

Feasibility Study:

ASEAN Online Dispute Resolution (ODR) Network



one vision
one identity
one community

The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967. The Member States of the Association are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam. The ASEAN Secretariat is based in Jakarta, Indonesia.

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

Feasibility Studies: ASEAN Online Dispute Resolution (ODR) Network
Jakarta: ASEAN Secretariat, November 2020

ASEAN: A Community of Opportunities

With the support of:



This publication was prepared with the support of the “Consumer Protection in ASEAN” (PROTECT), which is implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH and funded by the Federal Ministry for Economic Cooperation and Development (BMZ) of Germany.

The text of this publication may be freely quoted or reprinted, provided proper acknowledgement is given and a copy containing the reprinted material is sent to Community Relations Division (CRD) of the ASEAN Secretariat, Jakarta.

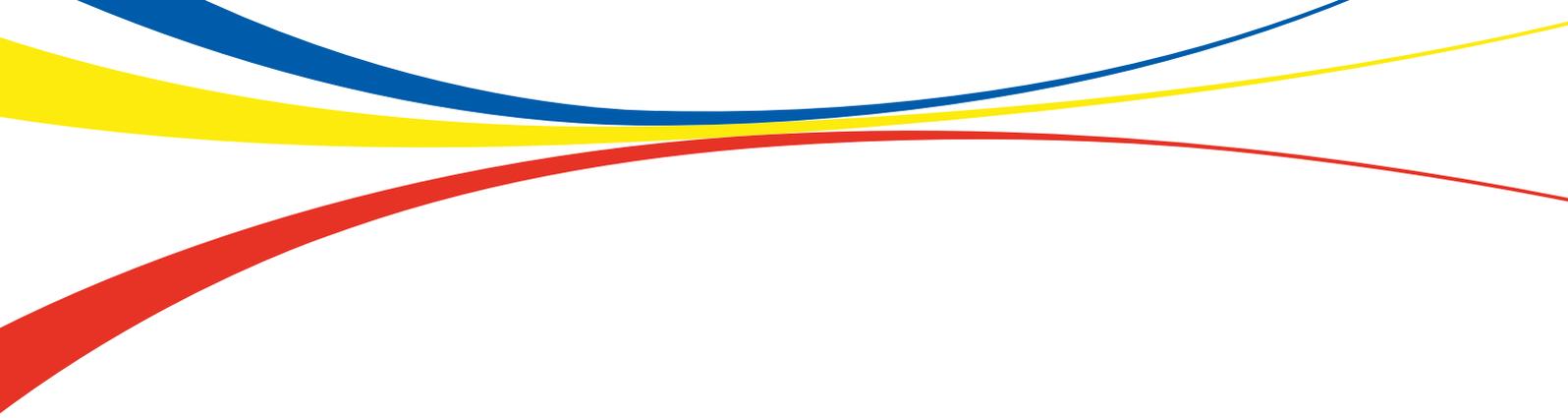
General information on ASEAN appears online at the ASEAN Website: www.asean.org

All icons and pictures in this publication are downloaded from Shutterstock.com.

Some of the icons are then used in creating diagrams or illustrations, which constitute GIZ's own elaborations. More information on this is available on the Note on Illustrations, available in page iv.

Copyright Association of Southeast Asian Nations (ASEAN) 2018.

All rights reserved.



Feasibility Study:

ASEAN Online Dispute Resolution (ODR) Network

The ASEAN Secretariat
Jakarta



one vision
one identity
one community

Table of Contents

Abbreviations	v	Chapter 4: What are key considerations for ODR in ASEAN?	21
Executive Summary	vi	4.1 SWOT Analysis for Introducing ODR	23
Chapter 1: Introduction	1	4.2 Criteria for ODR Design	24
1.1 Background of the Study	3	Chapter 5: What actions should be taken towards an ASEAN ODR Network?	33
1.2 Scope and Methodology	4	5.1 A Progressive ASEAN ODR Network	35
Chapter 2: Why does ASEAN need an ODR network?	5	5.2 Success Factors for the ASEAN ODR Network ..	37
2.1 History and Types of ODR	7	5.3 Conclusion and Outlook	38
2.2 ASEAN Commitments	9	Annexes	41
Chapter 3: What kind of ODR approaches already exist?	11	Annex 1. Checklist of Criteria for ODR Design	42
3.1 International Examples	13	Annex 2. Action Plan for the ASEAN ODR Network ..	43
3.2 Existing Efforts in ASEAN	17		
3.3 Assessment of Different ODR Approaches	18		

Note on Illustrations:

Unless otherwise stated, the diagrams, tables and illustrations in this Feasibility Study constitute GIZ's own elaborations. They are based on discussions during ACCP Workshop in Jakarta, Indonesia, in July 2019; side meetings held with various experts at the UNCTAD Intergovernmental Group of Experts in Geneva, Switzerland, in July 2019; as well as talks with agencies and academics from China and Brazil during a GIZ Expert Workshop in Berlin, Germany, in October 2019.



Abbreviations

ACCP	: ASEAN Committee on Consumer Protection
ADR	: Alternative Dispute Resolution
AHLP	: 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
BPKN	: National Consumer Protection Authority, Indonesia
CLM	: Cambodia, Lao PDR, Myanmar
DTI	: Department of Trade and Industry, Philippines
EU	: European Union
GDPR	: General Data Protection Regulation, European Union
GIZ	: Deutsche Gesellschaft für Internationale Zusammenarbeit
OCPB	: Office of the Consumer Protection Board, Thailand
ODR	: Online Dispute Resolution
OECD	: Organisation for Economic Cooperation and Development
PROCON	: Consumer Protection Foundation, Brazil
SENACON	: National Consumer Secretariat, Brazil
ToR	: Terms of Reference
UNCTAD	: United Nations Conference on Trade and Development

Executive Summary

The establishment of an ASEAN Online Dispute Resolution (ODR) Network is enshrined in Outcome 3.2 under the ASEAN Strategic Action Plan on Consumer Protection (ASAPCP) 2025. This Feasibility Study was commissioned by the ASEAN Committee on Consumer Protection (ACCP), in order to realize the aforementioned key deliverable under the ASAPCP 2025. The present Study primarily builds on the outcomes of the first Brainstorming Meeting with the ACCP held in July 2019. The initial inputs were subsequently refined, among others through consultations with the ACCP during the remainder of the year, additional document reviews, as well as insights from selected resource persons.

This Study describes the general history and context of how ODR emerged worldwide as a viable mechanism to empower consumers and ensure that they can avail of a comparatively easy and efficient manner to resolve any disputes with businesses. There are multiple options for the design and management of an ODR system, each with their pros and cons. This Study therefore highlights selected approaches pursued by jurisdictions around the world, at both the national/domestic and regional levels. Among the ASEAN Member States (AMS), Thailand is presently most advanced when it comes to developing an ODR system. Taking into account the different experiences, a set of key considerations and criteria is presented, as orientation for designing an effective ODR system.

The Study finds that in order for a regional ODR network to function properly, national ODR systems need to be put in place first, in at least a few selected AMS. Based on their respective readiness, the interfacing of the existing ODR systems across sectors and countries could be piloted, including for cross-border cases. To this end, a minimum degree of interoperability should be ensured and preferably is already built into the ODR systems at the design stage. This could be guided by a set of minimum principles or standards to be agreed upon by the ACCP. In addition and as one of the options, the

existing ACCP website (www.aseanconsumer.org) could be gradually expanded to interlink different ODR systems in the AMS, as a “one-stop shop” for consumer complaints and claims across jurisdictions in the region. Further links to different ASEAN portals, notably those providing information to SMEs could be considered, to ensure that enterprises with plans to expand across borders have the information and mechanisms at hand to act responsibly towards consumers.

With the above in mind, the Study concludes that with respect to the design of one or several ODR systems, a high (if not the utmost) degree of flexibility, with common standards and shared long-term goals, should be accorded to AMS in determining the scope, purpose and procedures that should apply. This acknowledges the diversity of consumer protection systems and legal frameworks in the AMS, and that individual systems at the country or sectoral level would likely have to be set up and operated separately and sequentially. However, from a practical point of view, it would be efficient for AMS to agree on common standards in order to allow for the (future) compatibility and scalability of different systems. With this, a progressive regional mechanism could emerge that allows for consumers and businesses to tap into a network of different ODR systems.

CHAPTER 1: INTRODUCTION



This page is intentionally left blank

By late 2019, all ten AMS have enacted general consumer protection laws. This is in accordance with the ASEAN commitment towards a people-oriented economic community where consumers are not only provided with wider choices and competitive prices, but also empowered to make decisions based on accurate, clear and consistent information. Moreover, consumers in ASEAN shall be able and enabled to transact in the dynamic regional market with the trust and confidence that appropriate mechanisms for dispute resolution and redress are in place that will protect them against irresponsible, fraudulent or unfair businesses practices.¹

In recognition of the above, the ASAPCP 2025² charts the way forward for regional initiatives shepherded by the ACCP. The ASAPCP 2025 contains a set of medium-term targets intended to drive higher levels of consumer empowerment and confidence. However, it should also be acknowledged that consumer protection systems in ASEAN are at varying stages of maturity and development. This poses a clear challenge to coherent consumer protection enforcement within and across jurisdictions, potentially risking consumer safety as well as undermining economic development.

The heterogeneity of national consumer protection systems in ASEAN is particularly evident with respect to the scope and strength of dispute resolution and redress mechanisms. While some AMS are already assessing options for setting up an ODR platform, others are only starting to establish more traditional, offline schemes to assist and mediate disputes that arise between businesses and consumers. It is against this backdrop that the present Study on an ASEAN ODR Network was undertaken. With initial deliberations and pilot activities on ODR well underway in selected AMS, there is an opportunity for the ACCP to actively contribute to ongoing international debates,

research, and capacity building projects related to ODR, thereby providing impulses that may even reach beyond the region³.

1.1 Background of the Study

Access to justice for consumers constitutes a cornerstone of an effective national and regional consumer protection system. It is essential that consumers have the option and opportunity to lodge complaints and resolve disputes with businesses in a fair, transparent, affordable and speedy manner. The necessity for devising procedures to address consumer complaints is enshrined in the fourth ASEAN High-Level Principle (AHLPr) on Consumer Protection, which reads: *Consumers have access to appropriate and convenient sources of advice and redress.*⁴ The provision and utilization of ODR mechanisms is one way to support and implement this principle.

The international literature and consumer policy community offers different definitions of ODR. The general notion is that ODR constitutes a sub-set of Alternative Dispute Resolution (ADR) but using innovative digital means or platforms for resolving consumer-to-business disputes, outside of the regular court system. Such disputes may be generated from either online or offline transactions of products, or services, or both. As noted by the United Nations Conference on Trade and Development (UNCTAD), *when ADR takes place using computer-mediated communications in the online environment, it is often referred to as ODR.*⁵ More specifically, ODR is typically understood to refer to web-based technology-assisted processes, such as communication and information management tools.

¹ See ASEAN Handbook on Consumer Protection Laws and Regulations (2019): <https://asean.org/wp-content/uploads/2018/05/Handbook-on-ASEAN-Consumer-Protection-Laws-and-Regulation.pdf> (last accessed 30/03/2020).

² See ASEAN Strategic Action Plan on Consumer Protection (2016): <https://aseanconsumer.org/read-publication-asean-strategic-action-plan-for-consumer-protection-asapcp-2025> (last accessed 30/03/2020).

³ See for example this project: <https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2146> (last accessed 30-03/2020).

⁴ See ASEAN High-Level Principles on Consumer Protection (2016): <https://aseanconsumer.org/cterm-regional-cooperation-in-asean/asean-high-level-principles-on-consumer-protection> (last accessed 30/03/2020).

