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COVID 19 & ODR – AN OPPORTUNITY OR A CALAMITY?

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During covid 19 times, lockdown and restriction of movement measures, inevitably affected global economy, International Trade, proposals, agreements, discussions and negotiations.

Sir Winston Churchill once said: “An optimist sees an opportunity in every calamity; a pessimist sees a calamity in every opportunity.” This would match in my humble opinion in the current days we all going through and in the way we respond to our differences. Instead of recording and referring to all things in a negative manner, we should focus our energy and focus to these matters that may improve resolving disputes using the capabilities technology and ODR has to offer.

Is well established that ODR has to offer a numerous advantage when it comes to mediation process, which I refer to in a nutshell:

- a. Significant cost reduction as to travelling, especially for cross border disputes, bearing in mind the restrictions in every country, due to the pandemic,
- b. Reduction of possible tensions when parties get to meet in person and thus destroy mediation before it even starts,
- c. The parties being in their own surroundings and familiar environment, tend to elaborate solutions easier.
- d. Worldwide and in the sphere of International Trade, ODR may be accessible through various platforms that make the life of both consumers and traders, easier.

As far as Europe concerned, an ODR platform may be used to solve problems deriving to consumer and trade, with the help of an approved dispute resolution body. A dispute resolution body is a neutral third party that helps consumers and traders solve disputes in a non-confrontational way. They are usually less expensive and quicker than going to court.

The ODR platform will notify the trader of your complaint. If the trader agrees to use the ODR process then you will have to agree on a dispute resolution body to handle your case. The trader will propose a list of dispute resolution bodies; you can select one or request a new list in your dashboard.

You will have 30 days from when you submit the complaint to agree on a dispute resolution body to handle your case.

If you are unable to agree on a dispute resolution body in time or the trader ignores your complaint, then you can try a different dispute resolution tool ¹.

As far as Hong Kong concerned and In anticipation of an upsurge of disputes arising from or relating to COVID-19, the Government announced on April 8 the establishment of the COVID-19 Online Dispute Resolution (ODR) Scheme under the Anti-epidemic Fund to provide speedy and cost effective ODR services to the general public and businesses, in particular micro, small and medium-sized enterprises. The Scheme is launched on June 29.

¹ Source <https://ec.europa.eu/consumers/odr/main/?event=main.home.howitworks#heading-3>

The eBRAM International Online Dispute Resolution Centre (eBRAM Centre) has been engaged to provide ODR and related services under the Scheme and will operate the Scheme independently.

The schemer will cover:

- (1) disputes arising out of or in relation to COVID-19 directly or indirectly;
- (2) cases where the claim amount is not more than \$500,000; and
- (3) cases where either one of the parties to the dispute is a Hong Kong resident or company².

In her article in PON (Programme On Negotiation of Harvard Law School, Mrs. Katie Shonk pointed out: “Even when we’re on opposite sides of the virtual negotiating table, we are all in this together. Be ethical, be kind, and be safe”³.

I have referred to the above references, in order to underline in my humble opinion of what I call a universal need for solidarity, respect and understanding, in order to solve differences. One might say that this view is a utopia, but the current global circumstances reminded us how vulnerable we all are on the one hand, and how challenges are common at the same time on the other. In the previous meetings cultural issues were correctly brought up.

Culture and the way people deal / conduct their disputes, is an important factor in International Trade and ODR. Therefore, preparation is a key matter for entering an ODR procedure. Preparation in such cases has two parameters: 1. Facts of the matter/case and 2. Learning about culture, mindset and ways of conducting business of the countries/regions involved in the specific matter. When writing these lines, I wondered if culture should be somehow regulated in the sense of an ODR resolving mechanism, when cases are brought up for resolving. They could be set up as guide lines for example: “When cross border matters and international trades are examined, the parties should take into consideration and respect each party’s local way of conducting business, customs and habits”. Or when drafting a contract, it would be useful to insert a paragraph concerning cultural matters and issues.

Worldwide, there are International Rules and Regulations as to Mediation, ethics regulations, Regional Conventions, National Regulations. A UN Convention on International Trade & ODR would be a landmark in my humble opinion. Here is an example: The United Nations launched The Convention of the Rights of the People with Disabilities. The said Convention overcomes any National Legislation for the Countries that ratified this Convention. What better way if a UN Convention would be an umbrella and a guideline in a global environment, especially during pandemic times which various matters are brought up, such as travelling, entering requirements of people from certain countries, etc. (EU examines the launching of European Green Pass for vaccinated people).

Taking the chance for this presentation, I’ve conducted a small experiment for myself. I’ve closed my eyes, lied down on my couch and tried to bring to my mind all the events that happened as from the day that covid-19 broke down. Information, daily cases, negative effect to global economy, limitations and the list kept going on.

² Source: <https://www.info.gov.hk/gia/general/202006/29/P2020062900651.htm>

³.Source: https://www.pon.harvard.edu/daily/negotiation-skills-daily/online-negotiation-in-a-time-of-sociadistance/?utm_source=WhatCountsEmail&utm_medium=daily&utm_date=2020-03-19-13-30-00&mqsc=E4110610

So I ended up to the conclusion that whatever happens either positive or negative, especially negatives, they happen for a reason and this reason is to teach us something. That ‘‘something’’ we need to take advantage of it in a positive manner.

Dear Delegates,

In concluding my presentation, I would answer to the question of the headline, of my topic, with one of my favourite quotes of Charles Darwin:

‘‘It is not the strongest species that survive, nor the most intelligent, but the most responsive to change’’.

Thank you very much.

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