolution (2017) which is not focus on law and it is only technical notes. UNCITL is observing that ODR is conducted at least simple, first, flexible and secure manner unless meeting or hearing by personally when resolving the disputes between the parties and in section x, it explains the appointment, and power of functions of the neural.⁶⁶

In addition, ODR is used to resolve consumer disputes effectively by promoting ADR mechanism because e-commerce disputes are needed to resolve, the

⁶⁶ NATIONS, "Uncitral Technical Notes on Online Dispute Resolution."

place of the business are in the difference countries all over the world and the territory of jurisdiction cannot reach outside of the country.

Chapter (3)

EU Online Dispute Resolution for Consumer Disputes

3.1 ODR platform in the EU

Internet started in 1969 and ODR did not emerge until the early 1990s.⁶⁷ The concept of online dispute resolution (ODR) was investigated to be made a prediction and observation in the early 1990s. Because using the internet is increasing and it could be a harmonious place. In the first half of the 1990s, online commerce was started to use and disputes are arising out on online activities, and many of useful tools for commerce did not come out for a few years to solve the disputes between consumer and trader.⁶⁸ At that time, out of court disputes mechanism for consumer is not popular in the EU societies. Digital single market became the weakest area in the single market within EU Member State. The European Parliament identified the barriers of e-commerce that are lack of adequate information makes consumers wrong decisions, need to enhanced cross-border payment adequately and the security for online shopping and data privacy in the e-commerce transactions.⁶⁹ Moreover, based on the e-commerce disputes, it had shown “where the e-commerce disputes are with selling via the internet and why European digital single market did not operate effectively.”⁷⁰

⁶⁷ Ethan KATSH*, "Online Dispute Resolution: Some Implications for the Emergence of Law in Cyberspace," vol.10, no. n°3, Hiver/Winter (2006): page - 3, para - 1.

⁶⁸ Katsh, "Odr: A Look at History," page-1, para-1.

⁶⁹ FILIP TERESZKIEWICZ, "The Eu Online Dispute Resolution Platform for Consumer Disputes: A Step Towards an Eu Digital Single Market*," ed. Judicium (Judicium.it2014), Page - 3, Para - 2.

⁷⁰ Ibid., page - 2, para - 5.

Therefore, online dispute resolution (ODR) in EU becomes as a crucial point which helps improve the situation in e-commerce transactions and to protect high level consumer.

ODR in EU is implemented to facilitate ADR bodies and to assist ARD process with speed, fairness, effectively for resolving local and cross-border e-commerce disputes within EU Member State. ODR is designed to promote ADR entities by using information and communication technology. ODR platform is user-friendly and can give the users' privacy and secure.⁷¹ Moreover, ODR legal framework is link with other ODR related laws which is depending on the applicable law in each county. However, EU Treaty and Directives provides and binding to EU Member State in harmonization legal framework. ODR can provide by assisting the ADR entities and interchanging information among the parties with secure, 'independent, impartial, transparent, effective, fast and fair out-of-court resolution'⁷² on online. EU has a number of laws which are already operated and link each sector with consumer protection law. ODR platform should be user-friendly and can give the users' privacy with secure.⁷³ Moreover The ODR legal framework is link with other ODR related laws which is depending on the applicable law in each county. However, EU Treaty and Directives provides and binding to EU Member State in harmonization legal framework.

⁷¹ THE EUROPEAN PARLIAMENT, "Regulation (Eu) No 524/2013 of the European Parliament and of the Council, on Online Dispute Resolution for Consumer Disputes and Amending Regulation," *L-165/I* (EC) No 2006/2004 and Directive 2009/22/EC, no. 2013/11/EU (2013): Article - 5.

⁷² *Ibid.*, Article - 1, Subject matter.

⁷³ *Ibid.*, Article - 5.

The legal basis for the Online Dispute Resolution platform has two pieces of legislation which are directly focused on the online dispute resolution in the European. The first one is the regulation (EU) No 524/2013⁷⁴ on consumer ODR. Its aim is to create EU-wide Online Dispute Resolution platform (the ODR platform) presenting for consumers and traders to settle cross-border online disputes with a single entry point. The main function of the platform is for a disputes arising from online sale or services contracts. This Regulation creates upon Directive on consumer Alternative Dispute Resolution, 2013/11/EU on consumer ADR.

The second one is an implementing regulation on the consumer ODR which set up the modality for an electronic complaint form, the exercise of the functions of the ODR platform, and the cooperation between the ODR contact points.⁷⁵ Both acts regulate the web-based platform to help consumers who bought goods or services form online and have problems with that purchase. According to the 2013/11/EU⁷⁶ Regulation, article 2 (1), it supports to apply the out of court resolution disputes which are regarding contractual commitments form online sales or services contract between a consumer who is a citizen in EU and trader.

How does ODR works? The whole process of the online dispute resolution is conducted entirely online and be used in combination with the process of

⁷⁴ *ibid.*

⁷⁵ COMMISSION IMPLEMENTING REGULATION (EU) 2015/1051, "Commission Implementing Regulation : On the Modalities for the Exercise of the Functions of the Online Dispute Resolution Platform, on the Modalities of the Electronic Complaint Form and on the Modalities of the Cooperation between Contact Points Provided for in Regulation (Eu) No 524/2013 of the European Parliament and of the Council on Online Dispute Resolution for Consumer Disputes ", no. (EU) 2015/1051 (2015).

⁷⁶ PARLIAMENT, "On Online Dispute Resolution for Consumer Disputes and Amending Regulation (Regulation on Consumer Odr)."

ADR procedures. There are four main processes in the ODR platform. The process of ODR is that when consumer submits the complaint via ODR platform, it notes and checks automatically the complaint form is success or is not. If the complaint form is not successful, the platform save draft within imitated time. After checking the successful complaint form, the complaint is sent to the relevant trader. If the trader agrees to use ODR and replies back to the platform. In this condition, the platform contacts the consumer start to handle the dispute with the trader first. If the trader cannot resolve the dispute, the trader finds ADR entities that can resolve and handle the dispute and the trader selects one or requests other ADR bodies on the list of website. After selecting the ADR bodies, the trader sent both of the complaint form consumer and the trader. If the ADR bodies accept the dispute to resolve, the ADR bodies send the message to the ODR provider, then the platform informs to the consumer when the dispute will be resolve and what ADR bodies will handle the dispute. If consumer agrees it, the dispute is started to resolve with ADR bodies and trader via ODR platform. The decision from ADR bodies could be binding which is depending on the legal system in each country.

If the disputes is in two countries, ODR contact point is needed to contacts with the other ADR body (contact point) where the traders' residence. ODR platform provides ODR content point in each country within EU to contact and interchange the information for resolving the cross-border e-commerce disputes between the trader and consumer. It is crucial point and useful for ODR Regulation when resolving the cross-border e-commerce disputes.⁷⁷ In this situation, ODR can provide and assist effectively, speed, fairness and convenience when resolving the cross-border e-

⁷⁷ Ibid., Article 7, Network of ODR contact points.

commerce disputes among the parties and countries. Each one step of ODR process is separated limited time and ADR body handles the case to reaches an outcome is in maximum 90 days.

In the ODR platform, ODR contact points and feedback system is curial point and helpful all of the stakeholders. In order to article (7) EU No, 524/2013, the ODR Regulation provides that ODR contact points was designed by Member States to provide one-by-one support to users of the ODR platform when necessary. By providing the link to the ODR platform with an e-mail address to the online traders who are required, these traders can enter via the platform, on their website.⁷⁸ ODR contact points contact ADR body (contact points) in other country to share and interchange information among the dispute countries that the traders' residence. It can assist with the complaint submission, provides the information of consumer rights and as well as information about the function of ODR platform, explain ADR entities' rules and procedures, advices and informs to ways of redress to the consumer or trader when the dispute does not been reached the settlement, and reports to the commission every two years.

This all of activates are very useful for all of stakeholder such as (consumer, ADR entities, trader and commission) and full helpful to the consumer and trader who is lack of awareness about ODR regulations. There is no doubt for the role of the

⁷⁸ European Commission, "Report from the Commission to the European Parliament and the Council on the Functioning of the European Online Dispute Resolution Platform Established under Regulation (Eu) No 524/2013 on Online Dispute Resolution for Consumer Disputes," (EU website: THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, 2017), page - 4, Para - 4.

ODR contact points that it is practical and helpful point for all stakeholders to file complaint on complaint website especially consumers and ADR bodies to contact via ODR platform.

Another helpful tool is feedback system. According to the article 5 (g), the aim of feedback system is information and knowledge sharing from former user who has experience the disputes. By sharing this, the new users get confidence to use ODR friendly. Feedback system is very popular among the parties. Because between unknown seller and buyer have lager misleading which is the buyers cannot get perfect information upon the goods and services. As a result, this is a crucial point for lack of consumer's confidence. The feedback system in ODR platform, consumer can give comments for ADR procedures and ADR body's skill for resolving system, using the ODR platform that is easy or convenience for them.

The Commission has encouraged to cooperating the traders to use ODR platform by giving feedback system even if the traders resolve the disputes out of the platform. By providing feedback system, the buyer can check the reliability of the seller, rank of product, the result of the seller's former transactions and seller reputation before decided to buy goods or services according to the former buyer's feedback.

This regulation only admits the filing of disputes arising from online sales or service contracts, according to the article 2(1) EU ODR platform allows an electronic management mechanism which permits the online dispute resolution method. Accordance with the article (24), the regulation cannot prevent any existing online dispute resolution functions within the EU. And also cannot restrict online disputes

offered directly to them from the ADR entities or mechanisms dealing with online disputes.

According to the Article 2 (2), this regulation allows the out of court resolution disputes indicated the paragraph (1), between the business and consumer (B2C) who are resident by allowing for such disputes resolved via an ADR entity on the legislation of the Member State. EU ODR Platform supplies a single entry point and web based platform, which is easier to file a claim, for consumers and traders as an out-of-court resolution of disputes. The legislation does not exceed both the EU boundaries and the laws and rules relevant to the ADR systems in the performance of the European. In addition, all European languages are accepted by the ODR platform to fill out the electronic complaint form. However, the consumer who is practicing a foreign language is not entitled to binding.

3.1.1 The policy for ODR

In the EU, ODR comes from two main parts which are consumer protection and digital single market based on internet phenomenon issues. The EU commission noted and set up an action plan for two main policies which are high-level consumer protection and to boost e-commerce transactions. The policy of the consumer protection is to protect fully high level of consumer in the digital single market by resolving the local and international e-commerce disputes within the EU and single marker policy is to boost affordable the digital trading or transactions with legally and secure across the EU Member State.

Consumer protection law in EU is very strong and wide legal framework. It contains strongly prohibit “unfair commercial practice, unfair contract terms and misleading advertising” both local and cross-border conditions. It provides high level

consumer rights fully which is that consumer has option on/off choice in contract and get fully redress. In conclusion, the legislation for EU consumer protection guarantees that (i) fair treatment (ii) acceptable standards for products and services (iii) right redress for someone who was treated unfair when purchasing products or services whether online or offline.

The policy for digital single market is to reduce trade barriers and makes more opportunities for doing business within EU border in a legal, safe, secure and affordable way by encouraging small and medium-sized businesses.

3.1.2 **Role of the Consumer Protection Authority**

Online Dispute Resolution Platform (official website) which is designed and operated by the European Commission for resolving the B2C cross-border e-commerce disputes out of court. The European Commission has a power to conduct the evaluation and checking existing rules that are need to be better and fit or enforce by authorities it.⁷⁹ “The Commission can be public guidance document on the rules on unfair terms in consumer contracts based on the interpretation of the rules by the European Court of Justice, national courts and national authorities”⁸⁰. The Commission can adopt and amend the ODR related laws, regulation and directions to the Member States. The Commission is informed about whether the legislation can resolve the disputes between the traders and consumers under the Directive. Moreover, The Member States inform the Commission about the ADR entity lists to what kinds of disputes can deal with the ADR entities. The Commission has the responsibility to development the operation of ODR platform such as data

⁷⁹ EU commission, "Module - 4, Unfair Commercial Practices and Unfair Contract Terms," (2018), page - 3, Introduction.

⁸⁰ Ibid., page - 9, para - 1.

interchanging, maintenance, funding, data security and privacy, user friendly and transparency and clear information among the parties.

3.1.3 ODR Legal framework and procedure in EU

According to the (EU) No 524/2013, Article (1), this new platform is implemented facilitation the “independent, impartial, transparent, effective, fast and fair out of court” online disputes resolution between consumers and traders. Its function is contribution properly to the aspect of the digital internet market and to achieve a high level of consumer protection. EU has adopted a number of laws which are mediation and issue related B2C cross-border e-commerce market for resolving consumers’ problem arising from the internet market by purchasing good and services within EU.