⁵ See UNCTAD Secretariat, E-Commerce and Development Report (2003): https://unctad.org/en/docs/ecdr2003ch7_en.pdf (last accessed 30/03/2020).

It is a common misconception that ODR is merely an online portal through which consumer complaints are filed and received. Rather, ODR also covers the processing of the complaints and facilitating the communications between the consumer and business in question, either with or without third-party involvement. As part of this Study, different approaches and key considerations on how to design, set up and manage ODR systems, along with lessons learnt from selected jurisdictions around the world, will be reviewed in more detail.

1.2 Scope and Methodology

The results of this Study were primarily conceived following a comprehensive literature review concerning the state of international discussions and approaches to ODR. This was complemented by insights from resource persons from academia and practitioners in selected AMS. Furthermore, the outcomes of meetings with the ACCP, held in Jakarta, Indonesia, throughout 2019 were considered.⁶ The meetings served to kickstart the discussion with the ACCP on the establishment of an ASEAN ODR Network, and to deliberate its general feasibility by taking into account the current state of national consumer protection systems. During the meetings, international experiences were highlighted, and an outline of the present Study with key points was proposed. The meetings were organized by GIZ, with remote participation by experts from the European Union (EU) and UNCTAD.

This Study covers four broad topics: first, the rationale for the establishment of an ASEAN ODR Network will be explained, with reference to the ASAPCP 2025 and against the backdrop of international trends and debates. Second, existing ODR approaches will be described and drawn upon, using case studies from several jurisdictions, including existing efforts in AMS. Third, crucial strategic, conceptual and operational considerations for ODR design will be presented, with a view towards encouraging responsible

entities in each AMS to weigh what is feasible and/or necessary within their respective political, socioeconomic and judicial contexts. Finally, concrete steps will be sketched out for AMS to help transfer their regional agenda into action. This is followed by a set of preliminary recommendations on how the ACCP and other relevant stakeholders in the AMS could make actual strides towards the envisaged ASEAN ODR Network in the medium to longer term.

It is worth emphasizing that in light of the short timeframe and limited resources to undertake this Study, it was not possible to carry out field visits to AMS and conduct in-depth interviews with additional stakeholders to substantiate the assessment. If funding permits, and provided that AMS exhibit a strong commitment to promoting ODR across the region, follow-on activities to assist with policy discussions, technical requirements and capacity building may be supported by external partners and development organizations in the future. For this, the indicative work plan annexed to this Study can serve as orientation.

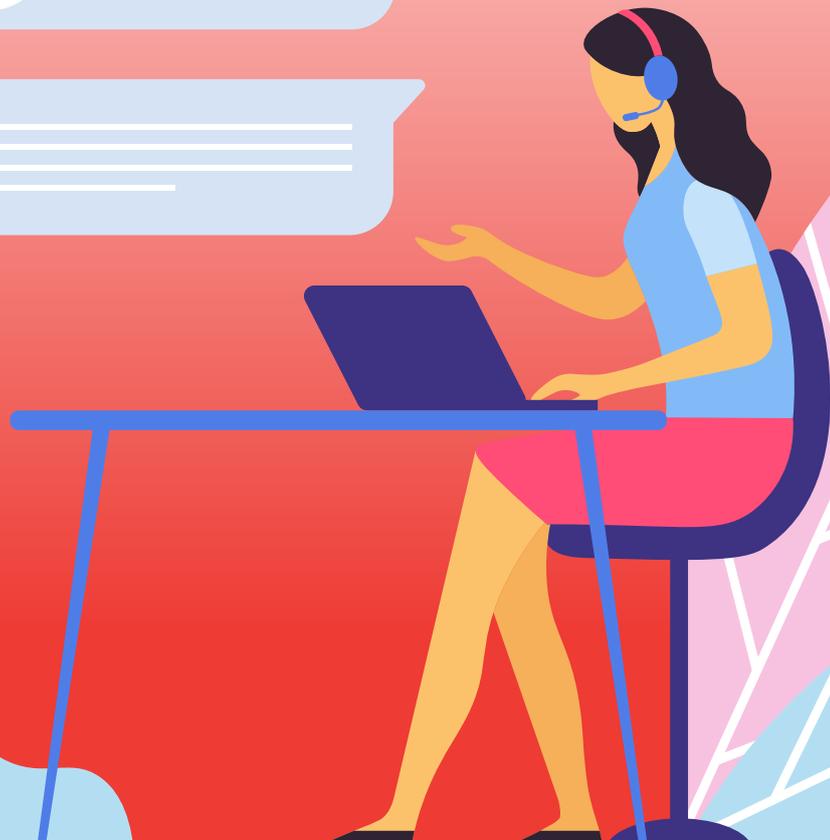
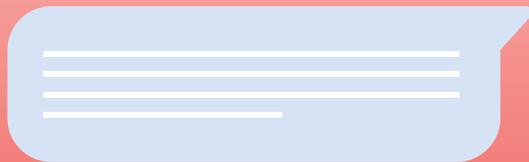
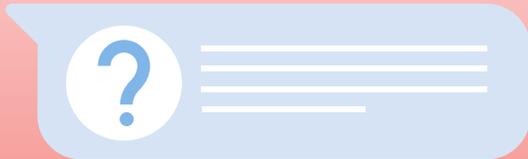
The main steps and timelines for the process of elaborating this Study are illustrated in the figure below.

Process and Timelines of the Feasibility Study



⁶ Preparatory Workshop on the 2019 ACCP Priority Deliverables, 20-21 February 2019; Brainstorming Meeting on Cross-Border and Online Dispute Resolution, 25-26 July 2019.

CHAPTER 2: WHY DOES ASEAN NEED AN ODR NETWORK?



This page is intentionally left blank

In recent years, AMS have made advances in strengthening consumer access to justice and redress. This includes, among others, the enactment of general and sectoral consumer protection laws, closer engagement of consumer protection and sectoral agencies, as well as consumer associations, the establishment of small claims courts (or equivalent mechanisms for dispute resolution, usually at the sub-national level), and the introduction of online consumer portals through which complaints can be filed and processed. Moreover, the website of the ACCP (www.aseanconsumer.org), which is intended as a regional resource portal, foresees the integration of an online complaints feature that, once operational, will facilitate the communication across AMS towards the settlement disputes between consumers and businesses that are located in different countries. To this end, the complaints feature interlinks the responsible ACCP focal points and requires them to coordinate in assisting the discussions between the consumers and businesses.

That progress notwithstanding, developments related to ODR are quite varied and often hampered by insufficient connectivity, institutional capacity or scope of action, and/or regulatory gaps at both the AMS and regional levels. In the following, the emergence and evolution of ODR will be summarized, as a way of contextualizing the ASEAN ODR Network as it is presently foreseen under the ASAPCP 2025. This Study will then outline the main benefits of introducing a workable national (and by extension a regional) ODR system.

2.1 History and Types of ODR

Dispute resolution and redress mechanisms are integral to an effective consumer protection system. Ensuring that consumers can enforce their right to seek redress and resolve disputes with businesses ultimately boosts market confidence and participation, thus contributing to economic growth and development.⁷ As part of efforts to

enhance consumer access to justice, different mechanisms for dispute resolution and redress have emerged and have been expanded over the years. They can be broadly categorized according to their degree of formality and voluntariness. The participation of government, and other third parties to the dispute, is another characteristic that sets one system apart from another. It can be argued that the design of an ODR system, and participation of third parties, is heavily informed by the prevalent legal system, cultural practices, as well as social perceptions.

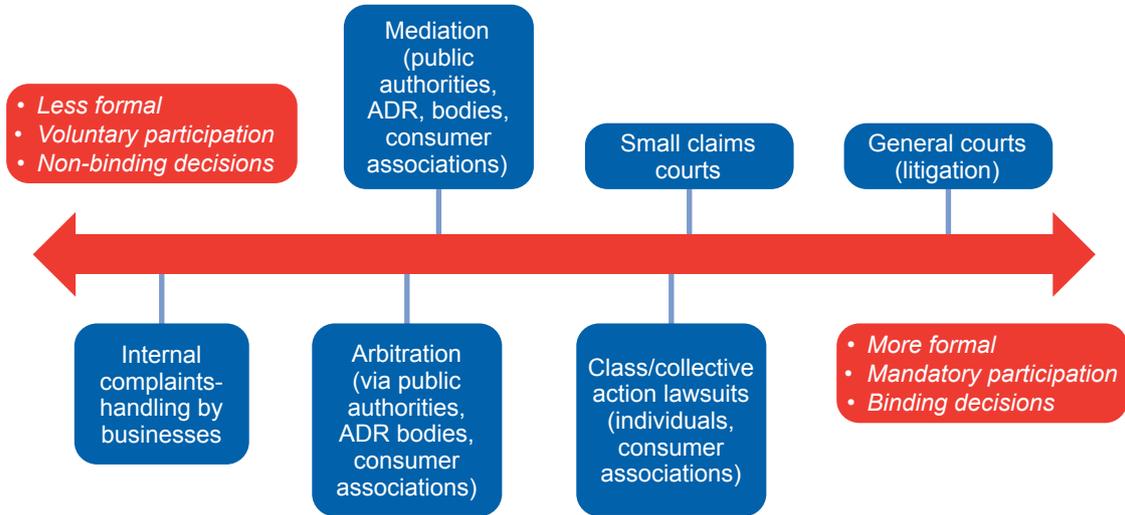
With the advancement of online technologies and the advent of cross-border transactions and e-commerce, ODR systems have become increasingly popular and sought after by both businesses and consumers alike. As mentioned at the beginning of this Study, ODR is commonly viewed as an online adaptation of ADR and thus as a form of out-of-court settlement, typically by means of mediation and arbitration, and by utilizing online platforms or (partially) automated processes.⁸ As such, ODR systems can be differentiated according to their extent of automation: they can range from online portals through which consumers can lodge their complaint, to communications platforms where mediation takes place via email or video conferences, to fully-automated ODR as the most advanced and complex form. A simplified visualization of the various types of dispute resolution mechanisms, according to the degree of formality and automation, can be seen in below figures.⁹

⁷ According to note TD/B/C.I/CPLP/11 by the UNCTAD Secretariat (2018), the terms “dispute resolution” and “redress” have a distinct legal nature; the former refers to a *transactional settlement of disputes between consumers and businesses*, while redress *usually presupposes the enforcement of consumer rights through corrective or complementary measures*.

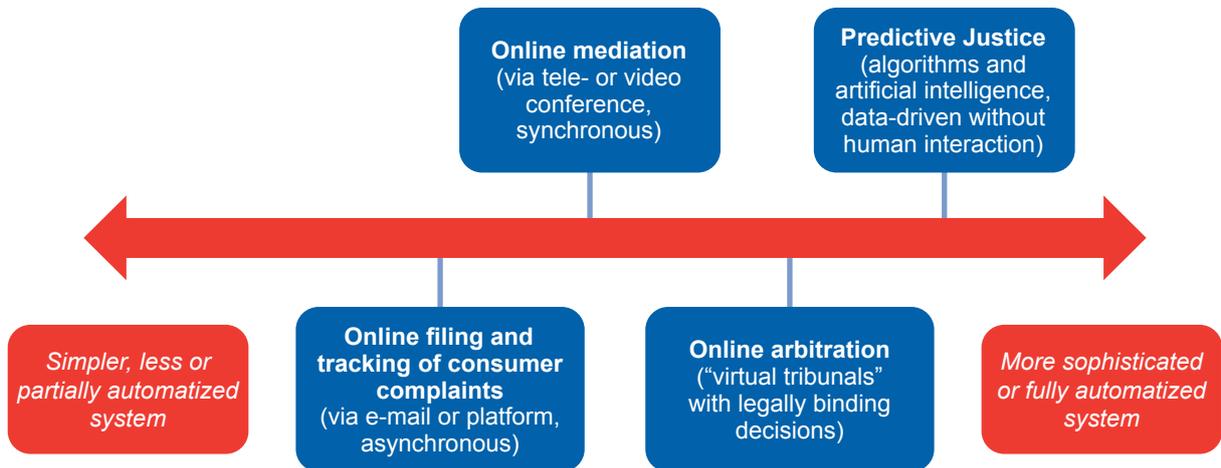
⁸ E Van den Heuvel (2000), *Online Dispute Resolution as a solution to cross-border e-disputes*.

