



The Benefits of the APEC ODR Framework for Resolving Cross-border Disputes and How to Use the APEC ODR Rules

Online Seminar

27 June 2023 Jacob Sin, ODR Director

What is eBRAM?



Arbitration institution

Mediation institution

Start-up from Hong Kong

LawTech company

Independent non-profit NGO

Company limited by
guarantee

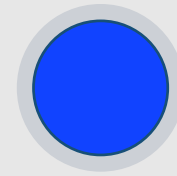
Target audience



Micro-sized enterprises



Small-sized enterprises



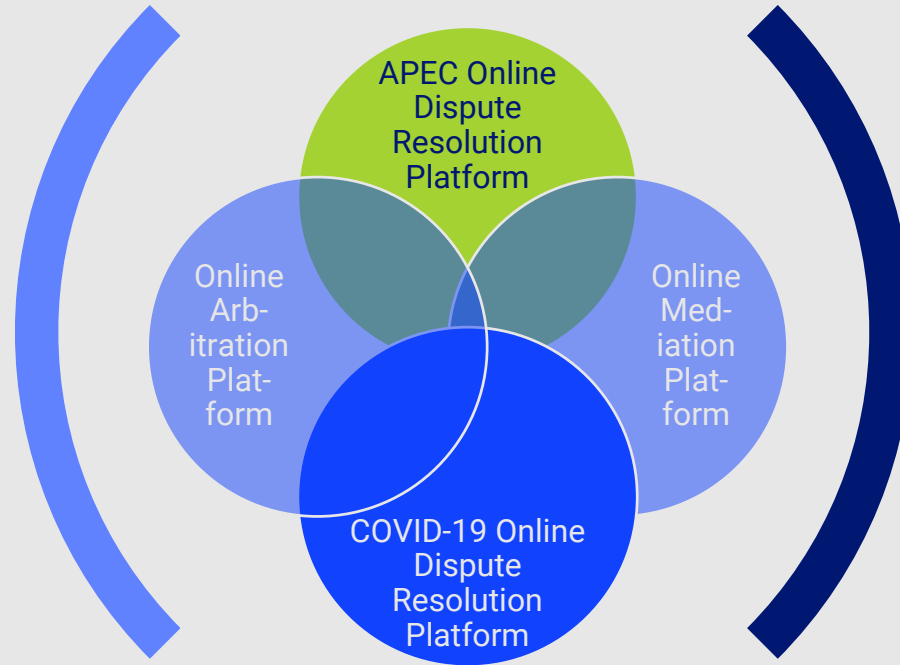
Medium-sized enterprises



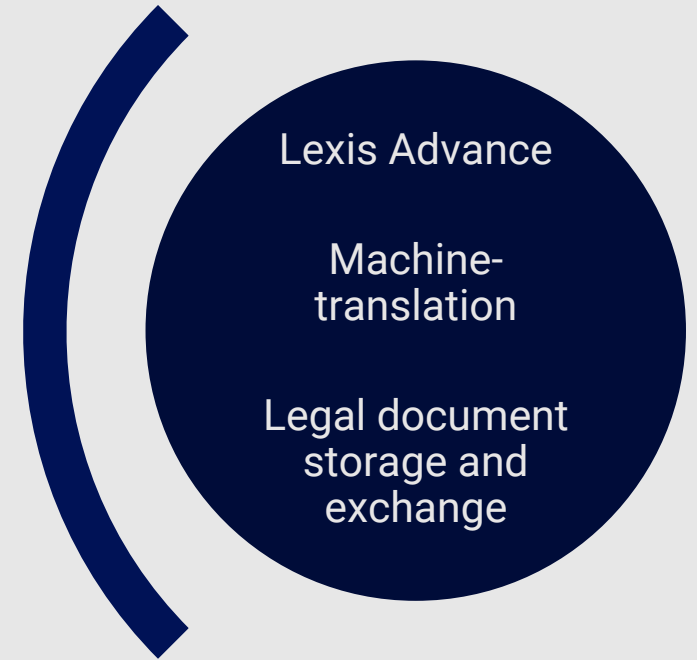
eBRAM LawTech services



Deal-making Platform
(under development)



ODR Platforms



Hong Kong Legal Cloud

Overview

1

What are the APEC Rules?

2

Benefits of the APEC Rules

3

How to use the APEC ODR Rules?