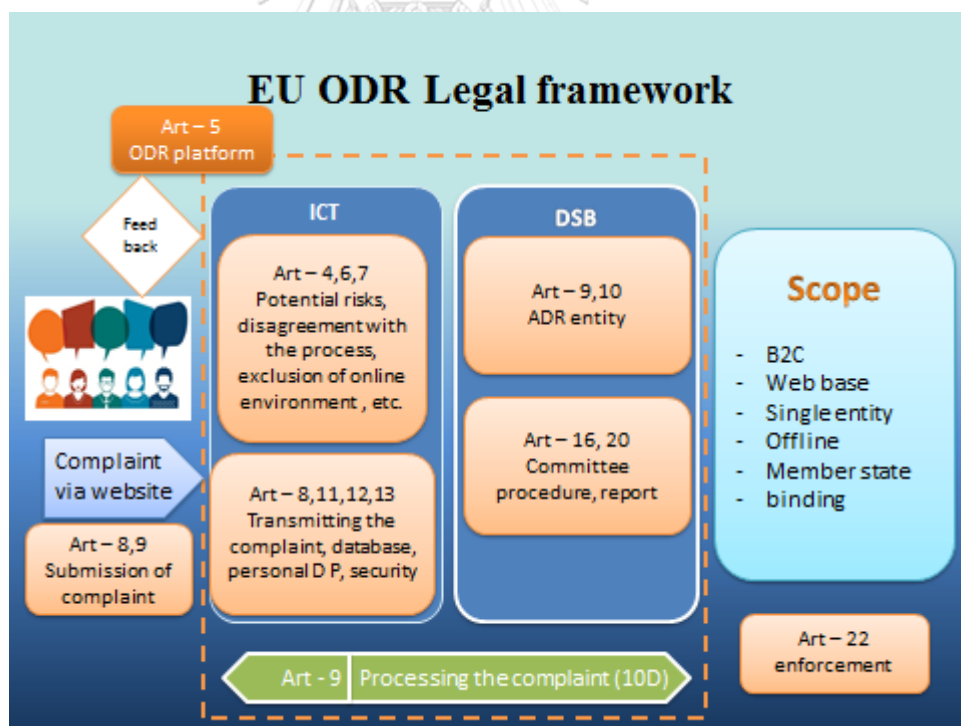


Figure 6 Legal Framework and scope of ODR in the EU

According to the (EU) No 524/2013, Article 5 (Para. 2), ODR platform is covered a single point of entry for consumers and traders searching for the out of

court disputes resolution by this regulation. It also is a two-way website available in EU official languages by electronically without any payment. According to the article (5) section (4), the ODR platform operates with automated translation software which automatically translates proper language from which penetrated toward its program.

The ODR platform provides general information on the subject of documents submission or proper ADR entities which have the power to decide the case. Besides, it supplies software to manage the case system so-called “electronic case management tool” to submit every required online information by the parties. Nevertheless, it does not enforce to using this tool by upon ADR entities.⁸¹

In order to article 5 Para 5 and 7, the commission intends to provides and up to date information with clear, understandable and easily accessible way to the stakeholder such as ADR entities, consumer, providers referred to point (h), Para (4). The commission also monitors how the ODR platform functions are supposed in detail. With respect to cooperation, article (7) Para (5,6,7), implementing acts are the rules related to the model of cooperation between ODR contract points under the article 16 (3) of the testing procedure. Each Member State creates an ODR contact point which is detail information about name and contact list and sends it to the Commission for communication between the parties and the suitable ADR entity.⁸²

Filing/complaint: In accordance with the Article (8), once a party has submitted a successful complete complaint form to the platform, the platform receipts this full complaint form. After that communicate to the party, and send an e-mail to

⁸¹ PARLIAMENT, "On Online Dispute Resolution for Consumer Disputes and Amending Regulation (Regulation on Consumer Odr)."article - 18, “ADR entities should not be obliged to use the case management tool.”

⁸² *ibid.*, article - 7, para 5,7.

the respondent party which is suitable ADR entities based on the language of the contract. In the Article (9), if the complaint has not been completed, inform that the form is missing information and the process is not work anymore to the complaint party. The ODR platform automatically responds to the ADR entity without delay to send complaint form according to Article 5(4) within ten calendar days. Then the ADR entities will agree to deal with the dispute and inform the applicable trader (party) their procedural rules, the cost of the disputes resolution procedure. If the parties neglect the agreement within thirty days or ADR entities withdraw to deal with the dispute, the process will close. At that time the complaining party can apprise to the ODR advisor for the information of redress. In accordance with the article (18), the regulations for all the penalties relevance the online disputes are set up by Member State and must be effective, harmonious and dissuasive for making sure to implement it.

Conciliation /mediation/arbitration: The essential part of the one legislation for ODR platform is “Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.”⁸³ The objective of this directive is to facilitate the alternative dispute resolution and to improve the settlement of disputes amicably by promoting the use of mediation and ensuring a balanced relationship between mediation and judicial proceedings. This directive was designed imposing mandatory standards on certain aspects of mediation in civil and commercial matters. According to the article (8), the

⁸³ THE COMMISSION OF THE EUROPEAN COMMUNITIES, "Directive 2008/52/Ec of the European Parliament and of the Council of 21 May 2008 on Certain Aspects of Mediation in Civil and Commercial Matters," *Official Journal of the European Union*, no. L 136/3 EN (2008).

Directive is binding only in respect of cross-border dispute mediations. But this provision can be practiced to internal dispute mediation processes.

Enforcement: The trader must set up ADR entity listed, according to the article 20(2) of Directive 2013/11/EU and show the ADR link on the ODR platform. This Directive noted that there were some points of advantages of mediation across litigation, which include cost-effective, flexible. One of the main aims of the Directive is that the mediation settlement agreements will be recognized and enforced in one Member State to make in another Member State as being court judgments. This is a significant step in developing the efficiency of cross border mediation. Article 6 of the Directive provides for the parties to ensure the “explicit consent” of the other and to request a written agreement for enforceability to recognize by a court. If Member State does not provide for its enforceability, even that agreement is contrary to the law of the member state. According to the Directive 2008/52/EC⁸⁴, section 20 states that the outcome of mediation make enforcement depend on national law and a Member State should declare and inform to another Member State for the binding decision. Detail instructions are explained in Regulation No 44/2001 and No 2201/2003 ‘the enforcement of judgments in civil and commercial matters.’ For example, under the new regulation for enforcement law in field of digital economy, there are established consumer protection enforcement bodies that have powers to request information from the domain registrars and bank to identify the responsible trader in each member state under the national law. Moreover, on the treaty state that to help and share information for consumer cases as soon as possible within the Member States. The decision for the disputes between two countries could be binding

⁸⁴ Ibid.

where the trader or providers' residence then the decision will be inform to other member state where the consumers' residence.

3.1.4 Case Study: The regulation of ODR

Basically, depend on the nature of disputes, why ADR and ODR are needed are as following;

Case Study 1: (traditional shopping) ; Consumer brought mobile phone on shop. After three days later, the phone does not work well and consumer brought it to the shop and wanted to replace, refund or repair it from the seller. In this situation, consumer needed to prove the product was defective when it was brought or within the guarantee time if the seller did not agree to replace, repair or redress it.

Case Study 2 (online shopping) ; Consumer from other country brought tablet on online website. After receiving it from delivery, the tablet had power error and consumer wanted to return it and get fully refund for it from the seller. However, the seller did not accept the product because the seller did not believe the product was defective when he sold it.

In this situation, consumer is not happy and there is three things that he can do, (i) maybe, consumer never purchase anything form the shop or website (ii) maybe, consumer is able to attack on or tell other this shop or website which is not trust and post on the social media or negative feedback/ comment on the web page and (iii) consumer can claim to the Court to get their rights. These ways are effective directly to the sellers' business and reputation. If consumer went to the Court, both of them have suffered from time consuming, cost expensive, difficult to understand the procedure of the Court. On the other hand, if the case is cross-border e-commerce dispute, traditional dispute resolution method does not reach outside of the country.

By using ADR and ODR can solve in this difficulty for resolving domestic and cross-border disputes between two countries and parties. ADR includes negotiation, mediation and arbitration, and ODR can able to facilitate ADR entity and procedures by interchanging the data among the parties via message, mail and video conferencing on the online platform. The same thing is both of ADR and ODR are out of court dispute resolution with amicable, fast, low-cost, effective and convenience. The following statements and cases are a process or procedures of ADR entity, and ODR regulation for resolving e-commerce disputes in EU.

The network of EU Consumer Centers (ECCs) was created in 2005 to increase consumer trust in cross-border shopping. ECC-Net is a merger of the Extrajudicial Settlement of Consumer Disputes network (EEJ-Net) and European Consumer Infocentres (EUorguichet) Network and the first step of cooperation between the level of national and EU Commission.⁸⁵ It has a national contact point in all EU Member State and the purpose is to resolve the cross-border consumer disputes by using ADR and ODR and provide the information and giving advice on ‘handling disputes between consumer and trader located in two different countries’ to get reasonable and amicable outcome.⁸⁶

Nowadays, ECCs is opening the thirty offices within EU, Norway and Iceland and the procedures and process of ECC is working under the EU Directive of

⁸⁵ <https://www.ukecc.net/about-us/eccnet-history.cfm>

⁸⁶ The European Consumer Centres Network, "The European Consumer Centres Network ; 10 Years Serving Europe's Consumers Anniversary Report 2005-2015," ed. The European Consumer Centres Network (The European Consumer Centres Network: European Union, 2015, The European Consumer Centres Network, 2015), Page - 8,A snapshot.

Services⁸⁷. ECCs helps the consumers' complaint against the traders who sell their products and services misrepresentation, unfair e-contract. Moreover, it assists like a legal adviser giving the specific instructions how to use consumers' right to the consumer. If the disputes cannot reach the settlement through ODR platform by themselves, ECC contact and ask the trader directly or ECC centers in other Member countries, where is the location of traders' business.

Case Study 3: A consumer from Slovenia purchased a book from Croatian trader by paying online transaction. The arrival date is within 14 days, however the book did not arrived until 40 days. Although consumer complained the trader, the trader did not deliver it. At that time ECC involved in by sharing the case to the ECC Croatian to contact with the trader in Croatian, the book had been returned back to the storehouse. The trader apologized and sent it to the consumer.⁸⁸

In this process, according to the EU consumer protection Directive provides the instructions on when making the purchase and after the order is placed. For example, if trader cannot deliver the products by post within the time limitation, the trader must provide giving refund the cost of products to the consumer. ECC helps consumer to get their right and the dispute had been arrived a settlement. Most of cases ECC can help consumer and trader by negotiation between them. However some of the cases are not reach a solution, ECC transfers the case to the ADR bodies.

⁸⁷ EU commission, "Directive 2006/123/Ec of the European Parliament and of the Council :On Services in the Internal Market," in *DIRECTIVE 2006/123/EC* ed. EU commission (EU website: EU commission, 2006).

⁸⁸ Network, "The European Consumer Centres Network ; 10 Years Serving Europe's Consumers Anniversary Report 2005-2015," Page - 12, case 2012.

Case Study 4: A consumer from Dutch ordered a laptop from an Estonian trader. After receiving the products and three months later it does not work well. Consumer complained it to the trader however; the trader refused because guarantee of the product had been already expired within three months. The consumer argued that the guarantee should be two years. Then the trader said he had no responsibility for this because the product was changed name.⁸⁹

In this case, normally consumer has difficulty to deal with the guarantee products because consumer has not an opportunity to check and test it on online shopping and difficult to return it within following day when the product is not working well. Therefore, the trader should make ensure their product and provide repair, replace and compensation for it in online trade.

Consequently, EU Consumer Right Directive provides legal guarantee which should be minimum two years period and if the product was defect within the first six months and the complaint was filed within the reasonable time, in this situation the trader has fully responsibility. Once the period is over, it needed to prove that the product has been already defected at the time of delivery and received it.⁹⁰ The EU Consumer Right Directive provides fully cover solutions and remedies with specific rules for order, receive and advertisement.

Case Study 5;⁹¹ A trader from UK and sells outdoor activity clothing to EU Member State. The trader is not ADR scheme member and sells the rain jacket to the consumer in France. After three months later, consumer informed to the trader via

⁸⁹ Ibid., Page - 16, case 2010.

⁹⁰ Ibid., Page - 15, Guaranteeing the done deal.

⁹¹ innovation and skill Department for Business, "Alternative Dispute Resolutions 2015 (Guidance for Business)," (2016), page - 35, case study -1.

email listed on trader's website because the seam of rain jacket was split under the arm. Consumer wanted to return it and replace the other one. However, the trader replied to the consumer that it is not his responsibility and did not provide to replace it. So consumer decided to complaint via ODR platform from the trader's website link.

After the e-complaint form had been successfully completed, ODR platform send it to the trader with detail ADR providers who are fully eligible to resolve the dispute and suggested that the any of ADR providers are willing to resolve the dispute within ten days. After receiving the message from ODR platform, the trader decided to use three out of the five ADR providers according to the ODR platform suggestion. Then the trader responded that he agreed to dispute three ADR provides that the trader wanted to use. After that ODR provider sent the consumer that the trader accepted the complaint and the trader choose three ADR provides. If consumer agreed ADR providers that the trader chosen, then consumer decided to use it and replied to the ODR platform. ODR platform quick responded the complaint to the ADR providers. ADR providers reviewed it and informed the trader that they agreed with the dispute. However, the trader read the message from ADR providers; he did not want to use ADR. In this condition, legislation does not force the trader to use ADR provider. If the trader refuses to take part or agree to use ADR, ODR platform cannot able the process any more.

In this condition, consumer can contact directly to ODR contact point and can ask who can arrange their information and redress. Moreover, consumer can go to the small claims court depend on two conditions which are if consumer does not satisfied the decision of ADR and the complaint is closed by the ODR platform being of

traders' refuse. No one can stop consumer who want to go court proceeding within the time limitation.

3.1.5 Alternative Dispute Resolution

The mediation issues for consumer are such as civil procedures, consumer protection law and Directives which provides in civil and commercial mediations where the parties are residence within EU Member State.⁹² ADR Directive makes ensure consumers who have a dispute against the trader when purchasing the products or services on online and offline within EU with certified ADR bodies listed to the Commission in each Member State and made public on the ODR platform and website. It includes name, relevance sector, achievement, and fees and union languages are available and already registered electronically.

The essential part of the one legislation for ODR platform is Directive 2008/52/EC⁹³ and Directive 2013/11/EU⁹⁴. The objective of this directive is to facilitate the alternative dispute resolution and to improve the settlement of disputes amicably on promoting the use of mediation and on ensuring a balanced relationship between mediation and judicial proceedings. This directive was designed imposing mandatory standards on certain aspects of mediation in civil and commercial matters.