⁹ Adapted from the UNCTAD Note TD/B/C.I/CPLP/11 (2018) and Van den Heuvel (2000).

Overview of Dispute Resolution Mechanisms Degree of Formality (simplified)



Overview of Dispute Resolution Mechanisms Degree of Automation (simplified)



According to UNCTAD, ODR gained momentum in the late 1990s, with growing interest and recognition by both governments and businesses that online resources provide the best choice to deal with disputes that occur in an increasingly online trade. The trend was underpinned by greater electronic capabilities on the one hand, and broader acceptance of alternatives to court litigation in resolving disputes on the other hand.¹⁰ Among the first movers to offer ODR were private companies, such as eBay, and a few international organizations, mostly also private rather than state-led, that were concerned with trademark and internet domain name disputes.

Initially, a significant number of ODR initiatives were founded on self-regulation, with the intent to facilitate direct communication between consumers and businesses. However, in response to the calls and concerns of consumer groups, government or neutral third parties were brought in to help strengthen the bargaining position of the consumers vis-à-vis corporate interests. There are now a growing number of ODR systems where, at least as an option, consumers can seek assistance from legal advisors, ADR bodies or the government itself for the negotiations with the businesses.

As another trend in recent years, increasing digitalization, along with the means to collect, analyse and process large amounts of data (so-called 'big data'), and advancements regarding artificial intelligence (AI), are creating more opportunities to augment and automate ADR processes. This has become particularly useful for standardized consumer claims where the regulatory framework is very clear, such as in the airlines industry. At this, the emergence of legal tech start-ups is noteworthy due to their important role in using progressive and innovative technological means that assist consumers in seeking compensation. In fact, in some countries, such as Germany, legal tech is fast becoming synonymous with ODR. Equally noteworthy are

initial experiences in the operations of internet courts (also called cybercourts or e-courts), such as the Hangzhou Internet Court in China.

2.2 ASEAN Commitments

The figure above illustrates how the ASEAN ODR Network is anchored in the ASAPCP 2025, and how it is also closely interlinked with other elements of the plan. The ASEAN ODR Network is referenced in the ASAPCP 2025 under Outcome 3.2 which contributes to the Strategic Goal of instilling high consumer confidence in the ASEAN Economic Community (AEC) in the long run. With this in mind, the ASEAN ODR Network is envisaged to address the challenges of increasing cross-border and online commercial transactions in the region, and potential consumer disputes arising in such settings. In a fast-moving global economy, there must be ways for consumers and businesses to resolve disputes in an equally expeditious, yet low-cost manner. In fact, the AHLP No. 8 calls for the protection of consumers in e-commerce, similarly as this protection is extended to traditional brick-and-mortar markets.¹¹

An ODR system can be an efficient and effective means to deal with disputes, even across different jurisdictions, provided that basic requirements for IT interoperability, inter-agency coordination and cross-country cooperation are met. Details of this will be described later in this Study when mapping out the way forward for AMS in successively introducing ODR systems within and across their jurisdictions.

The following figure lists the main benefits associated with ODR, from the perspective of different stakeholders in a consumer protection system. It shows the savings in terms of time and costs, along with the ease of access and tracking, for consumers, businesses and governments alike. This is particularly a consideration for low-value claims for which otherwise the hurdles for obtaining

¹⁰See UNCTAD Secretariat, E-Commerce and Development Report (2003): https://unctad.org/en/docs/ecdr2003ch7_en.pdf (last accessed 30/03/2020).

¹¹ See ASEAN High-Level Principles on Consumer Protection (2016): <https://aseanconsumer.org/cterm-asean-high-level-principles-on-consumer-protection> (last accessed 30/03/2020).

CHAPTER 3: WHAT KIND OF ODR APPROACHES ALREADY EXIST?



This page is intentionally left blank

Before going into further detail about whether and how to set up the ASEAN ODR Network specifically, it is worthwhile screening available international experiences and lessons learnt. Learning from the experiences of others can help avoid pitfalls and “reinventing the wheel”. This chapter therefore provides an overview of approaches that can be taken into consideration in the future establishment of an ASEAN ODR Network. Case studies are taken from national and regional ODR systems in different jurisdictions around the world. The examples are not meant to be exhaustive but serve to showcase illustrative options regarding ODR design and management, focusing on, but not being confined to, consumer disputes with businesses.

3.1 International Examples

ODR in the European Union (<https://ec.europa.eu/consumers/odr>)

The EU developed its ODR platform as a single point of entry that allows EU consumers and businesses to settle their disputes for both domestic and cross-border online purchases. The platform is accessible on all types of devices, with a simple complaints form that can be filled in three steps. It also enables users to conduct the entire dispute resolution procedure online. Most importantly, the platform is multilingual. A translation service for key information and forms is available to assist disputes involving parties that are based in different European countries. This feature eliminates the language barrier and greatly facilitates the settlement of cross-border disputes, thereby enhancing consumer empowerment and scope of action.

The platform was established following the adoption of the EU Regulation No. 524/2013 on ODR for Consumer Disputes, with a view towards ensuring effective access to means of dispute resolution. This was deemed a priority for increasing the confidence of consumers and businesses in the digital single market of the EU. It took three years of preparation for the system to become fully

functional in February 2016. Up to July 2019, there were about 120,000 complaints lodged through the platform, with more than 8.5 million visitors. Around 56% are domestic cases, while the remaining 44% are cross-border cases, from sectors, such as the airlines industry, clothing and footwear, information and communication technology, electronic goods, and mobile phone services. It was also reported that at present, 40% of direct dispute settlements between consumers and businesses in the EU are triggered by the ODR platform.

With those facts and figures in mind, the ODR platform in the EU, while allowing for the cross-border settlement of disputes, is only partially automated. Consumers need to first submit their complaints to the platform. Their complaints will later be forwarded to the relevant business, provided that the latter is already registered on the platform. Once a complainant has been matched with a registered business, both parties have to agree on an ADR body that is located in one of the EU Member States or participating countries.

That ADR body will then assist in the subsequent dispute resolution process. Businesses have 10 calendar days to confirm their commitment or obligation to make use of the agreed ADR body. Through the ODR platform, further details regarding the mutually appointed ADR body can be reviewed, for instance if there are any additional fees for their services, what is the average length of the dispute resolution process etc. The case will be automatically closed if the parties fail to agree on any form of settlement within 30 days after the submission of the complaint to the ADR body. Note that the fees and absence of standardized procedures or processing times may potentially pose a burden to consumers.

The EU ODR platform does not act as a mediator between the consumers and the businesses. Rather, it merely links both parties to ADR bodies that are then responsible for facilitating the settlement process. As of now, there are a total of 460 ADR bodies in all EU Member States, Norway and Liechtenstein registered on the platform. All online businesses operating in the EU are required

to list the link to the ODR platform and specify preferred ADR bodies on their company profiles and websites. This is a legal requirement which is actively encouraged and strictly monitored by regulators in the EU. It should be stressed that the obligation exists for all online traders in the EU, irrespective of their country of origin and regardless of whether they intend to avail of the ODR mechanism or not. Furthermore, it should be pointed out that while the ODR mechanism is available to all consumers transacting in the EU market, its application is confined to e-commerce activities only. This focused scope of application of the ODR system has been positively received by some stakeholders but also criticized by others for not being comprehensive enough.

ODR in Brazil (www.consumidor.gov.br)

Created by the National Consumer Secretariat (SENACON) in June 2014, consumidor.gov.br is an online platform that allows for Brazilian consumers and businesses to interact directly with each other in order to resolve disputes. It offers an out-of-court mechanism through which a large number of complaints can be channelled in an effective and efficient manner. To date, the platform is limited to consumers and businesses that are located in Brazil, thus not yet providing for any kind of cross-border dispute resolution.

A rather unique feature of consumidor.gov.br is that the participation of businesses is not mandated by the government. Therefore, consumers are only able to resolve disputes with businesses who have chosen to sign on to the scheme. However, as the platform is made available and subsidized by the government, there is an incentive for both consumers and businesses to utilize it because there is no cost burden at their end. All in all, the mechanism is deemed to be convenient and credible. A key advantage of consumidor.gov.br is that it enjoys considerable public trust and matches consumers directly with the businesses that they would like to file a complaint against, provided that it is already registered.

How it works is that consumers are requested to first register before submitting their complaints to which the businesses then are required to respond within 10 days. Consumers, in turn, have 20 days to indicate whether the complaint has been resolved. As a further means of consumer empowerment, they can also rate their level of satisfaction towards the response or solution offered by the businesses. In case the complaint cannot be resolved, consumers have the option to pursue a settlement via the Consumer Protection Foundation (PROCON), which is the public entity for consumer protection in Brazil. Last but not least, consumer can alternatively approach other bodies in charge of the National Consumer Defence System.

Thus far, there is a high success rate of consumer complaints that are responded to and resolved by businesses through the ODR platform in Brazil.¹² It is important to note that aside from public sponsorship, there is no government intervention or third-party mediator on consumidor.gov.br, nor is there a link or referral to ADR bodies. This means that all the communication takes place directly between the consumers and businesses, and that there is no enforcement action or penalty for businesses in case they are unresponsive to the consumer complaints.

However, the ranking system based on the satisfaction ratings of consumers is made publicly available. It exposes those businesses with an openness and positive attitude towards resolving disputes with consumers. As the businesses enjoy a better reputation for treating consumers fairly, their overall competitiveness increases. Since the platform is free, public and transparent, and participation in it voluntary, monitoring the effectiveness of consumidor.gov.br is seen as a joint responsibility of the government, business community and the consumers themselves. This is testament to a system founded on strong trust between all parties and stakeholders.

¹² See presentation by the Ministry of Justice and Security of Brazil (2019): https://www.caa.go.jp/en/about_us/topics/g20/presentation/pdf/presentation_4_2.pdf (last accessed 30/03/2020).

In the specific Brazilian context, ODR is becoming increasingly mainstream. Aside from consumidor.gov.br, there are other online mechanisms to address consumer claims, for example reclameaqui.com.br, which function in a similar manner. These are considered useful in light of the vast expanse of the country, as well as due to otherwise limited access and resources of large parts of the population to tap into judicial mechanisms. As such, consumidor.gov.br is not restricted to disputes arising from e-commerce transactions. While this opens up wider opportunities for consumers to seek redress for claims arising also from other kinds of products and services in different sectors, but it may need to be carefully weighed whether such a 'cover-all' approach is equally or similarly feasible in other countries.

