



ASEAN Guidelines on Online Dispute Resolution (ODR)



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For inquiries, contact:

The ASEAN Secretariat
Community Relations Division (CRD)
70A Jalan Sisingamangaraja
Jakarta 12110
Indonesia
Phone : (62 21) 724-3372, 726-2991
Fax : (62 21) 739-8234, 724-3504
E-mail : public@asean.org

Competition, Consumer Protection and IPR Division (CCPID)

E-mail : sarah.firdaus@asean.org
putu.swajaya@asean.org
mega.indrajati@asean.org

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ASEAN GUIDELINES ON ONLINE DISPUTE RESOLUTION (ODR)

Options and Orientation for
the Design of National ODR Systems
for Consumer Protection



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Abbreviations

AAEC	ASEAN Agreement on E-Commerce
ACCEC	ASEAN Coordinating Committee on E-Commerce
ACCMSME	ASEAN Coordinating Committee on Micro-, Small and Medium-Sized Enterprises
ACCP	ASEAN Committee on Consumer Protection
ADR	Alternative Dispute Resolution
AEC	ASEAN Economic Community
AHLCP	ASEAN High-Level Principles on Consumer Protection
AI	Artificial Intelligence
AMS	ASEAN Member States
ASAPCP	ASEAN Strategic Action Plan on Consumer Protection
ASEAN	Association of Southeast Asian Nations
ASEC	ASEAN Secretariat
B2B	Business-to-Business
B2C	Business-to-Consumer
C2C	Consumer-to-Consumer
GDPR	General Data Protection Regulation
MoU	Memorandum of Understanding
ODR	Online Dispute Resolution
OECD	Organization for Economic Co-operation and Development
UNCTAD	United Nations Conference on Trade and Development

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ASEAN GUIDELINES ON ONLINE DISPUTE RESOLUTION

Options and Orientation for the Design of National ODR Systems

INTRODUCTION

1. In the face of the advancing digital economy, Online Dispute Resolution (ODR) systems are gaining in importance around the world. This trend is underpinned by the demand to **create cost-efficient and convenient mechanisms that employ digital technologies to expand and expedite consumer access to redress**, particularly with respect to low-value or smaller claims.
2. The **ASEAN Strategic Action Plan on Consumer Protection (ASAPCP)** 2016-2025 foresees the development of ASEAN ODR Guidelines (“Guidelines”), as a priority deliverable for 2021 and in contribution to Goal 3 of the ASAPCP concerning *High Consumer Confidence in the ASEAN Economic Community (AEC) and Cross-Border Transactions*. As a building block towards realizing the longer-term commitment of an **ASEAN ODR Network**, the Guidelines provide practical orientation and suggest actionable steps to the members of the **ASEAN Committee on Consumer Protection (ACCP)** and related stakeholders in the ASEAN Member States (AMS) on how to design and operationalize national ODR systems.
3. The establishment and utilization of ODR systems recalls the following **ASEAN High-Level Principles on Consumer Protection (AHLPCP)**:
 - Principle 4 – Consumers have access to appropriate and convenient sources of advice and redress including Alternative Dispute Resolution (ADR).
 - Principle 8 – Consumers in e-commerce are protected.
4. Aside from the specific work under the ACCP, these Guidelines contribute to the realization of measures for 2022-2024 under the “**Bandar Seri Begawan Roadmap: An ASEAN Digital Transformation Agenda to Accelerate ASEAN’s Economic Recovery and Digital Economy Integration**” launched in 2021. With the concurrent actions of the **ASEAN Coordinating Committee on E-Commerce (ACCEC)** and the new work plan for the implementation of the **ASEAN Agreement on E-Commerce (AAEC)**, it is pertinent to synchronize and synergize ongoing efforts across the ACCP and ACCEC, as the main sectoral bodies of ASEAN tasked with ODR-related initiatives.
5. The Guidelines further take into account existing good practices, including initial experiences in piloting ODR systems in selected AMS to date. It should be noted, however, that **no international or regional standard for ODR exists**. Rather, ODR can have varying degrees of automation and sophistication, depending on national policy objectives, sectoral priorities and/or other administrative considerations in different jurisdictions.
6. The main characteristics of ODR in ASEAN are summarized in **Annex 1**. AMS are encouraged to actively refer to the Guidelines in conceptualizing their respective national ODR systems, with indicative milestones to be attained in the immediate, medium and longer term, as outlined in **Annex 2**.

7. Considering that ODR constitutes a comparatively new and fast-evolving topic, the Guidelines may need to be updated from time to time in order to reflect more recent insights or lessons that could enhance the functionality and effectiveness of ODR systems.