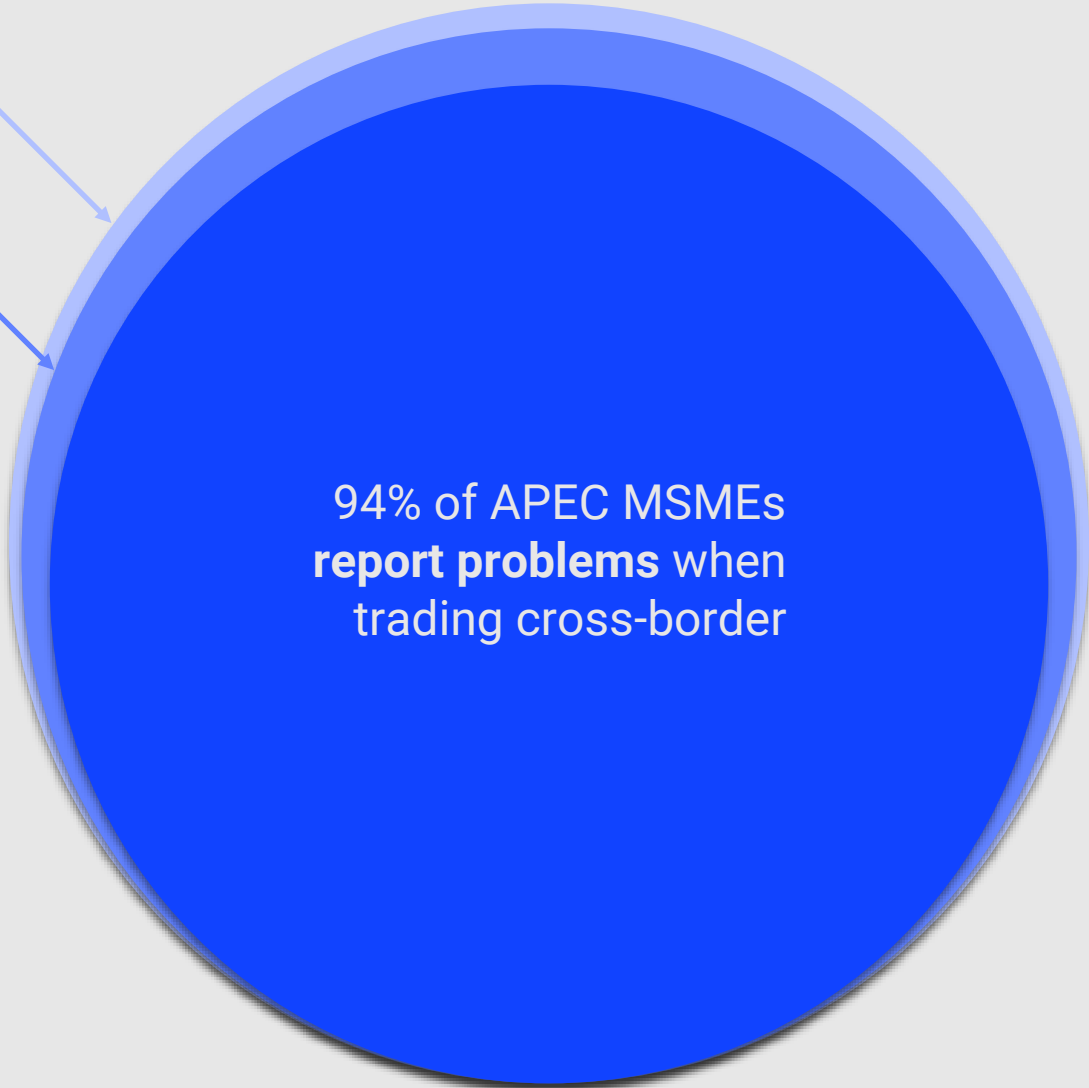
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**What are the APEC
Rules?**

Problem

All APEC businesses

> 97% of all APEC
businesses are
MSMEs



94% of APEC MSMEs
report problems when
trading cross-border

Objective of APEC Rules

To promote B2B cross border **confidence** ...



... by providing quick **electronic resolution and enforcement of disputes** across borders, languages, and different legal jurisdictions.

Overview of APEC Rules

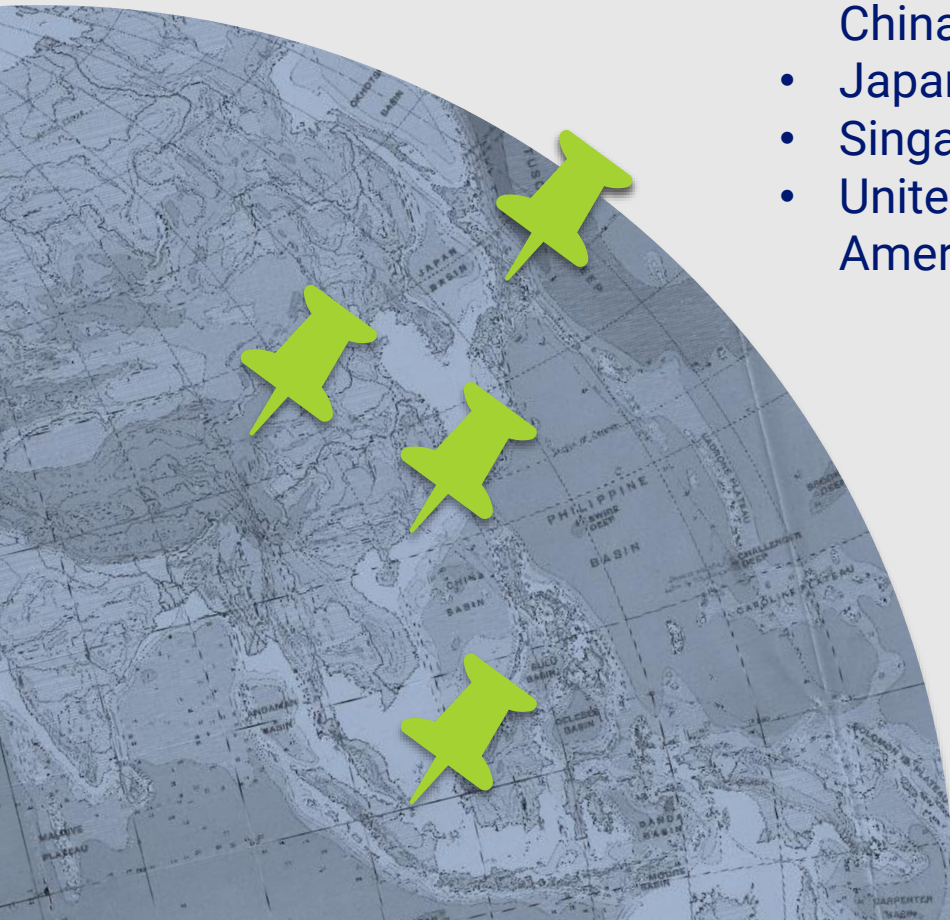
Opt-in jurisdictions include:

- China
- Hong Kong, China
- Japan
- Singapore
- United States of America

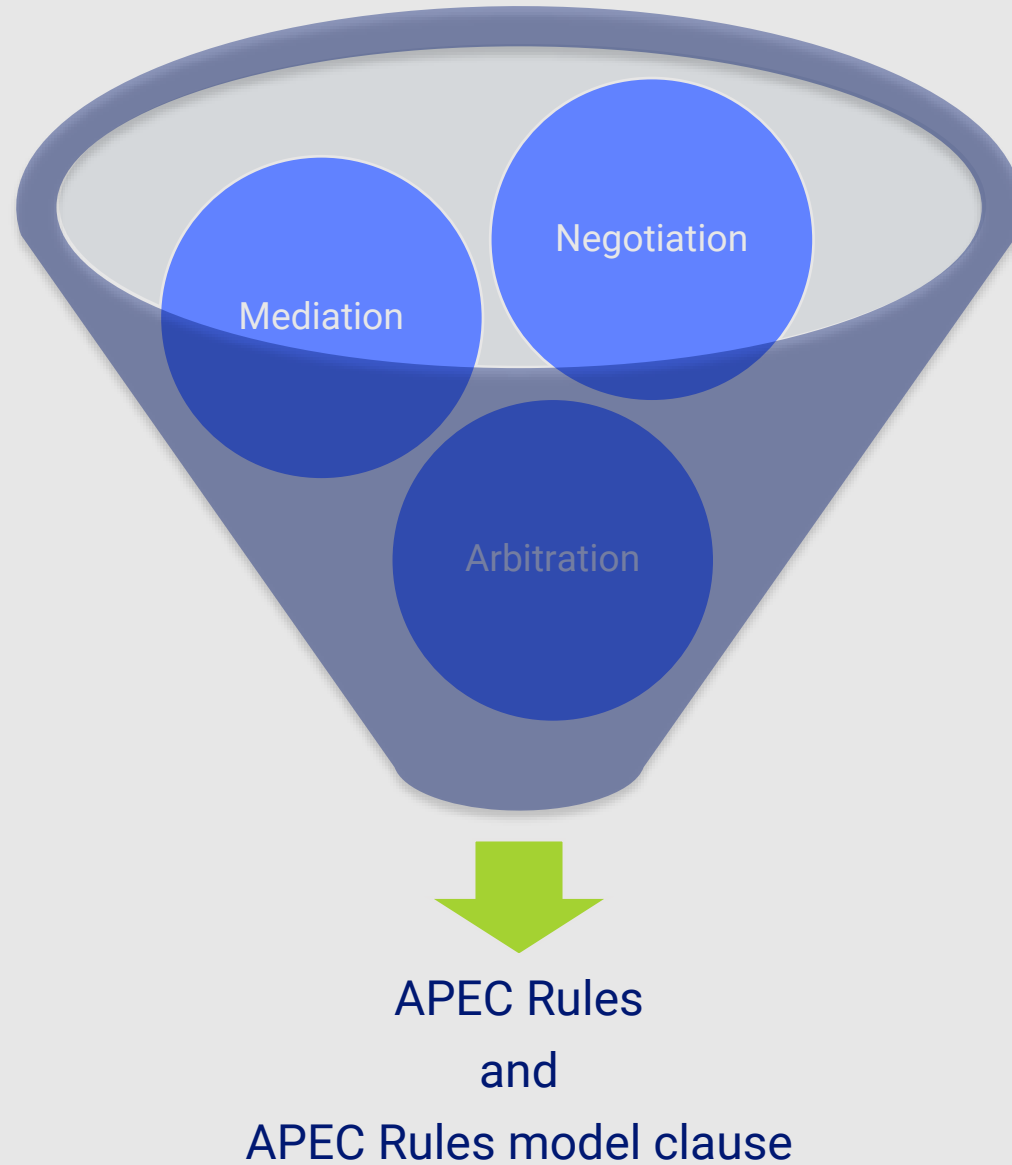
The APEC Collaborative Framework For ODR of Cross-Border B2B Disputes