Legal Tech in Germany (www.fliightright.com)
Flightright is an example of a so-called legal tech start-up company that is disrupting legal services and bringing ODR to a new frontier by utilizing innovative, data-driven processes to not only expedite the process of filing a complaint, but also making it possible for the consumer to receive almost instant information concerning a possible settlement. The services provided by **Flightright** are restricted to consumer advice and claims in relation to flight delays and cancellations in the EU, set in the context of the region-wide regulation that specifies the conditions under which consumers are generally eligible to receive some form of compensation. It works with the premise that in a relatively straightforward and standardized area, lawyer-to-consumer and lawyer-to-business services can be streamlined through digitalization so that ultimately, new efficiencies and new business opportunities are generated. In the highly contested market of ODR start-ups dealing with flights, **Flightright** is currently the market leader with over 300 million EUR in compensation

claims secured for more than 600,000 consumers at a nearly 99% success rate.¹³

For this, the legal tech company is acting as an intermediary between the consumer and the business. The system provided by the legal tech company first guides consumers through an easy-to-use online and automated form to lodge their complaint, then tapping on various data sources to verify a claim. The data being matched with the complaint includes legal provision applicable in a certain case or scenario, and other flight data (e.g. weather conditions on the day of the incident, whether indeed there was a delay caused by the airline company, or force majeure etc.). Once the claim is deemed to be valid, the consumer is presented with an option of how to proceed, usually with human intervention for legal assistance. The consumer is further informed about the chances and amount of the compensation they are likely to obtain, and either the fixed service fee that will be charged for the facilitation of the overall process and/or the provision retained when the claim has been successful. In the absence of a legitimate or otherwise ineligible claim for compensation, the consumer is also made aware in a matter of a few minutes.

This system has several advantages: first, it significantly lowers the barrier or inhibition that consumers may have in lodging a complaint because they are either not familiar with processes and regulations, or not knowledgeable enough to be able to assess the probability of success of their claim, and whether it will worth the effort. With the new system, consumers need to only invest a few minutes of their time, and then have a better basis for deciding whether or not to proceed with a complaint by weighing the costs against the potential compensation. Second, it is easier to process 'bulk' complaints as well as valid claims because the online system contains an integrated screening feature. The proportionality of costs and opportunity to process a high volume of claims at

¹³ For details refer to: <https://medium.com/legal-tech/legal-tech-startups-9755b18f93ac> and <https://www.fliightright.com/about-us> (last accessed 30/03/2020).

a time alleviates the burden on legal professionals to assess individual cases and therefore is less resource-intensive than assessments that are traditionally made in person.

All in all, platforms, such as [Flightright](#), succeed based on efficiency and affordability. The online system enables self-service and self-determination on the part of the consumers, so that they can enforce their rights more easily and without much of a financial burden or risk. It has been argued that in the long run, legal tech approaches will gradually reduce the need for legal services in many areas or market segments. This especially holds true for less complex and high-volume cases (with clear regulations, for example regarding passenger rights) where further advancements can be expected with the effective employment of AI.

[Internet Courts in China \(https://www.netcourt.gov.cn/portal/main/en/index.htm\)](https://www.netcourt.gov.cn/portal/main/en/index.htm)

The first internet court in Hangzhou was established in 2017, based on a pilot project in 2015 with partially automated and online proceedings at the regular courts. It was followed by trials in Beijing and Shanghai in 2018¹⁴. The dedicated e-courts were set up to primarily deal with unlawful practices and disputes related to e-commerce, copyrights, personal data and domains. The e-courts are accessible through computers and mobile phones, and they do not require the parties to physically appear in court as the cases are filed and heard online. The parties first go through a 15-day mediation process, and if that fails, can proceed to a trial with a judge. All communication, even the actual trial, takes place via the platform. Detailed online litigation rules govern the procedures for the asynchronous trials, allowing for case filings, case acceptance, mediation, presentation and examination of evidence, pretrial conference, adjudication, enforcement application and payment of court costs, all online.

The common challenge of consumers in obtaining or preserving electronic evidence is overcome by linking the e-court to major e-commerce platforms, such as Alibaba, from which the necessary data can be easily acquired. Interfaces also exist with financial service providers. If litigants choose to register and verify their identity online, this is done by cross-referencing data from Alipay; alternatively, offline identity verification is possible with a clerk at the regular court. Alipay is also utilized to cover the costs of litigation. Additional efficiencies are generated through the utilization of AI, including 'virtual judges', while blockchain helps establish the validity of certain evidence. If the parties are not satisfied with the e-litigation process, they may defer to a regular offline court.

The existence of the e-courts in China has brought considerable efficiency to litigation, by reducing time, costs and the workload of the judiciary. The model was successful in settling a unexpectedly high number of cases during the first years of operation of the e-courts. In fact, the e-courts have been hailed as important first steps towards a digital judiciary where 'borderless' online claims are dealt with in a 'modern' manner and with greater transparency. As consumers or businesses in other parts of the country may be harmed by unlawful practices of Hangzhou-based businesses (e.g. violation of intellectual property; delivery of unsafe, mislabelled or counterfeit products), they are now afforded the opportunity to obtain justice and redress.

The initial experiences and advances of the internet courts in China are being observed and scrutinized with growing interest by experts and businesses worldwide, not least because of potential problems. Among others, these concern the double role of e-commerce platforms, such as Alibaba and Alipay, as both litigants and providers of the technological solutions for the e-courts. Moreover, conflicts are likely to emerge concerning the independence of such

¹⁴ More information: <https://www.chinajusticeobserver.com/a/china-establishes-three-internet-courts-to-try-internet-related-cases-online> (last accessed 30/03/2020).

e-courts, which are driven by the private sector unlike traditional offline courts. This touches on the important consideration to which degree the state or government would need to be involved or intervene in a dispute resolution process, regardless of whether it is off- or online.

3.2 Existing Efforts in ASEAN

At present, means to obtain redress related to consumer complaints are quite diverse across different jurisdictions in ASEAN. The reason is that the national consumer protection systems in the AMS are at different stages of development with respect to redress and dispute resolution. For example, Cambodia only passed its general consumer protection law in November 2019, and similarly, the law in Myanmar was only revised in early 2019. While other AMS may possess a longer record of consumer law implementation, some, as is the case in Indonesia, may be pending urgent amendments needed to be able to react to recent developments and demands, such as those related to online and cross-border trade.

Adding to this is the pronounced heterogeneity of policies and practices when it comes to the engagement of ADR bodies and/or civil society organization. Another challenge concerns the enforcement of consumer protection laws across various sectors. Against this backdrop, the pilot activities and ‘work in progress’ of selected ACCP Members will be presented in the following section. This is intended to illustrate the commonalities and differences of particular country experiences, as the basis for further discussion on what could be transferable and replicable in other AMS.

ODR in Thailand (<http://dmediate.ocpb.go.th>)

The Office of the Consumer Protection Board (OCPB) in Thailand has established an online mediation platform, which currently focuses on the automotive sector. It is a pilot project and available in Thai language only, for now.

Consumers may lodge their complaint through the website, mobile application or offline means, such as the complaint centres and hotline. The option for settlement through online mediation is voluntary. If both parties have agreed to the online mediation, a mediator from the OCPB will approach them to set a time and date for a virtual meeting. A confirmation along with a password for access will be communicated through SMS or e-mail. If the mediation process is successful, the complaint will be terminated from the system and both parties will be required to sign an agreement. Whether or not the parties follow through on this agreement is closely monitored by the OCPB. On the other hand, if the initial mediation fails, another online mediator will be appointed to assist with the settlement of the complaint.

Although this ODR system is currently still in a pilot phase, there are already plans to expand it to further sectors or industries once all technicalities are solved and an initial track record of successful mediation outcomes has been established. To get started, the automotive sector was selected because of the high volume and value of cases. In other words, the consideration here was to trial the online system with products or transactions where there is a considerable interest of consumers to resolve a dispute with the trader because of the value of the loss suffered. Since e-mediation involves certain financial as well as personnel resources on the part of the OCPB, it makes sense to direct resources to a pilot project first. Keeping the pilot focused and within a limited environment allows for the continuous development and upgrading of processes while addressing inefficiencies and potential concerns quickly, before the system is opened more widely.

The ODR platform in Thailand exemplifies that there should be a concrete starting point and valid reasons for introducing an online mediation scheme. The example shows the importance of concentrating the attention and resources of the consumer protection agency to specific consumer concerns and working priorities that are both

economically and politically justifiable, and where the greatest impact is likely to occur as the result of effective ODR. The gradual approach to not open the ODR platform to all kinds of businesses and sectors is also an efficiency consideration. Finally, successes with the pilot could generate buy-in from the government to continue funding and consider expanding the platform.

Planned ODR in other AMS

Indonesia: Plans are underway in Indonesia not only to introduce a one-stop, integrated online complaints-handling mechanism for consumers, but to also gradually set up an ODR system across different sectoral ministries. The new system will apply a uniform complaints procedure and focus on e-commerce disputes, and similar to the internet courts in China, it will be linked with e-commerce platforms or operators. Cases will be forwarded either to local dispute resolution bodies, or other alternative avenues (such as ADR bodies), and subsequently escalated to the courts, if necessary. The Ministry of Trade is set to administer and monitor the system which is currently at an advanced stage of preparation.

Philippines: The Department of Trade and Industry of the Philippines (DTI) is currently in the process of developing an ODR system which is expected to be launched and rolled out in 2020. The planned [e-ConsumerNet](#) is envisaged as an online, automated portal for consumer complaints and queries. Shifting from a manual and e-mail referral system, the platform will allow consumers to track their complaints processing in real-time and to link up with all consumer-related agencies outside of the DTI so that cases under their respective purview could be dealt with in a faster manner. The [e-ConsumerNet](#) will also provide consumer-related demographics to provide insights and evidence for policy formulation and project development. An administrative order to formally announce the planned ODR system was issued in September 2020.

Vietnam: Finally, the Vietnam Competition and Consumer Authority has initiated work to upgrade its existing consumer portal, interlink it with the hotline and a common database in order to allow for all parties in a consumer dispute to track the progress online, regardless of their location in the country. This integrated system is set to be the basis for a more sophisticated ODR system in the future.

3.3 Assessment of Different ODR Approaches

It can be concluded from the examples described in this chapter that ODR can take on different forms, with different purposes, scope and levels of success, founded on or resulting in varying degrees of consumer empowerment. This is not only dependent upon how digitalized or automated the ODR platform is, but also can be differentiated according to the establishing entity (i.e. government-run or private/self-regulated), the purpose or function of the platform (e.g. whether it allows for direct settlements between consumers and businesses, or requires third-party facilitation via ADR bodies or other related agencies), and how far-reaching the obligations of the parties involved are (i.e. voluntary or mandatory participation).

The below figure illustrates the pros and cons of different ODR approaches, abstracted from the aforementioned examples. This includes examining certain limitations, challenges or even potential trade-offs when opting for one or the other approach. For example, if a narrow focus is defined for the ODR system, this can result in greater efficiency and offers the opportunity to first test the usefulness and effectiveness of the system. However, it might then not be possible to cover all kinds of claims and various sectors in which disputes between businesses and consumers may be prevalent. Similarly, there are advantages to private sector and third-party involvement in an ODR system, which would have to be weighed against potential conflicts as well.

Advantages and Disadvantages of ODR Approaches

Approach	+	-
Narrow focus or scope (e.g. sectoral, only e-commerce)	<ul style="list-style-type: none"> • Dedicate human and financial resources according to political priority and where most impact can be achieved • Opportunity to trial ODR, with potential for expansion 	<ul style="list-style-type: none"> • Limited resources, especially if only under the purview of one ministry or agency • Limited coverage and potential omission of claims in other areas
National/domestic system	<ul style="list-style-type: none"> • In line with country-specific legal and institutional framework, socioeconomic conditions and consumer preferences 	<ul style="list-style-type: none"> • Limited reach into other jurisdictions to address cross-border disputes
Private sector funding	<ul style="list-style-type: none"> • Leverage potentially limited government funding • Opportunity to accommodate sectoral expertise and self-obligation 	<ul style="list-style-type: none"> • Potential conflict of interest and/or all too strong position of businesses vis-à-vis consumers
Participation of third parties (e.g. government, arbitrators, lawyers)	<ul style="list-style-type: none"> • Benefit to consumers due to receive additional assistance and advice • Potentially stronger enforceability of decisions/settlements 	<ul style="list-style-type: none"> • Requires additional human resources (e.g. from government) and adequate competency as well as compensation schemes (e.g. fees)
Full automation	<ul style="list-style-type: none"> • Efficiency and predictability of decisions / settlements 	<ul style="list-style-type: none"> • Potential bias and lack of correction if decisions/settlements are unsatisfactory or faulty • Discrimination of those without online access and/or literacy

This page is intentionally left blank

CHAPTER 4: WHAT ARE KEY CONSIDERATIONS FOR ODR IN ASEAN?