Scope of the Guidelines

8. These Guidelines aim at assisting AMS in setting up or strengthening national ODR systems, in accordance with their respective national policy, legal and institutional frameworks, as well as degree of readiness. As a soft law instrument, they do not confer any legally binding obligation upon AMS.
9. The Guidelines describe a systematic, step-by-step process for deciding on a suitable model for a national ODR system in each AMS. This follows a number of key considerations and criteria to help determine the adequate governance, coverage and administration of a national ODR system.
10. These Guidelines cover government-led or administrative ODR systems under the purview of consumer protection authorities. Although outside of the scope of the Guidelines, wider developments concerning the digitalization of the delivery of justice, notably the emergence of legal tech, e-courts and business-led systems for dispute resolution, should be closely observed and the integration of different systems pursued, where appropriate.
11. Acknowledging the heterogeneity and varying levels of maturity of consumer protection systems in ASEAN, the Guidelines provide a common starting point to promote a certain degree of uniformity of ODR systems in the region.
12. AMS are encouraged to apply the substantive, procedural and IT-related principles put forward in these Guidelines as minimum requirements and to bridge gaps in the legal or regulatory framework, as needed. In the longer term, this is expected to facilitate coordination for cross-border consumer dispute resolution.
13. While the focus of the Guidelines lies on the establishment of national ODR systems in the AMS, the vision of integration into a post-2025 ASEAN ODR Network should be kept in view.

Concepts, Terms and Definitions

14. An ODR system comprises of an online platform that, apart from allowing for electronically filing a consumer complaint, enables the parties to resolve their dispute without the need for physical presence during the proceedings. Complementing “traditional” offline dispute resolution mechanisms, such as small claims courts and alternative dispute resolution (ADR) schemes, ODR plays a critical role in increasing consumer empowerment and access to redress in an evolving digital economy.
15. Unless otherwise described, these Guidelines refer to **ODR in the context of business-to-consumer (B2C) commercial transactions**. This recognizes the main mandate of the majority of ACCP members, i.e. consumer protection authorities that are part of Ministries of Trade in most AMS.

16. The following terms are used throughout the Guidelines:

- “Alternative Dispute Resolution”, or “ADR”, refers to an out-of-court mechanism for the resolution of B2C disputes that stands as an alternative to going to court, thereby avoiding the challenges associated with traditional litigation, such as delays or prohibitive costs to the disputing parties. The underlying principle of ADR is the provision of a low-cost, speedy, more flexible and relatively informal mechanism for resolving B2C disputes.
- “Complaint” or “Consumer Complaint” refers to initiatory actions with claims for relief or redress, such as reimbursement or damages, arising from a commercial transaction involving consumer goods. Such complaints are filed by consumers against businesses, which may be either individual sellers or platforms. For these Guidelines, a complaint excludes transactions involving consumer goods between a business enterprise and the merchant/platform (“B2B”), or those between a consumer and another consumer (“C2C”).
- “Consumer” refers to a natural person who avails of goods or services acting primarily for personal, family or household purposes.
- “Business” refers to the merchant/trader/seller who produces, markets and/or makes goods or services available to consumers.
- “Third-party neutral” refers to any entity participating and facilitating a settlement between the disputing parties. It is the third party, besides the consumer and the business, with the role typically assumed by the consumer protection authority or other relevant government entity. This may also be undertaken by a professional, private mediator and/or consumer association.
- “Online Dispute Resolution”, or “ODR” can be understood as a subset of ADR that employs technology-enabled communications in an online platform. It is typically understood to cover web-based technology-assisted processes where parties utilize digital communication and information management tools to resolve a dispute. Increasingly, algorithms and Artificial Intelligence (AI) are also employed in ODR systems.
- A “National ODR System”, at a bare minimum, refers to an online mechanism established by an AMS through which complaints can be initiated by consumers and resolved through online means, typically with assistance by the responsible government entity or other parties tasked with assisting with consumer claims, or with facilitating or mediating B2C disputes.
- “ASEAN ODR Network” refers to the regional ASEAN Online Dispute Resolution Network, as envisioned under Strategic Goal 3 of the ASAPCP 2016-2025, consisting of various interlinked ODR systems established by the AMS. Its rationale and further details are referenced in a Feasibility Study carried out by the ACCP in 2020.

OVERVIEW

17. Building the case for ODR requires time and effort, in a whole-of-government approach that involves different stakeholders and could extend beyond the immediate purview of consumer protection authorities. The following could be referenced in arguing why an ODR system is important to improve consumer access to redress, and what its main features could be in the ASEAN context.

Objectives and Benefits of ODR

18. Following on the ease and convenience of engaging in transactions through online means, consumers and businesses expect a similarly swift mechanism to resolve claims, without the burden of extensive fees and the necessity for in-person participation in the dispute resolution process. **The primary objective and benefits of an ODR system lies in settling disputes between consumers and businesses in a speedy, inexpensive and impartial manner.**
19. Offline dispute resolution mechanisms in many countries are often perceived as complex and applicable procedures not always sufficiently known. An ODR system holds the potential of addressing these issues by increasing transparency and accessibility, notably if rules of procedure are available online and different systems interlinked for ease of reference and referral.
20. An ODR system facilitates the communication not only between the disputing parties but can also reinforce inter-agency coordination as different entities in charge of consumer dispute resolution are encouraged to align their procedures in order to provide seamless interfaces between multiple schemes. This drives efforts towards regulatory coherence, first across sectors domestically, and in the long term among different jurisdictions that participate in either a bilaterally connected or a regional ODR scheme.

