



武汉大学 国际法研究所
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A Global Online Dispute Resolution System: Is China Ready to Join?

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Outline

I. UNCITRAL and Global ODR System

II. The Practice of ODR in China

III. China and UNCITRAL Work on Global ODR System

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I. UNCITRAL and Global ODR System

- Among the works on ODR of some international organizations, the role of UNCITRAL attracts more attention because its business is the modernization and harmonization of rules on international business.
- A Globe ODR system is anticipated to be established under the UNCITRAL work.

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II. The Practice of ODR in China

- **ODR in China can be mainly represented by three categories as follows:**
 - **A. CIETAC Domain Name Dispute Resolution Center (CIETAC Center)**
 - **B. China Online Dispute Resolution Center (China ODR Center)**
 - **C. Internal Complaint Mechanism (Taobao).**

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A. CIETAC Center

- The Center mainly settles **domain name disputes**, **common address disputes** and **electronic business disputes**.
- By the end of 2009, the Center had closed nearly 1,500 cases by online mode. In 2009 alone, the Center had closed 308 cases.
- In 2010, 144 case decisions (CN Domain Dispute, 143 case decisions; Keyword dispute, 1 case decision) have been made up to 8 November.

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A. CIETAC Center

- **Characteristics:**
 - CIETAC system implements a **quasi-mandatory jurisdiction** over .CN domain name disputes and Chinese domain name disputes.
 - The settlement only concerns **the attribution of the names** but not the compensation.
 - The decision can be enforced by the **domain name registration institution** directly and automatically after 10 days calculating from the date on which the decision is published.

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A. CIETAC Center

- Before a Complaint is filed, or during the dispute resolution proceedings, or after the expert Panel has rendered its Decision, either party may
 - a) institute an action concerning the same dispute with **the Chinese court** or
 - b) submit the dispute to a **Chinese arbitration institution for arbitration** subject to the agreement between the parties.

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B. China ODR

- In June 2004, China ODR was established by two companies.
- The present services are online conciliation and mediation, and the possible future services will include online arbitration and notarization.
- China ODR provides detailed rules for online mediation. Any online dispute can be conducted by online mediation. But the decision or mediation agreement has no binding force.

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B. China ODR

- With regard to its practice, China ODR has negotiated and mediated several disputes successfully before 2005.
- From 2005 to date, no record of case that has been resolved by China ODR can be found on its website.

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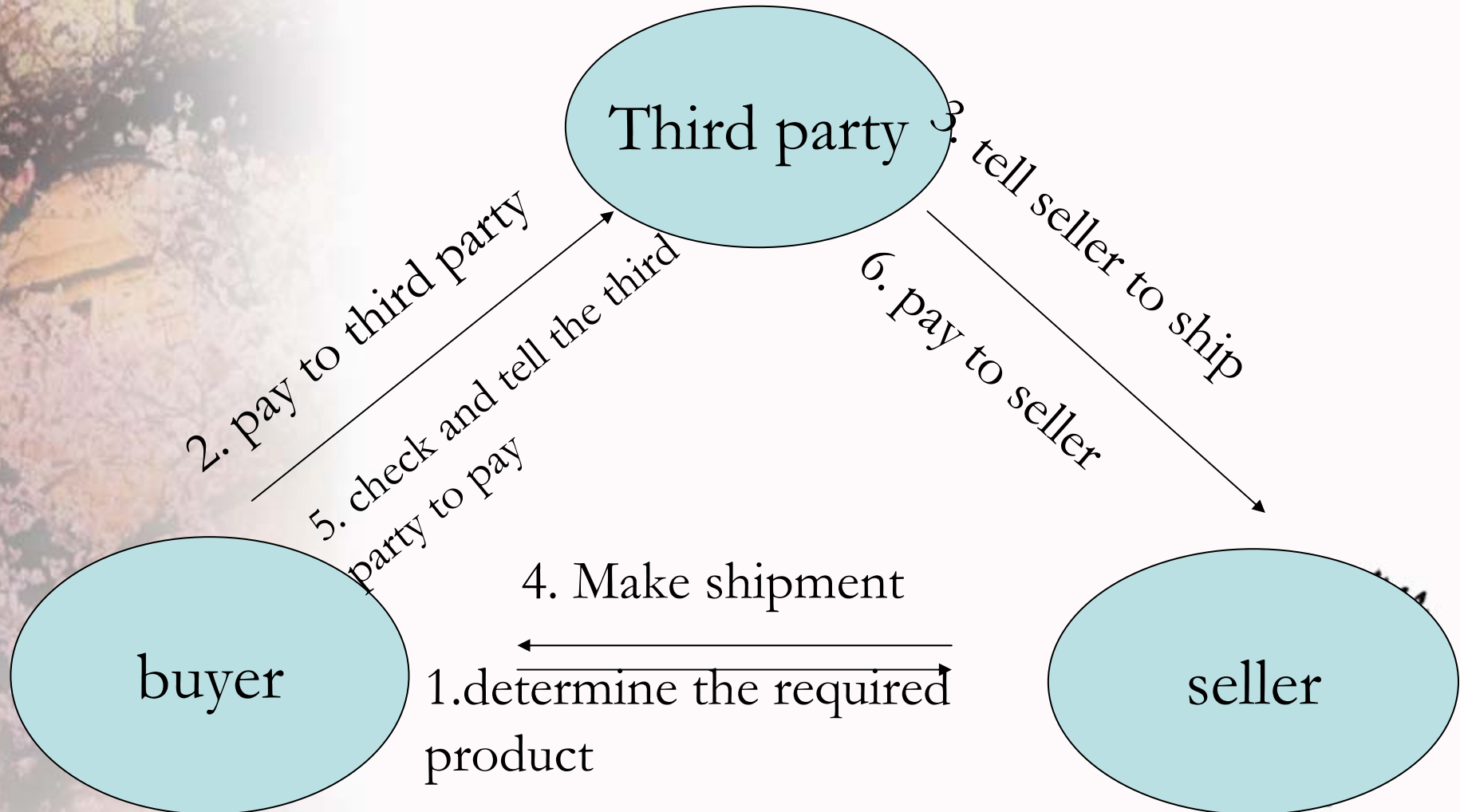
C. Internal Complaint Mechanism