Model Procedural Rules

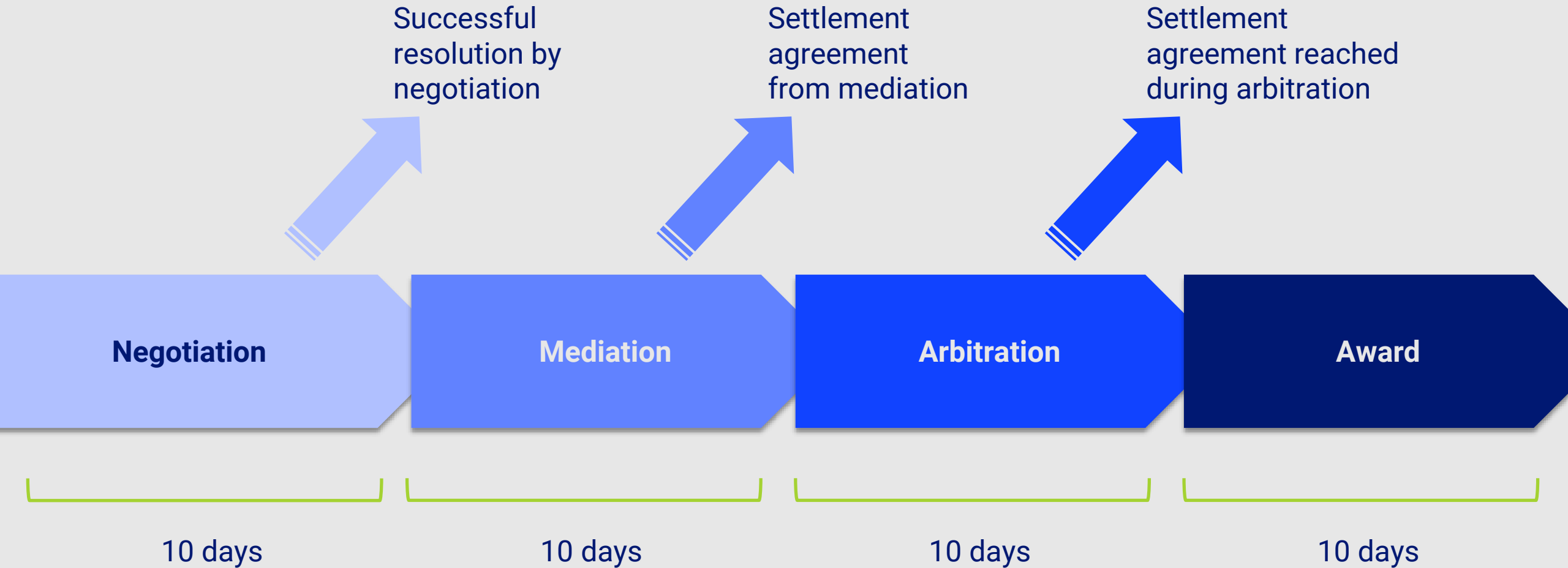
eBRAM APEC Rules



Structure of APEC Rules



Default procedural timeline for APEC Rules



Neutral under APEC Rules

- Neutral = Mediator + Arbitrator
- Neutral is professional who can act in different capacities
- eBRAM offers Panel of Neutrals



Neutral

- Dispenses with need to refamiliarise with case facts and legal issues
- Saves time and cost

Negotiation

Mediation

Arbitration

Award

2

**Benefits of the APEC
Rules**

Why use eBRAM's APEC Rules?

Swift

Achieved through integrating eBRAM's Platforms with eBRAM's Rules (e.g. eBRAM APEC Rules 4.3)

Expedited resolution as fast as within 3 weeks with the use of eBRAM's APEC Rules

Affordable

One set of platforms – avoid high costs from having multiple service providers

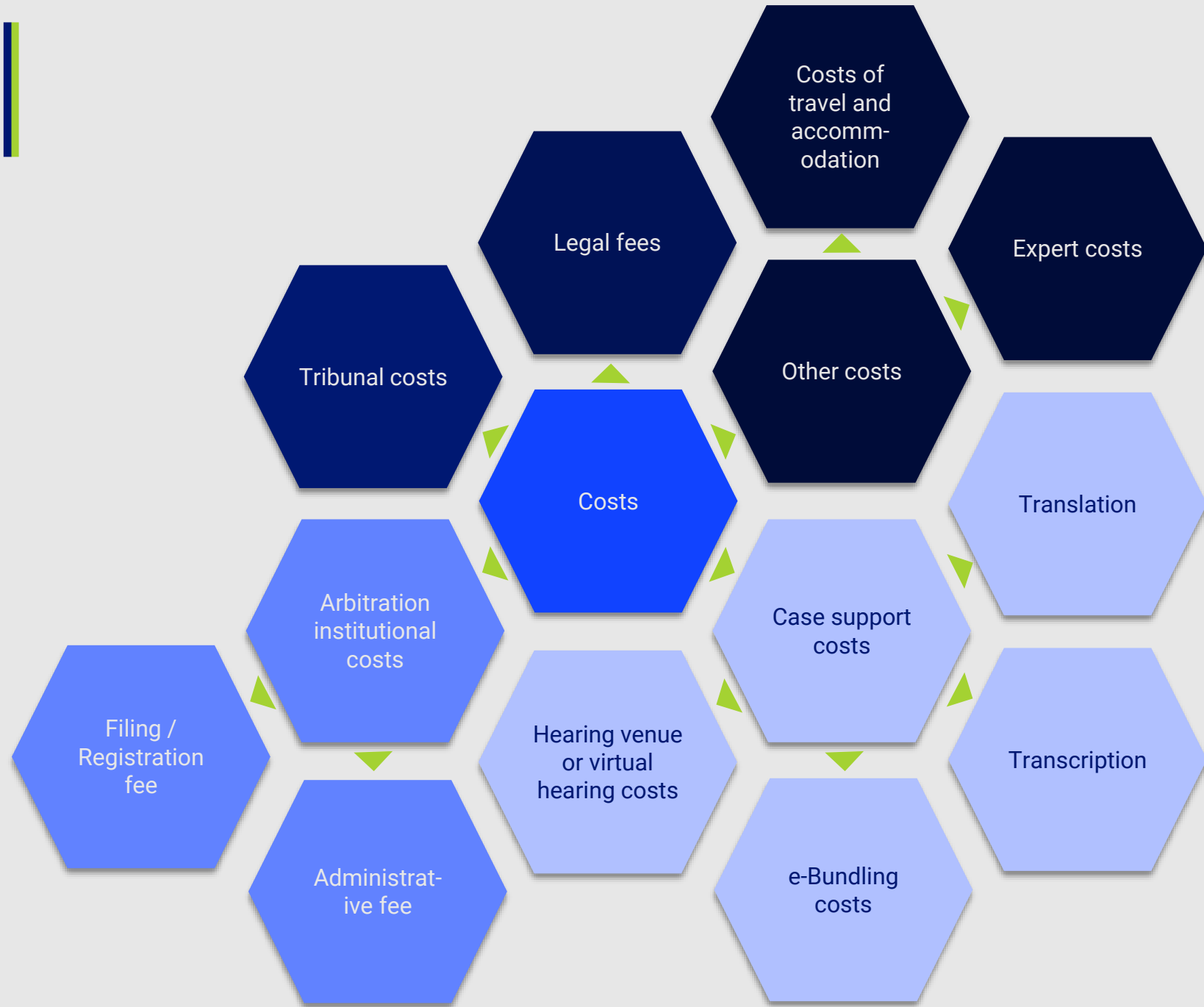
Case administration fees include cost of using ODR platforms if eBRAM Rules are adopted