According to the article (8), the Directive is binding only in respect of cross-border

⁹² Cortés, *Online Dispute Resolution for Consumers in the European Union*, Page - 159, 4.4.1 The purpose of regulating mediation in the EU.

⁹³ COMMUNITIES, "Directive 2008/52/Ec of the European Parliament and of the Council of 21 May 2008 on Certain Aspects of Mediation in Civil and Commercial Matters."

⁹⁴ the European Parliament and of the Council, "Directive 2013/11/Eu of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes and Amending Regulation (Ec) No 2006/2004 and Directive 2009/22/Ec (Directive on Consumer Adr)," ed. the European Parliament and of the Council (EU: the European Parliament and of the Council, 2013).

dispute mediations. But its provisions can be practiced to internal dispute mediation processes.

This Directive noted that there were some points of advantages of mediation across litigation, which include cost-effective, flexible. One of the main aims of the Directive is that the mediation settlement agreements will be recognized and enforced in one Member State to make in another Member State as being court judgments. This is a significant step in developing the efficiency of cross border mediation. Article 6 of the Directive provided for the parties to ensure the “explicit consent” of the other and request a written agreement for enforceability to recognize by a court. If that Member State does not provide for its enforceability, even that agreement is contrary to the law of the member state.

Online Disputes Resolution is a tool to promote Alternative Disputes Resolution to resolve the consumer disputes between consumer and traders mutually amicable without going to court. It provides to submit all complaints from the consumer via ODR platform. The ambition is to protect the consumer, enhance e-commerce trading and resolve the low-value, high-volume disputes which arise from both local and cross-border e-commerce transactions with fast, convenient, low-cost and effective. ODR Regulation connects with the ADR Directive on consumer disputes. Although the function of ADR can work itself to resolve the consumer disputes (but it does not effective resolving cross-border disputes), ODR cannot work without ADR because the regulation of ODR process built on ADR Directive rules. Therefore, the Directive encourages using ICT that there is no way to prevent to use of modern communication technologies in the mediation process according to the

recital 9.⁹⁵ Moreover, Regulation No 524/201, Article 2(1) provides out-of-court resolution disputes arising from online sale or services contract between the consumer who is in EU and the trader who established the business in EU by intervention of an ADR entity list in order with the ADR Directive.⁹⁶ The reason is that high-level consumer can be protected effectively by ADR entity with independence, fair, impartial and transparency and voluntary when consumer submits the complaints against the trader within the EU. The Directive intent to build the out-of-court redress schemes for consumer within the Member State. Both of ADR Directive and ODR regulation cover the dispute between consumer and trader who is resident or established within the EU territory according to the Directive Article 2(2) (g) and ODR Regulation Article 2(4).⁹⁷ EU ADR Directive stimulates ADR procedure resolving the dispute by offering the solution under the mandatory rules of the law.

3.1.5.1 The procedure of ADR entity

The main point of ADR Directive, according to the article 5 of the Directive intends fully covering to access ADR entity and ADR procedure for all Member State. The Member State ensures that consumer can submit the complaint against trader who is the EU respective territories to ADR entity under the ADR Directive procedures. In Article 5(1), the Member State ensures to cover the ADR infrastructure for consumer disputes against trader who established the business on their relevant territories by

⁹⁵ Cortés, *Online Dispute Resolution for Consumers in the European Union*, Page - 159, 4.4.1 The purpose of regulating mediation in the EU, para 3.

⁹⁶ MICHAEL BOGDAN, "The New Eu Regulation on Online Resolution for Consumer Disputes," 9 *MASARYK U. J.L. & TECH. 155 (2015)*. Vol. 9:1 (2015): Page - 158, Para- 2.

⁹⁷ ADR Expert Group, "Directive 2013/11/Eu (Directive on Consumer Adr) - Issues Emerging from the Meetings of the Adr Expert Group ", no. emerging from the meetings of the ADR Expert Group (2013): Page - 4, 1 - Types of disputes

determination of where the traders' place in order to Article 4(2). The Directive of Article 7 (1), (3) and (7) provides that to ensure the Member State to cover the procedure of ADR entity for consumer against the trader within the EU. It states that the trader concern who is the association of ADR entity or not, how to determine the traders' place, the fact for consumer access to ADR procedure and the procedure for ADR entity which is member of association or specific-sector owned by business association based on this Article.⁹⁸

In Article 2 (2) (e,b) does not allow the procedure of ADR entity directly connects with the consumer and trader to resolve the disputes before the traders are trying to resolve the consumers' complaint internal complaint handing mechanism first. Moreover Article 2(2) does not provide for dispute resolution procedure which is (1) not to allow before the neutral person for ADR entity are employed and compensate exclusively by the trader. Member State should allow the ADR procedure accordance with the Directive and the specific requirement for independence and transparency under the Article 6(3). According to the Article 5(2) point (a,b,c,d,e,f) provides to ensure the Member State that the providers maintain and update website for easy to access ADR procedure information for consumer and consumer can submit necessary and complaint documents both online and offline for both domestic and cross-border disputes within the EU under the Regulation (EU) No 524/2013 and Directive 95/46/EC in the Member State in which the ADR entity.⁹⁹

⁹⁸ Council, "Directive 2013/11/Eu of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes and Amending Regulation (Ec) No 2006/2004 and Directive 2009/22/Ec (Directive on Consumer Adr)."

⁹⁹ Ibid.

ADR entities have a power for introduction and maintaining the ADR procedure and refuse the complaint based on the points (a,b,c,d,e,f) which are seriously damage the ADR operation effectively under the Article 5(4). Moreover ADR entities have to explain both parties why they did not accept the complaints with reasonable reason. Member State permits ADR entities to set up pre-specific monetary which is acceptable the procedure of ADR and it must be acceptable amount that it is not remarkably impair for the consumer.¹⁰⁰

The level of the online mediators and offline mediators are the same, the difference is as using technology tool. In the ODR process, the online mediator is as a third party (human mediators). Moreover, the efficiency is depending on the mediators' skill for resolving disputes.¹⁰¹

3.1.5.2 The liabilities of the neutral person in charge of ADR entity and trader

There is an essential criteria requirement for ADR entity by establishing Member State to ensure is as follow; Pursuant to Article 5, para 4the Directive explains the requirement facts that the ADR entity from Member State can maintain or reject the complaint based on the some situations. In order with the Article 5(1) states that Member State imply with their obligation and make sure to submit the complaint form consumer to the ADR entity flexibility.¹⁰² Member State ensures that what maintain or introduce rules for ADR entity to be permitted or not for refusing to deal with the dispute based on the ground points Article 5(4), (a) to (f). Meaning that

¹⁰⁰ Ibid.

¹⁰¹ Cortés, *Online Dispute Resolution for Consumers in the European Union*, Page-145-6, No-4.2.1.

¹⁰² ADR Expert Group, "Directive 2013/11/Eu (Directive on Consumer Adr) - Issues Emerging from the Meetings of the Adr Expert Group ", no. emerging from the meetings of the ADR Expert Group (2013): Page - 2, Para - 1.

the commission form Member State provides the mandatory specific principle for disputes by the ADR entity that is specific quality to maintain or introduce ADR rules.

Article 6 of the Directive provides that the requirements for the charge of ADR neutral person for skillfulness, independence and fairness. It describes the charge of ADR neutral person are appointed three years minimum term of office which is suitable duration. The reason is the charge of ADR neutral persons' liability designed not reliable their duties in the absence of cause according to the Article 6(1).

In Article 8 states that the decision of the ADR entity is made ninety calendar day after receiving the complaint by the ADR entity. If the disputes are complex to resolve, the period can be extended.¹⁰³

ADR entries list is made in public on website with detail information made clearly and easily understanding under the Article 20(2) by the Member State according to the Article 7(1). There are address, the person in charge of ADR, the method or procedure, timeline for the disputes, cost, what kind of cases are accept and refuse, the effect of legal outcome of the procedures and the enforcement of ADR decision.¹⁰⁴ Moreover, ADR entities have to submit annual report about types of disputes, systematic cases which have something to avoid or resolve, time for resolving disputes, the outcome of ADR procedures in the future for domestic and cross-border disputes.

¹⁰³ BOGDAN, "The New Eu Regulation on Online Resolution for Consumer Disputes," Page - 157, para - 2.

¹⁰⁴ Council, "Directive 2013/11/Eu of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes and Amending Regulation (Ec) No 2006/2004 and Directive 2009/22/Ec (Directive on Consumer Adr)," Article - 7, Transparency.

ADR entity has to notify about complaint to the parties as soon as the complaint including the relevance information has been received. ADR entity within any state set up the qualify ADR entity and the list of ADR entity notify specific information which are falling or complying the ADR entities under the Regulation 2015 in accordance with Regulation 8.¹⁰⁵ ADR entity must provide the relevance documents for the consumer who can submit easily complaint on online and offline. Moreover, ADR entities have to cooperate and exchange the practices that the resolving the dispute to get settlement for domestic and cross-border disputes.¹⁰⁶ ADR entity has to submit a report twice for six months of each year and annual report in public under Regulation (2015) Article 10(1,2).¹⁰⁷

The parties have the right that they can choice the dispute resolving process or procedure of ADR entity and withdraw the disputes if they are not satisfied the activities of ADR entity before the procedure of dispute resolution initiate. UNION (2015)¹⁰⁸ The traders' obligation is that trader set up the dispute resolution scheme themselves or provide ADR entity list which covers based on the sector of trader to resolve the dispute on their website such as the address of trader, the condition of sale and services contract and terms and condition or relevance information for resolving disputing to the consumer. If the trader cannot reach the settlement a dispute by the consumer submit the complaint them directly, the trader have to provide the consumer

¹⁰⁵ EUROPEAN UNION, "European Union (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015," ed. EUROPEAN UNION (EUROPEAN UNION EUROPEAN UNION 2015), Part - 3, Information to be notified to Commission by ADR entity.

¹⁰⁶ Ibid., Article - 9, Obligations on ADR entities.

¹⁰⁷ Ibid., Article - 10, Reporting.

¹⁰⁸ Ibid., Fairness, Article - 14 (2,a).

to submit the dispute to the ADR entity where in the relevance State. The traders have to provide the detail information for resolving disputes to the consumer.

3.1.5.3 Enforcement

ADR entity must notify the parties the legal binding nature of ADR procedure as the aim of dispute resolution.¹⁰⁹ If the dispute between consumer and trader is reached the settlement outcome by the ADR entity's compromise and both parties are agree with this outcome, ADR entity signs the agreement to enforce as legally binding on it such as the decision of arbitration.

If the traders do not obey the rules under the Regulation (2015), who will be convict the class A punishment such as fine or imprisonment and the duration does not exceed twelve months or both.¹¹⁰ Furthermore, consumer is not satisfied the outcome of the dispute or the process of the dispute, the consumer can go to the Court (if consumer's ability is been limited to choose ADR procedure as arbitration process) for proceeding within six years started from the aware of breach of contract.

The consumer network check and make sure to identify the priorities of common enforcement and monitoring or analysis specific activities such as coordination with the difference State to inspect that kind of breach the consumer protection law particularly on online zone. Kind of breaches contain the traders' providing inadequate information, lack of detail contracts, misleading and unfair information for price (taxes, unexpected hidden cost, and delivery fees), not enough

¹⁰⁹ Ibid., Liberty, Article 15 (2,3).

¹¹⁰ Ibid., Part - 4, Consumer Information by Traders, point (3,4,5).

information for products quality, specification and label, the free of charge for products and unclear statement for long term payment or agreement.¹¹¹

3.1.6 ODR related laws

Existing ODR related laws are created based on the policies of consumer protection and boosting the digital single market to cover e-commerce disputes. EU ODR (524/2013)¹¹² was enacted in 2013 for protection high-level consumer protection in the internal market and when the disputes arising between consumers and traders.

When ODR mechanism is implemented in one country, the EU ODR legal framework has four main facts needed to consider is that (i) makes sure the power balance between the parties such as liability and responsibility based on e-contract and the level of consumers protection (ii) make sure the consumer protection law is adequate and provides specific rules which covers online environment for cross-border e-commerce disputes (iii) the eligibility of ADR body and entity (iv) ODR legal framework is needed to harmonize with other EU Member State based on the EU Directive and Regulation. ODR in the EU arises to resolve local and cross-border online disputes by using ADR entity which has four main parts of legal framework (i) ODR regulation (ii) ADR procedure and entity (iii) technology and, (iv) enforcement. All are based on the policy for high-level consumer protection and to boost e-

¹¹¹ Jana Valant, "Consumer Protection in the Eu (Policy Review)," (Consumer Protection in the EU: European Parliamentary Research Service, 2015), Page - 7, 1.3.2.3 Tools for stepping up enforcement and securing redress.

¹¹² PARLIAMENT, "On Online Dispute Resolution for Consumer Disputes and Amending Regulation (Regulation on Consumer Odr)."

commerce transactions. There are four main parts for ODR legal framework in EU is

(i) ADR (ii) Technology and, (iii) enforcement.