Main Characteristics of ODR in ASEAN

21. The Guidelines envisage the **establishment of ODR systems that are distinctly government-led and/or administered by other parties tasked with negotiation, mediation or otherwise assisting consumers in B2C disputes**, and thus are set apart from other forms of commercial ADR or arbitration schemes and/or litigation procedures that are transposed to an online system.
22. Given the level of consumer empowerment and literacy across ASEAN, it is critical to actively assist consumers in navigating and participating in an ODR system and settlement procedure. The involvement of government entities, notably the consumer protection authorities, in the ODR system is therefore considered indispensable.
23. The main mode of settlement through an ODR system in the AMS is through mediation or conciliation where procedures are comparatively flexible, informal and straightforward. This mirrors the mandate of consumer protection authorities in most AMS. The rules of procedure for the ODR system could foresee further steps that follow more complex and stricter requirements, for example using arbitration.

24. National ODR systems in the AMS should be open for **processing complaints or claims that arise from both, offline and online commercial transactions between businesses and consumers**. A separate or standalone system for either type of transactions is likely not economically feasible, due to higher administrative costs in the face of still comparatively low complaints behavior in many AMS.
25. An effective consumer protection system relies on affording consumers with various options for dispute resolution, through a combination of litigation and out-of-court mechanisms, both off- and online. The national ODR systems set up by AMS are not intended to replace existing offline mechanisms for consumer dispute resolution, nor other online systems through which consumers are able to pursue claims against businesses. This is in due consideration that consumers may possess different preferences and needs when seeking redress.
26. Designing ODR systems with openness and expandability in mind is a crucial consideration in order to allow for the future integration of parallel systems across sectors and jurisdictions.

DESIGN CRITERIA FOR NATIONAL ODR SYSTEMS

27. The conceptualization of national ODR systems in the AMS should be founded on common considerations to be matched with country-specific circumstances. The following criteria serve to aid deliberations in each AMS at the inception stage of an ODR system, guiding the process of identifying its scope, steering and other administrative matters.

Purpose, Coverage and Lead

28. Prior to embarking on the establishment of a national ODR system, its purpose should be determined, on the basis of an overarching government commitment or a national policy document, such as a Medium-Term Development Plan, national strategy on consumer protection, and ASEAN and/or international agreements. National priorities should be considered in case a pilot ODR system for specific sectors is foreseen.
29. The establishment of an ODR system does not necessarily entail setting up an entirely new system from scratch. **It is advisable for AMS to critically examine the scope and effectiveness of their existing consumer dispute resolution schemes in order to decide whether certain modes or mechanisms that are already in place could be transposed to an online and more automated system.**
30. Wider consultations, involving government entities and other relevant stakeholders, should precede and accompany the development of a national ODR system in order to continuously build political support and encourage public participation in the scheme. Extensive advocacy and awareness-raising activities are particularly pertinent to educate consumers and businesses about their rights and obligations under consumer protection laws, overcome a low complaints culture and/or low acceptance or visibility of the ODR system.
31. In accordance with the legal framework and policy requirements in each AMS, the designation of a relevant entity to shepherd the establishment of the national ODR system, with a clear and

sufficient legal mandate, is critical to **ensure streamlined efforts across sectors**. This step could entail a lengthy and complex negotiation process between multiple ministries in charge of consumer protection and related policies.

32. Some AMS would further require legal changes, for example new regulations on e-commerce, an amendment of the general consumer protection law, or executive issuances. This should be accounted for in devising a realistic plan, schedule and concrete milestones in order to translate the high-level policy commitments into actionable steps.
33. The majority of consumer protection systems in ASEAN rely on public enforcement. Thus, for a majority of AMS, the main consumer protection authorities (under the Ministries of Trade) are the natural lead for setting up and subsequently governing a national ODR system to deal with disputes in commercial B2C transactions. The designation of a lead for the ODR system influences the scope of a planned ODR system, i.e. whether it should be confined only to commercial transactions or also to financial services and/or data privacy issues that in many AMS fall under the jurisdiction of government entities besides the consumer protection authority.
34. Where other public, private and civil society entities are in charge of consumer dispute resolution as well, their involvement in the ODR system should be enabled, where possible. A government-led or government-run ODR system should not preclude the participation of other stakeholders, besides the government. The latter particularly concerns sectoral regulators, ADR bodies, small claims courts and consumer associations. For practical and policy reasons, the participation of additional parties could be foreseen in a phased approach.
35. The **preferable option should be a central, one-stop ODR system** that cuts across or interlinks sectors as it affords consumers and businesses the opportunity to effectively engage with only one system or platform, in line with a “no wrong door” policy. Such single point of entry could overcome a low complaints culture among consumers who might feel overwhelmed by diverse or seemingly complex options for dispute resolution. It would also act an incentive for businesses whose main interest is to avail of a simple, straightforward and swift manner to resolve consumer claims.
36. Technical coordination with other relevant government entities and/or the courts at various stages of the preparation of an ODR system is required in order to delineate roles, responsibilities and procedural aspects, particularly if referral mechanisms and interfaces with other systems are envisaged.
37. The active utilization of ODR systems by consumers and businesses requires some adjustment over time. AMS should consider the gradual development and upgrading of the ODR system, as an opportunity to test what works best and where gaps lie, for example with respect to the functionality of the system, consumer literacy, and/or business incentivization. This would further help build government and public commitment over time.