Convenient

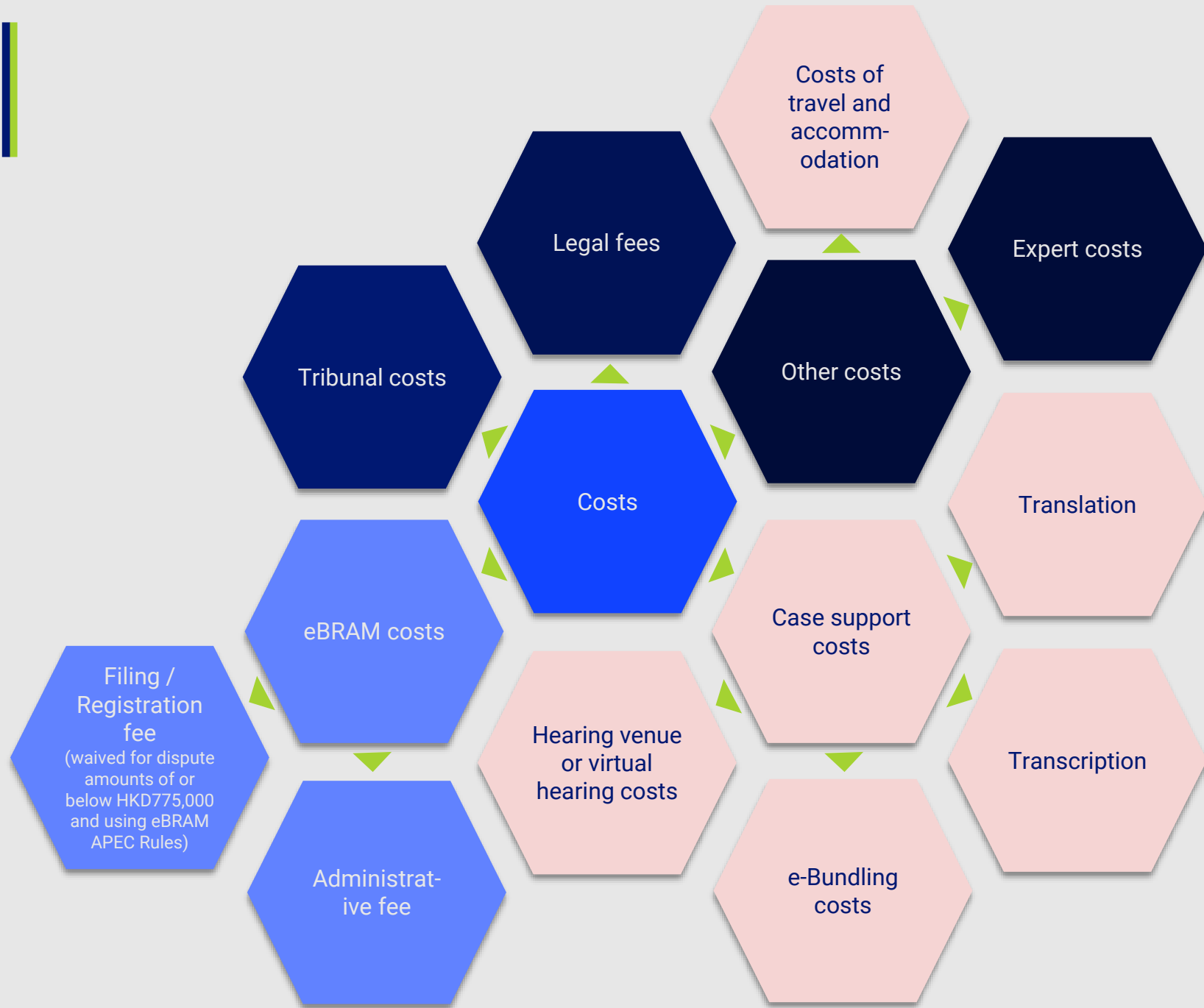
One-stop services – less management of LawTech tools from different service providers

One of seven Hong Kong institutions eligible to apply to Mainland courts for interim measures for Hong Kong-seated arbitrations

