



**ASEAN AUSTRALIA DEVELOPMENT COOPERATION PROGRAM (AADCP)
PHASE II**

**TERMS OF REFERENCE
FOR**

**THE DEVELOPMENT OF THE ASEAN ALTERNATIVE DISPUTE RESOLUTION (ADR) GUIDELINES
FOR CONSUMER PROTECTION**

The ASEAN Secretariat and the Australian Government, through AADCP II, invite applications from consultants for the above-referenced project.

I. Background

Effective enforcement mechanisms are the most important part of any consumer protection policy. To enable consumers to obtain redress, a coherent, adequately resourced and easily accessible infrastructure must exist. Enforcement mechanisms must be credible and easily accessible, especially to vulnerable and rural consumers. Effective enforcement infrastructure may include access to advice, counselling and legal support in general.

In 2013, ASEAN conducted a [study](#) to identify complaint and redress mechanism models for consumers within ASEAN Member States (AMS). Various options for complaint handling systems and consumer redress mechanisms in ASEAN were explored including the use of alternative dispute resolution (ADR) techniques to provide redress. ADR techniques provide an alternative to going to court to resolve disputes. It has become increasingly popular and used in instances where traditional litigation through the courts have experienced delays or where the cost is prohibitive. There are many variations in the way it can be applied but the underlying principle is that ADR provides a low-cost, speedy and relatively informal way of resolving consumer complaints. ADR are considered as “out-of-court” procedures and are usually used alongside existing legal systems and can be both informal and formal institutional processes. It promotes amicable settlement of disputes, by encouraging the use of mediation, and by adopting measures that ensure a balanced relationship between mediation and judicial proceedings and ensuring effective redress for victimized consumers in cases involving fraudulent and deceptive or misleading advertising commercial practices.

AMS are in different stages in establishing and utilising ADR as part of their consumer dispute resolution and redress mechanism. There is yet clarity over how the ADR is understood, set up and practiced in the various AMS. To ensure common understanding and approach on ADR across ASEAN, there is a need for ASEAN policymakers to have a common reference document, which describes the various approaches to ADR, and the considerations, requirements and steps necessary for effective establishment and application of ADR mechanism, particularly within the context of ASEAN consumer protection policy framework and practice. As a response to this need, this project will develop an ASEAN ADR Guidelines for Consumer.

The Guidelines will be useful not only for countries with less developed consumer protection ADR mechanisms but also for all AMS in promoting use of existing ADR methods as well as exploring other

methods to enhance their dispute resolution and redress mechanism.

The primary audience of the Guidelines is the ASEAN Committee on Consumer Protection (ACCP) and the relevant ministries in the AMS, who are responsible in consumer protection. The Guidelines can also promote co-operation with businesses, industry groups, and consumer groups in furthering consumer and business understanding of how to avoid disputes, dispute resolution and redress mechanisms available to consumers, and where consumers can file complaints. Ultimately, the existence of the ADR Guidelines will hopefully lead to greater utilisation of ADRs in the AMS.

In developing the Guidelines, the consultant will work with the ASEC Competition, Consumer Protection and Intellectual Property Rights Division (CCPID) and the representatives of the AMS.

II. Needs and Objectives

The project aims to enable ACCP and relevant ministries in the AMS in setting up and implementing effective ADR mechanisms in their respective countries.

The project will: 1) assess the ADR mechanism/methods available in AMS and identify international best practices both within ASEAN and beyond; and 2) develop a guideline for common approaches to ADRs, including consideration of a mechanism for resolving consumer complaints through consumer groups. The process will include consultations with stakeholders to share experiences and validate the Guidelines prior to the public dissemination.

III. Outputs

The project will have three main outputs, namely Country Assessment and Best Practice Report, the ASEAN ADR Guidelines for Consumers, and the Policy Paper on ADR for Consumer Protection.

- 1) **Country Assessment and Best Practices Report** will assess the ADR mechanism/methods available in AMS and identify international best practices both within ASEAN and beyond;
- 2) **The ASEAN ADR Guidelines for Consumers** will cover the following:
 - (i) Objectives of the different types of ADR as well as the factors to be considered when setting up the various ADRs, particularly in the context of AMS consumer protection policies.
 - (ii) Assessment of the feasibility in practice of each type of ADR such as practicality, institutional and cultural fit, human and financial resources, and power parity among potential users;
 - (iii) Preparations needed for establishment of the appropriate ADR such as a needs assessment and identification of goals, participatory design process (involvement of relevant stakeholders), adequate legal foundation, and effective support;
 - (iv) Implementation criteria — effective selection, training and supervision of ADR providers, financial support, outreach, effective case selection and management, and program evaluation procedures; and

(v) Appropriate legal status of each of the ADR – whether decisions would have binding commitments?

