



Supported by Australian Aid through the ASEAN-Australia Development Cooperation Program Phase II on behalf of the Australian Government

## DEVELOPMENT OF COMPLAINT AND REDRESS MECHANISM MODELS IN ASEAN

### OUTPUT 9 GUIDELINES FOR THE SELECTION AND IMPLEMENTATION OF COMPLAINT AND REDRESS MODELS

DECEMBER 6, 2013

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*"The final report was prepared by World Wide Project Management Services (WWPMS) in association with the Foundation for Effective Markets and Governance (FEMAG), as the approved Contractor on the Development of Complaint and Redress Mechanism Models in ASEAN ("Project") under the Special Services Agreement signed by and between the ASEAN Secretariat and WWPMS in association with the FEMAG on 14 September 2012. The views expressed in this report do not necessarily represent or are not necessarily endorsed by the relevant agencies in ASEAN Member States. Mention of specific entities, departments and/or government agencies do not necessarily imply endorsement of it by the relevant entities, departments, and/or government agencies of ASEAN Member States. The author of this report can be contacted at [allan.asher51@gmail.com](mailto:allan.asher51@gmail.com); [chair@femag.org.au](mailto:chair@femag.org.au)."*



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## GLOSSARY OF TERMS AND ABBREVIATIONS

TITLE	EXPLANATION
ACCP	ASEAN Committee on Consumer Protection
Administrative Tribunal	A form of Public Ombudsman Schemes
ADR	Alternative Dispute Resolution
AMS	ASEAN Member States
Outputs Three	Assessment Report on Consumer Complaint Systems
Codes of Conduct	A form of External Consumer Redress
Consultative Meeting	Meetings of the working group on cross border consumer redress
Consumer Claims Court	A form of external consumer redress
Cross-Border Redress	A redress scheme across state boundaries
External Redress Scheme	Redress schemes external to the business or organisation complained about
Features	Key components of best practice
Fieldwork	Research conducted in Thailand, Malaysia and Singapore
Framework for Assessment Criteria	Output two
Industry Dispute Resolution Scheme	A form of external consumer redress
Internal Complaints System	Systems implemented by the organisation or business complaint about
Licensing Schemes	A form of government established external consumer redress
Model Implementation	Steps which can be taken to implement the models
Models	Seven approaches to complaint handling and external consumer redress
Models for Complaint Systems and Redress Schemes	Output five – describing models for implementation
Nominated AMS	Thailand, Malaysia and Singapore
OECD	Organisation for Economic Cooperation and Development,
Ombudsman Schemes	Common name for name for public or private external redress schemes

<b>TITLE</b>	<b>EXPLANATION</b>
Output Five	Models for complaint systems and redress schemes
Output Six	Guidelines for implementation of models
Output Three	Assessment framework for complaint handling and redress schemes
Principles	Key elements of best practice complaint and redress schemes
Private Organisation	SOCAP
Public Sector Ombudsman	Schemes for resolution of complaints against government agencies and departments
Public Sector Redress Bodies	Bodies set up by statute or otherwise through government action
Redress Mechanism Models	Output five
Results	Expected outcomes for complaint handling and redress schemes
Self-Regulation	Industry rules with no external enforcement
Small Claims Court	Similar to small claims Tribunal
Small Claims Tribunal	A form of external consumer redress
Statutory Complaints Bodies	Bodies established by statute

## 1. PURPOSE OF THE GUIDELINES

These Guidelines have been prepared to assist consumer policy officials from ASEAN Member States (AMS) to identify appropriate models for internal complaint handling systems and external redress schemes for implementation in their jurisdiction.

The Guidelines include an overview of the importance of consumer policy and recent developments in consumer protection in the ASEAN Economic Community. They identify an important set of resources which will equip consumer officials to determine appropriate models for internal complaint handling systems and external redress schemes best suited to the needs of particular AMS.

As current levels of consumer protection vary amongst AMS and as levels of resource and expertise differ, there is no single model which will suit all AMS. These Guidelines therefore set out steps which may be taken to assess the current consumer protection framework of an AMS; and to identify possible steps which, if implemented, will lead to better or best practice levels of protection for consumers.

The Guidelines set out

- a model for internal complaint handling systems;
- 4 models for external redress schemes;
- a model for the encouragement of private organisations to improve consumer complaints system; and
- a model for cross-border redress.

The Guidelines conclude with a summary of Consumer Redress Mechanisms in ASEAN Member States which was derived from a research report titled *Road Mapping Capacity Building Needs in Consumer Protection in ASEAN: Policy Briefs 2010*. These have been updated and include amendments made to October 30 2013

## 2. INTRODUCTION AND OVERVIEW

### Consumer Protection in the ASEAN Economic Community

Consumer protection is an essential tool in building a people-oriented ASEAN Economic Community. The AEC prioritises the interests and welfare of consumers in the implementation of strategies for achieving an integrated economic region.

Consumer protection laws must ensure fair competition and the free flow of information in the marketplace. At present, Brunei Darussalam, Indonesia, Lao PDR, Malaysia, Philippines, Singapore, Thailand and Viet Nam have principal consumer protection acts. Consumer protection law in the Lao PDR has been in force since 1 December 2010. Vietnam's National Assembly also passed a new Consumer Protection Law on 17 November 2010 which has been effective since 1 July 2011 and replaces the 1999 Ordinance on Protection of Consumers Rights. Brunei Darussalam enacted the Consumer Protection (Fair Trading) Order on 10 November 2011 which took effect on 1 January 2012. Cambodia is in the process of drafting their consumer protection policy and law which is to be enacted by 2015, while Myanmar is in the process of drafting their consumer protection policy and law. Meanwhile,

consumer protection elements in these countries are covered by other legislations in order to achieve consumer protection objectives.

ASEAN Member States are at differing stages of implementation of measures for the enhancement of the welfare of consumers. A number have highly sophisticated and well-functioning laws, institutions and practices while some have yet to enact even foundational consumer protection laws. Most have dedicated agencies for the development of policy and enforcement of laws but some are still in the process of establishing such bodies. In addition to the stages of implementation, ASEAN Member States differ in their economic capacity and available resources to implement measures and thus the nature and timetable for action will also vary.

There are, nonetheless, common principles and features for complaint systems and redress schemes which can be applied throughout ASEAN Member States which will assist in the implementation of the ASEAN Economic Blueprint and these Guidelines have been prepared to accompany the Models Document to assist AMS in choosing the appropriate models and implementation path.

## ASEAN Committee on Consumer Protection (ACCP)

- Consumer protection is a new area of regional cooperation in ASEAN. As initiated under the ASEAN Economic Community (AEC) Blueprint, the inter-governmental ASEAN Coordinating Committee on Consumer Protection, later renamed the ASEAN Committee on Consumer Protection (ACCP), was established in 2007. The ACCP, and its three Working Groups, serve as the focal points to implement and monitor regional arrangements and mechanisms to foster consumer protection in the ASEAN Economic Community. Since the inception of the ACCP notable progress has been made.
- The lists of official recalled/banned products in ASEAN and of voluntary recall products in ASEAN has been regularly updated by the ACCP since the endorsement of the Guidelines for Notification and Information Exchange on Recalled/Banned Products in 2011. The notification and information exchange mechanism on recalled/banned products in AMSs cover all consumer products - with the exceptions of foodstuffs, pharmaceuticals, health supplements, traditional medicines, cosmetic products and medical equipment. The lists will be regularly updated by the ACCP and posted on the ACCP website [www.aseanconsumer.org](http://www.aseanconsumer.org). The ACCP is also in the process of uploading the lists on the OECD Global Portal on Product Recalls.
- The ACCP website, which was launched in 2012, serves as the main reference point for matters pertaining to consumer redress, including the provision of information on (i) basic cross border redress mechanism (handling complaints); (ii) focal point for consumer redress in each AMS; (iii) online/hotline access to cross border redress mechanism (handling complaints); and (iv) the ACCP. The issue of cross border redress can only be taken up at a later stage after all AMSs have put in place a national redress mechanism.
- The ACCP also initiated an ASEAN Consumer Complaints Leaflet which was developed in 2011 for distribution to visitors/tourists to ASEAN. The leaflet contains information on hotlines and/or national focal points in all AMSs for consumer complaints. The dissemination of the leaflets to all AMSs has been completed and the leaflet was launched on 3 April 2012 with the issuance of a press release on the ASEAN website.
- Other focal activities which are targeted for completion in 2013-2014 include: (i) Development of Complaint and Redress Mechanism Models in ASEAN; (ii) Strengthening Technical Competency for Consumer Protection in ASEAN; (iii) Supporting Research and Dialogue in Consumer Protection, through eight (8) consumer protection digests and one (1) case study on emerging consumer protection issue for 2013 and one (1) annual conference on consumer protection for 2014; and (iv) Development of Public Awareness Models for Consumer Protection.
- As regards cooperation with Dialogue Partners, the ACCP has also held follow-up consultations with several dialogue partners and organisations in seeking demand-driven technical assistance for capacity building needs and activities in ASEAN. ACCP has also started coordinating and cooperating with other ASEAN sectoral committees, such as the AEGC and the ACCSQ, through information sharing on cross-border issues affecting consumers.

## Journey to Best Practice Complaint Systems and Redress Schemes

### a) *Levels of development for redress schemes*

The initial step is to determine the stage of development and implementation of consumer policy and establishment of agencies for implementation which best describes your AMS.

- Little or no measures for consumer redress
- Basic consumer law/norms of business conduct/UN Guidelines on Consumer Protection operating in the jurisdiction
- Agreement within the jurisdiction on the need to respond to contestable markets/ASEAN Economic Blueprint/cross border trade in goods and services
- Growing consumer pressure with the establishment of contestable markets
- Industry associations involvement in complaints handling systems and redress schemes
- Government intervention or threats to establish consumer redress schemes
- Creation of industry ombudsman or other industry based schemes
- Best practice complaint systems and redress schemes

### b) *How to use the Guidelines*

- These Guidelines have been prepared to assist AMS in the selection and implementation of appropriate models for internal complaint systems and external redress schemes.
- The guideline is one of a suite of documents produced for a consultancy on the Development of Complaint and Redress Mechanism Models in ASEAN.
- Key documents relating to selection and implementation of models for internal complaint handling systems and external redress schemes are as follows:
  - Assessment Framework for Complaint Handling and Redress Schemes
  - Assessment Report on Internal Complaint Handling Systems and External Redress Schemes
  - Development of Complaint and Redress Mechanism Models in ASEAN
  - Guidelines for Selection of Models
- There is no single model which will suit all AMS in all circumstances as Models have been developed to solve different problems and AMS are themselves different from one another
- Each AMS has a different starting place as some have very well developed and implemented complaints systems and redress schemes
- The process is a journey to best practice in which current measures need to be re-evaluated and compared to those in other AMS and suitable reference countries on a regular basis to ensure that once they reach best practice, they remain at that level. With the fast pace of development in ASEAN it would be highly desirable to establish and maintain data bases of measures and experiences to share in relation to Models and their implementation.
- Progress will depend on many factors, including :

1. Stage of economic development
2. Regulatory capacity
3. Strength of the government sector
4. Degree of market development in the AMS
5. Presence of an active civil society
6. Pressures of competition in ASEAN markets
7. Presence of international businesses

### **Suggestions for establishing internal complaints handling systems and external redress schemes**

The following suggestions will be appropriate for AMS who have little or no current measures in operation.

#### **Implementing a complaint handling systems for government departments and agencies<sup>1</sup>**

- a. Carry out a survey of current complaint handling systems for government departments and agencies.
- b. The survey can be developed by using as a guide, principles and features for complaint handling schemes found in the Document Assessment Report for Complaint Handling Systems and Redress Schemes.
- c. Should the survey results demonstrate that existing internal complaint handling systems are inadequate , take the following action:
- d. Suggest to your Department or Ministry Head that throughout ASEAN and in an increasing number of countries, there is an expectation from the public for an improved system for complaints about the administrative activities and shortcomings of Government Departments and Agencies.
- e. Many countries which have implemented such a system exclude from their scope complaints about actual government policy and restrict their operation to administrative steps taken by government officials.

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<sup>1</sup> For a full description of internal complaint handling systems, please refer to Model One in this Guideline and to Model One the paper Development of Complaint and Redress Mechanism Models in ASEAN.

### **Implementing complaints handling systems for businesses**

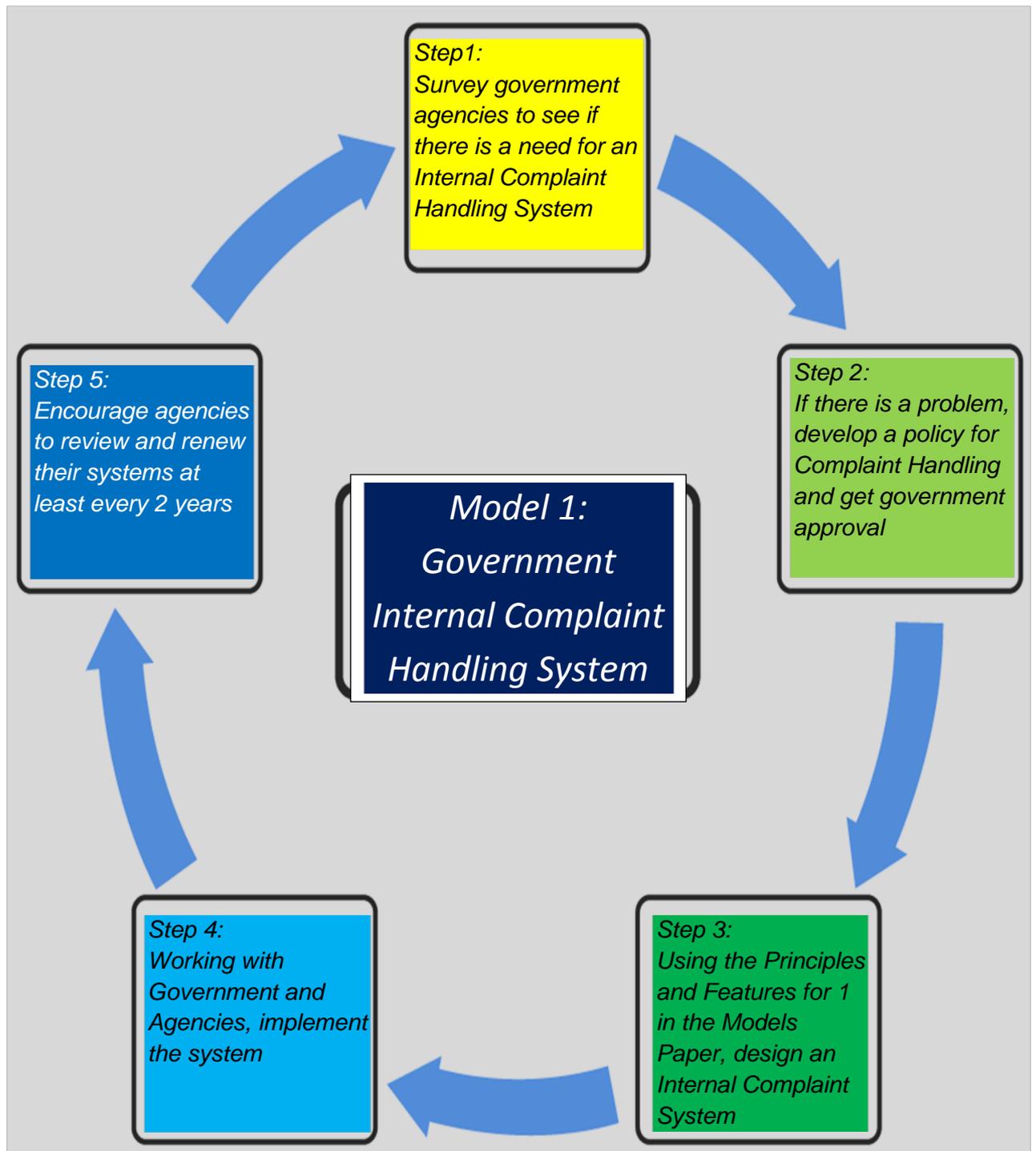
- a. The first stage of the implementation of internal complaint handling systems for businesses is to undertake a survey similar to that described in paragraph 3 but in relation to private businesses.
- b. The survey should seek to assess the adequacy of existing internal complaint handling systems and to cross reference that with government records about complaints from the industry sectors examined.
- c. In the event that the survey shows current internal complaint handling systems are not present or are inadequate, then further implementation of model one should be considered.
- d. The second stage is to meet with representatives of government departments responsible for:
  - Financial services/banking
  - Telecommunications
  - Utilities (electricity ,gas, water)
- e. Collect and summarize information about the complaints they have received in these sectors and then meet with industry associations about complaints handling systems encouraging them to implement ISO 10002 using the collected complaints data as a bargaining tool.
- f. It may be useful to run workshops on ISO 10002 through the national body responsible for standardisation. The “essential services” type industries that should at least be approached include:
  - Financial services/banking
  - Telecommunications
  - Utilities (electricity ,gas, water)
- g. The government should consider developing and implementing a policy that if these industries do not have their own schemes which meet the principles and features for external redress schemes developed by an agreed date that they will mandate redress schemes for these industries.