Usual costs in arbitration



Costs in eBRAM APEC proceedings



Administration fees at or below HKD775,000

Amount in dispute (HK\$)	Administrative Fee (HK\$)
Up to HK\$20,000	HK\$1,000
HK\$20,001 – HK\$50,000	HK\$1,500
HK\$50,001 – HK\$70,000	HK\$2,000
HK\$70,001 – HK\$100,000	HK\$3,000
HK\$100,001 – HK\$200,000	HK\$4,000
HK\$200,001 – HK\$300,000	HK\$4,500
HK\$300,001 – HK\$400,000	HK\$5,000
HK\$400,001 – HK\$500,000	HK\$5,500
HK\$500,001 – HK\$600,000	HK\$6,000
HK\$600,001 – HK\$700,000	HK\$6,500
HK\$700,001 – HK\$775,000	HK\$7,000

Neutral's fees at or below HKD775,000

Amount in dispute (HK\$)	Neutral's Fees (HK\$) (Mediation Stage)	Neutral's Fees (HK\$) (Arbitration Stage - for cases resolved with an award)
Up to HK\$200,000	Fixed fee of HK\$2,000 (inclusive of preparation and up to 4 hours of mediation), then HK\$500/hour for additional mediation	Fixed fee of HK\$5,000 (inclusive of all reading time, all communications and drafting including of the award), plus HK\$750/hour for hearing
HK\$200,001 – HK\$775,000	Fixed fee of HK\$4,000 (inclusive of preparation and up to 4 hours of mediation), then HK\$750/hour for additional mediation	Fixed fee of HK\$10,000 (inclusive of all reading time, all communications and drafting including of the award), plus HK\$1,000/hour for hearing

Administration fees above HKD775,000

Amount in dispute (HK\$)	Administrative Fee (HK\$)
HK\$775,001 – HK\$3,000,000	HK\$7,000 + 0.719% of amount over HK\$775,000
HK\$3,000,001 – HK\$5,000,000	HK\$23,000 + 0.6% of amount over HK\$3,000,000
HK\$5,000,001 – HK\$15,000,000	HK\$35,000 + 0.35% of amount over HK\$5,000,000
HK\$15,000,001 – HK\$50,000,000	HK\$70,000 + 0.228% of amount over HK\$15,000,000
HK\$50,000,001 – HK\$100,000,000	HK\$150,000 + 0.1% of amount over HK\$50,000,000
HK\$100,000,001 – HK\$250,000,000	HK\$200,000 + 0.055% of amount over HK\$100,000,000
HK\$250,000,001 – HK\$500,000,000	HK\$282,500 + 0.047% of amount over HK\$250,000,000
Over HK\$500,000,000	HK\$400,000

Neutral's fees above HKD775,000

Amount in dispute (HK\$)

HK\$775,001 – HK\$50,000,000

HK\$50,000,001 and above

Neutral's Fees (HK\$)

Based on an hourly rate commensurate with the experience of the appointed neutral which shall not exceed HK\$3,100 per hour save in exceptional circumstances

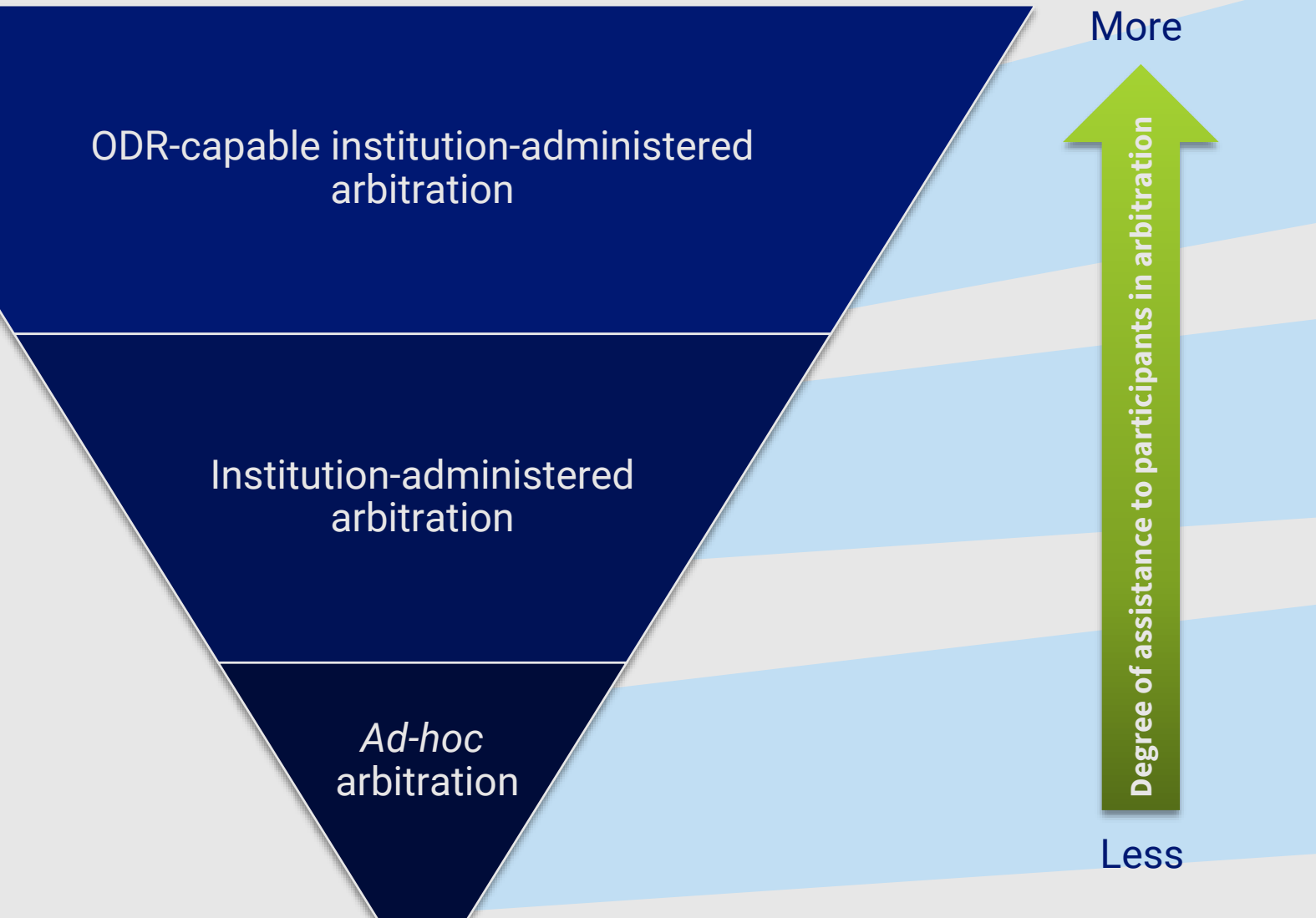
Based on an hourly rate commensurate with the experience of the appointed neutral which shall not exceed HK\$5,500 per hour save in exceptional circumstances