Users and Third-Party Participation

38. The identification of users and participants in the ODR system, and their respective roles, constitutes a fundamental concern where consumers are not yet sufficiently empowered to enforce their rights without assistance from the government, consumer associations, lawyers or other bodies. Access

to the ODR system for these parties should be granted in principle, but availing of such assistance should be optional, depending on the need or preference of the disputing parties.

39. The following **user groups** can be differentiated in an ODR system:

- *Disputants*, which include consumer-complainants and business-respondents. They may also include the platforms that market or sell goods and services, depending on whether complaints directed against platforms should also fall within the purview of the national ODR System. Where applicable, legal counsels and/or consumer associations could be assigned to assist or act on behalf of consumers.
- *Third-party neutrals*, i.e. the mediators who will hear and resolve the consumer complaints and whose qualifications should be clearly set out in order to ensure that a settlement is facilitated in a competent and impartial manner. The mediators can be either employed or designated by government authorities or drawn from the private sector, for example professional ADR bodies. A requirement should be for these third-party neutrals to possess prior legal education and/or to have undertaken a specialized training.
- An *ODR system administrator*, with overall executive functions in the day-to-day operations and hosting of the ODR system, including supervising the clerical and technical staff assigned to the management of online case files and for communications with the disputants. The ODR system administrator can be the main consumer protection authority, and/or other parties tasked with assisting consumers in B2C disputes.

Administration and Accountability

40. For reasons of efficiency, the lead for the establishment of the national ODR system and its subsequent implementation should be with the main consumer protection authority. Where multiple entities are involved in the dispute resolution process, and depending on the nature of the dispute, an inter-ministerial or multi-stakeholder body could be set up for the administration and governance of the ODR system.
41. Investments into human resources and training are required to **ensure an appropriate level of competence of the officials assigned to the ODR system**. With a view to public scrutiny, AMS should make this a priority and organize regular capacity building activities, for example on online case management and mediation techniques, so that a high level of professionalism can be maintained.
42. Trust in the fairness and effectiveness of an ODR system renders it a viable and sought-after option for the resolution of B2C disputes. In the interest of accountability, AMS should allow for the **public disclosure of case statistics** and aggregate information about the “success rate” of resolving disputes via the ODR system.

Degree of Automation

43. The potential of ODR compared to offline dispute resolution mechanisms lies in maximizing technology for wider access and the speedier resolution of B2C disputes. It should not be the aim to have a

fully automated and highly sophisticated ODR system from the start as this would require substantial investments not only in financial terms, but also in building consumer and business literacy as well as the capacities of mediators.

44. What stages of filing, processing and settling consumer complaints should be automated depends on a number of factors, such as readiness or familiarity of administrators and users/parties in employing digital tools and technologies, availability of funding, and/or prevalent data security risks, along with national policy objectives, sectoral priorities and/or other administrative considerations in different jurisdictions.
45. An essential element of an ODR system is the possibility to electronically file and track consumer complaints, in a more transparent and predictable manner than this would be possible with a paper-based process. **Existing online consumer portals in the AMS could be upgraded** from mere platforms for information provisions to incorporate an online complaints function where not only complaints can be easily filed, but also the disputing parties and third-party neutrals are able to **monitor the progress based on a digital case record**.
46. Following on the filing of a complaint, there should be a process for screening the validity of the claim. This could be done manually by a clerical staff or official assigned to the ODR system, but where technological advances allow for it, algorithms could be employed. The latter has the advantage of realizing efficiencies as large volumes of low-value, non-complex consumer complaints can be processed at a relatively small cost.
47. An ODR system could further automate the referral process where multiple entities may be in charge of consumer dispute resolution. The referral can be programmed in an online form whereby a complaint, based on certain criteria that have been input, would be directed to a relevant sectoral regulator. The latter could either be granted direct access to the ODR system or connected to a parallel system.
48. The ODR system should provide an online platform for the disputing parties to **communicate virtually, either in real-time or asynchronously**, in order to resolve the dispute at hand without having to meet in person. The communication can be via email or video. This is a crucial benefit for the parties if they are located in different locations or face other constraints to convene. **Where AMS decide to put in place such a platform for virtual proceedings, safeguards on data privacy and confidentiality are indispensable**.
49. In its most advanced form, an ODR system could fully rely on technology-enabled decisions for the compensation or relief to be awarded in disputes. Such approach involving AI and predictive justice can alleviate the case load and backlog but requires careful programmatic in order to arrive at fair and unbiased decisions. This is an option for AMS to look into in the long term, depending on technological advancements, and would be most feasible for straightforward cases where legal provisions as well as redress criteria are clear.