This page is intentionally left blank

This chapter lays out general considerations in setting up an ODR system or network in the specific context of ASEAN. These considerations are strategic, conceptual and operational in nature, among others informed by procedural, legal, technical (IT) and other requirements that are consistent with the overall out-of-court dispute resolution system in a country. The chapter will first look at options for ODR in the national context, considering that only few AMS have taken steps to establish some form of ODR domestically. A brief SWOT analysis on ODR in general flags the main challenges and opportunities associated with introducing an ODR system in the AMS, providing the backdrop against which further deliberations for its design are made.

4.1 SWOT Analysis for Introducing ODR

This section brings together points from the preceding discussion regarding the current state of consumer protection across the ASEAN region, international developments and the aforementioned criteria for the design of a viable ODR system. The results of a brief SWOT analysis can be summarized, as follows:

Strengths: The establishment of an ODR system comes with a number of clear benefits as is it possible for consumers and businesses to have easier access to a dispute resolution mechanism where key features and processes are automated, simplified and rendered more efficient in terms of costs and time. This ideally translates into a larger quantity of disputes successfully resolved through the system, which means greater effectiveness of consumer protection as a whole.

Weakness: That notwithstanding, while an ODR system facilitates consumer access to justice, it also potentially excludes certain groups of consumers and could put those without any IT infrastructure at a disadvantage. Another potential weakness might emerge if the system is designed as non-mandatory and non-binding for businesses to participate in, which could weaken the enforceability of decisions or agreements to settle

the dispute, thereby jeopardizing the robustness and effectiveness of the system.

Opportunities: As the international dialogue on proven best practices for ODR is also still at an initial stage, there are opportunities for countries to not only learn from international experiences, but also to actively involve themselves and share their own respective approaches, thereby enriching the discussion. The opportunity for developing countries to introduce ODR simultaneously with more developed countries, and the gains that arise from this within the global economic order, cannot be underestimated. Furthermore, because developing countries have different needs and infrastructure (notably in terms of technology), they may be able to design 'flatter' and more flexible mechanisms (e.g. by capitalizing on legal tech solutions) that could potentially be as robust as the more complex approaches in developed countries.

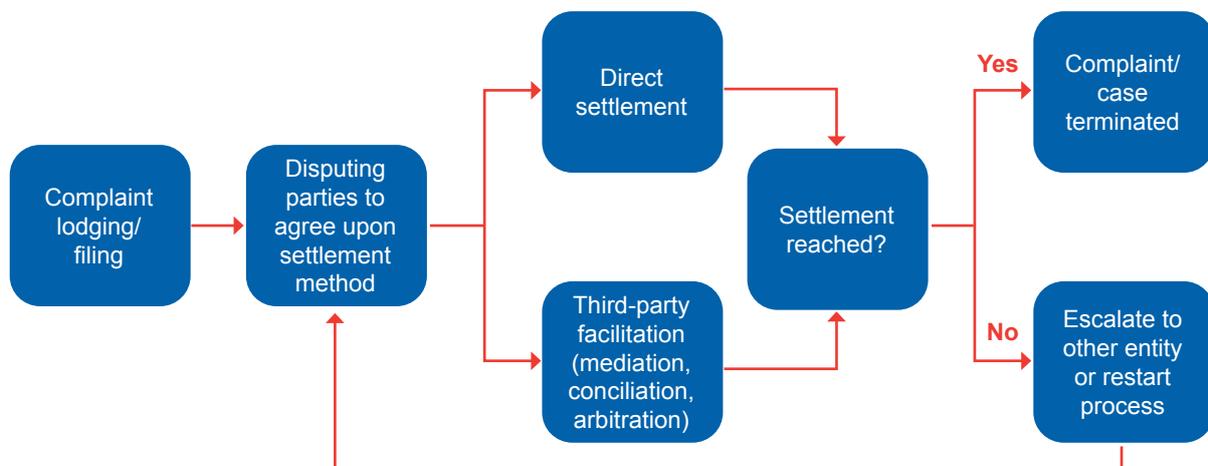
Threats: An important challenge for the introduction and effective implementation of an ODR system concerns the lack of political commitment by relevant actors in the country, which could mean that the financial and human resources committed may not be sufficient. Moreover, limited inter-agency coordination and/or involvement of private and civil society stakeholders could hamper the successful resolution of disputes through an ODR platform. This is not to mention capacity gaps that not only might exist on the part of the consumers, but also among other stakeholders, including those required to mediate a dispute. Finally, the importance of data protection and security should not be overlooked, as this could further jeopardize consumer and business trust in the ODR system. That said, however, a sound and built-in risk management can counter the challenges, in particular if strategic and smart decisions about the design of an ODR system are made.

This section and below figure show that a strong case can be made for the introduction of an ODR system, seeing that while there are certain immediate challenges, the benefits could outweigh the limitations in the long term.

SWOT Analysis for the Introduction of ODR Systems



Overview of a Dispute Resolution Process (simplified)



4.2 Criteria for ODR Design

The criteria for an ODR system are closely interlinked, and some of the issues raised in the following section can be subsumed under more than one category. Particular attention needs to be paid to the steps in a dispute resolution process, as mapped in the above figure, in order to determine at which stages different players and procedures would have to be considered. The issues should all be contextualized in each AMS because while similarities may exist across AMS,

certain issues may pan out in a decidedly different manner depending on the country context. Critical reflection would be required in order to ensure the future effectiveness and manageability of an ODR system both domestically and regionally. For example, if there are insufficient human and/or financial resources, it may make sense for a new ODR system to have a restricted scope to start with. Similarly, if neither consumers nor businesses are familiar with online systems, or internet penetration is still too limited, more efforts need to be invested first into infrastructure

and advocacy. In light of this, a limited roll-out in the form of a pilot, instead of a full ODR system from the beginning, would seem more practical and feasible.

Note that below criteria and accompanying guiding questions are consolidated in a checklist, featured in the annex of this Study.

a. Purpose and Scope of the ODR System

The first question to be asked in setting up an ODR system concerns its purpose and scope of application. The decision on what should be accomplished through ODR is crucial because it sets the course for how then the overall mechanism would need to be structured, who would be the primary users etc. Recalling the approaches of the EU and Thailand, for example, an ODR system may be confined to a particular type of transaction and/or piloted for a specific sector/industry, such as e-commerce or automotive.

As mentioned earlier in this Study, a pilot with an initial, limited roll-out has the advantage of testing and design improvements, especially if resources are scarce to begin with. Alternatively, if funding and/or technical requirements or capacities are not an issue, the ODR system could be open for all kinds of B2C disputes, including traditional offline ones, as is currently the case in Brazil. It should be noted that while the initial scope of a (pilot) ODR system may be narrowly focused, it would be important to design it with scalability and broader longer-term goals in mind. This means that from the beginning, potential expansion either nationally or regionally should be kept in view.

In general, defining the purpose of the ODR system is heavily dependent on the resources and commitments existent in a given jurisdiction, notably on the part of the main consumer protection agency and other (public and private) actors who might need to sign on to the scheme as well. This is, in turn, often underpinned or driven by political priorities. Moreover, the degree of experience of stakeholders in the country in utilizing online systems would need to be factored in.

With the above in mind, the following questions could be weighed in determining the purpose and scope of an ODR system:

- **What are the objectives to be achieved by introducing the ODR system?** The objectives would need to be clearly defined from the beginning and transparently informed to all relevant stakeholders. What problem is the ODR system envisaged to solve, first and foremost? Objectives could include the need to facilitate access to justice for consumers (e.g. in light of the great geographical expanse of a country); simplifying procedures and mandates across government (e.g. in line with other e-government initiatives); being able to channel a higher volume of complaints and claims, and thus ensuring more consistent approaches in addressing them, among others.
- **To which extent is the ODR system expected to be linked with other mechanisms for dispute resolution in the country?** This means assessing how the ODR system offers an additional or complementary avenue for settling disputes, notably on top of ADR mechanisms and/or small claims courts that are already existing (or envisaged) in a country. A careful examination of the existing legal framework is required at the initial design stage, alongside an assessment of options for IT interoperability. It should be emphasized that an ODR system typically is not set up as a stand-alone mechanism, and as such, it is certainly not intended to fully replace or substitute other means for dispute settlement.
- **Should the ODR system concentrate on a specific sector/industry and/or type of transaction?** This could be decided based on the prevalence of disputes in a particular area (e.g. e-commerce, telecommunications), and/or by looking at overarching political priorities and strategies, both related to consumer protection and/or to the overall economic development planning in the country.

- Is the ODR system envisaged to be gradually expanded?** Looking at the example of Thailand, it could indeed prove to be practical having a smaller pilot project on ODR first, before making the scheme available more broadly. There are multiple advantages to this: first, the platform could be tried and tested, and the system gradually refined, based on the pilot experiences. This means that the (financial) risks can be better contained. Second, a pilot ODR system could build the uptake and utilization by businesses and consumers over time. If kept smaller at the beginning, stakeholders could be eased into the practice of dealing with disputes online, especially if there was not a ‘culture’ or ‘habit’ of doing so beforehand. Finally, a pilot scheme could help generate political buy-in and encourage wider participation of government entities, if it is evidently successful. This allows for scaling while not demanding too many (financial) contributions from the outset.
- Should the ODR system only deal with domestic, or also with cross-border disputes?** In light of more intensive cross-border relations and cooperation, within ASEAN and internationally, the establishment of a new ODR system begs the question whether it should be designed specifically for the national jurisdiction only, or also allow for cross-border disputes to be lodged through the platform. Given limited experiences and resources, the former may be more feasible. However, a gradual approach can be considered, with a later expansion to cross-border disputes in mind. Aside from assessing the need and priority for a cross-border mechanism at the country level, along with its compatibility with available schemes in other countries, the prevalent legal framework would have to be carefully checked. Some countries may have consumer protection legislations that were formulated decades ago when the demands of cross-border (and borderless online) trade were not as pressing as they are today. Therefore, general consumer protection

laws may presently be outdated with respect to allowing for ODR, irrespective of whether a planned ODR system is intended for domestic and/or cross-border purposes.

b. Users of the ODR System

As with all matters pertaining to an effectively functioning consumer protection system, the primary users can be differentiated according to three main stakeholder groups: public sector; business community; and the consumers themselves. It is noteworthy that as opposed to other parts of the world, most consumer protection systems in the ASEAN region are not only comparatively young, but also more reliant upon public rather than private enforcement.

In the Latin American context, looking among others at the experiences in Brazil, the main consumer protection agency or other regulators do not play a prominent and proactive role in the dispute resolution process via the ODR platform; here, the government is primarily a funder and an observer that monitors, but does not intervene in, the process. This may be different in the case of countries with lower levels of consumer education and empowerment. In those countries, the involvement of the government can help enhance the bargaining position and power of consumers vis-à-vis businesses.

The questions below attempt to guide decision-making regarding the intended users and their responsibilities with respect to an ODR system. As the below considerations are primarily addressed to ASEAN stakeholders, the participation of the government, in one form or other (most notably through the main consumer protection agency, i.e. ACCP member), is presupposed.

Should participation in the ODR system be mandatory for businesses? The question of enforceability should be a primary consideration when designing and setting up an ODR system. It should be weighed from the beginning to which extent, either by law or regulation, traders should be required to register and participate

in the ODR system, this being in the interest of facilitating access of consumers to the businesses and potential redress. The challenge of voluntary business participation in an ODR scheme is that traders may not take their obligations towards consumers seriously enough. As a consequence, the ODR system could be underutilized, thus failing to promote consumer trust. In other words, voluntary participation may not create sufficient efficiencies or enhancement of consumer welfare.