Administrative fees comparison

Amount in dispute (HK\$)	HKIAC Rules 2018	CIETAC (Hong Kong) Rules 2015	eBRAM APEC Rules
20,000	19,800 + 8,000 (filing fee)	16,000 + 8,000 (filing fee)	1,000
400,000	19,800 + 8,000 (filing fee)	16,000 + 8,000 (filing fee)	5,000
800,000	25,000 + 8,000 (filing fee)	18,340 + 8,000 (filing fee)	7,179.75 + 5,000 (filing fee)
1,200,000	29,000 + 8,000 (filing fee)	21,200 + 8,000 (filing fee)	10,055.75 + 5,000 (filing fee)
1,600,000	33,000 + 8,000 (filing fee)	23,800 + 8,000 (filing fee)	12,931.75 + 5,000 (filing fee)

Amount in dispute (BN\$)	HKIAC Rules 2018	CIETAC (Hong Kong) Rules 2015	eBRAM APEC Rules
3,455	3,420 + 1,382 (filing fee)	2,764 + 1,382 (filing fee)	172
69,095	3,420 + 1,382 (filing fee)	2,764 + 1,382 (filing fee)	864
138,191	4,318 + 1,382 (filing fee)	3,168 + 1,382 (filing fee)	1,240 + 864 (filing fee)
207,286	5,009 + 1,382 (filing fee)	3,662 + 1,382 (filing fee)	1,737 + 864 (filing fee)
276,381	5,700 + 1,382 (filing fee)	4,111 + 1,382 (filing fee)	2,234 + 864 (filing fee)

ODR support



3. Tools and ancillary support services for arbitration

- For disputants adopting a non-ODR-capable institution, the disputants will need to, on its own accord (or agree with the counterparty), to arrange for tools and support services to assist with the practical and logistical aspects of the arbitration (e.g. case management systems, e-bundling, virtual hearings etc.).
- As an arbitral institution, eBRAM is not only capable of being appointed to administer arbitrations, but its ODR platforms can also provide an integrated set of tools which affords more assistance to disputants in need to dispute resolution.

2. Administration

- Arbitral institutions can be an independent, neutral entity between disputants to help administer the arbitration prior to and after the constitution of the arbitral tribunal.

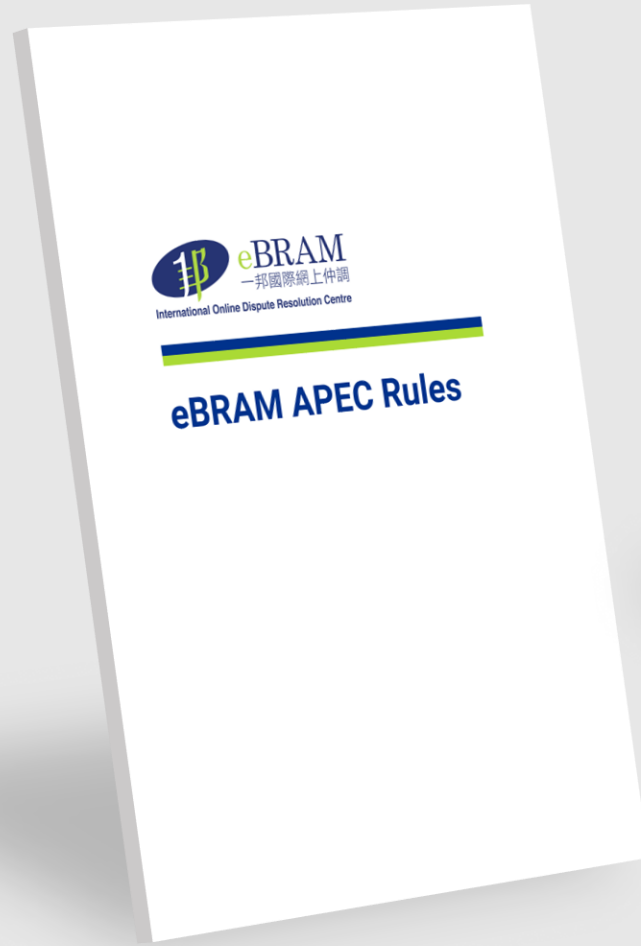
1. Establishing arbitration procedure

- In an *ad hoc* arbitration, disputants need to agree and establish the arbitration procedure and rules by themselves.
- Use of institutional rules can increase the certainty over arbitral procedural issues.