ODR legal framework		
Regulation No. 524/2013 and (EU) 2015/1051		
ADR	<ul style="list-style-type: none"> • Directive 2013/11/EU (ODR on consumer ADR), • Directive 2008/52/EC (mediation in civil and commercial matter) • Regulation (EC) no 2006/2004 enforcement 	<ul style="list-style-type: none"> • To reach a settlement for consumer disputes with amiable, fast, low-cost, convenience among the parties • Enforcement between national authorities
Consumer Protection	<ul style="list-style-type: none"> • Directive 2011/83/EU (consumer right) • EU 2018/644 (cross-border delivery services) • DIRECTIVE 2007/64/EC (payment services in the internal market amending) • DIRECTIVE 2005/29/EC (concerning unfair business-to-consumer commercial practices in the internal market) 	<ul style="list-style-type: none"> • To protect high-level consumer • E-contract, unfair practices or terms and condition, liability among the stakeholders, redress, adequate information
Technology	<ul style="list-style-type: none"> • Regulation (EC) No45/2001 	<ul style="list-style-type: none"> • Data security, e-payment security,

	(the protection of individuals with regard to the processing of personal data) <ul style="list-style-type: none"> • Directive 95/46/EC (personal data protection) 	information interchange method, mandatory software
Treaty for negotiation and harmonization on the legal framework	<ul style="list-style-type: none"> • the Treaty on the function of EU (TEFU) • the Charter of Fundamental Rights of the EU 	<ul style="list-style-type: none"> • Negotiation with between countries and ADR entity • Harmonize the legal framework for all ODR related law • Small claim procedure

Table 1 for ODR Legal Framework

According to the table 1, the main requirements for ODR Regulation are consumer protection law because of protection to consumers who are weak both of awareness and legal proceeding in the e-commerce environment. It is needed to provide adequate specific rules for the consumer in e-commerce disputes. ADR is part of ODR to resolve the consumer disputes and it also needs to reach a settlement by proving and investigation based on the ADR procedures and specific rules under the consumer protection law.

Directive 2011/83/EU (consumer right)¹¹³, aim is to protect consumer on online transactions especially in e-contract for distance selling. It provides detail rules

¹¹³ THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, "Directive 2011/83/Eu of the European Parliament and of the Council on Consumer Rights, Amending Council Directive 93/13/Eec and Directive 1999/44/Ec of the European Parliament and of the Council and Repealing Council Directive 85/577/Eec and Directive 97/7/Ec of the European

on information for distance contracts and off-permit contracts between consumer and trader. It provides, moreover, mandatory information should be provided by the trader on online sale. The reason is that adequate information provide by trader is crucial point in distance contracts and the trader should account for this with certain technical method on screen and it is easy accessible and reasonable such as photo quality, specification, delivery method, cost, return and refund, time for the whole process such as shipping, delivery time, payment method.

The reason why consumers are needed to protect from e-contract for distance selling is that consumer cannot able to see and test the produces before entering the contract provided by trader. Based on inadequate information makes consumer wrong decision therefore, consumers have rights for withdrawal form e-contract within the limitation time. The Directive explains that the contracting parties should have an obligation to provide reasonable time and legal certainty for consumers who want to withdrawal from the contract. Moreover, the trader should if consumers want to withdrew from the contract, the trader should provide reimbursement for all payments and it provides detail instruction for traders' liability, time limitation, information providing, delivery process which are fully protect consumers and their rights.

EU 2018/644¹¹⁴ provides specific instructions to boost cross-border parcel delivery services which include controlling the price for delivery services are

Parliament and of the Council," ed. THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION (Official Journal of the European Union website: Official Journal of the European Union, 2011).

¹¹⁴ Official Journal of the European Union, "Regulation (Eu) 2018/644 of the European Parliament and of the Council of 18 April 2018 on Cross-Border Parcel Delivery Services (Text with Eea Relevance) ", ed. THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION (THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE

unreasonable high and the traders' liability by providing information relevance cross-border delivery services for consumer and transparency of cross-border duty. The aim of Directive 2011/83/EU is to success B2C online internet market for the high level consumer protection and business competition.

DIRECTIVE 2007/64/EC ¹¹⁵ provides specific rules for payment services provider and institutions which are (i) 'electronic money institutions (ii) credit institutions under the Article 4(1) (a) 2006/48/EC Directive (iii) post office giro institutions (iv) payment institutions and, (v) prohibiting rules for "the European Central Bank" and "national central banks", and "regional or local authorities, not acting in their capacity as public authorities". ¹¹⁶ This Directive sets up the requirements of information for payment services, payment services for the user and providers' rights and obligations related to the e-business and the specific rules which are transparency in the whole payment process. The payment services market is organized separately within the Member State and payment services legal framework is fragmentation among EU member countries. When the single market is implemented and to provide free flow of goods, services and capital, current the legal framework for payment services is lack of harmonization and difficult to remove the trader barriers in the internal market. There is one reason why this Directive was

EUROPEAN UNION: THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, 2018).

¹¹⁵ EU Preliminary, "Directive 2007/64/Ec of the European Parliament and of the Council of 13 November 2007 on Payment Services in the Internal Market Amending Directives 97/7/Ec, 2002/65/Ec, 2005/60/Ec and 2006/48/Ec and Repealing Directive 97/5/Ec," ed. THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, 2007).

¹¹⁶ Ibid., Article - 1(1), Subject matter.

enacted is that consumers' right for guarantee to protect from misconducting of contract by traders or providers such as adequate information for payment, easily to access on mobile, no need to pay charge for low-value and high-value transactions in the refund payment, risk or fraud in payment transactions and reasonable time for payment transaction.

Directive 2005/29/EC¹¹⁷ provides approximate laws and regulations for protection directly or indirectly from unfair commercial practices making the harm to consumers' interests in the internal market. It contains misleading advertisement, contract, intellectual property rights, unfair competition and safety and complex products which makes high levels of risk to consumers. This Directive clearly defines the misleading omissions and actions in the commercial practices and makes sure the main characteristic of particular items which are directly or indirectly harms to the consumers who are making commercial transactions. The reason is that those kinds of practices make harm to consumer in 'harassment, coercion, physical force to use and undue influence and impair the consumers' freedom of choice'.¹¹⁸

Directive 95/46/EC¹¹⁹ and Directive 2002/58/EC¹²⁰ (personal data and the protection of privacy in the e-communications sector) protects basic rights for personal

¹¹⁷ European Parliament and of the Council, "Directive 2005/29/Ec of the European Parliament (Unfair Commercial Practices Directive)," ed. European Parliament and of the Council (EU website: Official Journal of the European Union, 2005).

¹¹⁸ *ibid.*, section - 16.

¹¹⁹ the European Parliament and of the Council, "Directive 95/46/Ec of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data," in *31995L0046*, ed. the European Parliament and of the Council (EU website: the European Parliament and of the Council, 1995).

¹²⁰ European Parliament and of the Council, "Directive 2002/58/Ec of the European Parliament and of the Council of 12 July 2002 Concerning the Processing of Personal Data and the Protection of

data processing and free flow of personal data between two parties, organization, or legal person. Directive 2002/58/EC provides to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services in the Community.

Regulation (EC) No45/2001¹²¹ is relevance for online sales issues for example, data processing information and tracking data and interchanging the personal data among the parties within the EU Member State. They have been established to protect fundamental rights of processing of personal data and privacy, and freedoms of natural person in the particular right. Moreover, it provides requirement of data processing, restriction, prohibition for the free flow of personal data among the parties. However, 2002/58/EC mainly focuses on e-privacy. Both of these Directives are relevance for online sales issues for example, data processing information and tracking data and interchanging the personal data among the parties.

It includes specific e-service, individual institution, organization or institutions within EU, to control or provides the processing of personal data specifically. Commercial practices and internal market encourage free flow of goods, services, labor within the EU, however, this Directive not allow free flow of data because of fundamental rights for person and institution should be safeguarded in Section (3). This Directive does not allow the information (personal data) divulging for direct

Privacy in the Electronic Communications Sector (Directive on Privacy and Electronic Communications)," in *Directive 2002/58/EC* ed. European Parliament and of the Council (European Parliament and of the Council website2002).

¹²¹ *ibid.*

marketing purpose and reused without reasonable fulfill a specific purpose. However, it allows third parties that if necessary with fulfillment of the purpose and allow from the recipient with identified.

Regulation (EC) No 45/2001¹²² provides the protection of individuals processing of personal data by the Community institution or body, the independent supervisory authority set up this Regulation under the Directive 95/46/EC. It can 'monitor the application of the provisions of this Regulation to all processing operations'.¹²³ If the third parties can collect personal data for the business, it has a legal obligation and the purpose is unambiguous to use it. The third parties comply with the Directive rules which are how long the data is kept within a necessary time depend on the business and what security is needed to measure taken to safeguard the data against possible misuse or illegal access. Third parties should provide complaint center or website, when the person claim or have questions.

Chapter (4)

Challenges and Limitations of ODR Procedures in Myanmar

4.1 Absence of an ODR Platform

Based on the chapter (3), ODR platform in EU can resolve the B2C disputes effectively within EU Member State and has been provided these facts that are accepting and transmission complaint, create the dispute resolution room for all parties, interchanging the data (information) with secure and confidentiality, database,

¹²² "Regulation (Ec) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the Protection of Individuals with Regard to the Processing of Personal Data by the Community Institutions and Bodies and on the Free Movement of Such Data," in *Document 32001R0045*, ed. European Parliament and of the Council (2001).

¹²³ *ibid.*, Article 1 (2).

personal data protection, consumer information, laws, rules and procedure for ODR platform (some laws are link with other ODR related laws) and resolving the dispute through ODR platform. The standard of the ODR platform in EU is fast, transparency, convenience and low-cost.

Current consumer complaint website in Myanmar is absent some process and rules of an ODR platform. These facts are as following;

- (i) **Data processing, transmission the complaint, interchanging the data;** ODR platform can only accept the complaint and there is no data processing and interchanging among the parties. It makes delay process when connecting among the parties.
- (ii) **Database;** There is no database system for recording the cases which is reached the final state or is not. It cannot manage contact point and assisting the consumers who need to assist for complaint and the process of the cases. It makes difficult to check and find the facts of the cases.
- (iii) **Information of Dispute resolution process;** Current ODR platform cannot able the information for dispute resolution process such as when the cases is finished, who are the dispute settlement body, the way how to resolve the cases. Therefore, the process is not transparent among the parties.
- (iv) **Dispute resolution process through the ODR platform;** Current ODR platform cannot crate and conduct to use online mediation or arbitration process. It makes the consumers and traders inconvenience

when they are resolving the dispute in face to face at the office in front of the authorize persons.

- (v) **Laws, rules and procedures for ODR platform;** There is no link with the other ODR related laws and some are lack of ODR rules such as; when the parties are responsibilities to use ODR and follow ODR rules, ADR procedure for ODR platform. Data interchanging or transmission among the parties and security for personal data protection. It makes all of the stakeholders who are not trust the dispute settlement mechanism.

In conclusion, based on EU ODR platform, it has minimum standard of ODR regulation and can make all stakeholders enjoy and trust to use e-commerce market widely.

In Myanmar, current ODR platform does not have that minimum standard of ODR and cannot make to be satisfied and happy all of stakeholders. These facts, absence of an ODR platform make all stakeholders' disappointment and they do not trust to use the ODR mechanism and organization. The reader can see that facts in Figure 4 that has proved that 82.2 percentages of the problems were not resolved by the organization.

4.2 ODR process

The main part of the ODR process in EU is (i) filing the complaint (ii) Create for resolving room for the parties (ADR process) (iii) Output the result based on the result of EU regulation for ODR in chapter (3). In the ODR process includes two parts that are automate process (without human) and partial process that involving human such as mediators, arbitrators, ODR contact points.

ODR platform in Myanmar can accept the consumer complaint and provides the e-complaint form. However, the process of complaint procedure for dispute settlement is only accepting the complaint from the consumer within Myanmar. Current complaint website provides the e-complaint form via ODR platform. There is no database processing, transmission, interchanging among the parties and cannot resolve the e-commerce disputes via ODR platform.

4.3 ODR Entities

EU commission is one of the leading in ODR platform and arranges the information and technological application for resolving the e-commerce disputes. The Commission has the responsibility to develop the ODR platform and maintain the operation of ODR process, procedures and functions. Moreover it can promote and effort the online settlement to the professional ADR entities. The committee in EU supports the Commission by giving positive opinion for adopting the draft implementing act.

The main role of the ODR entities in Myanmar is Consumer Commission that was organized under the Consumer Protection Law. The Commission can enact or amend the rules, regulation that is relevance the consumer protection whenever it is needed. The Consumer Committee (Ministry), Dispute Settlement Body and inspectors are under the Consumer Commission. The committee has to support the Commission for reporting the disputes, the result of dispute and challenges to the Commission monthly and yearly. The committee can instruct the dispute settlement body for resolving disputes.

4.4 ODR rules and procedures

(EU) No 524/2013¹²⁴ is designed based on the high-level consumer protection and boosting the e-commerce within the EU Member State. It grantee fully protect high level consumers' right. It can make feel confidence of consumers and traders in the digital market by resolving the disputes arising from online transactions within the EU Member State. ODR is created out-of-court disputes resolution with simple, efficient, first and low-cost for all parties. ODR has started to come out based on two policies that are boosting the digital e-commerce market and protecting the high-level consumer protection policies.

The rules and procedures for ODR (EU) No 524/2013¹²⁵ is created based on the ODR process through the ODR platform such as data interchanging and respond quickly the message, create the resolving room among the parties (ADR process and stakeholders' liabilities) and output the result (agreement) of the disputes). Based on these processes, the EU commission has enacted the law and rules or regulations where is needed. For example, the **complaint** process, EU commission has considered that the e-complaint form must be sufficient information for ADR entity to determine the case. Moreover, the e-complaint form must be user friendly, acceptable and easy for the ODR platform and what kinds of facts are needed in complaint form. All of the data in complaint form must be relevance, accurate and it is not excessive the purpose of dispute resolution. Moreover, EU commission has made time limitation for each state, example, when the traders, consumers and ADR entity will respond the message after receiving the message from ODR platform.