Recalling the contrasting examples of the EU and Brazil shows the importance of defining these business obligations in the planning stage. In the EU, businesses are somewhat bound to the ODR scheme, facing sanctions in case they fail to follow through with this obligation. This can constitute a crucial means of consumer empowerment, thereby allowing consumers to have easier access to traders and to hold them accountable. On the other hand, a voluntary participation scheme may work in certain countries and cultural contexts where there is an otherwise high degree of public and business accountability, and/or pronounced public and peer pressure.

- **Which government entities should (be able to) participate in the ODR system?** This is a follow-on question regarding the purpose and scope of the scheme, whilst once again dependent upon mandates for dispute resolution as foreseen under consumer protection laws and other relevant regulations. In case the scope of the ODR platform is confined to a particular type of transaction or sector (e.g. only e-commerce), it would need to be carefully weighed whether it would suffice to have only the main consumer protection agency involved. Given the cross-sectoral nature of consumer protection, and potential occurrence of disputes in various sectors, it could be argued that the ODR system should be open for participation of various sectoral entities, aside from the main consumer protection agency. However, in view of limited resources and capacities, a pilot could be designed for one type or transaction of sector first, but with the openness and

option for scalability and gradual expansion in the longer term.

- Aside from issue of mandates, this also concerns competencies. In some countries around the world, significant advances have been made in the past years to strengthen consumer protection in the area of financial services and fintech. With the emergence of more and more disputes related to these topics, challenges or constraints may exist for consumer protection agencies with only limited technical knowledge and proven experience in the area. This is an example where the participation of sectoral regulators may be warranted: on the one hand, to alleviate the burden on officials of the consumer protection agency, and on the other, to ensure that disputes are dealt with competently.
- **What kind of businesses is the ODR system designed for?** Businesses that are the intended users of an ODR system in a country may be differentiated according to different characteristics, among others sector/industry, whether they are operating off- and/or online, size of the company, etc. The latter leads to the question whether the ODR platform primarily targets larger companies or should also be available to smaller and medium-sized enterprises. It would have to be clearly established whether the focus lies on local and/or multi- or transnational companies that are active in the respective country, area/region or sector/industry. Moreover, particularly in the ASEAN countries, where state-owned or government-linked enterprises are important actors, the question arises whether they would also need to sign up to an ODR scheme at some point. This would make it easier for consumers to address their complaints and seek redress in case they have been harmed or otherwise wronged. Arguably, this is a difficult, even contentious political question to flag, not least because it presupposes coordination and consensus-building with the sectoral regulators under whose purview

the state-owned or government-linked enterprises operate.

- **Who are the consumers targeted by the ODR system?** Lastly, the question should be posed about who are the groups of consumers for whom the ODR system would likely be useful and relevant. First, it would need to be clarified whether the ODR system is open only for end-consumers to lodge their complaints, or whether certain businesses, which avail of products or services from other businesses, are considered as ‘consumers’ as well. An answer to this question is usually found in the provisions under the general consumer protection law, or other relevant regulations. As explained at the beginning of this Study, for reasons of manageability and ‘simplicity’, it is proposed to adhere to a stricter definition and exclusively refer to relations between businesses and end consumers. Secondly, since the ODR system presupposes that consumers are familiar with online transactions and activities, and that the basic mobile tools are readily available to them, this means that ODR may only reach a fraction of consumers in some countries. Therefore, as mentioned above, ODR should only be a complementary means to other, off-line mechanisms for dispute resolution.
- **Should the ODR system be a multi-party system?** Can additional parties make use of the ODR system in order to assist consumers in the process of resolving their disputes with businesses? The background to this question is that in many ASEAN countries, consumers may not be empowered and proficient enough to directly deal with the businesses. They may need assistance from a third party to communicate and mediate in the process because on their own, they may lack the legal expertise compared to the businesses. With this in mind, many jurisdictions around the world provide options for additional parties to be involved in an ODR scheme, much as this would be otherwise allowed in an off-line dispute resolution process. This is also

recalling that conceptually, ODR is considered to be an online form of ADR.

In other words, to deliver support to consumers, it can be considered to allow government entities, private ADR bodies, legal experts and/or consumer associations to participate in an ODR system as well. If these options are provided, it must be clearly informed to the consumers so that they can pick and choose on the basis of what they deem fit for their case, and to make sure that they are otherwise aware of the implications. It goes without saying that the additional party involved in facilitating the dispute shall be neutral and competent, and they should strictly observe the principles of fairness and due process. If necessary, standard competency profiles to ensure impartiality and independence of the third-party facilitators can be elaborated, guaranteeing minimum requirements and a certain level of legal expertise are fulfilled.

c. Legal Prerequisites and Procedures

There are a number of legal issues associated with the participation of different actors in an ODR system, notably in connection with business obligations on participating in ODR with consumers, and the degree to which decisions or settlements are binding as a result of the process. The legal issues can be broadly categorized along a number of guiding questions that need to be checked against the prevalent legal framework for consumer protection and dispute resolution in a given country. In a nutshell, an ODR system may have legal implications at different stages of its establishment and operation. This includes provisions and procedures that apply to user participation from the different stakeholder groups, the actual settlement mechanism, as well as follow-up and monitoring. Last but not least, as with many other online systems where larger data volumes are being generated and stored, critical questions concerning treatment of data protection and privacy may need to be addressed or anticipated.

- **What kind of legal obligations does the ODR system define for consumers and businesses?** Aside from whether or not registration and participation of traders in a certain sector/industry or area/region should be made mandatory in order for the ODR system to work effectively, the question is also whether the results of mediation or litigation process via the ODR platform is binding for the parties. This consideration relates to the question how the ODR system is anchored within the judicial landscape and what alternative courses of action exist for consumers to seek redress, either through judicial or non-judicial mechanisms. There would also be a need to ensure due process in the delivery of dispute resolution through the ODR system. This entails safeguards, which can be procedural but also technical in nature, to build in neutrality/impartiality in decision-making, the aforementioned escalation paths, as well as the right to appeal. This then links to the question of enforceability and or finality (bindingness).

Should, for example, the decisions arrived at by using an ODR platform be considered final and binding, and which options exist for their enforceability in case businesses do not accept the decisions to redress consumers? What happens if the parties are not satisfied with the outcome of the ODR process and cannot reach a settlement? Where can they turn to next to take the dispute to another level (e.g. to escalate or appeal to another ADR body and/or using litigation through courts)? Many of these questions call for the participation of a neutral third party to see to it that consumers and businesses are not entirely left to their own devices.

- **Which procedure(s) does the ODR system apply?** Resolving a dispute between consumers and businesses out of court can be done by using either negotiation/conciliation, mediation or arbitration. Alternatively, claims can be pursued by litigation through the courts. It is therefore key for an ODR system

to clearly spell out what kind of procedure should be followed by the parties, and to make this transparent for all stakeholders. This way, consistency in the application of the ODR system and in dealing with (potentially) different kinds of disputes can be maintained. The chosen procedure(s) are contingent upon the users identified for the ODR platform, i.e. whether the system allows only for direct communication between consumers and businesses, or also contemplates an option for third-party involvement, and to which degree it is automated. Specific steps and processing times could be outlined in a transparent manner, for example as concerns the number of days by which businesses are required to respond to a consumer complaint, and whether certain fees are incurred at any of the steps of the process. There should also be information on thresholds, in case the ODR system is accessible only for claims with a certain minimum or maximum value.

Furthermore, a deadline or cut-off date by when the parties need to have ideally resolved the dispute, and/or would have to take it to another forum or entity, should be disclosed. This would also apply in instances when the parties do not comply with the expected behaviour for an ODR process, or where jurisdictional and other limitations are reached. The example of the internet courts in China is a useful reference where a mandatory mediation process is foreseen prior to embarking in litigation. Similar as for offline mediation, clear criteria and guidance on how to assess and negotiate a certain complaint or claim, in accordance with prevalent laws and regulations, would be useful (e.g. thresholds). If then the ODR system is expanded to a cross-sectoral and cross-jurisdictional scheme, an alignment of the standard, from both a legal and procedural perspective, would become unavoidable.

- **How will the data generated through the ODR platform be responsibly exchanged and stored?** Many ASEAN countries are still

at the initial stages of introducing specific data security and protection laws, as well as specialized authorities. At the same time, regulations on data protection and privacy are getting more elaborate and stricter around the world, the prime example being the EU General Data Protection Regulation (GDPR) which also impacts foreign traders and jurisdictions outside of the EU. That said, the consumer and business data and information collected through the ODR system should be kept securely and confidentially, within the boundaries of the correspondence concerning the dispute at hand and among the parties involved. It could be decided that once a dispute is resolved, there is no need to retain full records of the case. Rather, only aggregated data that characterize the nature of each case (e.g. volume, type of transaction or sector/industry, category of complaints/business conduct) should be kept, in order for relevant government entities to have a better evidence base for advocacy and policymaking.

d. IT Requirements and Automation

- **What should be the degree of interoperability of the ODR system?** Regardless of whether or not an ODR system is intended to be narrowly focused, for example on consumer claims in certain areas, a key initial consideration should be to design and render it as open as possible, by taking into account prevalent IT standards and minimum requirements in order to permit interfaces with other platforms. In doing so, efficiency gains can be achieved as it is possible to easily expand the ODR system and integrate it with other systems, in a modular manner. Rather than having a parallel, exclusive and standalone mechanism for sectoral consumer claims, an option could be to link such as system with a broader one on business-to-business transactions, or more comprehensive e-courts as these become available in an increasing number of jurisdictions around the world. While such integration, both across sectors and countries,

could be pursued in a gradual approach and with a long-term perspective in mind, the IT prerequisites to allow for smooth interfaces at a later stage could already be built in.

- **Which elements of the ODR system should be automated?** As the examples from other jurisdiction have shown so far, the option of filing of consumer complaints through an online portal or platform is increasingly becoming the norm. However, what sets apart a complaints portal from a more elaborate ODR system is whether the communication towards arriving at a resolution of the dispute also takes place online, i.e. through digital media and without direct meetings of the parties involved. In the case of the EU, the system is only partially automated; upon agreeing online on a specific resolution method and ADR body, subsequent interaction would still require traditional phone calls or even face-to-face meetings between the disputing parties. Alternatively, full automation can cover all stages of the dispute resolution process, ranging from simple online communication between the parties (e.g. video conferences) to more complex or sophisticated data-driven means, as greater automatization, AI and other innovative features can be incorporated.
- **How can the ODR system help overcome language and literacy barriers?** The main idea about ODR is to make it much easier for consumers to obtain redress. Different languages can clearly impede this as consumers will need to look for trusted translation or interpreting services. A small solution can be offered here by integrating an automatic translation in the ODR system. A prime example for this can be found with the ODR platform in the EU. Of course, for the actual dispute resolution process, it would still need to be carefully assessed whether a language issue is likely to persist beyond the provision of the main information and online complaints form. In the multilingual ASEAN context, with English only formally (but

practically) a *lingua franca*, this challenge will have to be addressed eventually. In addition to reducing language barriers, it should be ensured that a simple language (and website navigation) is used for the ODR platform as it would also have to cater to consumers who are necessarily legal experts and who, in some jurisdictions, may have limited formal education and literacy levels.