(vi) Common approaches to establish the different types of ADR – possibly in stages.

Taking into account the different stages of consumer protection development across the region, the Guidelines will provide ADR types/ methods for AMS to consider, and step-by-step approach in putting those ADRs in place, that can be applied across all AMS. The guidelines should be designed to support the countries with less developed consumer protection ADR mechanisms but should also be suitable for all AMS. They should be flexible and easily adaptable and replicable for country-specific contexts. They should also be suitable and relevant to countries that are still in the early stages of developing consumer protection systems as well as those with more advanced consumer protection legislations and programs.

Development of the Guidelines will include consultations with stakeholders to share experiences and validate the Guidelines. Close to the end of the project, there will also be a presentation of the draft Guidelines to the ACCP members and relevant stakeholders such as representatives of the ASEAN Consumer Associations Network (ACAN). Experiences from AMS and non-AMS experts may be exchanged during these consultations.

3) **Policy paper on ADR for Consumer Protection**, of no more than 10 pages, providing a succinct summary of the results from the various aspects of the project which will assist in mobilizing support for establishing or further enhancing ADR mechanisms in ASEAN.

All outputs produced under this project must be written in a way that is suitable for publication and public dissemination.

In addition to the outputs mentioned above, the consultant is expected to produce the following reports:

- 1) **Inception Report** which would provide a brief description of the rationale of the project, the objectives and intended users, the approach and methods to be used, resources involved (including a brief detailed background of the experts that will work on the project), a detailed work plan, risk management plan, and the means to monitor and evaluate the implementation of the project. The report will also include an outline of the Guidelines, a draft agenda for the consultation to present the draft of the Guidelines to the stakeholders, and an outline of the project completion report.
- 2) **Project Completion Report** (no more than 30 pages), explaining the results from the various aspects of the project which includes recommendation on the next steps towards the establishment and/or further enhancement of national ADR in AMS. The Project Completion Report will establish a record of the project achievements against the project's original intended purpose and outputs. It is intended to assist in assessing impact, draw out conclusions and lessons learned that may be valuable in designing new related initiatives.

IV. Tasks/Activities

The following activities will need to be undertaken to achieve the project's outcomes. The bidder should provide details on its approach to each activity in its bid and is free to recommend additional activities. These will be expanded as part of the contracting and project inception processes.

Deliverable		Activity	Person working weeks	Completion Date (Indicative)	Person(s) responsible
1	Project Inception Report	Develop over-all approach to the delivery of the expected outputs	1	2 weeks after signing of the Special Services Agreement (SSA)	Consultant to draft report, with inputs from CCPID
		Prepare updated and detailed work plan and budget			
		Draft and finalise the inception report based on feedback			
<i>Approval of Project Inception Report by ASEC (3 weeks)</i>					
2	Country Assessment and Best Practices Report	Undertake desk top study	7	Week 8	Consultant
		Draft and finalise country assessment and best practices report as necessary following comments			Consultant to draft report, with inputs from CCPID
		Draft ADRs guidelines for Consumers			Consultant to prepare draft ADRs guidelines. CCPID to provide feedback
3	Consultative Workshop Report and Finalised ADRs Guidelines	Organise and deliver consultative workshop	3	Week 11	Consultant
		Evaluate and synthesise results			
		Finalise the ADRs Guidelines based on the feedback			
		Prepare and finalise Consultative Workshop Report incorporating participants and CCPID feedback			
<i>Approval of Needs Assessment and Best Practices Report, Consultative Workshop Report and Finalised ADRs Guidelines by ASEC (3 weeks)</i>					

Deliverable		Activities	Person Working Week	Completion Date (Indicative)	Person(s) responsible
4	Policy Brief and Project Completion Report	Prepare and finalise Policy Brief	2	Week 19	Consultant to draft policy brief and report with inputs from CCPID
		Prepare and finalise Project Completion Report			
<i>Approval of Policy Brief and Project Completion Report by ASEC (3 weeks)</i>					

The timing of the tasks/activities is indicative and can be adjusted when the contractor's work plan is developed, subject to mutual agreement.

V. Reporting

The consultant is expected to produce reports in accordance with Sections III and IV above.

All reports will be submitted based on ASEAN-Australia Development Cooperation Program Phase II (AADCP II) Guidelines for Contractors in draft format to ASEC CCPID (with a copy to AADCP II) and, following ASEC approval, in final form. All outputs and reports must be suitable for publication, although the decision on publication lies with the ASEAN.

The contractor will also provide regular (weekly, bi-monthly or as agreed with ASEC) summation of activities undertaken and issues that have arisen. These will be submitted to CCPID and AADCP II via email.

Financial reports will be submitted at invoicing in line with a payment schedule to be specified in the Special Services Agreement (SSA).