¹²⁴ *ibid.*

¹²⁵ *ibid.*

Current dispute resolution process based on Consumer Protection Law;

Current consumer complaint mechanism and rules and procedures for resolving the consumer disputes under the Consumer Protection Law are as following;

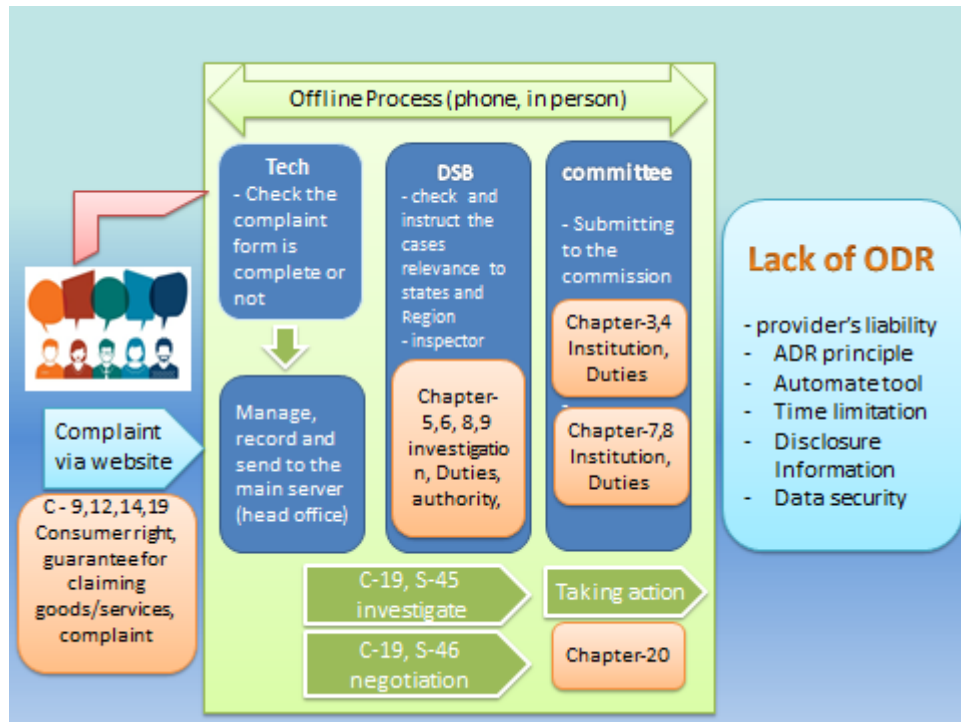


Figure 7. ODR Legal Framework and process in Myanmar based on Consumer Protection Law

Complaint (online and offline) : According to the Article 44 in chapter (19), the consumer complaint website does not only accept online dispute, but also offline Business to Consumer (B2C) disputes. Consumer can complain directly to the head of consumer office and complaint the staff from Consumer Information and Complaint Centers (CICC) where the location is relevant State and Regions. The complaint is accepted on phone, social media (Facebook, messenger), in person, email and the complaint website.

Processing (offline): When consumer submits the complaint via online or offline, Consumer Information and Complaint Center (CICC) receive and record it

and inform the DSB. The DSB instructs the inspector who is relevant State and Regions to check and investigate the cases. According to the Article 45, points (a, b and c), the inspector has responsibility to examine the complaint files that has been completed and accurate or not. Moreover, Article 15 provides the inspector's responsibilities to monitor and inspect for unsafe, misrepresentation, unfair conducts for goods and services. Article 15 (d) states the inspector can able to inquire the complaints relevance goods or services to get evidence for resolving the disputes.

Then the inspector starts to investigate both consumer and trader based on the complaint form from consumer. After that the inspector confirms the traders' residence in order to complaint form and reports it to the DSB. After accepting the disputes, DSB contacts and call on phone the both trader and consumer to enter the mediation channel by giving an appointment date.

If the consumers need advice for their case, complaint website provides Live-Chat section which is direct interaction by sending message to the Dispute Settlement Body.

Negotiation (offline): Article 46 states the negotiation process and procedures for resolving disputes between consumer and trader. It provides that when resolving the disputes, DSB from the relevant States and Regions (i) examine the necessary documents and other evidences related to the investigation (ii) meeting or calling the trader or the trader's agent against the consumer for negotiation (iii) examining and questions business trader and consumer in front of witness, consumer law expert and authority person from Government and other related person (iv) If the trader did not reply or refuse to come and cooperate for resolving the dispute, the Dispute Settlement Body (DSB) can make a decision to get solution without the trader

(v) DSB can examine and negotiate whether damage or harm to the consumers (vi) informing or notify the trader who commit or violence the rules under Consumer Protection Law the agreement on consumer protection (vii) if the trader did not comply the agreement from DSB, the case will be moved to the Committee.

If the consumers or traders are not satisfied the decision of DSB, they can appeal within (30) days in order to section 58. There is three difference levels that (i) State and Region office (ii) relevance committee in State and Region (iii) consumer protection committee and relevance to the administrative action. If consumer or trader is from State and Region, DSB make a decision the case in State and Region office, in this situation, consumer and trader can appeal to the committee relevance in State and Region (could be Yangon, Shan. etc). If consumer or trader do not satisfied the decision from committee, they can appeal the Commission of consumer protection. The date of appeal is start the date of making decision from relevance office. The decision of Commission is final in section 59 (c).

According to the Figures 2, 7 and based on the current complaint mechanism, the reader can see clearly that ODR process in Myanmar is only accepting the complaint and provides e-complaint form. The left of processes are offline process by making on phone and in person among the parties. Moreover, in order to the Figure 4, it has stated Consumer dispute settlement organization cannot resolve the disputes and explained why current ODR platform in Myanmar is not effectively resolve the e-commerce disputes. There are many reasons, among them, the main reason is absence of an ODR platform and rules and procedures.

Therefore, it is no doubt that missing ODR process, procedure and rules and cannot able to resolve the dispute via ODR platform. It cannot provide the

interchanging data (information), quick respond among the parties, database process and security, cannot provide the information for resolution process and create the mediation room for online mediator or arbitrator and other stakeholders.

Challenges of ODR for resolving disputes based on EU ODR regulation;

The structure of EU ODR mechanism is single entity point, web-based process and user-friendly. ODR platform give the grantee for all stakeholders by imposing rules and procedures in each parties on the ODR platform. That fact is directly benefiting all stakeholders when resolving the cross-border and local e-commerce dispute. There are getting the trust and confidences from all parties who are using ODR platform. Besides, the more getting the trust from consumers, the more consumers purchase the goods or services from online website. That facts support to archive e-commerce market by protecting high level consumer.

ODR platform in Myanmar is created single entity point and web-based process; however, it still needs user-friendly for all stakeholders.

Data processing, transmission the complaint, interchanging the data;

EU ODR regulation has already enacted detail rules and procedure for Data processing, transmission the complaint, interchanging the data (see Articles 7, 8, 9, 10, 11, 12 and 13). For the complaint form, EU ODR states that the document such as complaint form and relevant documents must be made adequately available for ADR entities making decision. The ODR platform can able to check automatically the complaint form that has been completed or has not.

In Myanmar, current ODR platform can provide the e-complaint form and provide to upload the relevance documents as an evidence for dispute. However, whenever consumers file a complaint on complaint website, the DSB always check

the complaints which has been completed and instructs the inspector to confirm and inquire both consumer and trader on phone or in person (if needed). Current ODR platform cannot check automatically the complaint that has been complete or not. Moreover, ODR platform cannot transmit the complaint and interchange the data among the parties. Being of lack of this process, the DSB faces challenges that delay the dispute resolution process, difficult to get an appointment date when consumers' and traders' residence are not the same place.

Database; EU ODR platform has been created database system and rules in Article 11. That is very benefit for all stakeholders. Those facts are as following;

- (i) Can identify the competent ADR entities and submit the complaint and connect with the ADR entities and trader without delay
- (ii) Conduct and alert the ADR entity who can check the date for receiving the complaints, can see the detail information of the disputes, the date of deadline that ADR entity need to know and the result of ADR procedure
- (iii) The Commission and ODR content points can see and check all of the ODR process and result to make report easily

In Myanmar, current ODR platform cannot conduct Database system for making those processes. Therefore, DSB has challenges to connect with the trader, cannot check the information of the dispute and cannot see the result easily where the cases are from State and Regions. Whenever consumers inquire the questions and want to know their cases, DSB cannot reply without delay the information because DSB always connect on phone to ask the DSB from difference States and Regions.

Information of Dispute resolution process; EU ODR provides the information that are the traders have to provide the adequate information for consumer and the ADR entities have to follow the rules for information for consumers and traders in out-of-court dispute resolution process and how to provide an electronic link for ADR bodies and traders (see Article 14). These facts make transparency the ODR process for all stakeholders who are enjoying and trust using the ODR platform.

In Myanmar, There is no information of dispute resolution process at all. Therefore, consumers and traders do not trust and convenience the dispute resolution process.

Dispute resolution process through the ODR platform; EU ODR is designed based on ADR with fist, convenience, free of charge by interchanging the information among the parties. Therefore, ADR is the main process of the ODR mechanism. There are two ADR Directives, Directive 2008/52/EC¹²⁶ and Directive 2013/11/EU¹²⁷ that are driving force behind the ODR regulation. EU ODR platform can able to create online mediation room for the consumers, traders and ADR bodies without need physical presence. That fact is very convenience among the parties and they can resolve the dispute without knowing each other. It makes to get easily the solution of the dispute with amiably and fair position.

¹²⁶ COMMUNITIES, "Directive 2008/52/Ec of the European Parliament and of the Council of 21 May 2008 on Certain Aspects of Mediation in Civil and Commercial Matters."

¹²⁷ the European Parliament and of the Council, "Directive 2013/11/Eu of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes and Amending Regulation (Ec) No 2006/2004 and Directive 2009/22/Ec (Directive on Consumer Adr)," ed. the European Parliament and of the Council (EU: the European Parliament and of the Council, 2013).

For **the mediation room process**, EU has already enacted Directive 2013/11/EU¹²⁸ and Regulation No 524/201. ADR Directive makes ensure consumers who have a dispute against the trader when purchasing the products or services on online and offline within EU. The standard of the EU ADR is out-of-court dispute resolution process and amicably, fair and transparency and low-cost. In this process, EU commission has considered that to link ADR Directive with ODR platform. The reason is that ODR is created to promote ADR entities for resolving the e-commerce disputes within the EU.

In Myanmar, the existing process of ADR body cannot handle online ADR process at all. Some of the challenges are as following;

Challenges-1, The eligible person for ADR; Dispute settlement body (DSB) is organized staff and lawyers who serve under the Department of Consumer Affairs. Consumer protection committee is established in order to consumer protection law, section 17 for resolving the consumer disputes and conducting the consumer protection affairs under the Central Committee.

In this condition, there is one issue of the status that DSB can handle the cross-border e-commerce disputes or not. Because the member of DSB is organized by staff officer who are not expert in negotiation, mediation process at all. There is no training for them. Some of the e-commerce cases could be complex and difficult for them because of behavior and level of well-known consumer education of their experience

¹²⁸ the European Parliament and of the Council, "Directive 2013/11/Eu of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes and Amending Regulation (Ec) No 2006/2004 and Directive 2009/22/Ec (Directive on Consumer Adr)," ed. the European Parliament and of the Council (EU: the European Parliament and of the Council, 2013).

and the making a decision is based on the liability and prohibition of trader under the consumer protection law.

Myanmar consumers are typically unlikely to repeatedly file a complaint directly to the trader. However, foreign consumer may be more active in making complaints and DSB can face challenges when resolving the complicated disputes. The reason is that doubting for the decision from DSB who are not expert in relevance sectors.

In EU, the ADR Directive Article 5 and 6, For example, in EU, ADR entities are eligible person and expert in their relevance sector. Before they become the member of ADR entity, they have already got certificate in their related sector. When resolving the disputes, they effort resolving the disputes within the time limitation. Moreover, Article 5 and 6 states the requirement of ADR entity and neutral person for skillfulness, independence and fairness. It describes the what eligible the ADR person have, what principle or practices need to be a member or ADR entity, what are the liability and when the case was accept and cancel. Moreover EU provides detail instruction for ADR entity such as the place where the ADR entity resolve the disputes, when the ADR entity have to inform to the trader for their mediation process and the instruction if ADR entity cannot resolve the dispute what they should do for the next step under the commission guideline.¹²⁹

In conclusion, DSB needs to promote their ability to resolve effectively both domestic and cross-border e-commerce dispute. On the other hand, specific rules and regulation for mediation and arbitration should be provides for DSB by the Ministry

¹²⁹ European Union, "European Union (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015," ed. EUROPEAN UNION (EUROPEAN UNION website: EUROPEAN UNION, 2015).

which has an authority to make or issue the rules, principles and regulations related to consumer protection affairs according to the agreement of the Myanmar President office in section 83(a).¹³⁰

Challenges-2, Lack of procedures for ADR entity; according to the ODR and ADR procedure, there is missing these procedures when resolving the cross-border e-commerce disputes.

In 2002, the Green Paper on Alternative Dispute Resolution in Civil and Commercial law was published by EU commission. The focal point in this paper is that the ability of ADR is increasing to be integral as a part of policy to improve access to justice.¹³¹ In 2008 EU published Directive 2008/52/EC of the EU Parliament and the Council on Certain Aspects of Mediation in Civil and Commercial Matters.¹³² The purpose of the Directive is building the trust by expanding the mediation process that can effectively resolve the cross-border disputes with low cost, flexible.

The Directive of Article 7 (1), (3) and (7) provides that to ensure the Member State to cover the procedure of ADR entity for consumer against the trader within the EU. It states that the trader concern who is the association of ADR entity or not, how to determine the traders' place, the fact for consumer access to ADR procedure and

¹³⁰ Ministry of Commerce, "Consumer Protection Law_2019," chapter-25, sec-83.

¹³¹ Leah Wing and Daniel Rainey, "Online Dispute Resolution and the Development of Theory," vol-19, no. no.4 (2012): Page - 2, para - 2.