### **Implementing an External Redress Scheme for businesses or government departments and agencies**

- a. As with internal complaint handling systems, prior to implementation of models for external redress schemes, consumer protection policy officials should undertake research into the existence and adequacy of current external redress mechanisms.

Five-step process for implementation of models 1-6. <sup>2</sup>

Diagram 1: Model One: Internal Complaint Handling System for Government Departments and Agencies



<sup>2</sup> In relation to model seven, as this is dependent on action from ACCP, the detail provided is indicative only.

Diagram 2: Model One: Internal Complaint Handling System for Businesses

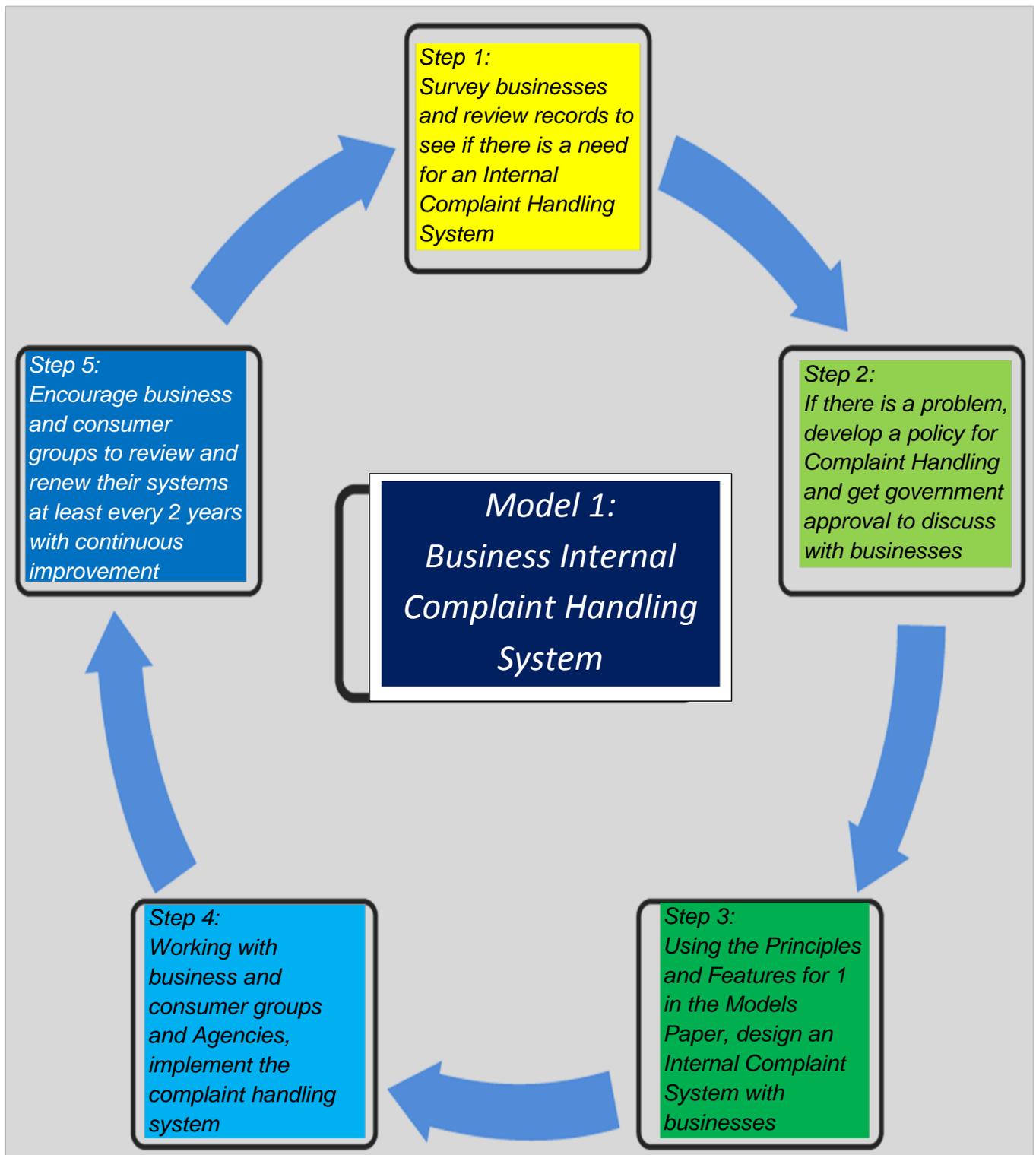


Diagram 3: Model Two: Self-Regulatory External Redress Scheme

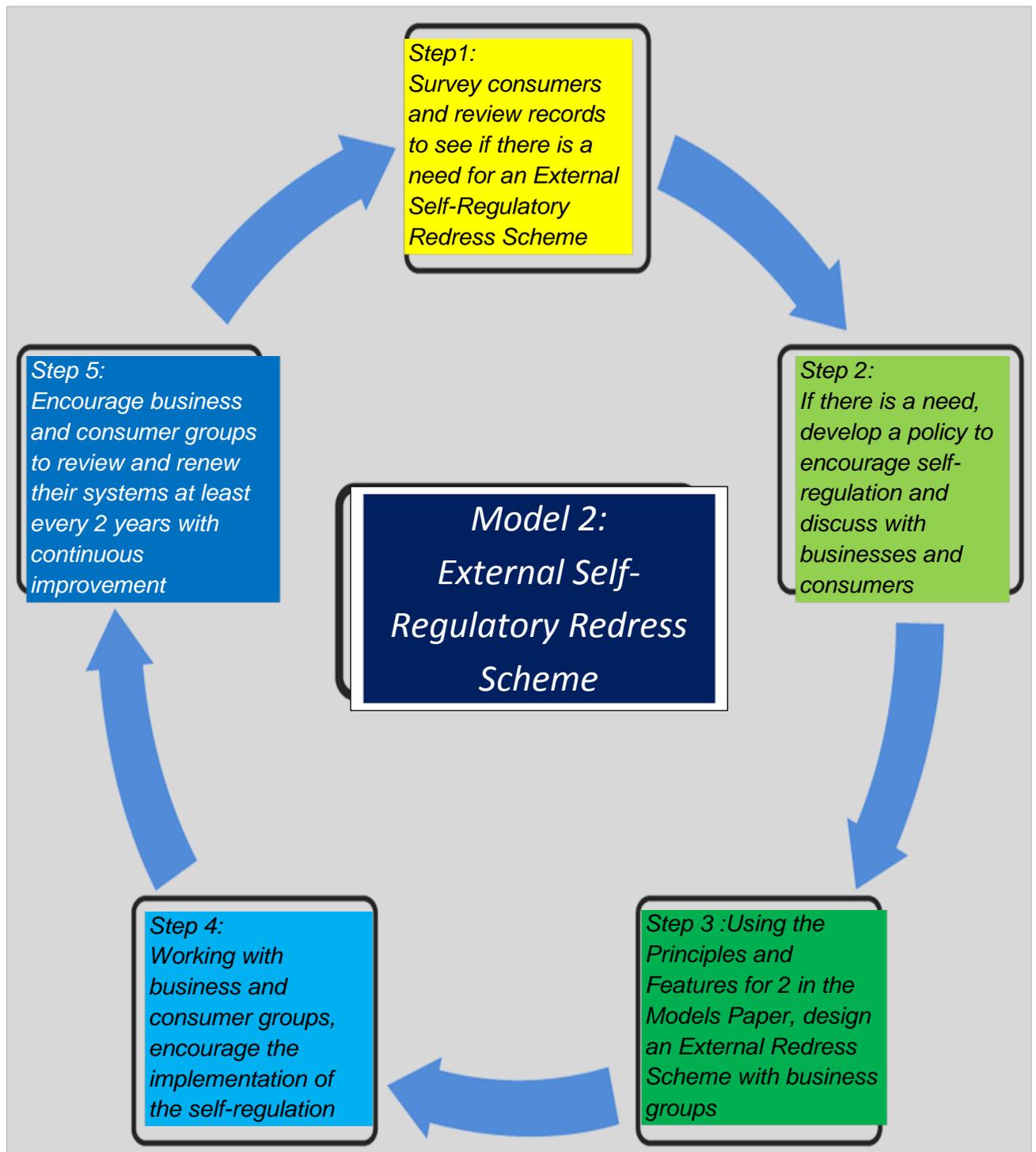


Diagram 4: Model Three: Government Established External Redress Scheme

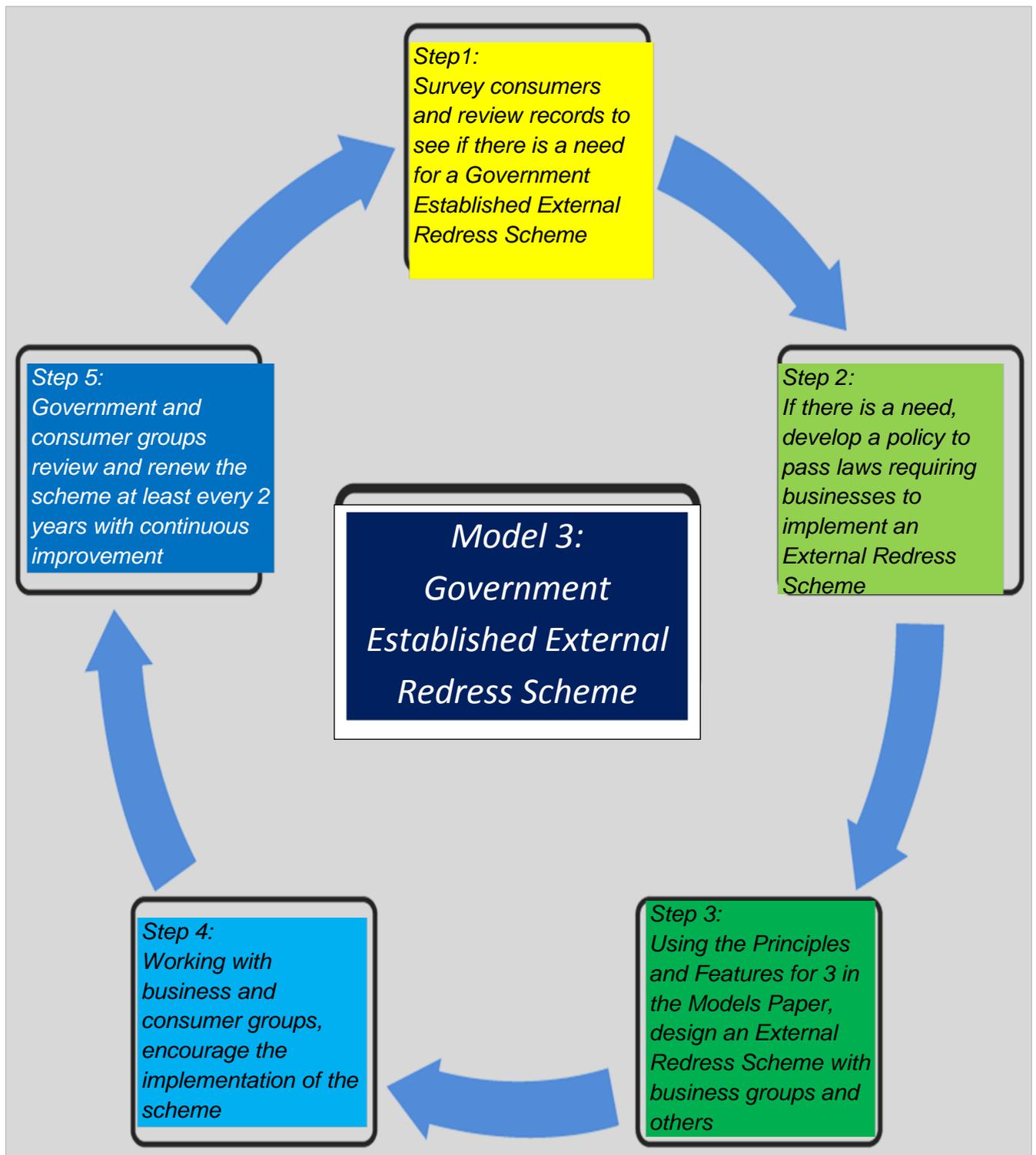


Diagram 5: Model Four: Public Sector Ombudsman Scheme

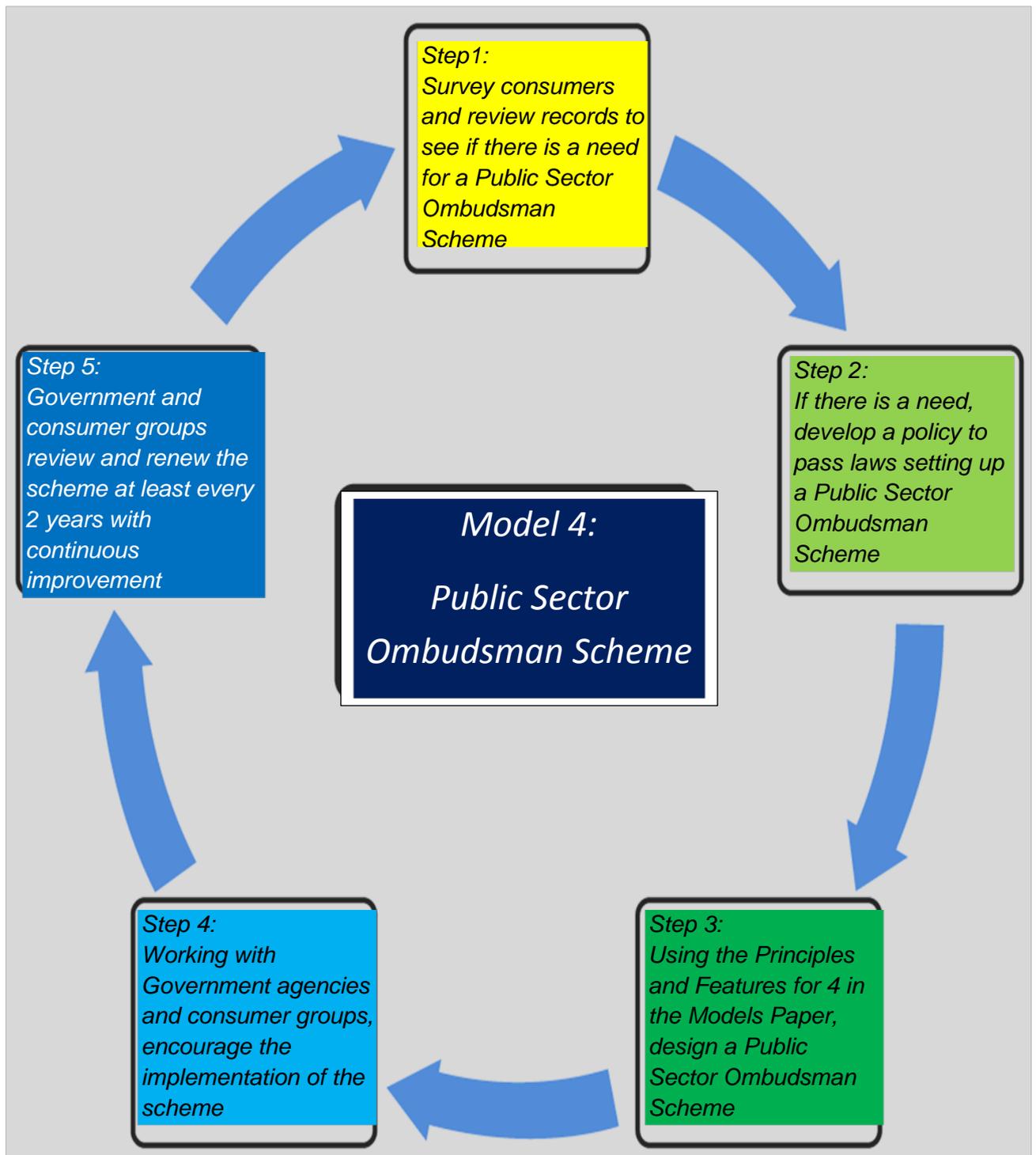


Diagram 6: Model Five: Small Claims Court

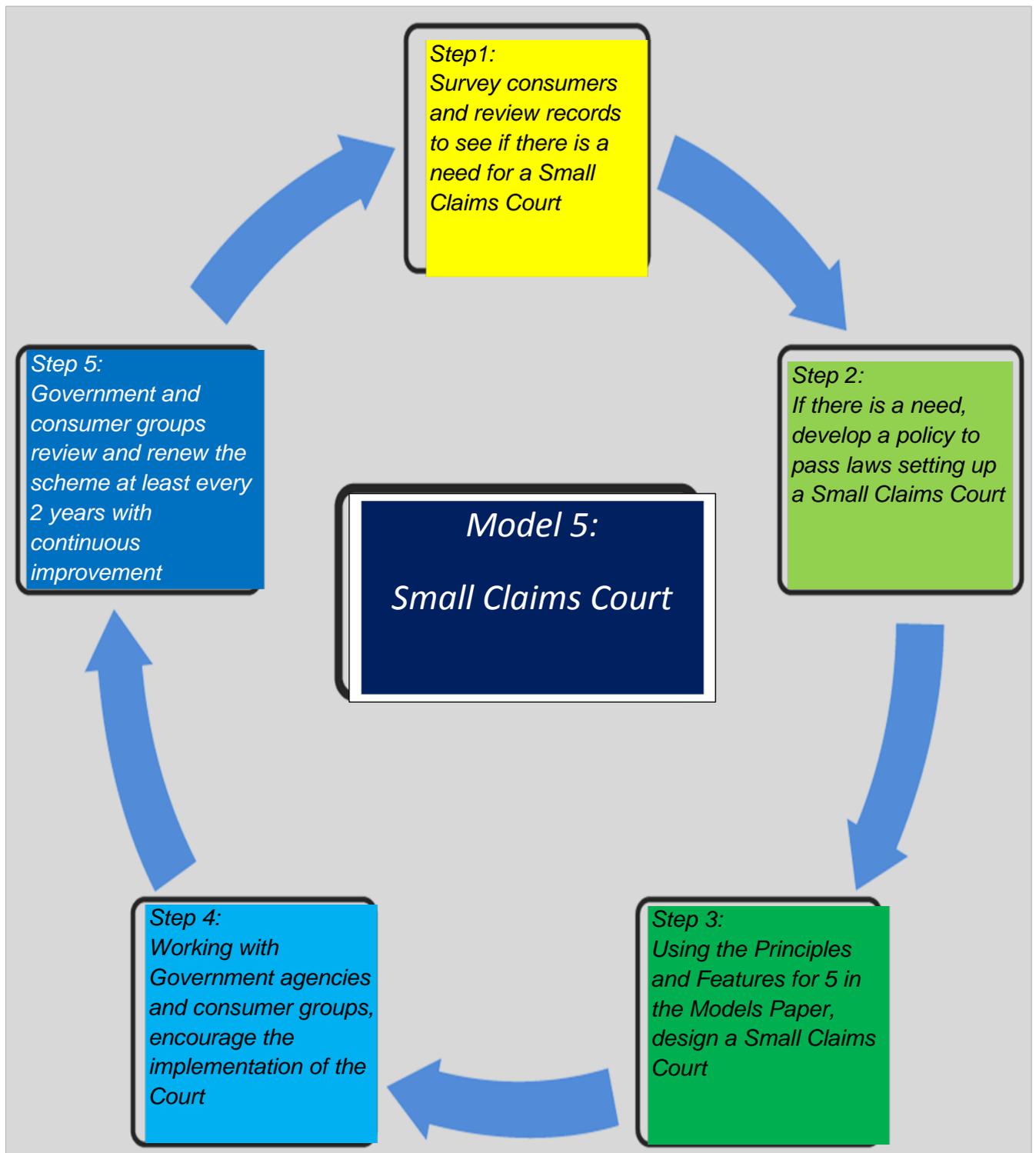


Diagram 7: Model Six: private organisation to improve Consumer Complaints Systems

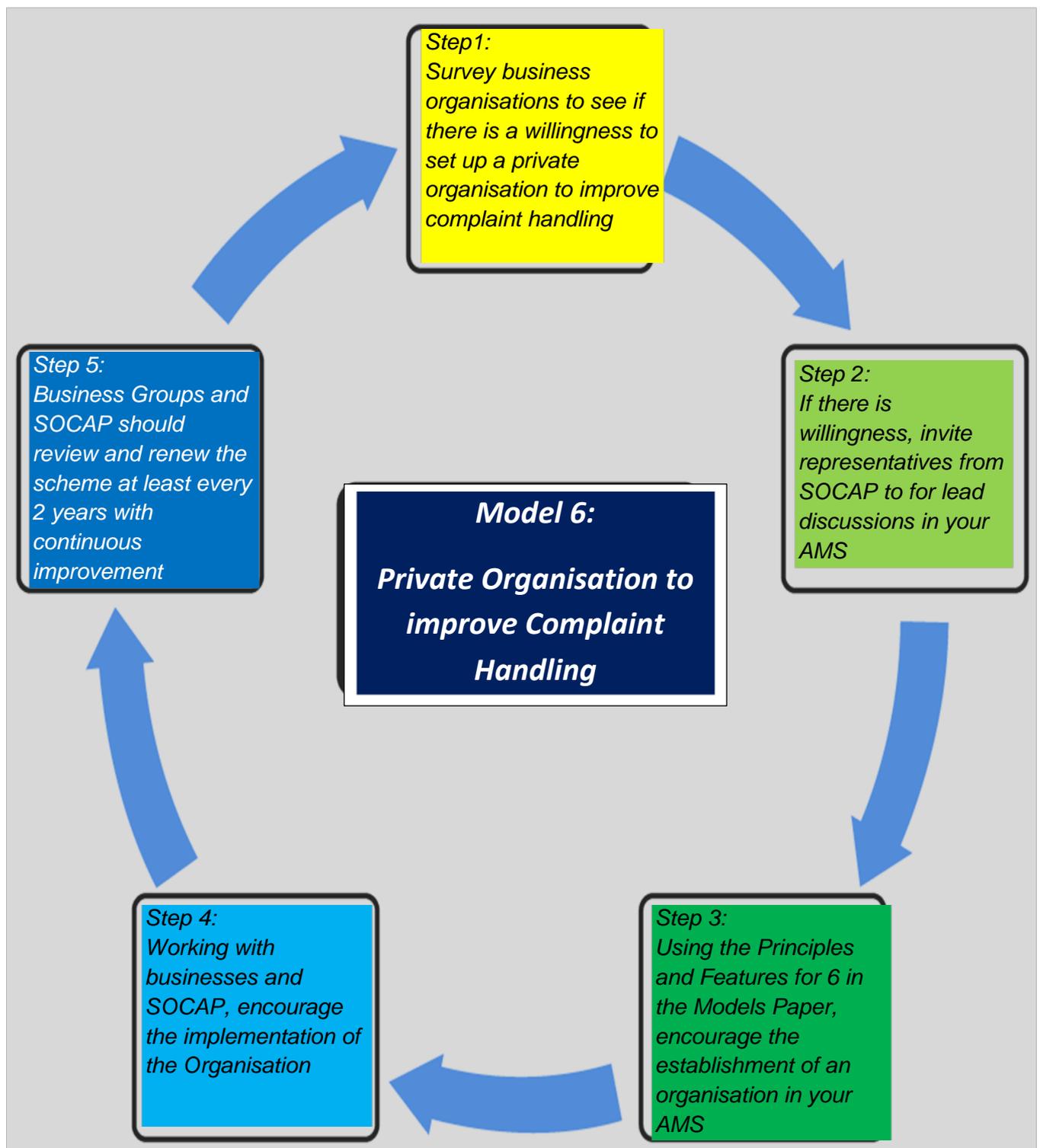
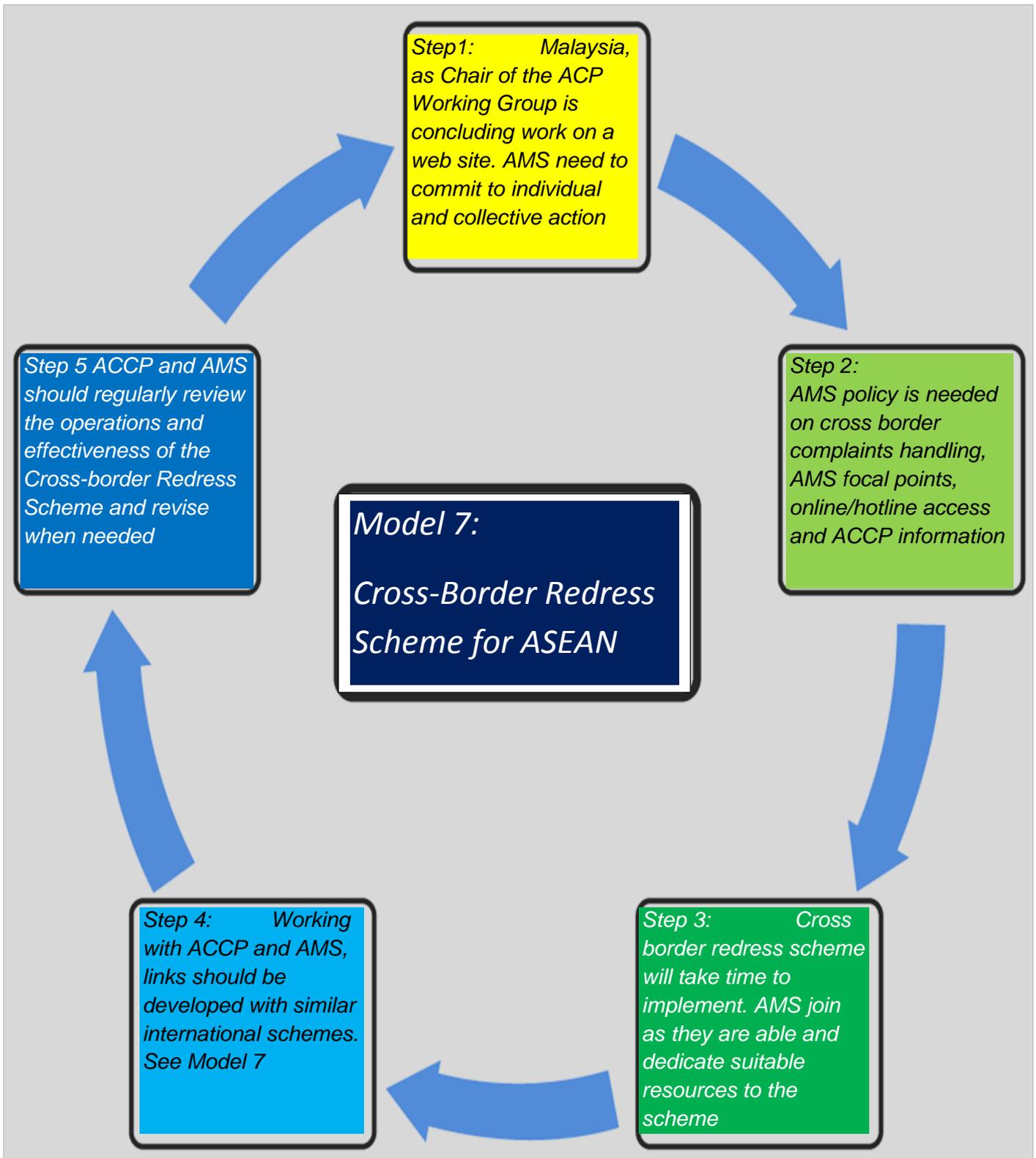


Diagram 8: Model Seven: Cross-Border Redress Scheme for ASEAN



### 3. GUIDELINES FOR THE SELECTION AND IMPLEMENTATION OF INTERNAL COMPLAINT HANDLING SYSTEM AND EXTERNAL REDRESS SCHEMES

<i>Choosing the appropriate model to implement</i>				<i>Implementing the appropriate model</i>			
<b>Selection of Models</b>	<b>Advantages and application</b>	<b>Disadvantages</b>	<b>Effectiveness</b>	<b>Ease of implementation</b>	<b>Structure</b>	<b>Operation</b>	<b>Maintenance</b>
<b>Model 1: Internal Complaint Handling Systems</b>							
<b>Key Principles:</b>							