Funding

50. **Sufficient human and financial resources should be allocated not only for setting up but also for managing the ODR system in the medium term**, including IT development and maintenance, as well as the provision of mediation services where needed. It is therefore important to adopt a longer-

term perspective when designing the ODR system in order to account for all potential costs, beyond immediate needs. The necessary funding may be provided by the main consumer protection authority and/or constitute a dedicated budget by the government on either an annual or multi-year basis.

51. Where the ODR system cannot be fully subsidized, an adequate solution should be found to cover operational costs, for example by charging certain fees to the disputing parties. However, due consideration should be put towards ensuring that consumers, particularly from low-income households, who seek an alternative to court litigation are not disadvantaged or discouraged from using the ODR system.

GUIDING PRINCIPLES

52. Although the ODR systems in the AMS will necessarily have to be customized to the respective domestic legal regimes, the increasingly cross-border nature of consumer transactions calls for the consistent protection of consumers across AMS. The following guiding principles serve to gradually overcome divergent policies, laws and regulations at the country level.

Accessibility

53. In light of varying levels of internet access in the AMS, the national ODR system should **allow for broad accessibility, even with limited connectivity**. Among others, this could be ensured by deploying mobile phone applications that require lower bandwidth, along with chat bots and standard forms or templates that aid consumers in filing and tracking claims. Hybrid modes for filing complaints are an option, notably if consumers are able to lodge complaints via local offices of consumer protection authorities and/or consumer associations which are subsequently fed into an ODR system.
54. The **consumer-centric design of the user interface** is another important consideration for accessibility and to allow for easy navigation. Terms of use and proceedings should be informed in a manner that they are readily understood by consumers with varying levels of digital literacy and legal backgrounds. In multilingual settings, IT solutions to facilitate access to different segments of society should be devised, or alternatively interpreters employed to assist the disputing parties in bridging language barriers.
55. While a mobile phone interface is useful for filing and tracking complaints, as well as to facilitate the asynchronous communication between the parties, it is recommended that for the actual settlement process, parties are provided with the opportunity to engage via video calls. For this, and if the signing of a settlement document is foreseen, accessing the ODR platform from a laptop or computer is advisable.
56. In due consideration of the principle of accessibility, the costs of participation in the ODR scheme should be kept as low as possible for the disputing parties. For example, charging little or no fees for an assisted negotiation in a B2C dispute would benefit consumers who may otherwise face substantial difficulties in pursuing claims against businesses with likely greater bargaining power, resources and expertise.

57. Consumers participating in the ODR system should have the option to decide whether or not to avail of legal representation or assistance. Procedural rules should offer them the opportunity to pursue their claim without the need of securing the services of a legal counsel if they feel confident to proceed on their own. Conversely, consumers in need of legal advice or other forms of assistance should be afforded the same, by enlisting the support of a lawyer, consumer association and/or another third-party neutral to represent or assist them or mediate in the dispute, where appropriate. This would particularly address the needs of consumers from low-income households or other vulnerable groups.

Transparency and Due Process

58. The ODR system should provide **accessible and accurate information to users**, notably concerning process steps, data protection and processing, qualification of third-party neutrals, processing times, fees or costs (if any), administrative requirements as well as possible outcomes of the ODR process. Digital records should be kept and made accessible to the disputing parties throughout the ODR proceedings. For the purpose of legal certainty and predictability, the rules of procedure and other pertinent information should be easily available to the public.

59. In order to monitor effectiveness and impacts, there should be a **regular reporting process on the utilization of the ODR system, funding and the success rate of resolving disputes** coursed through the system. This is a crucial requirement for transparency and should be part of the accountability mechanism put in place in conjunction with the administration and governance of the ODR system.

60. In order to be viewed as trustworthy, reliable and effective by consumers and businesses, national ODR systems must embody basic principles of **fairness and due process**. These are consistent with offline proceedings through mediation or ADR mechanisms and should be applicable online as well. Details should be enshrined in rules of procedure.

61. The disputing parties must be afforded the **right to be heard**, including the right to present their case and to present evidence. The right to be heard may be waived, but only after the party had been served due notice of the opportunity to present their case and adduce evidence. Parties should further be duly informed at which stages, if any, they may be able to withdraw from the ODR process.

62. There should be the possibility of taking **appropriate sanctions** on parties in case they interfere with the duly prescribed procedures to the extent of compromising due process.

63. The decision should be rendered in a manner that the parties know the reasons and implications, and based on the evidence presented and/or submitted for the record. There must be at least **substantial evidence to justify the decision**, or such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.