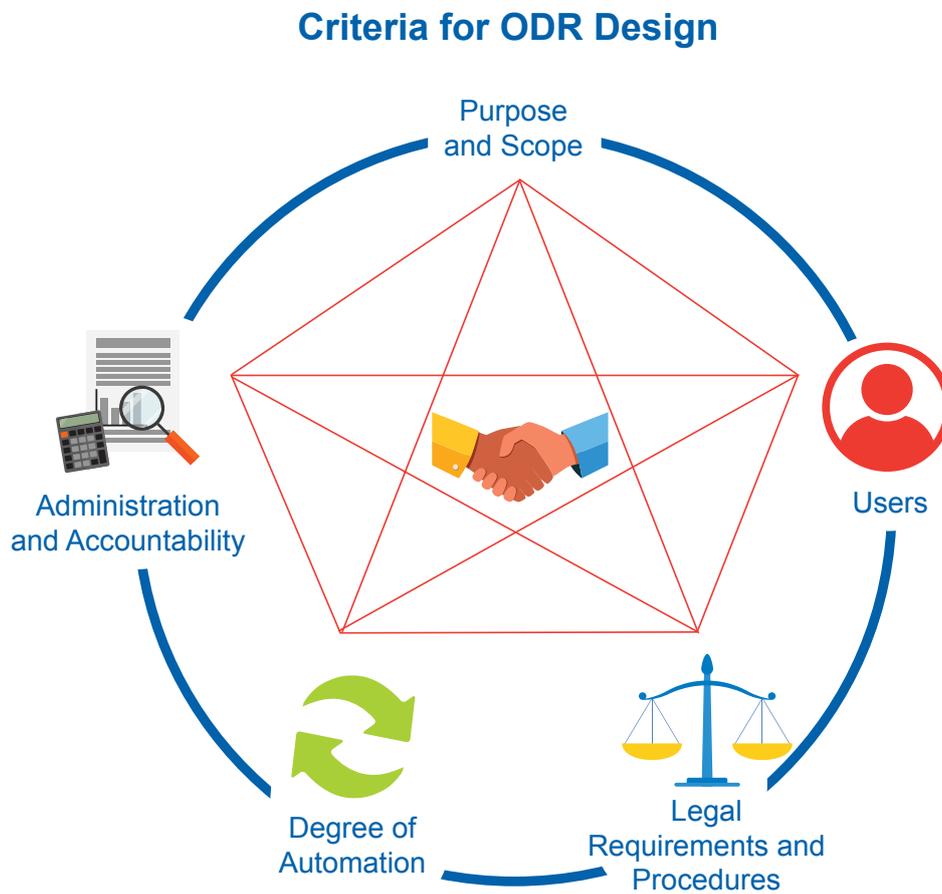
e. Administration and Accountability

- **Who takes the lead in setting up and managing the ODR system?** It is quite likely that in most countries, this will be the responsibility of the main consumer protection agency, as mandated by the general consumer protection law, and/or the ministry of trade and/or consumer association. These would then become the principal administrators and sponsors of the ODR platform but may need to closely coordinate with other sectoral entities (e.g. in the area of telecommunications). Other government entities may also shepherd such an endeavour, provided that this is in accordance with specific mandates and responsibilities described by relevant laws and regulations. Certainly, implications in terms of resources and competences need to be considered. For instance, according to the law, does the respective agency have sufficient funding, technical capacities and/or scope of action in order to effectively deal with the disputes that will be channelled through the ODR platform? Assessing the mandates of certain agencies and legal framework for setting up an ODR system would require consultations with the Ministry of Justice and/or supreme courts in the country.
- As an alternative to government-led initiatives, ODR systems could also be driven by the private sector, as several multinational and legal tech companies have shown in the recent years. The participation of government actors in such schemes can be generally envisaged as an option. In the specific ASEAN context where consumer protection enforcement largely a domain of the public sector, government steering and involvement seems unavoidable.
- **In administering the ODR system, how will public accountability be maintained?** It is critical for the ODR system to not only be accepted, but also trusted by government, businesses and consumers alike. If, therefore, the main consumer protection agency installs the ODR system and oversees its application, certain standards of transparency and accountability should be adhered to in order reinforce legal certainty and confidence. At a minimum, this includes providing clear, open and accessible information on how the ODR platform operates. It also comprises periodic monitoring and disclosure of the success rate of disputes that are resolved, the frequency of complaints in certain areas or sectors, as well as champions or repeat offenders within the business community. Among others, a feedback system for the users of the ODR system can be useful to review effectiveness and generate inputs for further developing the platform or selected processes; the feedback system may also constitute a useful measure to act against repeat players, i.e. businesses that continuously mistreat or mislead consumers. Last but not least, if it is foreseen for businesses and consumers to use the ODR system against a fee, it would need to be clearly communicated where such proceeds go to (e.g. state budget).
- **How will the ODR system be funded, and what are the expected costs?** The question on funding and other resources for the ODR platform in a country needs to set against a number of factors. The scope, users and degree of automation all need to be scrutinized against the available financial and human resources that will be needed for the long-term running of the ODR system. At the same time, accommodating the principle of inexpensiveness and proportionality in

consumer dispute resolution means that countries will have to decide whether to pursue a full or partial fee-based approach. In some countries, the budget of the government would have to be requested and tapped in order to fund the ODR system. In other countries, it may make sense to have funds from the private sector as well. In both scenarios, transparency and public accountability are indispensable to

prevent the misuse of funds and promote trust in the ODR system itself.

To sum up, the below figure illustrates key considerations for ODR design that should be kept in view, irrespective of whether the ODR system in question is foreseen to operate at the national/ domestic, regional or sectoral level:



CHAPTER 5: WHAT ACTIONS SHOULD BE TAKEN TOWARDS AN ASEAN ODR NETWORK?



This page is intentionally left blank

In the ASEAN context, regional initiatives and cooperation mechanisms can hardly be dissociated from actions at the AMS level. This is true for a lot of policy areas, including consumer protection and redress. Therefore, this chapter synthesizes the analysis outlined in the preceding sections by proposing concrete actions and decisions to be taken by AMS towards the establishment of national ODR systems and, by extension, an ASEAN ODR Network. The proposed actions are clustered around a set of success factors on which an effective ODR system, be it at the national/domestic, regional or sectoral level, can be founded.

5.1 A Progressive ASEAN ODR Network

The ASAPCP 2025 does not spell out the elements or specific steps towards the establishment and operation of the ASEAN ODR Network. It only outlines the importance of putting in place ODR systems at the AMS level first. This follows the assumption that a decentralized and phased approach might be most feasible, allowing for national ODR systems to emerge separately, and as a next step, creating interfaces between these different systems. This is also in the understanding that the pace and progress of introducing ODR systems would likely vary from AMS to AMS, due to varying levels of maturity of consumer protection systems, and differences in economic development as well as political priorities. At this, there would be no 'one size fits all' solution that can be applied across all AMS, and not one most 'advanced' type of ODR for them to aspire to.

Furthermore, the term 'ASEAN ODR Network' in the ASAPCP 2025 implies that it is not foreseen to build one ODR platform for all countries, but rather to interlink different systems across jurisdictions, and possibly sectors as well. Last but not least, it is not specified whether the ODR system should exclusively cater to disputes between businesses and consumers, or also be available for mediation in business-to-business disputes.

Bearing this in mind, the initiation of the ASEAN ODR Network would then need to consider where and how to start, and whether it is necessary for the network to be anchored in a particular platform. First, in the interest of pragmatism and keeping things manageable, the ODR network can start by interlinking at least two ODR systems in different AMS, once the interoperability in terms of legal standards and IT protocols has been confirmed. Depending on whether the ODR systems in question have a broad scope or are sectorally focused, the consumer protection agencies and/or other sectoral entities would need to conclude a formal cooperation arrangement to oversee and operate the integrated system. If, as noted in the earlier chapters, openness of the system is accounted for, additional ODR systems from other sectors or countries could be linked up as well, thus organically forming the ASEAN ODR Network, as envisaged under the ASAPCP 2025.

It is worth emphasizing that the long-term strategy of the ASEAN ODR Network should be oriented towards the objective of facilitating greater access to justice for consumers. That said, it should be a secondary consideration whether the ODR systems to be linked up are exclusively devoted to one type of transaction or one sector/industry, as long as the common denominator is the settlement of a dispute between consumers and businesses, and any differences in legislation or procedures is transparently communicated to the disputing parties. Again, for practical and/or political reasons, AMS may decide individually whether to proceed with a comprehensive ODR system, or with a pilot in one area instead. The ASEAN ODR Network should be open for interfaces with both types of ODR systems, provided that certain minimum requirements are fulfilled.

One option to 'anchor' the ASEAN ODR Network could be to use the existing ACCP website (www.aseanconsumer.org) as the main portal. The website already provides important resources and information for stakeholders about developments in the area of consumer protection in the AMS and ACCP. With a proper outreach strategy, traffic of consumers and businesses could be further

directed to the website. Moreover, an integrated complaints feature is intended to facilitate the communication concerning consumer complaints across jurisdictions. It could be considered to expand the features and functionality of the existing ACCP website over time: either to build up its own ODR system as part of the website, or to act as the landing page to interface with multiple ODR systems in the AMS. The latter would afford a certain of flexibility and choice for all parties, i.e. AMS can link their respective system(s) to the platform without compromising on their own national ODR system(s) as well as administrative, legal and/or political requirements in their jurisdiction; meanwhile, businesses and consumers have the option or are guided to choose which national system to avail of. This is very similar to the EU's present ODR approach.

An additional consideration could be an interface to the upcoming ASEAN SME Portal (www.aseansme.org), now in the process of rebranding to ASEAN ACCESS, which is hosted by Thailand and currently being revamped and upgraded as part of a multi-year project. The online portal strives to connect enterprises in ASEAN, particularly local SMEs, which have the potential for internationalization, with each other and with key information on legal frameworks, business opportunities and partnerships. The regional portal is interlinked with national portals in all ten AMS, to ensure sufficient reach into the countries and up-to-date, relevant resources on conditions 'on the ground' and requirements for regional as well as international market access. In January 2020, the ASEAN SME Portal was rebranded as "ASEAN Access", in order to position the portal as a service provide not only for SMEs, but also for larger businesses. Since the expansion to other markets requires a keen understanding of the prevalent legal framework and adherence to certain principles of fair business conduct, both towards consumers as well as other competitors, a further option exists to interlink the ASEAN SME Portal and ACCP website, and in doing so, provide more opportunity and exposure to the ASEAN ODR Network.

A note on readiness of AMS and what could be considered basic prerequisites in the AMS for the establishment of a national ODR system and, by extension, a regional ODR network. The following prerequisites are not meant to be all in place prior to setting up an ODR system, but they would provide an important foundation. First, an internet infrastructure at the national and sub-national level should be in place, to enable consumer access to online platforms in a relatively easy and cost-efficient manner (e.g. through mobile phones). Second, there should be an agency (e.g. consumer protection agency) willing and able to shepherd the ODR system. Third, there should also be continuous interagency coordination to promote cross-sectoral actions on consumer protection, and linked to that, exchange of information and data on consumer complaints. Finally, there has to be a strong political will of the government to invest in an ODR systems in the long term. This would need to extend to funding not only for the infrastructure of the ODR system itself, but also for broader country-wide internet access, capacity and dialogue efforts across sectors and stakeholder groups. Certainly, this is founded on a general commitment by government entities to protect and promote consumer rights, coupled with openness to create ADR mechanisms outside of the traditional courts.

With all that in place in the AMS, the ASEAN ODR Network can essentially be initiated anywhere, provided that there is a certain degree of compatibility between the systems of the participating jurisdictions. The minimum requirements or protocols could be consulted bilaterally between these AMS or agreed between all AMS as a group (e.g. within the ACCP). This also means that it is not strictly required to have common IT and/or legal and/or procedural standards from the start, as long as interoperability is guaranteed. A gradual alignment or harmonization is, however, highly recommended. In the same way as openness and interoperability, it can already be a key consideration when an ODR system is designed.