Commitment	Suitable for a single entity/organization	Depends for success on organisations commitment to the system	Goal is to deal with expressions of dissatisfaction by customers or clients at the earliest possible stage	Consider the case studies in the Models paper	Commitment from the entity's/organization's governing body	Training	Collection of information
Visibility and accessibility	All private and public sector bodies should have a formal Internal Complaint Handling System	Not suitable for an industry or government redress scheme	Can deal with complaints before they develop into disputes	Using the international standard on complaints Handling (ISO 10002) can assist organizations in setting up a complaints handling system	Policy and procedures	Communicating the complaints handling system to the public	Analysis and evaluation of complaints
Responsiveness	Appropriate for entities/organizations of all sizes	Very small businesses find it hard to set up systems	To be effective it should include principles and	See case studies in the Models paper for examples of good schemes	Allocation of responsibility and authority for complaints handling within the organization or entity	Supporting the making of a complaint	Redesigning goods and services as a result of complaints feedback
Fairness	Does not require legislative backing to be effective	Government agencies can			Resources	Early resolution	Satisfaction with the complaint-handling system
Objectivity						Receipt of complaint	
No cost to make a complaint						Tracking of complaint	
Confidentiality						Acknowledgement of complaint	
Customer focused approach	Gives entity/organization the opportunity to fix problems relating to their goods/services					Managing the complaint <ul style="list-style-type: none"> <li>Initial assessment of complaint</li> <li>Considering the</li> </ul>	Monitoring the complaint-