64. The parties should be informed about the finality and legal enforceability of the decision, and its **finality or bindingness upon the parties and/or availability of further appeals or judicial review**, based on prevalent domestic laws and regulations. Where foreseen under the respective legal framework of the AMS, penalties may apply for non-compliance with the outcomes of the ODR process.

65. Where third parties are involved to facilitate the communication between the disputing parties, a process should exist to vet their qualifications, independence and integrity. Where necessary, a **separate set of rules or competency standards may be promulgated** to ensure professionalism, ethics and neutrality.

IT REQUIREMENTS

66. Although these Guidelines primarily serve to assist with the design of national ODR systems in the AMS, the broader goal is the phased establishment of a region-wide ASEAN ODR Network. This demands that the future integration and interoperability with other dispute resolution systems, both domestically as well as across jurisdictions, be accounted for already at the design stage.

Interoperability

67. **Ensuring openness and compatibility between national ODR systems** and related platforms allows for easy transmission and sharing of relevant data and documents, for example related to case histories. It also facilitates the efficient referral of cases between different entities in charge of dealing with B2C disputes, either within countries or where coordination with entities in other countries is warranted in relation to cross-border transactions.
68. Designing for future expansion and enhancement requires programming with software which is not encumbered by proprietary claims by different IT vendors and allows for easy upgrading, as needed. While customization is critical to make sure national ODR systems cater to country-specific needs, **application programming interfaces (API) should allow for extendibility and interaction with other ODR systems or platforms.**
69. At the domestic level, interoperability can enable a phased escalation of claims from an ADR-based to other modes of recourse, for example by connecting the ODR system to arbitration bodies or e-courts.

Data Security and Privacy

70. Considering the sensitivity of information in relation to B2C disputes, it is critical that national ODR systems exhibit **strong frameworks and safeguards on data security and privacy**, embedded in both their design as well as their daily administration. Any data breach that leads to the unauthorized disclosure of personally identifying information risks compromising the credibility of the national ODR system and undermines public trust.
71. National ODR systems should be built in compliance with prevalent policies, laws and regulations that govern data security and privacy in the AMS. In the absence of these or where data protection frameworks may not yet be up-to-date, an option is to refer to principles that are commonly accepted according to international good practice. Such principles include seeking consent for data collection or use, focusing on data quality, purpose specification, use limitation, security safeguards, transparency,

individual participation and accountability while describing important actions if data leaks or breaches occur. **Periodic risk management and mitigation measures should also be carried out.**

72. For the integration of national ODR systems in the ASEAN ODR Network, a consensus should be reached on appropriate standards and safeguards among participating AMS. Reference may be taken from the **ASEAN Framework on Personal Data Protection** endorsed in 2016 as well as the **ASEAN Framework on Digital Data Governance** dated 2018. For the latter, the ASEAN Digital Ministers in 2021 approved the **ASEAN Model Contractual Clauses for Cross-Border Data Flows** which outline contractual safeguards for the transfer of personal data across borders.

LEGAL AND PROCEDURAL REQUIREMENTS

73. To achieve consistent, credible outcomes, the ODR system requires a clear legal framework to govern its operational procedures, with definite procedures for the disputing parties to understand and apply in proceedings. **A document describing the rules of procedure should be prepared as guidance.**

Transparent and Definite Procedures

74. The requirements for rules of procedure for the national ODR system may vary in form and scope in each AMS. They can be either devised as specific implementation regulations and/or reference from existing provisions, for example on mediation, arbitration or court procedures.
75. To **promote transparency and accountability**, rendering the rules of procedure accessible to the wider public is essential, for example by posting them on a public website. The rules should be periodically updated in order to account for changes in the legal or institutional environment, thereby reducing the potential for friction caused by misunderstandings among disputing parties about applicable procedures.
76. Similarly, where referral mechanisms are envisaged for the ODR system, these should be described in sufficient detail and made known to the public. Where procedures for the settlement of B2C disputes vary across the respective government entities, consultation and clarification should be pursued in the interest of consistency and coherence. **Memoranda of Understanding (MoU) could be concluded to advance the alignment of procedural rules across government entities overseeing consumer protection in different sectors.**
77. Same as with offline modes of consumer dispute resolution, a **staggered approach ensures a more flexible process** starting with negotiation between the parties, based on cordiality and cooperation. Where that fails to promote a consensual agreement, options to escalate the dispute could be foreseen, notably to mediation with assistance of a third-party neutral, and subsequently to a more formal arbitration process with stricter rules, or even to formal litigation. The extent of damages that may be awarded depend on the respective laws and regulations in place in each AMS.