3

How to use the APEC Rules

Review eBRAM APEC Rules



https://ebram.org/apec_rules/

Adopt eBRAM APEC Rules model clause into contracts

“Any dispute, controversy or claim arising hereunder and within the scope of the APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes, shall be settled in accordance with the APEC Rules of eBRAM in force when the Notice of the Claim is submitted to eBRAM .”

Parties may consider adding the following to the clauses for eBRAM APEC Rules:

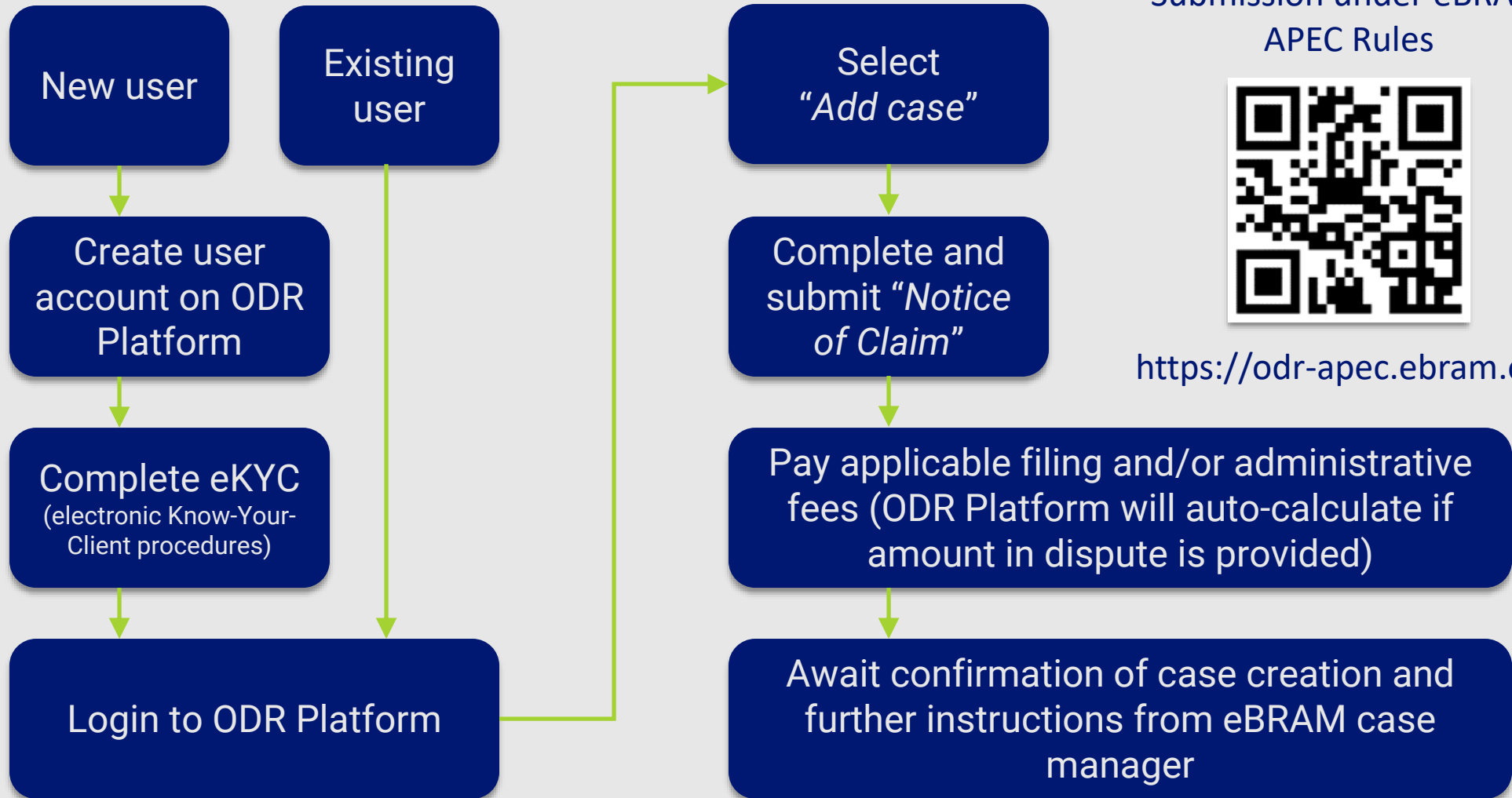
“The number of Neutrals shall be one.

The place of arbitration shall be [jurisdiction].

The applicable law of this arbitration agreement and of the procedure for the proceedings by ODR under the eBRAM APEC Rules shall be the laws of [jurisdiction].

The language used in the arbitration under the eBRAM Arbitration Rules shall be [English/other agreed language].”

Submit case through eBRAM ODR Platform



Submission under eBRAM
APEC Rules



<https://odr-apecebram.org>

Contact us

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Limited**

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