¹³² COMMUNITIES, "Directive 2008/52/Ec of the European Parliament and of the Council of 21 May 2008 on Certain Aspects of Mediation in Civil and Commercial Matters."

the procedure for ADR entity which is member of association or specific-sector owned by business association based on this Article.¹³³

In Article 2 (2) (e,b) does not allow the procedure of ADR entity directly connects with the consumer and trader to resolve the disputes before the traders are trying to resolve the consumers' complaint internal complaint handing mechanism first. Moreover Article 2(2) does not provide for dispute resolution procedure which is (1) not to allow before the neutral person for ADR entity are employed and compensate exclusively by the trader. Member State should allow the ADR procedure accordance with the Directive and the specific requirement for independence and transparency under the Article 6(3).

Another international framework is the UNCITRAL Model Law on International Commercial Arbitration (1985), UNCITRAL Model Law on Electronic Commerce (1996), United Nation Convention on the Use of Electronic Communications in International Contract (2005) and recently the Technical Notes on Online Dispute Resolution under the UNCITRAL. These laws examine that the value of arbitration and use as a method to resolve the disputes arising from the international commercial transactions, to make arbitration legal framework of uniformity among the member state, when the parties can request to resolve their disputes to get a settlement with amicably, the context of contract information, the meaning of data message and the purpose of using it, and information discloser by the parties. However it still needs to redress specific online arbitration rules to cover e-commerce transactions.

¹³³ Council, "Directive 2013/11/Eu of the European Parliament and of the Council of 21 May 2013 on Alternative Dispute Resolution for Consumer Disputes and Amending Regulation (Ec) No 2006/2004 and Directive 2009/22/Ec (Directive on Consumer Adr)."

Challenges-3, Lack of specific e-contract rules for ADR; Current consumer protection rules cannot provide e-commerce dispute and the effect makes ADR difficult when making a decision. In this situation how much ADR entities are organized with the eligible person in their relevance field.

When the DSB took the mediation between consumer and trader, they are facing challenges to resolve dispute both local and cross-border e-commerce disputes. The reason is that the Dispute Settlement Body still needs specific regulation for e-contract in e-commerce. The lack of specific regulation makes DSB difficult to resolve the dispute with fair, fast and amicable.

For example, consumer does not want the item for being late of delivery and want to cancel his/her order and want to refund but the trader does not allow canceling the order which is unfair for the consumer. So consumer claims to DSB to resolve it via online website, to get his right to cancel and refund for the item. Normally DSB could decide to refund for the items to the consumer under the section 25 and 26. However, the trader explain that there is no refund policy on the e-contract (terms and condition) which is consumer already agreed.

In this situation, how to decide delivery is late, the places of the items can local and foreign country which is taking time. When consumer can cancel their order or withdraw refund? The reason is lack of information to provide the consumer and e-contract is created by trader side only.

Most of traders break the e-contract and have unfair behavior on the consumer. Some of the individual online trader in Myanmar cannot provide clearly detail information for their products and services of reasonable delivery time and cost,

the process of redress system, tracking system for delivery process, the resolving method, security for e-payment and option in or off method on their website.

Whenever consumers purchase the products or services on online, consumer cannot trust pushing online website for lacking of such condition. Existing consumer protection law provides the traders' liability and grantee for their products and services in section 22, 23, 24 and 27.¹³⁴ Moreover, it provides the rights for consumers' claim for products of services in section 25, 26 and 28. It seems enough for local offline disputes. Moreover, DSB cannot resolve the e-contract breaking form the trader being lack of specific rules for internet provider or third party. The decision of the central committee is binding and some of disputes are remain to resolve.¹³⁵

Dispute Settlement body needs the standard/model rules and regulations "Guideline for consumer protection in the context of electronic commerce"¹³⁶ to implement and archive their dispute mechanism body which can solve the disputes arose from using the Internet especially online cross-border consumer disputes. There are (435) local disputes and (5) cross-border disputes which are both goods and services in April to January 2019 according to the Consumer Information and Complaint Center (CICC)'s survey. Among these cases, three cases, agricultural machine company from China delegated seller to set up in Myanmar, are being resolved until now (It has been taken six months) by Dispute Settlement Body.

Another challenge for DSB is that when DSB resolve the disputes, it takes time both of local and cross-border disputes. There is no time limitation for resolving

¹³⁴ Ministry of Commerce, "Conaumer Protection Law_2019."

¹³⁵ *ibid.*

¹³⁶ Liyanage, "The Regulation of Online Dispute Resolution: Effectiveness of Online Consumer Protection Guidelines," page-1.

disputes and the time for resolving the dispute is 60 or more days and it depends on the case. For example some of disputes are needed to investigate an expert in their relevance field and some of cases are out of the scope of the consumer protection area such as mobile banking cases are under the Central bank or Ministry of Information,.etc. Therefore DSB needs to negotiate with other organization by personally. If consumer protection committee can use database or online communication with the parties, such kind of problems are resolved easily and faster than offline communication and cover the cross-border resolving disputes via email, message app or videoconferencing.

In addition, the Consumer Protection law and other ODR related law cannot provide cross-border e-commerce disputes. There is not specific information procedures for trader, ADR entity and services provider for e-commerce sector. For example, EU ODR regulation contains specific rules and instructions for ODR providers and ADR entity for resolving cross-border disputes. Furthermore, EU has already enacted ODR related regulation and Directives for resolving cross-border e-commerce disputes such as unfair contracts terms, delivery services, personal data security, small claim procedure, trust mark, digital signature, remedies for consumer and information disclosure which are support to the ADR entity to make a fair decision with amicable, transparency, effective between the parties. Myanmar should consider enacting the new regulation or rules to cover the e-commerce disputes.

Actually ODR and ADR procedure should follow minimum international standard for resolving the cross-border e-commerce disputes based on case study problems. On the other hand, Dispute Settlement Body is organized government staffs who are not skillful knowledge for dispute resolution procedures, and the

responsibility and dispute resolving procedures or instruction is not clear statement. Database process, and online mediation and arbitration procedure are also missing under the consumer protection law. Based on these condition, the result will come out that lack of specific ADR procedure and skillful ADR entity will face difficult and have not granted to decide with fair, transparency and amicable between the parties.

ODR related laws

To protect consumer interests, ODR regulation is needed in Myanmar. However, the nature of ODR does not only stand itself and it depends on the local laws in each country. Normally it is created based on ADR body, technology and linked with other related laws. Therefore, ASEAN consumer protection handbook 2018¹³⁷ examined that the consumer protection organization or authorize Ministry for consumer affairs or dispute resolution body should have the power and responsibilities of ODR for consumer protection or sharing the power among the consumer agencies. The reason is that, ODR regulation is not only depending on the consumer protection law but also involving other related laws which are linked with the ODR regulation. For example, some of the countries have separate legislations for ODR to provide specific detail rules based on the issues such as unfair contract terms, product liability and quality, product safety. However, some of the countries have adopted specific rules for consumer protection law for consumer interests based on the sector of law and regulations which are linked to the ODR regulation. For example e-commerce, banking system, payment method, healthcare, professional services, ADR procedures and special tribunals.¹³⁸ Myanmar also has the same

¹³⁷ ASEAN, "Asean Handbook on Consumer Protection 2018," page-13.

¹³⁸ Ibid., Page - 13, Scope of Consumer Protection Law.

condition for ODR regulation and some parts of specific laws are needed to link with ODR regulation under the consumer protection law, and the focal Ministry and the dispute settlement body has fully power and responsibilities to protect the consumer interest. There are some ODR related laws are missing or need to amend and adopt to implement ODR mechanism by examining, analyzing and proving that facts. The following ODR related laws are needed to enact or amend for implement ODR mechanism;

The Arbitration law (2016): It was enacted in 2016¹³⁹ and has adopted the terms from the New York Convention and UNCITRAL model law (1985). The ambition of this law is to resolve the commercial dispute located in regional and international with effectively and fairness, to recognize and enforce the foreign arbitral awards made in arbitral proceeding and to encourage the dispute resolved by arbitration. However, it provides only (B2B) local and international commercial disputes. All of the arbitration processes are based on offline commercial disputes between two parties. This law does not cover in cyberspace for resolving consumer disputes. There are three reasons that are (i) government has not clear policy and action plan for consumer protection and promoting e-commerce market to cover cross-border e-commerce disputes (ii) consumer protection does not enforcement and link on the Arbitration law for resolving cross-border e-commerce disputes (iii) the arbitration procedures are only focus on offline commercial dispute and not specific rules for resolving cross-border e-commerce consumer disputes.

¹³⁹ "Arbitration Law 2016," in *Law No. 5/2016*, ed. The Pyidaungsu Hluttaw (The Pyidaungsu Hluttaw: The Pyidaungsu Hluttaw, 2016).

Current dispute resolution procedure is focus on offline between the parties. However, the definition of ‘international arbitration’ is used only in section 13 and 32.¹⁴⁰ Being of excluding the definition of ‘commercial’, this Arbitration law can be used not only commercial matter but also arbitration. It contains where the arbitral award is made in local and international in sections 10, 11, 30 and 31, and chapter (10). Moreover, in this arbitration act provides the scope of application is based on the place of the arbitration. Meaning is that, when the disputes arise between two counties, in accordance with the agreement or contract, one of the parity must go the other country for hearing the case. Therefore, the costs could high for travelling charges and other expenses. The amounts of cross-border consumer cases are tiny and consumer cannot effort in this condition. The nature of online arbitration in consumer disputes and offline arbitration are difference because the online arbitration is made based on the file sharing system and making a decision is depend on the applicable law according to the treaty or agreement among countries or between two countries. Therefore, Arbitration law is needed to review the process of file sharing for arbitrator, commercial practices and specific negotiation rules for online dispute among the countries. For example, in section 30 states the facts that are assisting the arbitral tribunal in taking evidence or arbitral tribunal or any parties can request to the arbitration proceedings with consent of the arbitral tribunal. In this situation, the process are paper based (offline) and concern the Court assistance for taking evidence. In the online process, the evidence is making based on the e-contract, complaint form and relevant documents without assisting court. The ADR body that is chosen from parties make a decision based on these documents within the time frame.

¹⁴⁰ Ibid.

Meaning that even though some of the section and chapter are reused in online arbitration, still needs to review for covering online environment.

Enforcement for Arbitration law: According to the UNCITRAL technical notes on ODR¹⁴¹, provides negotiation, facilitated settlement and appointment, powers and function of neutral in the ADR process via online platform. There is no statement for enforcement clearly between two countries. However, the Working Group III¹⁴² has considered for enforcement mechanism to comply with the outcome of dispute resolution specifically such as payment, Credit Company or bank. Non-complaint traders must be suspended in their domain name and the black list traders could establish or create webpage. Therefore, the chambers of commerce or organization (third party) have to record for non-complaint and black list traders on the enforcement mechanism.¹⁴³ The process of chargeback mechanism should be governed under the national legislation. In this condition, the working group III considers that how much effect involving the third party in the outcome of private enforcement mechanism.

In conclusion, the facts Myanmar needs specific rules for e-commerce is (i) ICT infrastructure (ii) online consumer protection (iii) the security for e-transaction and online personal information protection (iv) e-payment and settlement (v) cyber security (vi) trade facilitation for e-commerce logistics (vii) e-signature, data message.

Moreover, when Myanmar establishments ODR mechanism, there are several

¹⁴¹ NATIONS, "Uncitral Technical Notes on Online Dispute Resolution."

¹⁴² United Nations Commission on International Trade Law Working Group III (Online dispute resolution), "Online Dispute Resolution for Cross-Border Electronic Commerce Transactions: Overview of Private Enforcement Mechanisms," ed. Working Group III (Online dispute resolution) Twenty-eighth session (General Assembly Distr2013).

¹⁴³ Ibid., page - 7,8, D. Possible alternative mechanisms.

requirements for online arbitration. For example, the arbitrator must be neutral person and in the automate negotiation process, there is no need human. In this condition the outcome of arbitral award should be binding or not. There is some difficult to enforce the third parties because some of the internet provider or trader could involve under the ODR regulation. According to the EU ODR regulation, it does not enforce to the third parties to use ODR mechanism, however, enforce European Consumer Center Network makes sure the providers' list and registration in their relevance country. The arbitral award for online process is mostly binding and it depends on the applicable law in relevance country.

Therefore, based on these facts, government need to review and analysis which dispute settlement body will be handle cross-border consumer disputes or ADR entity under the arbitration law are allowed to participate and resolve cross-border consumer disputes by referring from Consumer Protection Law. In fact, all of the countries use certifies or eligible person of ADR entity under the specific ADR procedure or arbitration law when resolving the cross-border e-commerce disputes in ODR regulation.

Consumer Protection Law: Consumer Protection Law was enacted by Myanmar Union of Parliament on the March 15th, 2019 and has been enforced in Myanmar.¹⁴⁴ The new law has made clear the lack of uncertainties and doubtfulness by replacing the old law (2014). These facts are products labeling, guarantees regarding to goods and services, consumer rights, consumer claim for goods such as exchange, redress, compensation, responsibilities for the Dispute settlement body, and offence and penalties. Although new law has been enforcement, one exception of the

¹⁴⁴ Ministry of Commerce, "Conaumer Protection Law_2019."

product labeling requirement section (18), which will be enforced next year after the date of enactment. All of facts are based on the only consumer protection for offline transaction and aims to protect consumers' right in all sectors.

Thus facts is no doubt that when look at the Consumer Protection Law, chapter 19, states the negotiation process for Dispute settlement body (DSB) organized by government staff. There is no specific rules for cross-border consumer disputes when DSB enter for resolving disputes and refuse, the obligations for resolving disputes within time limitation and there is doubt the eligible person of DSB for the cross-border they can handle or not. The main facts Consumer Protection Law cannot able to link with the other ODR related laws such as Arbitration law.