78. Specifically, the **rules of procedure** for the national ODR system should cover the main stages of an ODR proceeding, as follows:
- *Submission of Claims.* This is the stage where the consumer submits a claim for resolution, and which should trigger an automatic record as well as notification to both the business in question as well as the administrator of the ODR system. At a minimum, the claim should include the following details: the names and electronic addresses of the parties, the grounds for the claim and relevant proof of documentation, the preferred language of proceedings, and the signature or other means of identification and authentication of the claimant or their representative. The claim may likewise include any solutions proposed to resolve the dispute. Additional categories could be foreseen, based on need as well as to facilitate referral and further scrutiny.
 - *Opportunity for Negotiated or Facilitated Settlement.* The ODR system should afford the parties the flexibility and opportunity for direct communication, without undue delay and with the record of communications preserved and accessible online. Appropriate parameters for the negotiation process should be defined, including timelines, presentation of evidence etc. If a third-party neutral facilitates or mediates the dispute, the rules of procedure should delineate their role and stipulate the finality and enforcement of the settlement, as well as the option for appeal in case one of the parties is not satisfied with the outcome. This should be aligned with the prevalent procedural laws and other relevant regulations in each AMS.
79. Among the advantages of ODR is being able to forego the need for paper documents, including such documents that traditionally bear a physical or “wet-ink” signature. AMS should take appropriate steps to **guarantee the legal recognition of electronic documents and communications**, as well as the use and validity of electronic signatures in ODR proceedings.
80. While the ease and efficiency of use of the ODR system could be a sufficient incentive, stronger provisions may be necessary in some AMS, for example by **making registration and participation mandatory for businesses**, by law or regulation. The latter is an important instrument to improve both business liability as well as regulatory oversight.

Further Legal Issues

81. Aside from **examining the need for legal changes** as a prerequisite for setting up and operationalizing a national ODR system, regional and international linkages between ODR systems across jurisdictions require AMS to amend or adopt laws and regulations to facilitate cross-border cooperation, particularly as concerns data flows and sharing of confidential information.
82. Where different AMS exercise jurisdiction over a dispute, **appropriate communication and coordination mechanisms for dealing with the dispute should be put in place**, by consulting the **ASEAN Cross-Border B2C Disputes Resolution Guidelines** dated 2019, as an important soft law instrument.
83. The conclusion of bilateral or multilateral cooperation agreements or arrangements could promote the eventual establishment of the **ASEAN ODR Network**, expected to lead to a more effective resolution of cross-border consumer disputes that may otherwise not be adequately resolved due to limitations

of jurisdictional reach and enforcement of decisions beyond national borders. In this connection, it is further important to **examine whether existing consumer protection laws in the AMS cover extraterritorial complaints or disputes**, i.e. whether they apply overseas and to transactions involving sales to local consumers in the AMS.

REGIONAL AND INTERNATIONAL COOPERATION

84. With a view towards accelerating the alignment or convergence of substantive and procedural rules related to consumer dispute resolution in the AMS, continuous exchanges among AMS as well as learning from international good practices should be prioritized. **Variations between national ODR systems in the AMS with respect to governing policies and procedures could be remediated by consensus.**

Cooperation among ASEAN Sectoral Bodies

85. In relation to a regional ODR system, **AMS should actively explore the option of linking their national ODR system to the ACCP website** (www.aseanconsumer.org) which includes an online complaints function. This is complemented by agreed processing steps for the referral and follow-up of consumer complaints lodged through the ACCP website and been trialed since mid-2021. In the future, the ACCP website could become the central node through which national ODR systems in the AMS are interlinked.

86. These Guidelines are devised under the purview of the ACCP. However, since they pertain to governing consumer transactions, also in the digital economy, parallel work undertaken by other relevant ASEAN Sectoral Bodies should be kept in view. First and foremost, the **ASEAN Coordinating Committee on E-Commerce (ACCEC)** should be periodically consulted for progress of regional guidance documents and deliverables under their ambit, in order to realize synergies as well as promote coherent cross-sectoral approaches at the regional level.