VI. Work Management

The project will be funded by AADCP II and managed by ASEC CCPID.

CCPID will act as the ASEC key focal point for the project. It will:

- oversee project implementation and together with AADCP II monitor progress of the consultancy work;
- provide technical supervision to the project;
- assist/facilitate introductory consultation meetings with key Member States focal points; and
- provide over-all guidance on the organization and conduct of the workshops and meetings

The consultant should be responsible for organising and conducting the scheduled activities in collaboration with the host countries and ASEC.

The Program Planning and Monitoring Support Unit (PPMSU) of AADCP II will provide technical support to CCPID for the implementation of this project, as required.

VII. Scope of Services

The consultancy will be undertaken over an **effective period of five (5) calendar months** with approximately **thirteen (13) person weeks** of professional services. Work will commence immediately after contract signing.

• Qualifications

In its proposal the bidder should demonstrate:

- Thorough understanding on consumer redress mechanism in particular the various forms of ADRs;
- Extensive experience in consumer rights, enforcement of consumer laws, and consumer demands as well as current and emerging consumer concerns and related issues;
- In-depth knowledge of and substantial work experience in consumer protection policies, legislation and programs, especially within ASEAN;

- Proven track record in research, survey, activity design and delivering effective capacity-building, related to consumer protection;
- Demonstrated ability to develop and maintain sound working relationships with stakeholders;
- Experienced in policy making and providing policy advice to governments and having considerable exposure and network with consumer protection agencies;
- Proven experience in dealing with senior government officials, parliamentarians and other identified stakeholders;
- Proven ability for accuracy under pressure and adherence to deadlines;
- Thorough understanding of ASEAN, and ASEC procedures is needed and willingness to adapt is required; and
- English proficiency, good report writing and presentation skills are prerequisites.

VIII. Bidding

Interested consulting firms are invited to submit a proposal in response to these Terms of Reference. This proposal should be in two parts: **Technical** and **Financial components**.

The Technical component should present the following information:

- A brief discussion indicating the relevant areas of the bidder's experiences and expertise, and understanding of the needs of the project;
- A brief analysis of key issues, especially in identifying and benchmarking the specific competencies requirements in the six focal areas in consumer protection;
- A methodological discussion of how the bidder proposes to address those project needs including assessment of key issues, analytical strategies that will underpin the project implementation, specific techniques to be utilised, and practical discussion of possible limitations in carrying out the project;
- A detailed work plan that specifies activities to be undertaken, expected outputs and deliverables, resources to be utilised and timing;
- Staffing and management plan;
- A discussion on how measures to ensure the future sustainability of the outcomes of the project will be addressed;
- CVs of all proposed experts;
- Brief discussion of firm's past experience in undertaking similar work and brief summaries of all projects undertaken.

The Financial component should specify:

- 1) Professional fees of expert(s);
- 2) Management and/or operational fees (if any), which include all costs incurred by the person/entity/company for internal coordination, communication, travels and any other associated project management cost;
- 3) Applicable taxes such as VAT, GST, PPN. See Section IX point 3 for an additional note on tax liability.

Activity costs for experts and participants such as reimbursable expenses for airfare, other travel costs and daily subsistence allowance for workshops, meetings, and all other agreed activities do not need to be included in the Financial Component. These items will be discussed with the preferred contractor during the finalisation of the scope of services. Costs will be based on prevailing ASEC rates.

IX. Submission of Application

Applicants should send their application with a cover letter, materials specified in Section IX above and other supporting documents with “***Development of the ASEAN Alternative Dispute Resolution Guidelines for Consumer Protection***” as the subject via email to tender@aadcp2.org, no later than **6 April 2020 at 05:00pm Jakarta time**.

For Frequently Asked Questions (FAQ), please visit <http://aadcp2.org/aadcp-ii-tender-frequently-asked-questions/>

Any queries on the TOR should be sent to contact@aadcp2.org with the subject line:” ***Query : The Development of the ASEAN Alternative Dispute Resolution for Consumers Guidelines.***”

IX. Additional Notes on Terms and Conditions of the Project

1. Any future studies/reports/analysis in any form of intellectual property rights (including but not limited to patents, copyright and any related rights) submitted by the Contractor to ASEAN arising out of or in connection to the services performed by the Consultant to ASEAN shall belong to ASEC under the name of **ASEAN** only;
2. Successful bidder shall agree to be bound and sign the Special Services Agreement (SSA) with all requirements under the terms and conditions provided therein, including but not limited to the AADCP II Guidelines for the Contractors attached to the SSA.
3. As an intergovernmental organisation, ASEAN shall not be responsible for any tax(es), levy, tax claim or any tax liability which may be imposed by any law in relation to any amount payable by the ASEAN Secretariat.