EU has published consumer right Directive 2011/83/EU¹⁴⁵ and Directive 93/13/EEC Unfair Terms on Consumer Contract¹⁴⁶. Directive 2011/83/EU¹⁴⁷ provides and covers the certain aspect of e-contracts (in article 5 and 6) for B2C such as off-premises contracts (in article 7 and 8), distance contracts (in article 9 and 16), sales contracts and services contracts (in article 2(5) and 6) of this Directive. It provides information requirements for all types of contracts, detailed rules regarding the consumer's right, the right of withdrawal (in chapter 6), traders' specific obligation for

¹⁴⁵ THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, "Directive 2011/83/Eu of the European Parliament and of the Council on Consumer Rights, Amending Council Directive 93/13/Eec and Directive 1999/44/Ec of the European Parliament and of the Council and Repealing Council Directive 85/577/Eec and Directive 97/7/Ec of the European Parliament and of the Council."

¹⁴⁶ Communities, "Council Directive 93/13/Eec of 5 April 1993 on Unfair Terms in Consumer Contracts".

¹⁴⁷ the European Parliament and of the Council, "Directive 2011/83/Eu " in *Document 32011L0083*, ed. the European Parliament and of the Council (<http://data.europa.eu/eli/dir/2011/83/oj>: Official Journal of the European Union, 2011).

surcharges payment (in article 19), post-contractual telephone cost (in article 21) and the additional payments for consumers' consent (in article 22). All of specific rules are apply on each specific type of contracts. Meaning is that the specific type of contracts has different rules and difference time frame which measures based on the high-level consumers' right.

DIRECTIVE 2005/29/EC¹⁴⁸ is effective measurement tool to protect from all types of unfair commercial practices which could be any behavior for hiding consumers' economic interest in the cross-border transactions within EU. The traders' behavior is broad and difficult to measure in commercial practices and contract. However, this Directive covers and provides the duty to trade fairly, information and remedies of unfair commercial practice for the traders who have to comply with when they operate e-commerce business and regulates all phases of any consumer contract. This Directive measures based on the facts that whether the conduct of the traders can constitute an unfair commercial practice and "where the right and obligations will be in accordance with the laws of their traders' country"¹⁴⁹ in the borderless market. It provides unfair practices based on the misleading omission and action (in article 6 and 7), aggressive omission (in article 8 and 9) and prohibition for the traders (in article 5). Both of two Directives provides to measure where the specific type of contract conducted by trader will be misleading or aggressive to the consumer for an unfair commercial practice in the e-commerce trading within the EU.

¹⁴⁸ Council, "Directive 2005/29/Ec of the European Parliament (Unfair Commercial Practices Directive)."

¹⁴⁹ Sutatip, *Access to Justic in Transnational B2c E-Commerce* (Springer Cham Heidelberg New York Dordrecht London: Springer Cham Heidelberg New York Dordrecht London, 2015), page -100, 4.14 Fair Trading Practices.

Consumer Protection Law cannot able to perform those Directives in EU. There are many specific rules and regulations needed to review for covering e-commerce disputes so far. The new consumer protection law does not have specific rules/regulation to solve the disputes arising from using online and offline transactions. For example, chapter (10), article 21 provides the liabilities for traders contain (11) rules and all of rules are broad and general. Article 21(b and c) states that the business person must treat consumer honestly and without discrimination, the business person must act in accordance with business ethic and rules. There is no measurement tool or specific rules for 'honestly', 'discrimination' and 'business ethic and rules'. The business person could avoid to their liabilities for lack of specific rules and also ADR bodies could face challenges to make a decision. In the EU Directives has provided the detail rules for traders' obligations in this condition for misleading, unfair practices and specific type of contract.

In conclusion, the facts mentioned above prove that current ODR platform under the Consumer Protection Law cannot conduct and provide effectively for resolving the e-commerce disputes for being lack of ODR rules and regulation.

Chapter (5)

Implementation of ODR regulation in Myanmar

5.1 Conclusion

Technological innovation has transformed live-style of people and business, and our future environment is more and more enjoy with the ICT products. It makes the human facilitating their life with information flow and on the other hand, ICT is a huge threatens for the human. If the government cannot management ICT related policy, law and regulation for information or technology, ICT can be the biggest

dangerous issues for this future of country such cyber security, digital money and online transactions. The reason is that each country on the world is connection with internet.

Some of consumers were lack of knowledge on how to make complaints and other are trying to lode their complaint on website. However, the responsible organizations take time to get solution and inquire asking many questions to the consumers. Some consumers request the other consumer who is well-know about complaints made to submit consumer protection committees. Nevertheless, most of consumer did not claim their problems to dispute settlement body because they already have known to get final decision is taking time and do not want spend time for this action and they do not trust the activities of Dispute Settlement Body (DSB) and regulation process that is not effective. Most of the e-commerce cases are not resolved by the DSB because the Consumer Commission and law enforcement body do not manage online registration for shopping website, lack of interchanging cases management system and does not able to trace the transaction process.

ODR, combining ICT and ADR process is one of effective problem solving tool for e-commerce disputes. Actually ODR can be used many ways to resolve the disputes such as family, civil, commercial, financial disputes. Nowadays most of the countries widely use ODR mechanism in their own way. The reason is that they believe that using the ODR is the best way to resolve civil and commercial disputes without going to the court and people can avoid the court. That is why ODR is coming out as peoples' describing to resolve cross-border e-commerce disputes for covering out of country.

ODR can fix effectively these kinds of problems with fast, convenience, low cost or free of charge, privacy and secure. By using ODR mechanism, consumer who is not satisfied buying online products or goods can complaint easily online website. Consumer can get advice from ODR content person such as ODR related questions (how to complaint on website) or the process of complaint (where or who the complaint is handled). In the automated negation process and ODR process, consumer can get email or message alert form the provider or directly live chat with the provider. By doing this, consumer gets information about their case is on-going process or not. It makes very convenience and user friendly for the consumer. Some of the ODR mechanism can help pre-complaint system which is pre practices complaining. Normally, consumer does not need to pay mediation fee. And ODR regulation provides the liability for each party's fairly.

In conclusion, ODR can bring fair and balance power among the parties and using ODR mechanism which can assist them effectively, free of charges, and they do not need to face-to-face when resolving the disputes. Moreover, consumer can get fully benefit by using ODR mechanism for their rights without going to the Court. On the other hand, by enhancing the e-commerce, small and medium enterprise will development, can promote the local products and investor in other countries will take part Myanmar online platform based on the strong, specific and fair ODR regulation.

5.1.1 ODR platform

The process of complaint procedure for dispute settlement is only accepting the complaint from the consumer within Myanmar. According to the consumer protection law, Dispute Settlement Body (DSB) and Consumer Information and Complaint Center (CICC) have been organized in states and division within

Myanmar. However, There is missing ODR rules and regulation such as data interchanging, file sharing process and database system are not systematically work well. Consumer Protection Law does not provides it and ODR procedure such as file sharing, complaint process, liability for the third parties and data security.

This part is very importance for ODR process and resolving the cases with other countries such as cross-border e-commerce disputes. The reason is that whenever consumers purchase the product or services in local and outside of the country have difficult and do not get protection for their rights.

5.1.2 ADR

Under the consumer protection law, the process of Consumer Information and Complaint Center (CICC) is accepting the complaint in their relevance state or division and informing the officer who is appointment to resolve the disputes between consumer and trader. Settlement Body (DSB) is an organization set up with office staffs form Department of Consumer Affairs. Most of the resolution process is made on phone. Sometime DSB negotiates both trader and consumer in front of the authorize persons who are professional in consumer protection law. The negotiation process is mostly by phone and personal when resolving the disputes.

In this situation, the negotiation process for DSB is not efficient when resolve the disputes. It has several requirements for online process such as the procedure of ADR in cross-border disputes, enforcement, resolving method, professional skill for resolving disputes and the obligation and accountability of ADR entity. Moreover, current Arbitration law can resolve commercial cases for B2B only. The arbitral process is based on the place (offline). These lacks of specific ADR process makes difficulty when resolving the cross-border consumer disputes.

5.2 Recommendation for Proposed ODR model for Myanmar

Policy for ODR; In order to Myanmar e-government ICT master plan (2015)¹⁵⁰, government sets up the E-commerce policy is to implement and encourage e-commerce trading outside of the Myanmar and to create secure cross-border transactions. According to the SAAPCP (2016- 2025), it states that to establish online dispute resolutions regime in ASEAN based on the strategic goal (3). Based on this guideline, one of the goal for Ministry of Commerce is to establish ODR system paves the way for working along with ACCP member countries to implement SAAPCP (2016- 2025). Existing Consumer Protection Law is separately from e-commerce policy and only focuses on consumer protection policy, so it needs to review by adding tow policies for covering the cross-border e-commerce disputes.

Moreover, it has not detail plan for implementation ODR mechanism under the Department of Consumer Affairs. It needs to make a plan to implement the ODR mechanism to resolve cross-border the consumer disputes because to implement ODR mechanism which is needed to amend not only consumer protection law but also technical and cyber security such as data security, e-contract, payment and ADR. Moreover, government or policy maker need to follow ASEAN and UNCITRAL (model law and technical notes) guidelines to cover the cross-border disputes and harmonize the legal framework. It states the minimum standard of ODR mechanism in all member state for settling the disputes arising from cross-border low-vale sale or services contract for e-commerce transactions. However, policy makers need to notice that the Guideline or law from ASEAN and UNCITRAL are wide and rules are considered for all Member Countries. Those rules are needed to fix based on the

¹⁵⁰ (ADB), "Myanmar E-Governance Ict Master Plan 2015 - Appendices."

culture and behavior of consumer, domestic law, cases study and self-regulations when those rules are applied for implementing ODR mechanism in Myanmar.

In conclusion, online dispute resolution is a kind of mechanism which develops effectively and firstly as a technological advance for resolving disputes. As using of internet increases, it has become a threat on various sectors of public, social, and law, some of the unexpected problems are arising such as online phenomenon disputes. Moreover, there is no doubt that the traditional legal system is not adequate to solve this kind of problems. According to ODR relevant laws in Myanmar there are inadequate to resolve consumer dispute arising from e-commerce transactions. And also lack of ODR mechanism, Dispute Settlement Body faces challenges to solve consumer disputes effectively and efficiently. Moreover, consumers want to avoid a court procedure for small amount of money in e-commerce disputes. Online dispute resolution platform could be the right tool to achieve quickly for resolving commercial disputes in Myanmar. ODR mechanism can solve amicable the consumer disputes among the stakeholders such as public organization, policymakers, legislators, regulators, consumers, the channels of payment, and providers within the worldwide ODR system without needing face to face. This research will utilize and cover in building a robust ODR mechanism with international standardization in Myanmar.

Based on the current ODR platform and Consumer Protection Law should be amended and fixed the rules and procedures for archiving ODR mechanism based on the two kinds of policies that are consumer protection and boosting e-commerce. Current ODR platform is created based on the only consumer protection policy. Therefore, some of the ODR rules and procedure and process are missing. The

commission should review that fact when implementing the ODR mechanism for resolving e-commerce disputes effectively.

5.2.1 ODR model

ODR is created to upgrade ADR in out of court process. Moreover, ODR is designed to resolve the both online and offline disputes and ODR is used the way the user wants such as B2C, C2C, B2B, G2B etc. Some use ODR not only commercial disputes but also civil cases such as family, financial disputes. The definition of ODR is widely and broad range of concepts. It involves variety of procedures and methods that are depend on the creator who wants to use it.

Myanmar is one of a member of the Association of Southeast Asian Nation (ASEAN). Therefore, Myanmar needs to follow the policy, rules and guidelines of ASEAN. However, there is no ODR specific rules and regulation for both legal and technical guideline yet. ASEAN has a long term plan to implement online ADR mechanism effectively based on fair practices, easy to use, transparent for cross-border e-commerce transactions.

Myanmar is also a member of United Nation (UN) and can follow Conference on Trade and Development (UNCTAD) and UNCITRAL model law on e-commerce (1996)¹⁵¹ for harmonizing the legal framework. According to above reasons the Myanmar needs to reform the following ODR rules and regulations in order to effective ODR mechanism and to consistence with the international standard and norm.

¹⁵¹ Nations, "Uncitral Model Law on Electronic Commerce with Guide to Enactment 1996, with Additional Article 5 Bis as Adopted in 1998."

However, both of UNCITRAL and ASEAN do not provide the legal framework for ODR so far. When Myanmar will adopt these guideline or agreement to implement ODR legal system, it needs to consider widely based on policy, self-regulation and cases in order to international guideline (UNCITRAL and ASEAN). Meaning that, Myanmar does not need to apply directly the international guideline because the purpose of the guideline is considered generally for all member state and difference legislative system. On the other hand, Myanmar needs to consider unfair contract term and practices form EU which is focus on B2C disputes although Myanmar does not apply directly it. Myanmar can study form it based on the situation of self-regulation (consumer behavior, healthy, safety), case-study and which are happening and cannot be resolved in Myanmar to be sustainable develop.

ODR in Myanmar is missing under the consumer protection law for e-commerce disputes. The reason for explain about e-commerce or e-trading is that most of the problems arise from lack of specific e-commerce rules or regulation. Those phenomena disputes are happening in Myanmar and existing Dispute Settlement Body cannot resolve it especially in cross-border e-commerce disputes.

Consumer Commission and law enforcement body can recover the ODR regulation by learning from the experience of EU ODR mechanism. The scope of consumer protection in Myanmar is very fundamental. ODR legal framework in Myanmar should implement separately like EU under the consumer protection law. The reason is that Myanmar has started ODR legal framework as a single point for only consumer. Single point entity is one of curial points for consumer who can claim and find easy via the platform. Myanmar consumers are inadequate consumer

awareness and still need to encourage using ODR platform so far. If the first steps for claim procedures make them complex, they do not want to use it.

When applying the international ODR related laws from UN and ASEAN, Myanmar notes the provisions in section 213 and 214 under the Constitution of the Union of Buram (1948). It address that any international agreement (which is relevance Myanmar citizens include contracts and treaties) is needed initially the ratification of parliament before adopting it as an applicable law.