<p>Accountability</p> <p>Continual improvement</p>	<p>Increases customer/client satisfaction with goods/services</p>	<p>sometimes ignore complaints</p>	<p>features</p>			<p>complaint</p> <ul style="list-style-type: none"> <li>• Addressing the complaint</li> <li>• Communicating with the complainant</li> </ul> <p>Closing the complaint, review and record keeping</p> <p>Monitoring implementation of recommendations/remedies</p>	<p>handling system</p> <p>Auditing the complaint-handling system</p> <p>Management review of the complaint handling system</p> <p>Continual improvement</p>
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<i>Choosing the appropriate model</i>				<i>Implementing the appropriate model</i>			
<b>Selection of Models</b>	<b>Advantages and application</b>	<b>Disadvantages</b>	<b>Effectiveness</b>	<b>Ease of implementation</b>	<b>Structure</b>	<b>Operation</b>	<b>Maintenance</b>
<b>Model 2: Self-Regulatory External Redress Schemes</b>							
Principles	Set up with little formality	As an “opt in” for industry participants the process does not get broad industry coverage	Can be a first step in developing an industry wide scheme	Participants can design their own scheme	Commitment from the industry’s governing body	Communicating the redress scheme to the public	Analysis and evaluation of disputes
Accessibility							
Independence	Usually used in the early stages of consumer policy and law implementation	Powers of the association will be no more than persuasive	To be effective it should include principles and features	Can be implemented very quickly	Designing the redress system including how it will operate	Procedures for managing disputes	Provide feedback to scheme participants on systemic issues
Fairness							
Accountability	Norms of conduct expressed in a code of practice	Determinations are typically not enforceable		Little formality required	Policy and procedures	Requires an industry association to administer the scheme	
Communication							
Efficiency							
Effectiveness	May include mediation and the use of persuasion rather than enforcement	Depends for success on organisations commitment to the system		No laws or regulations are necessary	Allocation of responsibility and authority including requirements at the entity level and who handles unresolved complaints	Rules should be based on principles and features	Regular reviews of the scheme against industry principles
	Can be bought into existence very quickly and with an absolute minimum of formality.	Rules and procedures are set at the standard members of the Association are prepared to accept which is often very			Resources needed for the scheme	Depends for success on organisations commitment to the system	
	Terms of reference and procedures can						

	be very flexible and change as needed without bureaucratic processes.	low  Governments and consumer groups will generally have little or no role in the establishment or oversight  Considered to be just an interim step in development of consumer redress scheme					
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<i>Choosing the appropriate model</i>			<i>Implementing the appropriate model</i>				
<b>Selection of Models</b>	<b>Advantages and application</b>	<b>Disadvantages</b>	<b>Effectiveness</b>	<b>Ease of implementation</b>	<b>Structure</b>	<b>Operation</b>	<b>Maintenance</b>
<b>Model 3 :Government Established External Redress Schemes</b>							
	<p><b>A. Statutory Bodies</b> Jurisdiction usually covers most economic activity</p> <p>Some are established to deal with a specific industry or practice</p> <p>Generally part of a larger government agency responsible for consumer policy and law enforcement</p> <p>May also be linked to industry regulators and small claims courts</p>	<p>Large number of complaints to the complaints body may impact on the timeliness to deal with complaints</p> <p>Depends for success on organisations commitment to the system</p>	Covers all industries	Model on existing schemes in operation in other jurisdictions	<p>Commitment from the government</p> <p>Designing the redress system including how it will operate</p> <p>Policy and procedures</p> <p>Allocation of responsibility and authority complaints</p> <p>Resources needed for the scheme</p>	<p>Communicating the redress scheme to the public</p> <p>Procedures for managing disputes</p> <p>Depends for success on organisations commitment to the system</p>	<p>Analysis and evaluation of disputes</p> <p>Provide feedback to industry on systemic issues</p> <p>Regular reviews of the scheme</p>
	<p><b>B. Licensing Schemes</b> Enables governments to identify specific areas of poor industry practice to be improved</p>	<p>May be unsuitable for industries with lack of financial resources</p>	Covers the whole industry	Model on existing schemes in operation in other	<p>Commitment from the government and the industry's governing body</p>	<p>Communicating the redress scheme to the public</p> <p>Procedures for managing disputes</p>	<p>Analysis and evaluation of disputes</p> <p>Provide</p>

	<p>When properly implemented and well-funded they can provide successful consumer redress</p>	<p>Needs government involvement</p>	<p>that entities must have their own complaints handling system to be part of the redress scheme</p>	<p>jurisdictions ( see DEVELOPMENT OF COMPLAINT AND REDRESS MECHANISM MODELS IN ASEAN Paper for models)</p>	<p>Designing the redress system including how it will operate</p> <p>Policy and procedures</p> <p>Allocation of responsibility and authority including requirements at the entity level and who handles unresolved complaints</p> <p>Resources needed for the scheme</p>		<p>feedback to scheme participants on systemic issues</p> <p>Regular reviews of the scheme against industry principles</p>
	<p><b>C. ADR Techniques</b>  Industry Ombudsmen Schemes are independent, impartial redress bodies</p> <p>Provide low-cost, accessible, informal and speedy alternative to courts.</p> <p>Typically they are free of charge to consumers and while processes are impartial, they seek to redress the imbalance of resources and expertise between consumers and</p>	<p>Cost of establishment and maintenance</p> <p>Where only industry is represented on the Board, financial control can influence the effectiveness of the scheme.</p>	<p>Covers the whole industry</p> <p>requirement that entities must have their own complaints handling system to be part of the redress scheme</p> <p>Industry and consumer</p>	<p>Model on existing schemes in operation in other jurisdictions (see DEVELOPMENT OF COMPLAINT AND REDRESS MECHANISM MODELS IN ASEAN Paper)</p>	<p>Establishment of an industry/consumer council to appoint Ombudsman and oversight budget</p> <p>Designing the redress system including how it will operate</p> <p>Policy and procedures</p> <p>Allocation of responsibility and authority including requirements at the entity level</p>	<p>Communicating the redress scheme to the public</p> <p>Procedures for managing disputes  See case studies in the Models paper for examples of good schemes</p>	<p>Analysis and evaluation of disputes</p> <p>Provide feedback to scheme participants on systemic issues</p> <p>Regular reviews of the scheme against industry principles</p>

	<p>service providers</p> <p>Decisions made by the Ombudsman are independent of any interference from the Board</p> <p>100% coverage of the industry concerned can be achieved through making membership redress scheme a condition for a grant of license to operate.</p>		<p>involvement in the governance of the scheme adds to its credibility and acceptance by consumers</p>		<p>Resources needed for the scheme</p>		
	<p><b>D. Codes of Conduct</b></p> <p>Many industry and public sector codes of conduct now have legislative or regulatory underpinning to ensure their enforceability</p> <p>Confer rights on consumers to take action under the provisions which might be enforced in small claims courts or in the court system more generally.</p> <p>Can retain some of the</p>	<p>Codes may be slow to react changes in the marketplace</p>	<p>Covers the whole industry</p> <p>Requirement that entities must have their own complaints handling system to be part of the redress scheme</p>	<p>Model on existing schemes in operation in other jurisdictions (see DEVELOPMENT OF COMPLAINT AND REDRESS MECHANISM MODELS IN ASEAN Paper for models)</p>	<p>Commitment from the government and the industry's governing body</p> <p>Designing the redress system including how it will operate</p> <p>Policy and procedures</p> <p>Allocation of responsibility and authority including requirements at the entity level and who handles unresolved</p>	<p>Communicating the redress scheme to the public is important</p> <p>Procedures for managing disputes</p> <p>See case studies in the Models paper for examples of good schemes</p>	<p>Analysis and evaluation of disputes</p> <p>Provide feedback to scheme participants on systemic issues</p> <p>Regular reviews of the scheme against industry principles</p>

	<p>industry connection and dynamism which comes from engaging industry associations with rule-making but with the added advantage of ensuring wider coverage and a more certain possibility of redress for consumers using such schemes.</p>				<p>complaints</p> <p>Resources needed for the scheme</p> <p>Depends for success on organisations commitment to the system</p>		
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<i>Choosing the appropriate model</i>				<i>Implementing the appropriate model</i>			
<b>Selection of Models</b>	<b>Advantages and application</b>	<b>Disadvantages</b>	<b>Effectiveness</b>	<b>Ease of implementation</b>	<b>Structure</b>	<b>Operation</b>	<b>Maintenance</b>
<b>Model 4 : Public Sector Ombudsman (also known as Parliamentary Ombudsman)</b>							
	<p>Independence from the government is an important element</p> <p>Goal is to provide redress and also deal with systemic issues of poor administration in government agencies</p> <p>Depends for success on organisations commitment to the system</p>	<p>Limited to covering government agencies</p> <p>Usually have no powers of enforcement for decisions</p>	<p>Covers the all government agencies</p> <p>Requirement that all agencies must have their own complaints handling system</p>	<p>Model on existing schemes in operation in other jurisdictions</p>	<p>Commitment from the government</p> <p>Appointment of an suitably qualified independent ombudsman</p> <p>Designing the redress system including how it will operate</p> <p>Policy and procedures</p> <p>Allocation of responsibility and authority including requirements at the entity level</p> <p>Needs resources</p>	<p>Communicating the redress scheme to the public</p> <p>Procedures for managing disputes</p> <p>See case studies in the Models paper for examples of good schemes</p> <p>Depends for success on organisations commitment to the system</p>	<p>Analysis and evaluation of disputes</p> <p>Provide feedback to scheme participants on systemic issues</p> <p>Regular reviews of the scheme against industry principles</p>

<i>Choosing the appropriate model</i>				<i>Implementing the appropriate model</i>			
<b>Selection of Models</b>	<b>Advantages and application</b>	<b>Disadvantages</b>	<b>Effectiveness</b>	<b>Ease of implementation</b>	<b>Structure</b>	<b>Operation</b>	<b>Maintenance</b>
<b>Model 5 : Small Claims Courts or Tribunals (Also known as Consumer Claims Tribunals or Civil and Administrative Tribunals)</b>							
	<p>Designed for swift and inexpensive redress for consumers</p> <p>Most do not permit legal representation</p> <p>Usually suggest or require mediation prior to adjudication</p> <p>Tend to have modest monetary limits for jurisdiction</p> <p>Employ ADR techniques</p> <p>Judgements usually enforceable in the courts</p>	<p>Winning in the small-claims court does not automatically ensure payment in recompense of a plaintiff's damages. This may be relatively easy, in the case of a dispute against an insured party, or extremely difficult, in the case of an uncooperative, transient, or indigent defendant</p>	<p>Covers all industries</p>	<p>Model on existing schemes in operation in other jurisdictions</p>	<p>Commitment from the government</p> <p>Policy and procedures</p> <p>Resources</p> <p>Appointment of suitably qualified adjudicators</p>	<p>See case studies in the Models paper for examples of good schemes</p> <p>Communicating the redress scheme to the public</p> <p>Procedures for adjudicating disputes</p>	<p>Analysis and evaluation of disputes</p> <p>Regular reviews of the scheme</p>

<i>Choosing the appropriate model</i>				<i>Implementing the appropriate model</i>			
<b>Selection of Models</b>	<b>Advantages and application</b>	<b>Disadvantages</b>	<b>Effectiveness</b>	<b>Ease of implementation</b>	<b>Structure</b>	<b>Operation</b>	<b>Maintenance</b>
<b>Model 6: Private Organisation to improve consumer complaints systems</b>							
	<p>Made up of representatives from businesses and government agencies who deal with consumer complaints</p> <p>Highly effective in those countries in which they operate</p> <p>Strong international networks</p> <p>Consistent with building a responsible and responsive business sector</p>	Requires business and government agency support to be successful	Depends on the level of commitment from business and government agencies	Model on existing schemes in operation in other jurisdictions	<p>Commitment from business and government agencies to best practice complaints handling and customer service</p> <p>Establishment of a Board to drive the organization</p> <p>Policy and procedures</p> <p>Resources</p>	<p>Communicating the scheme to the public</p> <p>CEO &amp; staff to organize conferences, workshops and publications on best practice complaints handling and customer service</p>	Systems to monitor best practice

<i>Choosing the appropriate model</i>				<i>Implementing the appropriate model</i>			
<b>Selection of Models</b>	<b>Advantages and application</b>	<b>Disadvantages</b>	<b>Effectiveness</b>	<b>Ease of implementation</b>	<b>Structure</b>	<b>Operation</b>	<b>Maintenance</b>
<b>Model 7 : Cross-Border Redress</b>							
	<p>An important consumer protection function for dealing with cross-border issues</p> <p>Build on existing ASEAN work program</p> <p>Could link with similar international schemes work already underway in ASEAN</p> <p>Consistent with the ASEAN Economic Blueprint</p> <p>Recommended in the ASEAN Consumer protection Road Mapping report</p>		<p>Depends on the level of commitment and action by ASEAN Members to the model</p>	<p>Development of an implementation strategy by ASEAN Members</p> <p>Development of a <b>Tools and Advice Resource Centre</b> would assist</p>	<p>A committee to draft an implementation plan and oversight its implementation</p> <p>Guidance material on website</p> <p>People exchange for on-the-job learning</p>	<p>Regular Regional workshops and conferences to give guidance on complaints handling systems and schemes</p>	<p>System to monitor best practice</p> <p>Regular reviews</p>

#### 4. CONSUMER REDRESS MECHANISMS IN ASEAN MEMBER STATES

As part of a major project in assessing levels of implementation of consumer protection policy throughout the AMS, a research report titled *Roadmapping Capacity Building Needs in Consumer Protection in ASEAN: Policy Brief 2010* was prepared. At the time of the report, the following information concerning redress mechanisms in AMS was identified. Information included is current at October 30 2013. AMS policymakers wishing to implement models for redress schemes will find the information to be of use in establishing new policies or in the revision of current ones.

Implementation of new consumer laws and modification of existing ones is a continuous process. In 2013, the ASEAN Secretariat released a short note on Consumer Protection in the ASEAN Economic Community which included the following updates:

##### Consumer Protection in the ASEAN Community

“At present, Brunei Darussalam, Indonesia, Lao PDR, Malaysia, Philippines, Singapore, Thailand and Viet Nam have principal consumer protection acts. Consumer protection law in the Lao PDR has been in force since 1 December 2010. Vietnam’s National Assembly also passed a new Consumer Protection Law on 17 November 2010 which has been effective since 1 July 2011 and replaces the 1999 Ordinance on Protection of Consumers Rights. Brunei Darussalam enacted the Consumer Protection (Fair Trading) Order on 10 November 2011 which took effect on 1 January 2012. Cambodia is in the process of drafting their consumer protection policy and law which is to be enacted by 2015, while Myanmar is in the process of drafting their consumer protection policy and law. Meanwhile, consumer protection elements in these countries are covered by other legislations in order to achieve consumer protection objectives.”

##### **Brunei Darussalam**

###### **Redress Mechanisms**

In general, consumers in Brunei Darussalam can file complaints on products and services, and seek compensations through various channels including:

- Department of Economic Planning and Development, Prime Minister’s Office
- Department of Electrical Services
- Department of Water Services
- The Authority for Info-communications Technology Industry of Brunei Darussalam(AITI)
- Small Claims Tribunal
- Newspaper and public media (complaints)

The Small Claims Tribunals Order, 2006 provides for the establishment of small claims tribunal for consumer address. However, no data or details were available or provided to understand the role and activities of the Tribunal for the purpose of this study. The Consumer Protection (Fair Trading) Order 2011 was enforced on the 1<sup>st</sup> January 2012 and the specified body responsible for general consumer complaints is the Department of Economic Planning and Development, under the Prime Minister’s Office. Complaints related to specific areas also fall under the purview of relevant agencies: e.g. Division of Energy, Water services, Authority for Info-Technology.

Different issues related to environment are handled by different authorities, such as:

- Department of Environment, Parks & Recreation – water (river) and air quality open burning, noise pollution, waste management,
- Department of Public Works – water quality, damages of water pipes, low water pressure, road quality
- Municipal Board – waste collection within the municipality.