- **Internal complaint mechanism** refers to the system established by the provider of the network transaction platform and used to accept consumer complaints and settle disputes through consultation.
- **Taobao and its third party payment institution: Alipay**
- Alipay service was launched by Taobao.com in 2003.
- generated about 180 million transactions in 2009, and resolved about 900,000 disputes meanwhile.

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Mode of Third Party Payment





C. Internal Complaint Mechanism

- In 2005, Alipay published the Dispute Resolution Rules.
- Art. 2(6) of Alipay Dispute Resolution Rules authorizes Alipay to have certain enforceability:
- “Upon submission of a dispute to Alipay, Buyer and Supplier irrevocably agree that **Alipay shall have the right to determine** that all or part of the contract price of the Transaction in dispute **shall be released to either or both of the parties to the Transaction** according to these Rules....”

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III. China and UNCITRAL Work on Global ODR System

- A. There is an increasing demand of ODR in China.
- B. Chinese existing laws and regulations lay a favourable foundation for the development of ODR.
- C. China can promote the ODR initiative by using the UNCITRAL future ODR system as reference.

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A. An Increasing Demand of ODR in China

- up to June 2010,
- the number of net citizens in China has reached 420 million.
- the utilization rate of web shopping, online payment and e-banking was about 30% on average.
- From 2008 to 2010, e-commerce transaction grows at a speed of about 20% each quarter.
- Online disputes' characteristic: small value, large volume.

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B. Favorable Legal Circumstance for ODR in China

- In China, there is no specific law on ODR.
- 1. Electronic Signature Law in 2004
- 2. The Supreme People's Court recognizes the validity of electronic forms of arbitration agreement by its Judicial Interpretation in 2006.
- 3. Mediation or conciliation is deeply ingrained in Chinese culture. The mediation has been absorbed into civil proceeding, administrative and arbitral proceeding in Chinese legislations.

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B. Favorable Legal Circumstance for ODR in China

- The Law of People's Mediation in October 2010
- Given ODR is not an absolutely new dispute resolution method, a framework from the existing models of arbitration and mediation, or even from the existing laws can be borrowed in its establishment.

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C. Facilitating the Development ODR in China by participating in UNCITRAL Work on Global ODR System

A global system needs each and every member to join and contribute. Cooperation is preferred and requested all the time during the establishment and thereafter as well.

China, as one of the leading e-commerce entities in the world, is able to cooperate with other states in the field of ODR and promote UNCITRAL to bring in legal standards for ODR providers.

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IV. Conclusion

- There is an increasing demand of ODR in China.
- Through participating in UNCITRAL initiative and taking its successful and unsuccessful experience for reference, China can deepen the understanding of ODR and improve its development.

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