5.2 Success Factors for the ASEAN ODR Network

The following success factors complement the aforementioned design criteria by providing additional considerations for AMS to reflect upon when it comes to the envisaged ASEAN ODR Network. The specific actions at the national and regional levels are derived from these success factors. Although the sequence of actions can be roughly indicated, a specific schedule will be difficult to set, considering that setting up a fully functioning ODR system can be a time-consuming task, and it may even be practical to initiate steps at the AMS and regional level in parallel. The action plan for the ACCP annexed to this Study should therefore be carefully and continuously monitored, and adjusted, if deemed necessary.

Strategy: What is the long-term vision for the ASEAN ODR Network?

If the ASEAN ODR Network is conceptualized as a region-wide ODR system made up of different interlinked national and/or sectoral ODR systems, it should be decided and transparently communicated from the beginning what each ODR system should cover and achieve, and whether its expansion is foreseen at a later stage. At the national level, this discussion primarily involves the main consumer protection agency and related sectoral agencies. However, as it may be difficult in some settings to set up just one dedicated and 'cover-all' ODR system (e.g. due to the vast expanse of the country and population), it seems more practical to let sectoral dynamics run their course whilst ensuring cross-sectoral coordination as best as possible.

In other words, it is not a primary concern whether the main consumer protection agency, or the financial or telecommunications regulators, or the entire government initiate an ODR system, as long as there is a clear scope and purpose concerning the kind of disputes to be handled via the platform, as well as a certain degree of built-in openness and interoperability, as agreed among relevant stakeholders. That way, an ODR system

that is started by a sectoral regulator can potentially interface with the system of another, and this can be extended even across different jurisdictions.

A long-term strategy and 'big picture' should therefore be kept in view whereby ODR could start small but allows for relatively easy scaling, much like the addition and combination of different 'modules' can contribute to a more comprehensive ecosystem over time. With a view towards the envisaged ASEAN ODR Network, this would be a viable and highly efficient approach that would guarantee AMS the flexibility to operate their own systems, based in their respective readiness and political priorities.

Steering Structure: Who should be responsible for overseeing the ASEAN ODR Network?

For each ODR system established at the country or sectoral level, a lead agency would have to be tasked with overseeing its effective operations, transparency and trustworthiness. Deciding who (else) will be represented in the governance or steering structure of an ODR system has important implications for funding, monitoring and reporting. If the ASEAN ODR Network operates in a decentralized manner, as suggested above, coordinated management efforts are warranted across agencies and jurisdictions. Depending on which sectors are integrated, this would mean that the steering structure for the ASEAN ODR Network may not have to only comprise the ACCP focal points, but also representatives from other sectoral entities and/or the private sector and civil society.

However, since this can quickly lead to unwanted complexity and bureaucracy, a division of responsibilities may prove to be more practical, for example having the national ACCP focal points concerned only with the national portion of the ASEAN ODR network and where cross-sectoral coordination may already pose a challenge. Interfaces between sectoral platforms in different countries may be reported and reviewed by the ACCP but would not constitute their core responsibility. The discussion and development of

strategies on how to streamline certain legal or IT standards and processes for the ODR systems can take place both within ACCP and in consultation with dedicated sectoral entities or agencies.

Cooperation: What cooperation format(s) should be applied for the ASEAN ODR Network?

Cooperation and coordination are indispensable for a workable ODR system, be it at the domestic/country, regional or sectoral level. As noted earlier, mandates for consumer protection and redress in the countries may already be decentralized and diverse, which is then aggravated when initiating a regional network. Consumers and businesses must be provided with sufficient information and guidance on how to navigate the existing mechanisms for dispute resolution without being overwhelmed or discouraged. That said, it is important that certain formal cooperation agreements are concluded across sectors and jurisdictions in order to set the basis for the smooth referral of cases, where necessary, and the safe exchange of data. It may make sense for the ASEAN ODR Network to be anchored in one platform which is interfacing with different sectoral and national ODR systems. This primary platform would act as a 'clearing house'. As an option, this platform could be the ACCP website, if so decided.

Processes: What processes need to be governed so that the ASEAN ODR Network can operate effectively?

Making effective use of interlinked ODR systems across sectors and jurisdiction means that certain processes will have to be streamlined, synchronized or standardized, among others through automation. While each ODR system would need to define core processes (e.g. how to facilitate the communication between the disputing parties, or what kind of procedure should be followed), the compatibility or interfaces between different ODR systems hinges on clarifying interoperability on two levels: relevant legal and IT requirements.

For the legal side, it is necessary to assess whether commonalities exist in the laws and regulations that govern consumer protection and dispute resolution in each country, both with respect to substantive and procedural provisions. If these differ significantly, it will be difficult to establish an integrated system across jurisdictions. It is in the interest of consumers and businesses alike that an alignment of costs, processing times, enforceability etc. for dispute resolution is pursued, for greater legal certainty and consistency. Similarly, the same or compatible IT standards and operating systems can make it easier for different ODR platforms to 'plug' into each other. That way, the ASEAN ODR Network can be continuously expanded.

Learning and Innovation: How to ensure feedback loops in the ASEAN ODR Network?

Both national ODR systems as much as the future ASEAN ODR Network should periodically review their strategy, steering, cooperation and key processes in order to update, upgrade and innovate the existing mechanisms from time to time. Feedback loops or rating systems can be helpful as the disputing parties can directly review the quality and effectiveness of their dispute resolution process through the respective platform.

5.3 Conclusion and Outlook

The establishment of the ASEAN ODR Network can be initiated at any time and in any sector, provided that there are at least two operational ODR systems in different AMS. National ODR systems can be set up sequentially and depending on the individual readiness and resources of each AMS, following an ASEAN-x approach whereby some selected AMS, on a bilateral or multilateral level, could already link up in network as "first movers", with others joining successively.

While the specific operational processes of the ASEAN ODR Network can be defined as the interfaces are built between individual ODR systems in the AMS, it is vital that the ACCP starts the dialogue on common legal, procedural and IT standards that would enhance interoperability as well as lead to greater effectiveness of the ASEAN ODR Network. The first step here can be to conduct a more detailed mapping of IT operating systems and protocols that are commonly used for ODR platforms. The study on needs and gaps related to consumer dispute resolution in the AMS, as envisaged under the ASAPCP 2025, could also feed into a more in-depth dialogue within the ACCP about dispute resolution mechanisms and procedures, and to which extent they may already be or still would have to be aligned, with vision of the ASEAN ODR Network in mind.

By taking a step-by-step approach, the ACCP Members could gradually move towards realizing their vision of the ASEAN ODR Network, and initial joint deliberations could drive the national agenda in individual AMS. Also, instead of treating cross-jurisdictional cooperation as an afterthought, the proposition for AMS to agree on certain minimum standards, particularly with respect to IT protocols and operating systems, right from the start could help avoid that they establish proprietary closed platforms that make it difficult or impossible for other platforms to 'plug in'. A careful examination of technical issues associated with setting up an ODR system would be indispensable, as an immediate follow-up to this Study.

This page is intentionally left blank

ANNEX



Annex 1: Checklist of Criteria for ODR Design

1.	Purpose and Scope of the ODR System
1.1	What are the objectives to be achieved by introducing the ODR system?
1.2	To which extent is the ODR system is expected to be linked with other mechanisms for dispute resolution in the country?
1.3	Should the ODR system concentrate on a specific sector/industry and/or type of transaction?
1.4	Is the ODR system envisaged to be gradually expanded?
1.5	Should the ODR system only deal with domestic, or also with cross-border disputes?
2.	Users of the ODR System
2.1	Should participation in the ODR system be mandatory for businesses?
2.2	Which government entities should (be able to) participate in the ODR system?
2.3	What kind of businesses is the ODR system designed for?
2.4	Who are the consumers targeted by the ODR system?
2.5	Should the ODR system be a multi-party system?
3.	Legal Prerequisites and Procedures
3.1	What kind of legal obligations does the ODR system define for consumers and businesses?
3.2	Which procedure(s) does the ODR system apply?
3.3	How will the data generated through the ODR platform be responsibly exchanged and stored?
4.	IT Requirements and Automation
4.1	What should be the degree of interoperability of the ODR system?
4.2	Which elements of the ODR system should be automated?
4.3	How can the ODR system help overcome language and literacy barriers?
5.	Administration and Accountability
5.1	Who takes the lead in setting up and managing the ODR system?
5.2	In administering the ODR system, how will public accountability be maintained?
5.3	How will the ODR system be funded, and what are the expected costs?

Annex 2: Action Plan for the ASEAN ODR Network

	Immediate Actions	Medium-Term Actions (2020-2025)	Long-Term Actions (post-2025)
AMS Level	<ul style="list-style-type: none"> ▪ Advocate for an ODR system and pitch benefits to relevant government entities to mobilize commitment and resources (incl. survey on acceptance and uptake) ▪ Assess goals, needs and prerequisites for ODR at the national level ▪ Devise the concept for a national (or sub-national) ODR system, incl. determination of the scope, stakeholders, steering and possible sources of funding (see checklist in Annex 1) ▪ Initiate the cross-sectoral dialogue with relevant government entities, private sector, and civil society (incl. academia) on how to set up and manage the future ODR system ▪ Engage in regional and international dialogue on approaches and experiences with ODR, for example through the International Consumer Protection Enforcers Network (ICPEN) ▪ Conduct capacity building activities 	<ul style="list-style-type: none"> ▪ Designate a lead agency to oversee the national ODR system ▪ Mobilize funding to operate the ODR system (or pilot) ▪ Develop implementing regulations and/ or guidelines on the standards and procedures for the ODR system and obligations of stakeholders / parties ▪ Ensure system and network reliability, and look into data protection issues ▪ If necessary, conclude formal arrangements on exchange of information and data (across sectors) ▪ Establish the ODR system and run public awareness campaign to promote its utilization ▪ Explore incentives for business participation ▪ Regularly monitor and review the functionality and effectiveness of the national ODR system for improvements / refinement 	<ul style="list-style-type: none"> ▪ Scale the national ODR system across sectors and/or integrate in a broader e-court system ▪ Expand ODR system through integration in the ASEAN ODR Network and/or bilateral arrangements with ODR systems in other AMS ▪ Harmonize legal and procedural standards across jurisdictions in ASEAN

	Immediate Actions	Medium-Term Actions (2020-2025)	Long-Term Actions (post-2025)
Regional Level (ACCP)	<ul style="list-style-type: none"> ▪ Assess goals, needs and gaps, as well as prevalent procedures for dispute resolution in the AMS ▪ Assess potential interoperability of national ODR systems and IT protocols in the AMS ▪ Engage in regional and international dialogue on good practices and experiences related to ODR ▪ Conduct capacity building activities 	<ul style="list-style-type: none"> ▪ Conceptualize the scope, approach and elements of the ASEAN ODR Network (reflecting the propositions in this initial Feasibility Study) ▪ Define roles and responsibilities, as well as rules for the engagement of additional stakeholders / parties, and devise regional guidelines, if necessary ▪ Conclude cooperation agreements between AMS to complement and operationalize the ASEAN Cooperation Framework on Consumer Protection and Guidelines on Cross-border B2C Dispute Resolution) ▪ Pilot the integration and interlinking of at least two national ODR systems from different AMS ▪ Develop monitoring plan to periodically review the effectiveness of the (initial) ASEAN ODR Network ▪ Bridge gaps in procedural and legal frameworks 	<ul style="list-style-type: none"> ▪ Continue with periodic sharing of experiences and good practices between AMS and other countries to explore the possibility of expanding the ODR network ▪ Continuously improve and refine the system by adding more advanced features and services (e.g. translation) ▪ Expand the scope and functionality of the ASEAN ODR Network and upgrade through additional automated features, using blockchain and AI ▪ Work towards a common framework or standards on data protection