Complaints can be channelled in-person by:

- Hotline numbers
- Email or websites
- Facebook
- Fax
- Post
- Complaints form

Currently, AITI has an official complaint form and a “Consumer Guidelines-Complaint Handling Process”<sup>3</sup>. The Guidelines specifies that “AITI can only commence investigation into the complaint upon receipt of a complete Complaint Form together with all necessary supporting documents”, and “will not take action on incomplete complaint forms”. The process and the amount of details required may be perceived as intimidating, unfriendly and time consuming for consumers to file a complaint. In the 8-page form<sup>4</sup> (including a guide), details required include:

- Name, including identification card number, address and contact information or that of authorized representative.
- Particulars of the licensee that the complaint is lodged against.
- Points in issue and a brief statement of facts.
- Copies of any other relevant supporting documents e.g. contract or other materials relating to the complaint and previous correspondence with the licensee.
- Relief or remedy being sought.

A Notification of Complaint from AITI shall be issued to the licensee, and if no response is received within a stipulated time, a directive will be issued (exercising AITI’s power under Section 27 of the Telecommunication Order 2001), which will contain instruction for resolution of the complaint.

## **Cambodia**

### **Redress Mechanisms**

Whilst the consumer complaint handling and publication office of CAMCONTROL Directorate-General of the Ministry of Commerce is directed to provide a consumer complaints and solution service, public awareness of this role is low. To handle this, CAMCONTROL has recently instituted a physical mailbox marked “consumer voice and opinion” at wet markets to receive complaints from consumers. Complaints also come in to CAMCONTROL by telephone, fax, email or letter.

However, there is no regimented system for dealing with the complaints that are received. For example, there is no central registry of complaints that would allow for statistics of complaint

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<sup>3</sup> Complaint Handling Process-Consumer Guidelines. April 2009. Retrieved from [http://www.aiti.gov.bn/media/complaint\\_handling\\_process\\_April\\_2009.pdf](http://www.aiti.gov.bn/media/complaint_handling_process_April_2009.pdf)

<sup>4</sup> AITI Complaint form can be downloaded from [http://www.aiti.gov.bn/media/complaint\\_form\\_April\\_2009.pdf](http://www.aiti.gov.bn/media/complaint_form_April_2009.pdf)

handling to be generated. The establishment of such a registry, according to CAMCONTROL, would require a supportive sub decree or an appropriate legislation. Neither are organised records kept of enquiries made or warnings given to industry in response to consumer complaints received.

CAMCONTROL's complaints service, which is focussed on food and product safety, does not adequately cover the services sector. Thus, consumers of banking, professional services and phone and Internet services have nowhere to turn for redress but to their providers, or to the courts. Local Internet service provider AngkorNet advises that it has an internal call centre to receive complaints, but cannot suggest where a consumer might turn if the call centre is unable to assist. It claims however that if there were an industry wide independent complaints resolution body, the company would participate in this program.

There is no institutionalised mechanism for alternative dispute resolution in Cambodia, either. However many Cambodians do resort to traditional dispute resolution by submitting them to elderly people, or other respected or prominent persons in their villages or communes for reconciliation.<sup>5</sup> Whilst a practical and cost effective form of resolution, this mechanism is unenforceable except with the cooperation of both parties, and is not suitable to all classes of dispute, such as where expert legal or technical knowledge may be required to help the parties reach a resolution.

There is a non-governmental body Legal Aid Cambodia (LAC), formed in 1995, with offices in seven locations including in rural areas.<sup>6</sup> It represents thousands of poor Cambodians in both civil and criminal matters, and aims "to provide quality legal aid, legal and human rights education/outreach and advocate for the poor in Cambodia in order to ensure access to justice, promote respect of law and human rights and advance legal and judicial reform." Along similar lines is the Cambodian Defenders Project, established in 1994.<sup>7</sup>

At the present, the court system is still applied to all kinds of complaints. Consumer complaint mechanism in Cambodia is expected to be included in a specific law on consumer protection which has been in the drafting process for a long period of time.

## **Indonesia**

### **Redress Mechanisms**

Law No. 30/1999 on Arbitration and ADR, which was promulgated in 1999, provides the rules for Arbitration and ADR (consensually based dispute settlement). Article 2 of the Law describes the scope of application of the Law that applies for disputes settlement that is predetermined by parties in the agreement/contract. The use of arbitration in the administrative type ADR such as in the labor, environment and consumer protection dispute settlement are also prescribed in the Law No. 30/1999.

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<sup>5</sup> Koy Neam. *Introduction to the Cambodian Judicial Process*. Phnom Penh: The Asia Foundation, 1998.

<sup>6</sup> See <http://www.lac.org.kh/english/>

<sup>7</sup> See <http://www.cdpcambodia.org/>

In Indonesia, generally, ADR is interpreted as alternative to adjudication as it is reflected in the title of the Law No. 30/1999 which separates ADR<sup>8</sup> and arbitration. Indonesia has been practicing four main types of ADR, namely:<sup>9</sup>

1. Judicial Type ADR (Court Connected ADR)
2. Administrative Type ADR
3. Private Sector Type ADR
4. Traditional Type ADR

The Law on Consumer Protection (Law No. 8/1999) introduces Consumer Dispute Settlement Agency (Badan Penyelesaian Sengketa Konsumen), or CDSA, is established by local government in each district/city level for the purpose to serve out court settlement through mediation, conciliation and arbitration. CDSA is a non-structural institution having the function of "setting consumer dispute outside the court cheaply and simple in short of time." By the end of October 2013 there has been 111 CDSA.

CDSA membership consists of representative from the government, consumers and entrepreneurs. The number of CDSA membership is at least 9 people and each element is represented by three people, and at most 15 people who each element is represented by five people.

CDSA is expected to facilitate, accelerate and provide a guarantee of legal certainty for consumers to demand the civil rights to the irresponsible entrepreneurs. Moreover, it can also be an access to obtain information and guarantee of equal legal protection for consumers and entrepreneurs.

In the handling and settlement of consumer disputes, CDSA authorizes to perform research and investigation of evidence of letters, documents, goods, laboratory test results, and other evidences, whether submitted by consumers or entrepreneurs.

The basic principles of the settlement in CDSA, as follows:

- a. Settlement of consumer disputes through CDSA based on voluntary choice of the parties. When the parties have agreed to choose CDSA as a place of dispute settlement, the parties must agree for a second time to choose one of ways of dispute settlement applied in CDSA, such as by way of conciliation or mediation or arbitration.
- b. Not Tiered  
If consumers and entrepreneurs have agreed to choose the way of resolving disputes by conciliation, and the settlement is not entirely in the hand of parties, then the dispute settlement can not be proposed by mediation or arbitration.
- c. Settlement by the Parties  
When the parties have agreed to choose the way of resolving the conciliation or mediation, the Settlement entirely in the hands of the parties either on the shape and size of compensation payments in cash or installment. CDSA Assembly is merely as a facilitator who must provide input, advice, and explanation in regard to the contents of the Consumer Protection Act.
- d. Settlement by the Assembly  
When the parties agreed to choose the arbitration settlement, the settlement are fully submitted to the CDSA Assembly both form and amount of indemnification.
- e. Without a Lawyer  
In settlement principle of consumer disputes through CDSA without a lawyer (attorney), considering that this is highlighted in the deliberative process of dispute resolution, that is not tight or stiff personal legal problems, because the decision expected in CDSA is a win-win solution.
- f. Cheap, Quick and Simple

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8 ADR includes negotiation, mediation, conciliation, early neutral evaluation and other hybrid type of ADR.

9 Extracted from Mas Achmad Santosa (2002)

The disputes settlement in CDSA has no charge, both to consumers and entrepreneurs, and also the settlement time is relatively fast, i.e within 21 working days at the latest the decision has been issued by CDSA.

Duties and functions of CDSA as provided in Article 52 of Act No. 8 Year 1999 on Consumer Protection, as follows:

- a. To carry out the handling and settlement of consumer disputes by mediation, or conciliation, or arbitration;
- b. To provide consultation of consumer protection;
- c. To supervise the inclusion of standard clause;
- d. To report to the investigator in case of violation of general provisions of law;
- e. To receive complaints, both written and unwritten, from the consumer about the occurrence violations of consumer protection;
- f. To conduct research and examination of consumer protection disputes;
- g. To summon the suspected entrepreneur allegedly committing a violation of consumer protection;
- h. To call and present witness, expert witness and/or any person who is considered knowing about the violation of law;
- i. To ask for investigator help to bring the entrepreneurs, witnesses, expert witnesses, or anyone who are refused to fulfill the summon of consumer dispute settlement;
- j. To obtain, inspect and/or assess a letter of document, or other evidence for the investigation and/or examination;
- k. To decide and determine the presence or absence of loss in the part of consumer;
- l. To informing the decision to entrepreneur committing a violation of consumer protection;
- m. To impose administrative sanctions to entrepreneur violating the provisions of law.

Consumers can complain to the CDSA as long as meet the following requirements:

- Consumer as the party who proposes complaint or lawsuit request, can only be accepted if submitted by end consumer. End consumer, also includes foreigner residing in Indonesia. A group of people/consumers lawsuit who have similar interests, known as a class action lawsuit can not be accepted in CDSA, as well as a lawsuit proposed by NGO. Both of lawsuits could only be proposed to the District Court.
- Consumer complaint to the CDSA is only directed to entrepreneur, including public enterprises and state enterprises, but not to government institutions.
- The consumer complaint to the CDSA is only goods and/or services in regard to 5 (five) parameters, as follows:
  - Goods that do not meet the standards
  - Misleading information
  - The way of selling inflicts a financial loss
  - The contract default

Two types of ADR exist in the private sector:

- (1) business association type - established, attached or facilitated by business association such as Indonesian National Board of Arbitration ..
- (2) independent type - by independent Organization such as the Indonesian Institute Conflict Transformation which was established in 2001 (which and non-government Organization working with public on case settlement, dispute system design and capacity building works);

also the Indonesian Mediation Centre which provides the mediation service of private and commercial cases.

Further, the Supreme Court Regulation No. 1/2008 concerning Mediation Procedures within the Court states that to Mediation is mandatory for parties in dispute and handling judges;

- o Parties in disputes can select listed mediator(s)
- o Code of Conduct developed by the Supreme Court is a basis for mediator to conduct his/her tasks;

Agencies or Organizations involved in complaints handling and redress:

- YLKI received 40 – 60 complaints monthly. For other NGO on Consumer Protection in Indonesia received 3300 complaints during 5 years
- CDSA has resolved 1270 complaints during 5 years
- Telecommunication Regulatory Authority has a complaint centre to receive the complaints from the public.
- Directorate of Consumer Empowerment, Ministry of Trade received 30-40 complaint monthly. Directorate of Electricity Business Affairs Supervision, Ministry of Energy and Mineral Resources has resolved ± 400 complaints during 5 years.
- Department of Banking Investigation and Customer Protection, Bank Indonesia (BI) has settled 189 disputes through Banking Mediation during the last 5 years. Besides, BI has some channels for banking customer both to ask some advices and to submit their dispute settlement proposal according to banking matter, such as e-mail ([mediasi@bi.go.id](mailto:mediasi@bi.go.id)), phone line (+62-21-29818923), and face-to-face consultation. There is no fee for this process, but there are some codes of conduct to be obeyed by each party (the customer and the bank) before the mediation meeting starts.

### **Challenges**

Complaint handling mechanism for any issues related to banking lies mainly on the onus of the banks to handle and deliver its resolution back to the customer. In some case, whereby banks are unsuccessful to handle and give a satisfying resolution to the customer, there is an alternative dispute resolution through Banking Mediation in Central Bank (Bank Indonesia) as an option for the customer and a further step in resolving banking problem. Therefore, Banking Mediation is a following action of customer complaint resolution after the dispute had undergone a dispute settlement process by the bank. In this process, Central Bank (Bank Indonesia) acts as neutral party and motivates each party to settle down the dispute by mediation.

In Banking Mediation process, further actions or sanctions or reimbursement may not be imposed on the bank.

Consumer Organization suggests that industry (banks) should handle customer complaint as good as possible and any cost incurred by Central Bank (Bank Indonesia) to settle their cases.

**General consumer protection**

Generally, Lao has Consumer Protection Law which was public on 20 July, 2010. Consumer Protection and Competition Division was established under Department of Domestic Trade, Ministry of Industry and Commerce.

In order to implement the Consumer Protection Law, Consumer Protection and Competition Division has attempted to establish the implementation bodies across our country. However, until now, redress mechanisms available to the consumer have been limited. There is no cross-sectoral national hotline telephone number for consumer complaints.

The *Law on Resolution of Economic Disputes 2005* provides for the mediation or arbitration of economic disputes by an Organisation of Economic Disputes Settlement under the Ministry of Justice. Its jurisdiction extends over “conflicts which take place in relation to production and business operations” (Art. 2). However this depends on both parties agreeing that mediation or arbitration should take place (Art. 4). Moreover, a fee is payable (Art. 44).

There are also Economic Police under the Ministry of Public Security who intervene in commercial disputes, such as complaints of foreign trade mark owners against counterfeit goods being sold in Lao PDR, the sale of price controlled goods at higher prices, or commercial misrepresentations. If investigation by the Economic Police reveals that a vendor has broken a law, action can be taken such as a warning or in appropriate cases prosecution.

Often it is the Economic Police who have been called upon to act on consumer complaints also. In some cases, such as misrepresentations by vendors, this is been appropriate and can yield successful results for the consumer. However, they are not specifically trained in other consumer protection issues such as product safety and labelling. Nor can they order provision of civil redress such as a refund to the consumer. Therefore the Economic Police do not provide Lao consumers with a one stop point for redress for all consumer complaints.

For commercial activities that require registration by the business owner, the consumer can go to the relevant registrar to complain about the conduct of a vendor.

If found to have breached the terms of registration, the registration certificate can be cancelled. However, few consumers are aware of the responsible registrar for a given business, and thus do not know where to turn to make such a complaint.

Further, once again, this does not provide the consumer with actual redress by way of compensation, but merely penalises the vendor. Neither can consumer organisations in Lao PDR act on behalf of, nor represent a consumer in civil proceedings, to seek redress or compensation. Therefore if a consumer does not have the knowledge or resources to go to court to take civil action, he or she may be out of luck.

There is also a mechanism by which a complaint can be taken to the National Assembly, but this is in the nature of an appeal from a decision of the courts, and is therefore not accessible to most consumers.

Under the new *Consumer Protection Law*, the situation will improve. The law provides (Art. 37) for disputes between consumers and suppliers to be settled through a hierarchy of processes:

- Conciliation or mediation.
- An administrative hearing by the responsible ministry.
- Arbitration by the Organization of Economic Disputes Settlement.
- Finally, court action.

A strict timetable for these processes is provided in the Law.

The difference between conciliation and mediation is that conciliation takes place between the consumer and supplier only, whereas mediation is conducted by an independent individual or organisation accepted by both parties. Organisations to offer this mediation service must be established under the Act, comprising of between three to five personnel. The yet to be formed Consumer Protection Association may also offer a mediation service (Art. 42).

### **Specific subject areas**

Outside of the procedure in the new *Consumer Protection Law*, there are certain sectoral boards or administrators to whom complaints can be taken in specific subject areas as a free alternative to the expensive process of taking legal action. These include:

- The Lao National Internet Committee, for Internet service disputes such as billing irregularities;
- the metrology division of the Department of Intellectual Property, Standardisation and Metrology of the National Authority for Science and Technology for disputes about weights and measures such as faulty scales;
- The industrial property division of the same department for trade mark disputes; and
- The Law Enforcement Committee of the Department of Food and Drug for food or pharmaceutical safety disputes.

The publicity materials issued by the Department of Food and Drug provide a telephone number for the purpose of making such complaints, and in rural areas, the Department's provincial offices are also available to receive complaints in person. However, the Pharmaceutical Development Corporation recommends that for pharmaceutical complaints, rather than going to the Department, the consumer should complain directly to the manufacturers of their products, because only the manufacturer has access to batch numbers and can conduct testing on offending samples.

The WREA has indicated that in an emergency situation where damage has been done to the environment and consumers have suffered loss as a result, it attempts to mediate a negotiated solution for redress – however, this function lacks any legal backing.