The minimum standard of ODR in EU is independence, transparency, legality, fast, convenience and free of charges. The main policy of ODR is to protect consumer and boost e-commerce. ODR in EU can give the guarantee the consumers to get their rights fully and can able protect high-level consumer. EU ODR platform is single entity point and web base design that are user friendly. Moreover, EU ODR is conducts fully legal regulation than other ODR mechanism such as OECD and UN.

UN ODR 2017 guide line is focus on the technical notes and the purpose is to encourage ODR development and assist ODR providers, ODR platform, ADR body and ODR proceeding parties.¹⁵² In the UNCITRAL Technical Notes on Online Dispute Resolution (2017), recommends that ODR mechanism will be implemented in all member state to settle the disputes arising from cross-border low-vale sale or services contract by using e-commerce transactions. ODR has this ability such as “non-binding, descriptive, reflects principle of impartiality, independence, efficiency, effectiveness, due process, fairness, accountability”¹⁵³ It focuses on technical note on ODR, and do not provide legal aspect. UNCITRAL technical note (2017) section 2 (7,

¹⁵² "Uncitral Technical Notes on Online Dispute Resolution," page - 1.

¹⁵³ Ibid., Page - 1, The technical note on ODR.

8 and 9) explains that ODR mechanism should be simple, fast, efficient and able to use it in the real e-commerce transactions. It prohibits the ODR should not disproportionate in the economic value such as load of burden for economic, costs and delays. Data interchange or ODR information flowing process should be transparency among the stakeholders such as the link between the parties, information disclose, recode, outcome result and easy to available all relevance information from the ODR platform in section 2 (10, 11 and 12).¹⁵⁴ In technical notes (2017) focus on the B2C, however it provides for both B2C and B2B which is board and therefore, ADR procedure and enforcement sections is needed to filter out for B2C cross-border low-value e-commerce transactions. The important point for ODR mechanism is independence and neutral. The commission should consider the facts from chapter (4) absence of an ODR platform.

Data processing, transmission the complaint, interchanging the data:

Existing consumer complaint system is web-based design and single entity point. The complaint form is accepted both offline and online disputes between consumer and trader.

However, Law enforcement body needs to review current e-complaint form like EU and UNCITL technical guideline. According to the UNCITL guideline, section VI (f) states that to use the signature or identification or authentication for claimant or claimant's representative when filling the e-complaint form via platform. The Consumer Commission and law enforcement body need to consider that fact and provide the consumer and parties to use their own trust mark via ODR platform.

¹⁵⁴ Ibid.

Using the trust mark is important for parties who can be identified and easy to find them.

Another fact is needed to consider, EU ODR provides that consumers can use ODR platform. However, consumers are not directly allowed to enter ADR body. If consumer is directly complaint ODR platform, the e-complaint form states that 'consumer have been made to contact with trader'. The purpose of this fact is to encourage the trader to take part ODR platform voluntarily and to foster using dispute resolution mechanism on their own online shopping or services website. Consumer Commission and law enforcement body need to consider by fostering the trader who is happy to use ODR mechanism. That point is better than by forcing traders to use ODR mechanism and more success it. The e-complaint form should be completed as an evidence for ADR bodies that can check easily and ready to use it. Commission and law enforcement body need to review the process of data information, interchanging among the parties and security of data privacy and personal data. The Commission can able to create and design ODR platform that can create dispute resolution room among the parties for getting convenience and trust.

For the Data processing and transmission, Consumer Commission and law enforcement body should arrange data privacy, security and information interchange among the parties to be transparency, efficiency and fast. Consumer Commission and law enforcement body should provide database systems to maintain, information flow process and recording and allowing the personal data storage within limitation under the Electronic transactional law.

Database; The Commission has to provide Database system for checking and identifying the cases, ADR entities and contact with the parties through the ODR platform.

Information of Dispute resolution process; Information disclosure is one of the importance for the dispute resolution process via ODR platform. That makes the parties who can know the dispute resolution process, their liabilities with transparency. Therefore, Commission and law enforcement body need to consider that fact for dispute resolution process.

Dispute resolution process through the ODR platform: Current Consumer Protection Law, section 46 provides the mediation processes. However, that process is offline and there is no link with the ODR regulation. The mediators are needed to promote their ability for resolving the e-commerce disputes. Consumer Commission and law enforcement body need to consider promoting the mediators' ability or link with the arbitrators who are under the Arbitration law. However, mediator or arbitrator should be expert in their relevance field which fact is important to get trust from consumer and trader. The expert mediator or arbitrator can make easy to resolve the disputes with speed, amicable and convenience between the parties within the limited time. Moreover, Consumer Commission and law enforcement body should make to maintain ODR platform and monitoring the procedure or process of ODR that is really effective or not and fit it at the same time. Other international framework is the UNCITRAL Model Law on International Commercial Arbitration (1985), UNCITRAL Model Law on Electronic Commerce (1996) examine that the value of arbitration and use as a method to resolve the disputes arising from the international commercial transactions, to make arbitration legal framework of uniformity among

the member state, when the parties can request to resolve their disputes to get a settlement with amicably.

In the proceeding stage, it contains two parts which is automate negotiation without human and second is mediation with neutral. However, in the first stages, currently Dispute Settlement Body cannot handle for the automate negotiation. The automate negotiation process is created code base system based on the scope of procedure and specific rules. In this situation if the dispute reaches at the final state, the final decision could bind. Nevertheless, it is needed to consider because it is very useful for the parties without mediator for tiny amount of disputes.

The main form of proceeding stages is that commencement with complaint form, mediation, arbitration, final outcome. In this process the technology can enable to facilitate for data interchange among the parties whatever the case is reach settlement or not at the reasonable period of time. The ODR platform enables sending, receiving and responding directly in the negotiation process via internet. In the second stages, if the dispute cannot be reached the settlement in the first stage, the provider contacts with the mediator to resolve the disputes. In this situation, the law enforcement body needs to make the specific rules for mediator and linking of the parties in section 3(18, 19 and 20) and section 8 (40 and 44)¹⁵⁵. For example, limitation of time for resolving the disputes, when mediator can take part or not, what are the liability for the parties and what eligible the mediation need to resolve the disputes.

Consumer Commission and law enforcement body need to consider the rules and procedure for ADR bodies when ADR entities can handle the disputes and when

¹⁵⁵ Ibid.

ADR procedures should be provider to the consumer and trader like EU ADR Directive 2013.

Network of ODR contact points and feedback system: Current the nature of ODR contact point is the same CICC established in states and regions. However, the function of CICC is accepting the complaint that come from online and offline and submits it to the officer. Therefore, CICC is needed to promote their functions and responsibility for facilitate and replying the questions from consumer and trader who need to assist and advice for complaint, general information for consumer rights and providing the where the parties are resident in the same location. Feedback system is needed in ODR platform for getting consumer and trader comments. It is conducted to get the message for resolving procedure and style of ADR entities, experience, how much helpful the ODR platform and content points. Based on these facts, the Consumer Commission needs to consider when the rules and regulation is needed to fix to be sustainable development of ODR mechanism.

5.3 Recommendation for Government, Consumer Commission and law enforcement body

Consumer Commission and law enforcement body need to consider for applying ODR related issues from international and ASEAN based on the policies and enacted or amend ODR related laws. Government needs to find the effective way by encouraging the stakeholders to involve ODR process to success it and if not ODR mechanism cannot success. Even traders or providers are ready to involve the ODR process, the lawyer (mediators and arbitrators) are not eligible in their fields especially in technology such as e-mediation or arbitration. On the other hand, the Consumer Protection law cannot provide to allow them directly involving through the

ODR process. So government has to provide both e-mediation professional training for local and international, and fulfill the requirements of ODR related law.

The government encourages the arbitrators to collaborate the dispute settlement body voluntary. The government should provide arbitration fee based on amount of compensation and chose of trader and consumer. Moreover, government needs to arrange the procedures of consumer disputes redress system and provides an agreement with the international consumer redress for cross-border disputes. In addition, the government realizes challenges that making reasonable and fair policies or laws for online and offline consumer disputes and encourage all of parties are involving to the ODR process with eagerly. How to arrange Budget for arbitrator or mediation for example EU procedures is proportional value of the claim subject to the list of price. When resolving the disputes between two countries, government needs trade agreement or treaties among the countries and the facts and the way to resolving method needed to include for Business to Consumer cross-border e-commerce disputes and follow ASEAN agreement on e-commerce.

Consumer Commission and law enforcement body: They make ODR definitions, roles and responsibility for each stakeholder. The policy makers or ODR administrator need to consider the balance of bargaining power among the parties based on the handing conflicts of interest in sections (13,14,15 and 16).¹⁵⁶ Meaning that, Consumer Commission and law enforcement body or ODR administrator consider widely for whole process of ODR such as the liability of stakeholders, the standard of neutrals and code of ethics for neutrals, rules of conducts for ADR entity. The main ODR function is consent to the parties and ODR administrator. Data interchange such

¹⁵⁶ Ibid.

as information, conversation and message should be explicit among the parties. In section 6, the complaint form should have six facts. In this condition, current consumer complaint form in Myanmar has already provided these facts. However, there is two languages are available and the signature or identification and authentication are still needed to provide. The signature and identification is needed to link the Electronic Transactional law (2016) on the ODR regulation. Consumer Commission and law enforcement body should adopt the rules and convene a meeting with the ODR content point, ADR entities and ODR member for discussion of any problems and operation of the ODR platform.

5.4 Recommendation with potential weakness and strength for using ODR mechanism

The most importance facts is that to make a strategy or plan to implement ODR mechanism based on consumer protection and e-commerce policy. Government should enhance the policy maker or consumer protection committee to make specific action plan for implementation ODR mechanism. Consumer protection committee needs to negotiate with another Ministry to amend or enact the ODR related laws for amending regulations for redress, fraud, data protection, fair practice and other related issues within their jurisdictions to protect consumer and boosting the online business. The reason is ODR related laws are not under the consumer protection affairs, for example, arbitration, data security and e-contract laws are under the difference Ministries and office of the Attorney General. Amending these laws, it could take time and need to negotiate with other Ministry for linking with the ODR regulation and Consumer Protection Law. Moreover, Government should ensure to get fully

power to consumer protection organization for protecting consumer and ADR entity for resolving consumer disputes.

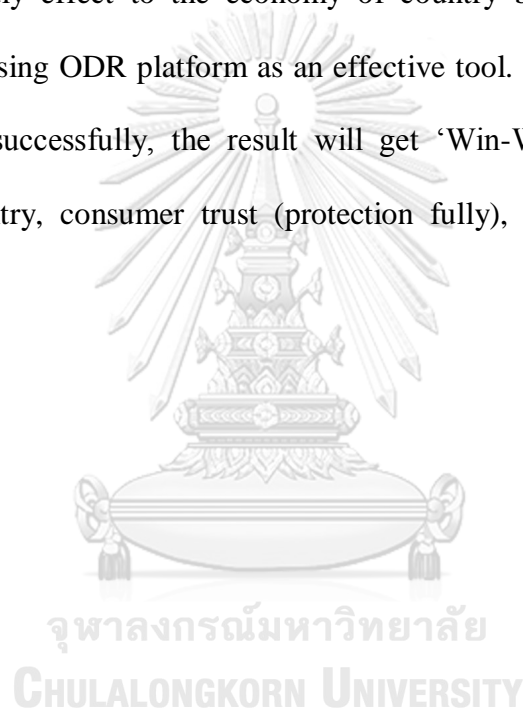
Some of the facts government needs to consider in trade agreements for the global online trading especially for cross-border disputes. Although some power is distributed to the non-government organization or dispute settlement organization, the government still control and monitor their activities such as submitting an annual report to the government, collaborating with the government for some issues. The main reason is to boost high-level trust between the parties.¹⁵⁷ Based on these facts and recommendations, when Myanmar establish the ODR mechanism, there are several requirements such Laws, Technology, and to attractive participating eagerly for all stakeholders. Those facts are important to consider and if there is not specific action plan or strategy, ODR mechanism cannot be impalement successfully and effectively.

However, the disputes are arising and cannot resolve them which are crucial facts in Myanmar. Lacks of specific rules make the Dispute Settlement Body facing challenges and the consumers do not trust using online shopping based on the current e-commerce problems. This reasons are effectively direct both consumer protection and to boost e-commerce transaction. If Consumer Commission and law enforcement body cannot provide ODR regulation to protect consumers effectively on online shopping, e-commerce will not success. On the other hand, consumer cannot trust to purchase goods and services form online website and if there is some problems, consumer and seller cannot get protecting under the law or regulation. Based on these

¹⁵⁷ World Economic Forum, "The Global Governance of Online Consumer Protection and E-Commerce Building Trust," (2019): Page-4, Para-3.

facts make directly affect losing the interests of consumers, traders and investors and country's economy.

If ODR mechanism to protect consumers will be established, consumers can trust online shopping and more purchase products and services directly website from other countries. If there is some problems, consumers can use online complaint website easily and complaint directly to the trader or via the ADR entity. Those reasons are directly effect to the economy of country by promoting e-commerce transactions and using ODR platform as an effective tool. If government can provide ODR regulation successfully, the result will get 'Win-Win' solution such as the economy of country, consumer trust (protection fully), and the interests of third parties.



REFERENCES



จุฬาลงกรณ์มหาวิทยาลัย
CHULALONGKORN UNIVERSITY



จุฬาลงกรณ์มหาวิทยาลัย
CHULALONGKORN UNIVERSITY

VITA

NAME	Nwe ni Htun
DATE OF BIRTH	29 July 1978
PLACE OF BIRTH	Pyay, Myanmar
INSTITUTIONS ATTENDED	BA (Law), Myanmar LL.M (B.Law) Thailand
HOME ADDRESS	Nay Pyi Taw,



จุฬาลงกรณ์มหาวิทยาลัย
CHULALONGKORN UNIVERSITY