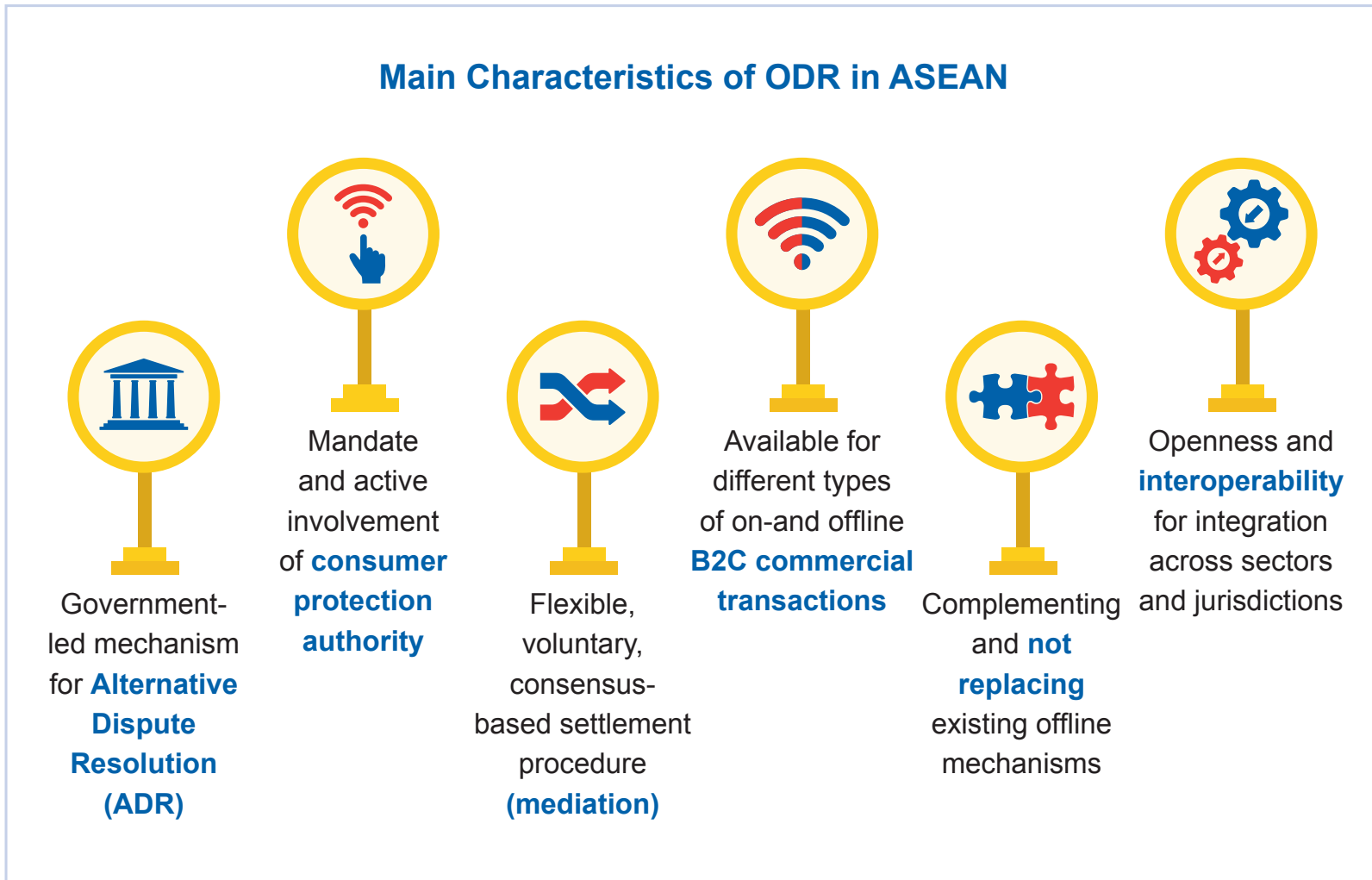
87. Another potential partnership could be envisaged with the **ASEAN Coordinating Committee on Micro-, Small and Medium-Sized Enterprises (ACCMSME)**, which in 2021 launched the ASEAN ACCESS portal (www.aseanaccess.com) in order to connect and facilitate market access for regionalizing enterprises in the AMS. The platform provides information and matchmaking services, among others. As it is important for businesses to apply consumer protection laws, including requirements for dispute resolution, a link to the ACCP website and/or national ODR systems for B2C dispute could be foreseen.

Cooperation with the Wider International Community

88. AMS should actively engage with the wider consumer protection community, through relevant international groupings and fora, in order to deepen their technical understanding about ODR systems. This includes learning from practical experiences in other jurisdictions outside of the ASEAN region, particularly those with similar political and socioeconomic characteristics.

89. MoUs between AMS are not strictly warranted in light of existing regional commitments under the ASAPCP 2025 and other strategic documents of ASEAN, but could supplement existing documents. Additionally, AMS could consider entering into bilateral or multilateral cooperation arrangements regarding consumer dispute resolution, including to interlink ODR systems, with countries outside of the ASEAN region.

ANNEX 1: Main Characteristics of ODR in ASEAN



ANNEX 2: Design Criteria for National ODR Systems

Design Criteria for National ODR Systems

Purpose, Coverage and Lead	Users and Third-Party Participation	Administration and Accountability	Degree of Automation	Funding
<ul style="list-style-type: none"> • Determine objectives in line with national priorities • Assign lead for the set-up and administration • Engage in continuous advocacy to promote stakeholder support and streamline efforts across government entities (if possible, central ODR system) 	<ul style="list-style-type: none"> • Identify and assign role to users of the ODR system • Allow for the participation of third-party neutrals to facilitate and mediate in B2C disputes 	<ul style="list-style-type: none"> • Ensure appropriate competency standards and capacity building for online case management and online mediation • Publish aggregate case statistics for accountability 	<ul style="list-style-type: none"> • Account for policy objectives, stakeholder and/ or IT readiness, administrative issues • Facilitate remote participation and communication through various online means • Consider upgrading existing consumer portals and redress schemes 	<ul style="list-style-type: none"> • Allocate sufficient budget for set-up and operational costs in the medium term (incl. IT maintenance and mediation services) • Consider an appropriate fee scheme that does not burden consumers (especially from low-income households)

ANNEX 3: Milestones for the Development of National ODR Systems