In other sectors – such as consumer banking, or quality complaints outside of the food and drug sector – no such body exists to hear consumer complaints and provide redress. The National Chamber of Industry and Commerce provides arbitration services between its members, but not between members and consumers.

Similarly, whilst markets are governed by a committee, this mostly moderates disputes between vendors, rather than between vendors and consumers. Membership of the committee is limited to representatives of the vendors. There is no consumer representation on any market committee.

## Malaysia

### Redress Mechanisms

Generally, redress mechanisms available for consumers in Malaysia to resolve disputes and to seek compensations include:

- a. The Court System
- b. The Tribunal for Consumer Claims
- c. The Tribunal for Homebuyer Claims
- d. Alternative Dispute Resolution

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### **MINISTRY OF DOMESTIC TRADE COOPERATIVES AND CONSUMERISM (MDTCC)**

Claim and complaint centre under MDTCC:-

- **TRIBUNAL FOR CONSUMER CLAIMS**

The Tribunal for Consumer Claims (TCC) is a body established through the provision of Section 85, Part XII of the Consumer Protection Act 1999. Part XII of the Act contains 38 sections governing various aspects of the Tribunal such as membership of the Tribunal, jurisdiction of the Tribunal, proceedings of the Tribunal, awards of the Tribunal and other related matters. The Tribunal has the mandate to handle claims not exceeding RM 25, 000. As November 2012, a total of 7,126 claims were filed under the Tribunal for Consumer Claims, whereby 51% were on goods and 48% were on services.

- **E-ADUAN**

E-Aduan (E-Complaint) System is an online service initiated by the Ministry of Domestic Trade, Co-Operatives & Consumerism which has started since 14 June 2004. The main objective of e-Aduan system is to provide an online platform for the public to complaint on unethical business conduct in Malaysia.

Complaint can be made to [e-aduan@kpdnkk.gov.my](mailto:e-aduan@kpdnkk.gov.my) or contact the e-aduan hotline: 1800-886-800.

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### **PRIME MINISTER'S DEPARTMENT**

#### **PUBLIC COMPLAINT BUREAU**

A further example of a public sector Ombudsman scheme, although one which is administratively part of the Office of the Prime Minister and thus does not possess the degree of independence of the Ombudsman of the Republic of Indonesia can be found in Malaysia. Established in July 1971, the Public Complaints Bureau became a Department of the Government of Malaysia in 1992. PCB was set up as a watchdog and monitoring body to ensure efficient and fair administration of the government. There are 9 State Offices and the 197 Staff are under the Director General, Dato' Mahani Tan Abdullah. PCB has an Advisory Board with consumer representatives which meet twice each year. Administratively, the PCB is located within the Prime Minister's Department.

PCB investigates complaints about shortcomings/mismanagement of the ministries, department and agencies at the federal, state and local level. In common with most public sector Ombudsmen schemes, there are no fees or charges to lodge a complaint.

With consent, a complaint on behalf of another person can be lodged and anonymous complaints may be lodged if the complaint involves public interest and sufficient information is given by the complainant to enable investigation to be conducted.

Types of complaint that can be lodged to PCB:

- Delay / no action
- Unfair action
- Lack of public amenities
- Inadequacies of policy implementation and law
- Abuse of power / misconduct of civil servants
- Failure to adhere to set procedures
- Failure of enforcement
- Unsatisfactory service quality

Not all matters are within the jurisdiction of the PCB. Matters which cannot be dealt with include:

- those that are against Government policies
- matters under the jurisdiction of:
  - Public Accounts Committee (PAC)
  - Anti-Corruption Commission (MACC)
  - Enforcement Agency Integrity Commission (EAIC)
  - Legal Aid Department
  - Courts of Law

In common with other public Ombudsman schemes, the PCB employs a systematic approach to the provision of redress to complaints against government agencies.

In keeping with good practice principles, PCB generates a case number after a complaint is registered in the system. Following receipt, PCB sends a letter of acknowledgement to the complainant and investigation commences.

All correspondences relating to the investigation will be copied to the complainant for information and complaints which are of public interest will be brought to the attention of the Permanent Committee on Public Complaints and Cabinet. PCB informs the complainant of the result of investigations and follows up the complainant on the customer satisfaction index to evaluate the service of PCB.

PCB's Standard Operating Procedures stipulate that all complaints must be resolved within 15 days. Notwithstanding this general requirement, the time taken to resolve complaints will depend on the nature of complaints whether it is simple, moderate or complex. Simple cases may be resolved immediately or within 3 days. Moderate cases may be settled within 5 to 15 days.

To facilitate access, PCB does not require any supporting documents; however the complainant may supply some documents.

The Figure 5 below provides a typical complaint management flow diagram of PCB. Resolution times will depend on the nature of the scheme and the complexity of the issue at hand.

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### **TUNTUTAN TRIBUNAL PERUMAHAN (THE TRIBUNAL OF HOMEBUYER CLAIMS)**

TTPR was established on 1 December 2002 pursuant to an amendment to the Housing Development (Control and Licensing) Act 1966 [Act 118] and became fully operational on 1 January 2003.

- **Objective** - The objective of TTPR is to hear and adjudicate homebuyer claims in an easy, cheap and fast manner.
- **Mission** – The mission of TTPR is to continuously improve the level of TTPR's credibility in all aspects of management, administration and legislation under its jurisdiction.
- **Functions** - TTPR functions as an alternative forum for the homebuyer to claim for damages or compensation from the licensed housing developer in an easy, cheap and fast manner.

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### **MALAYSIAN MEDICAL COUNCIL (MMC)**

Pursuant to the Medical Act 1971, the MMC can only regulate its registered doctors. This is reflected in the Council statutory power to register doctors to 42 practices in Malaysia and to either reprimand, erase a doctor from the Medical Register or suspend a doctor's registration.

### **National Consumer Complaint Centre (NCCC)**

National Consumer Complaints Centre handles national and cross border complaints without any charge. It is the first and leading independent alternate consumer dispute resolution Organisation in Malaysia. NCCC receives consumer complaints through various channels such as phone, walk in, e-mail, messaging system, e-complaint, letters and fax. Currently, NCCC receives complaints from 20 industrial sectors. There are certain formats that need to be followed by the complainant before they can submit any complaint. Complainant are encouraged to submit an online complaint as it is easy, fast and cost efficient to the complainant.

NCCC primarily acts as a mediator between a complainant and a respondent. Unlike the Tribunal for Consumer Claim, the NCCC is not limited to cases with claims not more than RM 25,000.

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### **FORUM AIR MALAYSIA (WATER FORUM MALAYSIA)**

Forum Air Malaysia was formed to assist National Water Services Commission (Suruhanjaya Perkhidmatan Air Negara - SPAN) and carry out the duties as Forum Air under the Water Services Industry Act 2006. This includes the duties and responsibilities that are outline in Section 70 of the

Act. Forum Air Malaysia was formed on 5th May 2008 and was formally registered under Registrar of Society (ROS) on 25th July 2008.

Forum Air Malaysia acts as a platform for domestic and commercial consumers to interact while bridging the gap between the public and the government agencies such as SPAN and Ministry of Energy, Green Technology and Water (KeTTHA). While handling complaints regarding water and sewerage services, Forum Air Malaysia also involves actively in key stakeholders meetings by representing the voice of the consumers. Aside from organising numerous awareness campaigns together with SPAN, Forum Air Malaysia is carrying out its advocacy work intensively in order to push for a better water service industry in the country.

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#### **ADVOCATES & SOLICITORS DISCIPLINARY BOARD**

The Advocates & Solicitors Disciplinary Board (ASDB) is a statutory body established under the Legal Profession Act, 1976. It is a body entrusted with powers to conduct disciplinary proceedings and to mete out appropriate punishments on advocates and solicitors who have breached a particular provision of the Legal Profession Act 1976(as Amended) or the Rules made there under or any Rulings of the Bar Council.

A non-refundable fee of RM 100.00 is charged to Complainant to lodge complaints against Advocates and Solicitors. However, complainant will not be compensated for the fee paid.

#### **THE MALAYSIAN MEDIATION CENTRE (MMC)**

The Centre is a body established under the auspices of the Bar Council with the objectives of:-

- Promoting mediation as a means of alternative dispute resolution; and
- Providing a proper avenue for successful mediation;
- Providing a 5-day mediation skills training workshops for would-be mediators;
- Provide a 2 day workshop on introducing mediation to interested Organisation's;
- Maintaining a list of qualified mediators on the MMC panel; and
- Providing Senior Mediator Services to Members of the Bar.

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#### **BANK NEGARA MALAYSIA (BNM)**

BNM provides 4 modes of handling Complaint & Redress

- BNM provides 4 modes of handling Complaint & Redress
- BNMLINK- represents Bank Negara Malaysia's important points of contact with the general public, acts as a centralized point of contact to facilitate a rapid and effective response for financial consumers and businesses in matters related to the financial sector. Several channels of communication are available ie by telephone, e-mail, and fax, and letter, text messaging and face-to-face.
- **BNMTELELINK** – established to complement the walk-in counter services of the BNMLINK for the general public. BNMTELELINK can be contacted directly either by telephone, fax, letter or email.
- **Complaint units of financial institutions** – under BNM regulations, all commercial banks, Islamic banks, insurance companies, Takaful operators and card issuers are required to establish dedicated complaints units in their respective Organisations to address and respond to complaints in a timely manner.

- **Agensi Kaunseling dan Pengurusan Kredit (AKPK)** – The Credit Counselling and Debt Management Agency (AKPK) is an agency set up by Bank Negara Malaysia in April 2006 to provide financial counselling and debt management to individuals. AKPK also provides financial education to help individuals take control of their financial situation through wise use of credit.

Services offered by AKPK include:

- Financial education on the proper use of credit and basic money management
- One-to-one counselling and advice on managing finances wisely (budgeting, money management and credit related issues )
- Debt management program (managing personal debts with financial service providers)

#### Financial Mediation Bureau (Bank Negara)

The Financial Mediation Bureau (FMB) which was established in 2004 is an amalgamation of the Banking Mediation Bureau and Insurance Mediation Bureau in Malaysia. FMB started its operation in 2005 as a non-profit alternative dispute resolution channel. It was an initiative mooted by Bank Negara Malaysia (Central Bank of Malaysia) and supported by the entire financial industry. Y. Berbahagia Tan Sri Dato' Seri Siti Norma Binti Yaakob, a retired Chief Judge of Malaya, is the Chairman of the Board of Directors of FMB. The Board of Directors is constituted by 11 members. Of which, majority of the members are independent Directors.

The primary mandate of FMB is to ensure that all disputes against financial service providers in Malaysia arising from their services and products are being dealt with effectively to the satisfaction of all the stakeholders, in particular, the complainants. The members of FMB are the conventional and Islamic commercial banks, investment banks, insurance companies and takaful operators, selected development financial institutions and payment systems operators/card issuers. As at 31 December 2012, FMB has 106 members. In terms of manpower, FMB has a total strength of 40 employees, of which, 5 are Mediators and 14 Assistant Mediator.

In line with the fundamental principle of accessibility as subscribed by financial ombudsman services schemes worldwide, the complaint handling services provided by FMB is free of charge to the complainants. Over the last eight years, FMB has grown from strength to strength as an alternative dispute resolution channel, both in terms of the numbers of inquiries received and the number of complaints registered and resolved by FMB. In 2012, FMB received close to 14,000 enquiries from the general public through letters, emails, telephone calls and in-person (walk-ins), of which 35 per cent were enquiries on banking matters while 65 per cent related to insurance. As at 31 December 2012, a total of 1,919 new complaints were registered and 2,718 cases were closed by FMB. Out of which, a total of 1,161 cases related to banking and the remaining 1,557 cases were on insurance. The bulk of the cases were resolved by mediation (49.2%) and adjudication (32.7%) while the rest were attributed to withdrawal of complaints and those that fell outside the jurisdiction of FMB. The FMB is now well recognised as an independent and impartial alternative dispute resolution channel and has emerged as an important component of the dispute resolution landscape in Malaysia.

The success of FMB in resolving complaints contributes towards a sound, stable and competitive financial sector. FMB is expected to play an even bigger role with the proposed establishment of the Financial Ombudsman Services Scheme (FOS) by Bank Negara Malaysia, as outline in Bank Negara Malaysia's Financial

Sector Blueprint 2011-2020 and with the coming into force of the Financial Services Act 2013 and Islamic Financial Services Act 2013 on 30 June 2013. Bank Negara Malaysia and FMB are in the midst of formulating the FOS. The FOS, once approved by Bank Negara Malaysia, is expected to be implemented in 2014. It is envisaged that the mandate of the FMB would be expanded and greater powers would be granted to FMB under the proposed FOS so as to ensure that disputes between complainants and the financial service providers (limited to members of the FOS as prescribed by Bank Negara Malaysia by way of Regulations pursuant to the two laws) would be resolved efficiently and effectively.

#### Malaysian Communications and Multimedia Commission (MCMC)

The Malaysian Communications and Multimedia Commission (MCMC) is a statutory body established under the Malaysian Communications and Multimedia Commission Act 1998 (MCMCA) which implements and promotes the Government's national policy objectives for the communications and multimedia sector. MCMC key role is to regulate and promote the development of the communications and multimedia industry.

Pursuant to section 188 of the Communications and Multimedia Act 1998 (CMA 1998), a licensee is required to deal reasonably with consumers and adequately address consumer complaints. MCMC has issued the Guidelines on Complaints Handling which set out the principles and procedures for making, receipt, handling and resolution of complaints.

MCMC deals with consumer complaints through a three step process.

**Step One:** Problems with telecommunications, postal, internet and radio services must first be referred to service providers before further redress is sought

**Step Two:** Where complaint are not resolved or complainants are not satisfied with the resolution provided by the service provider, consumers can lodge their complaints to the Industry Forum i.e. content complaints are dealt with by the Communications and Multimedia Content Forum of Malaysia (CMCF), while complaints on services are dealt with by the Communications and Multimedia Forum of Malaysia (CFM)

**Step Three:** If consumers are still not satisfied with the resolution, complaints may be referred to MCMC

*The Communication and Multimedia Consumer Forum of Malaysia (CFM) [www.cfm.org.my](http://www.cfm.org.my)*

CFM is responsible for the administration of the General Consumer Code of Practice (GCC) for the Communications and Multimedia Industry Malaysia. The GCC was registered as a voluntary industry self-

regulatory code in 2003. The GCC is binding on and requires compliance of all licensees under the Communications and Multimedia Act 1998 (CMA)

- Under the code it is mandatory for licensed operators, specifies a comprehensive complaint handling regime which deals with:visibility and accessibility
- special needs
- responsiveness
- charges
- further recourse
- suspension of charges
- internal data collection and analysis
- review
- changes to complaint handling processes
- retention of records
- audit of the complaints handling processes of the Service Providers and of the Consumer Forum

Communications and multimedia transactions by consumers can lead to complex complaints requiring a considerable amount of expertise to resolve. In addition evidence shows that early in the complaint process, there should be avenues for clarification and mediation to resolve complaints. In Malaysia the CFM is one such means of providing early opportunities the mediation and for gradual escalation of complaints.

*Public Complaints Bureau-Malaysia [www.pcb.gov.my](http://www.pcb.gov.my)*

A further example of a public sector Ombudsman scheme, although one which is administratively part of the Office of the Prime Minister and thus does not possess the degree of independence of the Ombudsman of the Republic of Indonesia can be found in Malaysia. Established in July 1971, the Public Complaints Bureau became a Department of the Government of Malaysia in 1992. PCB was set up as a watchdog and monitoring body to ensure efficient and fair administration of the government. There are 9 State Offices and the 197 Staff are under the Director General, Dato' Mahani Tan Abdullah. PCB has an Advisory Board with consumer representatives which meet twice each year. Administratively, the PCB is located within the Prime Minister's Department.

PCB investigates complaints about shortcomings/mismanagement of the ministries, department and agencies at the federal, state and local level. In common with most public sector Ombudsmen schemes, there are no fees or charges to lodge a complaint.

With consent, a complaint on behalf of another person can be lodged and anonymous complaints may be lodged if the complaint involves public interest and sufficient information is given by the complainant to enable investigation to be conducted.

Types of complaint that can be lodged to PCB:

- Delay / no action
- Unfair action
- Lack of public amenities

- Inadequacies of policy implementation and law
- Abuse of power / misconduct of civil servants
- Failure to adhere to set procedures
- Failure of enforcement
- Unsatisfactory service quality

Not all matters are within the jurisdiction of the PCB. Matters which cannot be dealt with include:

- those that are against Government policies
- matters under the jurisdiction of:
  - Public Accounts Committee (PAC)
  - Anti-Corruption Commission (MACC)
  - Enforcement Agency Integrity Commission (EAIC)
  - Legal Aid Department
  - Courts of Law

In common with other public Ombudsman schemes, the PCB employs a systematic approach to the provision of redress to complaints against government agencies.

In keeping with good practice principles, PCB generates a case number after a complaint is registered in the system. Following receipt, PCB sends a letter of acknowledgement to the complainant and investigation commences.

All correspondences relating to the investigation will be copied to the complainant for information and complaints which are of public interest will be brought to the attention of the Permanent Committee on Public Complaints and Cabinet. PCB informs the complainant of the result of investigations and follows up the complainant on the customer satisfaction index to evaluate the service of PCB.

PCB's Standard Operating Procedures stipulate that all complaints must be resolved within 15 days. Notwithstanding this general requirement, the time taken to resolve complaints will depend on the nature of complaints whether it is simple, moderate or complex. Simple cases may be resolved immediately or within 3 days. Moderate cases may be settled within 5 to 15 days.

To facilitate access, PCB does not require any supporting documents; however the complainant may supply some documents.

*PRIME MINISTER'S DEPARTMENT*

*PUBLIC COMPLAINTS BUREAU*

The Public Complaints Bureau main function is to resolve public complaints and to obtain public feedback on government policies or programs towards enhancing the quality of life in Malaysia. The bureau plays an

important role in reducing bureaucratic inefficiencies, addressing public grievances as well as soliciting suggestions, recommendations and feedback from the people to continuously improve public service delivery.

The bureau investigates complaints about administrative actions of the Malaysian government, ministries, department and agencies at the federal level. All complaints can be referred to the bureau except matters under the jurisdiction of Public Accounts Committee, Anti-Corruption Commission, Legal Aid Bureau and Courts of Law.

BNM provides 4 modes of handling Complaint & Redress

- BNMLINK- represents Bank Negara Malaysia's important points of contact with the general public, acts as a centralized point of contact to facilitate a rapid and effective response for financial consumers and businesses in matters related to the financial sector. Several channels of communication are available ie by telephone, e-mail, and fax, and letter, text messaging and face-to-face.

## **Myanmar**

### **Redress Mechanisms**

The Myanmar legal system is primarily as a British-based judicial system, and a common law system based on the principle of stare decisis. The laws in the Republic of the Union of Myanmar are generally categorized into seven main categories according to the period in which they have been enacted:

(i) The Colonial Period Laws (before 1948); (ii) the Parliamentary Laws (1948-1962); (iii) the Revolutionary Council Laws (1962-1974); (iv) the Pyithu Hluttaw Laws (1974-1988); (v) the State Law and Order Restoration Council Laws (18 September 1988 to 14 November 1997); (vi) the State Peace and Development Council Laws (15 November 1997 to 30 January 2011); (vii) the Pyidaungsu Hluttaw Laws (31 January 2011 to the present day).

The mechanisms for consumer redress are generally embedded in the enacted laws in the country, which generally assumes the necessary legal proceedings for actions that may require legal representation through certified legal practitioners.

There is no specific consumer redress mechanism for consumer claims. However, there exist government agencies as well as non-governmental organisations which protect the rights of consumers in various fields. All the ministries concerned are working in coordination with each other to protect the rights of consumers in respective areas. The Department of Food and Drug Administration formed under the Ministry of Health ensures the product safety of consumer goods such as food, medicine and health products by taking necessary actions and issuing Worldwide FDA certificate for food and drug. The Ministry of Commerce is responsible for issuance of import and export licences for consumer products and ensures not to allow unsafe products into the country as well as abroad. Industry-wise codes or Guidelines which are to be followed by all business

Organisations in the industry are being prepared and developed by business associations such as Myanmar Pharmaceutical Association, Myanmar Fishery Association, other entrepreneurs' associations, non-governmental organisations and the Republic of the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) in cooperation with the government agencies.

There are related laws for consumer redress in the Republic of the Union of Myanmar. Generally, the Civil Court handles civil disputes according to civil law and the Criminal Court handles criminal disputes according to criminal law (the Penal Code). There are also the Arbitration (Protocol and Convention) Act, 1937 and the Arbitration Act, 1944 which relate to arbitration in the Republic of the Union of Myanmar.

The respective government agencies are now trying to handle consumer redress issues all over the country. Currently, the Republic of the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) sets up arbitration body namely Arbitration and Mediation Committee which resolves mainly trade disputes occurred among the members of the association. When the disputes could not be settled by means of arbitration or mediation, the Court is the destination place which gives the final decision.

## Philippines

### **Redress Mechanisms**

Law No. 30/1999 on Arbitration and ADR, which was promulgated in 1999, provides the rules for Arbitration and ADR (consensually based dispute settlement). Article 2 of the Law describes the scope of application of the Law that applies for disputes settlement that is predetermined by parties in the agreement/contract. The use of arbitration in the administrative type ADR such as in the labor, environment and consumer protection dispute settlement are also prescribed in the Law No. 30/1999.

In Indonesia, generally, ADR is interpreted as alternative to adjudication as it is reflected in the title of the Law No. 30/1999 which separates ADR<sup>10</sup> and arbitration. Indonesia has been practicing four main types of ADR, namely:<sup>11</sup>

1. Judicial Type ADR (Court Connected ADR)
2. Administrative Type ADR
3. Private Sector Type ADR
4. Traditional Type ADR

The Law on Consumer Protection (Law No. 8/1999) introduces Consumer Dispute Settlement Agency (Badan Penyelesaian Sengketa Konsumen), or CDSA, is established by local government in each district/city level for the purpose to serve out court settlement through mediation, conciliation and arbitration. CDSA is a non-structural institution having the function of "setting consumer dispute outside the court cheaply and simple in short of time." . By the end of October 2013 there has been 111 CDSA.

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10 ADR includes negotiation, mediation, conciliation, early neutral evaluation and other hybrid type of ADR.

11 Extracted from Mas Achmad Santosa (2002)

CDSA membership consists of representative from the government, consumers and entrepreneurs. The number of CDSA membership is at least 9 people and each element is represented by three people, and at most 15 people who each element is represented by five people.

CDSA is expected to facilitate, accelerate and provide a guarantee of legal certainty for consumers to demand the civil rights to the irresponsible entrepreneurs. Moreover, it can also be an access to obtain information and guarantee of equal legal protection for consumers and entrepreneurs.

In the handling and settlement of consumer disputes, CDSA authorizes to perform research and investigation of evidence of letters, documents, goods, laboratory test results, and other evidences, whether submitted by consumers or entrepreneurs.

The basic principles of the settlement in CDSA, as follows:

- g. Settlement of consumer disputes through CDSA based on voluntary choice of the parties. When the parties have agreed to choose CDSA as a place of dispute settlement, the parties must agree for a second time to choose one of ways of dispute settlement applied in CDSA, such as by way of conciliation or mediation or arbitration.
- h. Not Tiered  
If consumers and entrepreneurs have agreed to choose the way of resolving disputes by conciliation, and the settlement is not entirely in the hand of parties, then the dispute settlement can not be proposed by mediation or arbitration.
- i. Settlement by the Parties  
When the parties have agreed to choose the way of resolving the conciliation or mediation, the Settlement entirely in the hands of the parties either on the shape and size of compensation payments in cash or installment. CDSA Assembly is merely as a facilitator who must provide input, advice, and explanation in regard to the contents of the Consumer Protection Act.
- j. Settlement by the Assembly  
When the parties agreed to choose the arbitration settlement, the settlement are fully submitted to the CDSA Assembly both form and amount of indemnification.
- k. Without a Lawyer  
In settlement principle of consumer disputes through CDSA without a lawyer (attorney), considering that this is highlighted in the deliberative process of dispute resolution, that is not tight or stiff personal legal problems, because the decision expected in CDSA is a win-win solution.
- l. Cheap, Quick and Simple  
The disputes settlement in CDSA has no charge, both to consumers and entrepreneurs, and also the settlement time is relatively fast, i.e within 21 working days at the latest the decision has been issued by CDSA.

Duties and functions of CDSA as provided in Article 52 of Act No. 8 Year 1999 on Consumer Protection, as follows:

- n. To carry out the handling and settlement of consumer disputes by mediation, or conciliation, or arbitration;
- o. To provide consultation of consumer protection;
- p. To supervise the inclusion of standard clause;
- q. To report to the investigator in case of violation of general provisions of law;
- r. To receive complaints, both written and unwritten, from the consumer about the occurrence violations of consumer protection;
- s. To conduct research and examination of consumer protection disputes;
- t. To summon the suspected entrepreneur allegedly committing a violation of consumer protection;
- u. To call and present witness, expert witness and/or any person who is considered knowing about the violation of law;

- v. To ask for investigator help to bring the entrepreneurs, witnesses, expert witnesses, or anyone who are refused to fulfill the summon of consumer dispute settlement;
- w. To obtain, inspect and/or assess a letter of document, or other evidence for the investigation and/or examination;
- x. To decide and determine the presence or absence of loss in the part of consumer;
- y. To informing the decision to entrepreneur committing a violation of consumer protection;
- z. To impose administrative sanctions to entrepreneur violating the provisions of law.

Consumers can complain to the CDSA as long as meet the following requirements:

- Consumer as the party who proposes complaint or lawsuit request, can only be accepted if submitted by end consumer. End consumer, also includes foreigner residing in Indonesia. A group of people/consumers lawsuit who have similar interests, known as a class action lawsuit can not be accepted in CDSA, as well as a lawsuit proposed by NGO. Both of lawsuits could only be proposed to the District Court.
- Consumer complaint to the CDSA is only directed to entrepreneur, including public enterprises and state enterprises, but not to government institutions.
- The consumer complaint to the CDSA is only goods and/or services in regard to 5 (five) parameters, as follows:
  - Goods that do not meet the standards
  - Misleading information
  - The way of selling inflicts a financial loss
  - The contract default

Two types of ADR exist in the private sector:

- (1) business association type - established, attached or facilitated by business association such as Indonesian National Board of Arbitration ..
- (2) independent type - by independent Organization such as the Indonesian Institute Conflict Transformation which was established in 2001 (which and non-government Organization working with public on case settlement, dispute system design and capacity building works); also the Indonesian Mediation Centre which provides the mediation service of private and commercial cases.

Further, the Supreme Court Regulation No. 1/2008 concerning Mediation Procedures within the Court states that to Mediation is mandatory for parties in dispute and handling judges;

- o Parties in disputes can select listed mediator(s)
- o Code of Conduct developed by the Supreme Court is a basis for mediator to conduct his/her tasks;

Agencies or Organizations involved in complaints handling and redress:

- YLKI received 40 – 60 complaints monthly. For other NGO on Consumer Protection in Indonesia received 3300 complaints during 5 years
- CDSA has resolved 1270 complaints during 5 years
- Telecommunication Regulatory Authority has a complaint centre to receive the complaints from the public.
- Directorate of Consumer Empowerment, Ministry of Trade received 30-40 complaint monthly.

- Directorate of Electricity Business Affairs Supervision, Ministry of Energy and Mineral Resources has resolved ± 400 complaints during 5 years.
- Department of Banking Investigation and Customer Protection, Bank Indonesia (BI) has settled 189 disputes through Banking Mediation during the last 5 years. Besides, BI has some channels for banking customer both to ask some advices and to submit their dispute settlement proposal according to banking matter, such as e-mail ([mediasi@bi.go.id](mailto:mediasi@bi.go.id)), phone line (+62-21-29818923), and face-to-face consultation. There is no fee for this process, but there are some codes of conduct to be obeyed by each party (the customer and the bank) before the mediation meeting starts.

### **Challenges**

Complaint handling mechanism for any issues related to banking lies mainly on the onus of the banks to handle and deliver its resolution back to the customer. In some case, whereby banks are unsuccessful to handle and give a satisfying resolution to the customer, there is an alternative dispute resolution through Banking Mediation in Central Bank (Bank Indonesia) as an option for the customer and a further step in resolving banking problem. Therefore, Banking Mediation is a following action of customer complaint resolution after the dispute had undergone a dispute settlement process by the bank. In this process, Central Bank (Bank Indonesia) acts as neutral party and motivates each party to settle down the dispute by mediation.

In Banking Mediation process, further actions or sanctions or reimbursement may not be imposed on the bank.

Consumer Organization suggests that industry (banks) should handle customer complaint as good as possible and any cost incurred by Central Bank (Bank Indonesia) to settle their cases.

### **Singapore**

The Consumer Protection (Fair Trading) Act has provisions for civil remedies, with appropriate and practical channels for redress and compensation for consumers. The following are the different agencies in Singapore that are involved in providing redress for consumers.

#### **Agencies handling consumer complaints in Singapore**

<b>Agency</b>	<b>Affiliation</b>	<b>Types of complaints handled</b>	<b>Complaints filing mechanisms</b>
Consumers Association of Singapore	Independent	Consumer to Business transactions (goods/services):	<ul style="list-style-type: none"> <li>- General phone hotline</li> <li>- Fax</li> <li>- Walk-in consultation</li> <li>- Online submission</li> </ul>
Financial Institution Disputes Resolution	Independent	Banking and finance, insurance products/services	Fax, Post, Email

Agency	Affiliation	Types of complaints handled	Complaints filing mechanisms
Centre (FIDReC)			
Singapore Mediation Centre	Independent	Arranges mediation sessions for dispute resolution between parties	Mediation session in person
Small Claims Tribunal	Government	All consumer goods and services; Civil claims regarding all goods and services	Filing a claim: Personally and through fax
Monetary Authority of Singapore (MAS)	Government	Civil Penalty Enforcement Action For False Trading	Filing a claim: Personally and through fax

### ***An Overview of the Small Claims Tribunal in Singapore***

While CASE is still searching for ways to make a difference, the Small Claims Tribunal established under the Small Claims Tribunal Act (Cap 308) provides redress at relatively insignificant costs. The relatively quick and inexpensive nature of the Tribunal is shown by the amount that an individual consumer pays to initiate legal action (only SD10). Even a non-consumer (business) will only pay SD50. Far more important perhaps for the consumer is that legal representation is not allowed; which means that parties appear in their own capacity. Thus the consumer will appear on his own while the corporate defendant will not be able to send its highly experienced legal counsel as would happen in the regular courts. Any claims brought before the Tribunal should involve less than SD10,000; it is possible for this to go up to SD20,000 if the parties so agree. The types of disputes that can be brought to the Tribunal are those arising from sale of goods, supply of services and damage caused to property.

As regards the time period, claims can be initiated within one year from occurrence of a cause of action; otherwise, the consumer will have to use the regular courts. As might have become evident from what was said already, the Tribunal engages in very little that may pass as legal procedure. Above all, it attempts to mediate between the disputing parties and, if that fails, it issues orders. This makes it a convenient forum for those who cannot possibly find the time or the resources to mount legal battles to obtain redress<sup>12</sup>. Any party that is dissatisfied by the decision of the Referee (a legally qualified person with the same powers as a Magistrate hearing the case) can appeal to the High Court only on matters of law.

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<sup>12</sup>For a succinct account of the workings of the Tribunal, see, George TSL Shenoy and Toh See Kiat, *Legal Aspects of Doing Business in Singapore*, Addison-Wesley, 1996, at 321-325.

### ***Alternate Dispute Resolution in Singapore***

Apart from the Supreme court and Subordinate Courts, Singapore depends a lot on the Alternative Dispute Resolution Services to solve out certain civil problems of the citizens. And, those are best managed by agencies like Community Mediation Centre (CMC), Singapore International Arbitration Centre (SIAC) and Singapore Mediation Centre (SMC).

#### **Community Mediation Centre**

CMC mainly focuses on community disputes and not on commercial ones. Community disputes are essentially social in character and those include neighbourhood and family disputes excluding family violence, disagreements with friends, conflict between strangers, various sorts of squabbles and so on. CMC acts as a mediator who helps the two opponent parties to get settled either through joint meetings of both parties or through private one-on-one session. Just like other court cases each side is given a chance to put up their points and during joint sessions the mediator asks questions to clarify doubts and to gather more information on the issue. Parties can even meet the mediator privately in separate sessions called caucuses to reveal their private viewpoints which they are not ready to disclose before their opponents. Generally this body tries to solve the problem within an hour but if the case is too complicated then, it might take even six hours.

#### **Singapore International Arbitration Centre**

SIAC maintains complete transparency while acting as an Alternative Dispute Resolution body. It helps parties in getting appointments of arbitrators, in managing the financial aspect of the arbitration and making the progress of arbitration very smooth. It functions according to the guidelines mentioned in its Code of Practice. It is well equipped with a wide range of multinational and multicultural professional secretariat who suggest solutions which are culture specific and this sensibility is required for solving civil matters which are very much socio-cultural in nature.

#### **Singapore Mediation Centre**

SMC is a prominent ADR body that provides solutions through Neutral Evaluation and Mediation/Arbitration methods. It also provides training facilities in Negotiation, Mediation and Conflict Management.

Other key agencies in Singapore involved in the work of alternative dispute resolution are the Consumer Association of Singapore (CASE) Mediation Centre and Financial Industry Disputes Resolution Centre. It is easy to access Alternative Dispute Resolutions in Singapore and the best part of the story is that trivial disputes get solved in an hour which generally goes on for years in other nations. One can really come to a solution and settlement through the intervention of a legal mediator through discussions and counselling.

#### ***Cross Border Redress***

Under the cross border redress, The Consumers Association of Singapore (CASE) has signed a memorandum of Understanding (MOU) with its counterpart the Federation of Malaysian Consumers Associations (FOMCA) in August 2010. The MOU strengthens bilateral cooperation between CASE and FOMCA in the areas of information sharing and will pave way for a cross border consumer dispute resolution. The MOU was signed by CASE President Yeo Guat Kwang and FOMCA President Datuk Marimuthu Nadason. Officials from both countries' trade ministry were present at the signing ceremony. The signing of the MOU reinforces the already strong ties between CASE and FOMCA. It paves the way for both CASE and FOMCA to discuss the setting up of a channel to help consumers to

resolve consumer related disputes in our respective countries. Such a channel will protect consumers from both countries - Singapore consumers can seek CASE's assistance to resolve their consumer-related dispute with vendors in Malaysia and Malaysian consumers can similarly seek FOMCA's assistance if they have a dispute with vendors in Singapore. The MOU between CASE and FOMCA is the fourth MOU that CASE has signed with consumer associations overseas. The previously signed MOUs were with China Consumers' Association, Consumer Coordination Council (India), and Macao SAR Government Consumer Council (CCM) respectively.

## **Thailand**

### **An Overview of Consumer Protection**

Under the Constitution of the Kingdom of Thailand of 2007, Section 61 states that consumers shall have the right to receive actual information and shall have the right to make a complaint for remedy of damage. And there shall be an autonomous consumer protection organization for giving opinions to the State agency on the enactment and issuance of laws, rules and regulations and on the determination of various measures for consumer protection. And also Section 84 specifies that the State shall regulate business activities for free and fair competition, antimonopoly, and consumer protection.

Regarding related acts on Consumer Protection, the main consumer protection law is the Consumer Protection Act 1979 which was amended in 1998 and in 2013. The Office of the Consumer Protection Board (OCPB) has the responsibilities according to this Act. The Act specifies the right of consumers in five aspects including the right to receive correct and sufficient information and description of the quality of goods or services, the right to enjoy freedom in the choice of goods or services, the right to expect safety in use of goods or services, the right to receive a fair contract, and the right to have the injury considered and compensated in accordance with laws. The Act provides protection in mainly 3 fields: advertising, labelling, and contracting, and will provide protection in the area where there is no specific law.

Other specific laws on consumer protection are such as Direct Selling and Direct Marketing Act of 2002, Law on the Liability to Damages caused by Unsafe Products (Product Liability Act of 2008), Consumer Case Procedure Act of 2008, Cosmetics Act of 1992, Food Act of 1979, Condominium Act of 1979, Medicine Act of 1958, Commercial Bank Act of 1962, Price of Goods and Service Act of 1999, Unfair Contract Term Act of 1997, Industrial Product Standard Act of 1968 etc.

There are consumer redress mechanisms in many agencies such as the OCPB, the Civil Court and the Court of First Instance.

### **Office of the Consumer Protection Board (OCPB)**

The OCPB is a department level agency under the Office of the Prime Minister, established in pursuant to the Consumer Protection Act of 1979. It receives complaints from the consumers whose rights are violated from any action of business operators. Complaints will be considered and the compensation will be made to the consumers for loss or injury caused by business operators.

The Mechanism of Consumer Complaints Handling and Redress of the OCPB is based on:

- **Mediation**

1. Preliminary mediation by the officials of Office of the Consumer Protection Board.

- Consider the facts from the complainant (consumer).

- Call the business operator and the consumer for mediation by the officials of Office of the Consumer Protection Board as mediator.

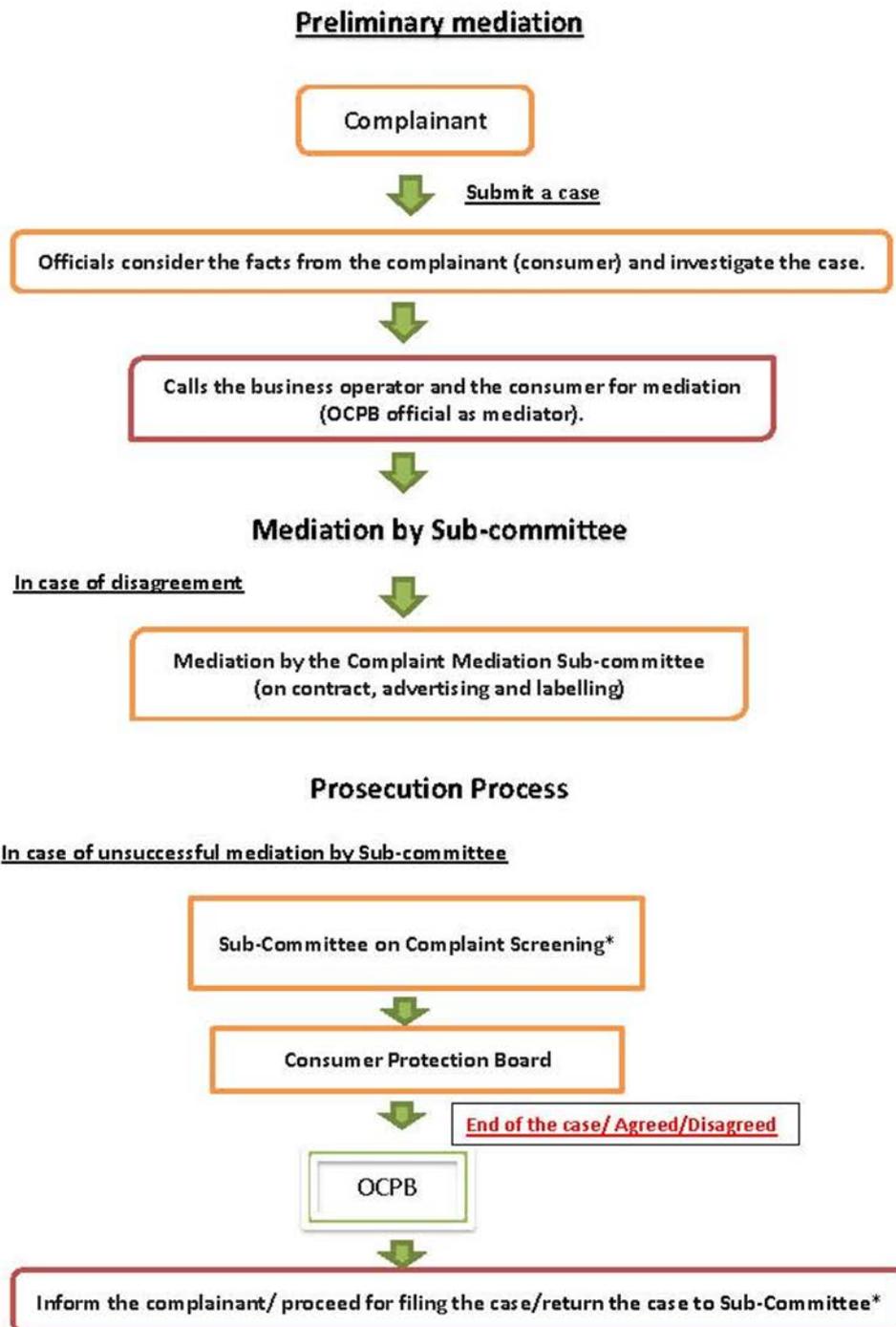
2. Mediation by the Complaint Mediation Subcommittee (on contract, advertising and labelling) or the Sub-Committee on Complaint Screening for further consideration, if the preliminary mediation fails.

- **Prosecution**

By the Consumer Protection Board's decision to file the court case on behalf of the consumer without any payment of government expense, consumers shall be redressed.

The OCPB complaint handling and redress procedure shows in the chart which follows

## Complaint Handling and Redress Procedure



Office of the Consumer Protection Board, 2013

Regarding protections in other fields, consumer complaints are handled by different agencies. These are examples of other related consumer protection agencies which are responsible for their specific areas.

### **Civil Court**

Consumer Division in the Civil Court has been designed for the management of Consumer Case proceedings; comfortably, fairly, efficiently, shortly duration of the case proceedings, adding higher standards for the business and an improbity deterrence. Under the Consumer Case Procedure Act 2551 (2008), which came into effected on August 23, 2008, is an important legislation with respect to handling disputes between consumers and business operators. The Act contains both procedural and substantive provisions. It has provided avenues for consumers to file complaints against business operators for various types of violations. The Act simplifies and expedites the legal process for consumers to seek redress when they are injured or have sustained damage by allowing consumers to file complaints orally, by having the Case Officer arrange for the recording of details of the complaint and ask the plaintiff to sign. Moreover, to ensure access to legal remedies for all, the Act waives court fees for consumers who wish to file an action (although restrictions apply). The court is also given considerable discretion under the Act to conduct the proceedings and to make sure that consumers receive fair treatment.

(Source : Consumer Division, Civil Court, Office of the Judiciary, 22 October 2013).

### **Court of First Instance**

The amount of Thai and foreign tourists traveling to different areas across the country has increased which results in the distribution of income into all economic sectors but causes more disputes. Such disputes have arisen in consumer protection cases due to the consumption of goods and services and criminal cases which the tourist might be involved as injured person or a defendant. These cases are unique as most tourists stay in each place, which can be a scene of action, in short period of time. Tourist Protection Section under the Office of the Judiciary is established to provide a special section in each court of justice located in major tourist attraction areas such as Bangkok, Chiang mai, Kho Samui, Phuket in order to implement such cases quickly and fairly. Whereas the Office of the Court of Justice issues Notification establishing Tourist Protections Section adopt the Rule of Practice governing civil and criminal proceeding in relation to tourist.

(Source : Tourist Protection Section, Court of First Instance, Office of the Judiciary, 25 October 2013).

<b>Issues</b>	<b>Agency</b>
1. Food, drug, cosmetic, medical devices, narcotic/toxic substances	Food and Drug Administration, Ministry of Public Health
2. Unfair medical treatment and services	Medical Council of Thailand, Ministry of Public Health
	Department of Health Service Support, Ministry of Public Health
3. Private medical center (Weight loss clinic, private hospital)	Bureau of Sanatorium and Art of Healing, Department of Health Service Support, Ministry of Public Health
4. Price, stockpile, no display price tag, standard of measure, quality of fuel and lubricants	Department of Internal Trade, Ministry of Commerce
5. E-commerce	Department of Business Development, Ministry of Commerce
6. Insurance	Office of Insurance Commission, Ministry of Commerce
7. Products quality and standards	Thai Industrial Standards Institute, Ministry of Industry
	National Bureau of Agricultural Commodity and Food Standards, Ministry of Agriculture and Cooperatives
8. Land permits	Department of Lands, Ministry of Interior
9. Economic Crime	Economic Crime Division, Royal Thai Police
10. Technology Crime	Technology Crime Suppression Division, Royal Thai Police
11. Tourism	Tourist Police Division, Royal Thai Police
	Department of Tourism, Ministry of Tourism and Sports
12. Transportation	Bangkok Mass Transit Authority
	Ministry of Transport
	Department of Civil Aviation
	Department of Land Transport
13. Unfair administration	Department of Provincial Administration, Ministry of Interior

## **Vietnam**

### ***Redress mechanism as prescribed by the Law on Protection of Consumers' Interests.***

The newly enacted Law on Protection of Consumers' Interests prescribes these forms of redress mechanisms: negotiation, mediation, arbitration, and court. It also sets new regulations on parties' responsibilities.

In civil cases, consumers and the consumers' interests protection associations shall bear the burden of proof to prove the mistake of business individuals and organisations. They will also be exempted from court fees and charges when they file a civil case for consumer protection. Business individuals and organisations, on one hand, shall bear the burden of proof with regard to their innocence.

### ***Available redress mechanisms***

#### **Under the ordinance**

Redress is not popular among consumers in Vietnam. Most of them think that the subject of the complaint is not worth the time and effort. Consumers, particularly the poor, have limited appreciation of redress. It is the highly educated who are more likely to complain about faulty consumer products and services and they mostly complain about mobile phones, cars, and insurances.

More popular than the consumer complaints mechanism of the government is the Consumers Complaint Bureau which is set up and being run by the Vietnam Standard and Consumers Association. The bureau handles consumer complaints, including those of small value like cakes and candies and resolves this usually through mediation. The number of complaints that the bureau receives is nth time more than those submitted to the Vietnam Competition Authority.

The bureau accepts complaints from consumers by phone, email and through their website:

<http://www.nguoitieudung.com.vn>

Most consumer organisations in provinces and other cities in the country are also dealing with consumer complaints. Just like the Consumers Complaint Bureau, consumer organisations resolve complaints via conciliatory mediation with relevant functional government agencies.

#### **Under the new law**

##### **New short court**

Consumers have the right to initiate a lawsuit in accordance with fast track procedures when the following conditions are met in full:

1. There is only one plaintiff who is a consumer;
2. The transaction is valued up to 100 million;
3. The defendant directly supplies goods and services to the consumer;

##### **Forms of penalizing administrative offenses in the sector of consumers' interests protection**

The law prescribes the forms of penalising administrative offenses: warning, fine and supplementary forms of penalisation. The latter includes the following:

- Strip of the right to use its license and professional practice certificate
- Compulsory suspension or temporary suspension of the business activities in the sector where the act of violation is committed
- Confiscation of evidence and means used for violation
- Confiscation of profits gained from acts of violation
- Put in public list of business individuals and organisations which violate consumers' interests.