



ASEAN Competition Law and Policy Peer Review:
Guidance Document

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

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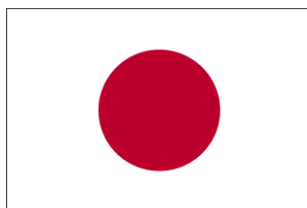
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Chapter 1

Introduction

The Guidance Document (GD) outlines the steps in the ASEAN competition policy and law peer review process. Each step corresponds to a section in the GD. Furthermore, it includes sub-steps, the responsible party or parties, and highlights the activities that take place in each step, as well as appendices and templates to assist in the planning and implementation of a successful peer review.

1.1 Definitions Related to Peer Review

This section defines the terms used in the GD:

- i. The **ASEAN Experts Group on Competition (AEGC)** is a forum for discussing and coordinating competition policies, with the goal of promoting a healthy competitive environment in the ASEAN region. It consists of focal points from competition authorities of each AMS and conducts meetings up to twice a year.
- ii. **Peer Review** refers to the formal review of a competition law and policy by a group of independent, qualified experts in relevant technical fields with inputs from AMS. The review may examine all or some aspects of the competition law and policies, including institutional framework, the agency's priorities, strategies and enforcement record.
- iii. **Peer Reviewed ASEAN Member State (PRA)** refers to an ASEAN Member State (AMS) that has accepted to be peer reviewed for the whole or part of its competition policy and law (CPL) regime.
- iv. **Peer Review Team (PRT)** refers to a group formed to conduct a peer review, which comprises one or two external consultant(s), AMS Peer Reviewers and the ASEAN Secretariat.
- v. **External Consultant** refers to a non-member of the AEGC appointed as a consultant by the AEGC and the ASEAN Secretariat, for a certain term through an open tender process to implement the peer review together with other members of the PRT. At least one or up to two external consultants may be appointed.
- vi. **AMS Peer Reviewers** refers to one or more AMS(s) that volunteered to participate as a reviewer in the exercise.
- vii. **Plenary Reviewers** refers to AMS(s) that are not part of the PRT who are requested by the PRA and PRT to be the reviewers at the plenary event provided as separated session in the series of the meeting of AEGC.

Terms Used in the Process

- i. **Self-Assessment** refers to the process of assessing the peer reviewed matter(s), which and will be used as reference by the PRT in assessing the matter(s).
- ii. **Questionnaire** refers to the set of questions covering the substantive, procedural and institutional aspects of the PRA's competition law, policies and strategic actions, and priorities of the peer reviewed agency.
- iii. **Peer Review Plan** is the plan developed by the PRA for each peer review and shared with the ASEAN Secretariat and the AEGC. For each peer review, the Peer Review Plan serves as a tool for planning and scheduling a peer review and informs the AEGC, ASEAN Secretariat as well as the external consultant(s) and the PRT about the timeline, deliverables, format, and the milestones of the peer review.
- iv. **Peer Review Report** is a written document that details the goals, process, and outcomes of a peer review. For each peer review, the Peer Review Report helps the reader understand why the peer review was undertaken, who the peer reviewers were and how they were selected, how the external consultant(s) and the PRT conducted the peer review and the outcomes following assessment. The Peer Review Report is a valuable source for drawing lessons and is part of the Peer Review Record at the end of the peer review process.
- v. **AMS Peer Comments** refers to written responses provided by all AMS or their regulatory agencies to the questions solicited by the PRA of comments from some or all aspects of the scope of the peer review process, the draft PR report findings and recommendations, and may include the Peer Review approach and goals of the peer review.
- vi. **Peer Review Plenary** refers to a structured discussion of the findings and the recommendations of the peer review report among AMS during a closed meeting of the AEGC, in which the comments from the AMS competition agencies or relevant departments are solicited. Although a few AMS may already been involved in the peer review as part of the PRT, comments from other AMS can be obtained during the plenary can be used as a tool to help ensure that the Peer Review findings and recommendations are sound and appropriate.
- vii. **Peer Review Records** are formal files containing peer review documents, findings and recommendations made by the external consultant(s) and the PRT during a peer review. The Peer Review Record also includes all materials disseminated and collected during the review, and the final Peer Review Report. The Peer Review Record is archived in digital format by the PRA and the ASEAN Secretariat.

1.2. Objectives and Link with the ACAP 2025

Under the ASEAN Competition Action Plan (ACAP) 2016-2025, the AMS have agreed upon several strategic measures in furtherance of the competition policy initiatives of the ASEAN

Economic Community Blueprint 2025. The strategic goals of ACAP 2025 include the establishment of effective competition regimes, strengthening the capacities of competition authorities in the AMS and moving towards greater harmonization of competition policy and law in ASEAN.

As part of an initiative to strengthen the competition law frameworks of the AMS and establish effective national competition law regimes in all AMS (“ACAP Strategic Goal 1”), the AMS aspire towards conducting at least five peer reviews of their national competition law regimes by 2025. These peer reviews will take place as part of the AMS “process of reviewing their existing competition regimes, in light of their enforcement experiences, changing market dynamics and in accordance with international best practices”. This Guidance Document aims to describe and explain the steps of the peer review process that ASEAN competition authorities will participate in when they volunteer to represent the PRA or a member of a PRT.

Participation in the peer review process, apart from advancing ACAP Strategic Goal 1, will also help the AMS to strengthen the capacities of their respective national competition-related agencies to effectively implement competition law and policy (“ACAP Strategic Goal 2”). Competition authorities which take part in the ASEAN CPL Peer Review Process will have opportunities to learn from the experiences of the other competition law regimes in the region, as well as share their respective perspectives on common competition law and policy issues they have encountered. Such interaction between competition authorities from the AMS will complement existing capacity-building initiatives and deepen the regional cooperation arrangements in this area (“ACAP Strategic Goal 3”) that would facilitate the movement towards greater harmonization of competition law and policy at the regional level (“ACAP Strategic Goal 5”).

Considering the wider significance of the ASEAN CPL Peer Review Process to the attainment of the various ACAP Strategic Goals, the steps of the peer review process described in this Guidance Document should be implemented with the following general principles in mind:

(i) Voluntary Basis

Competition authorities from the AMS who choose to participate in the ASEAN CPL Peer Review Process do so on the basis that they will benefit from the exchange of views on the CPL issues that have been identified for closer scrutiny in each peer review exercise. Each participant voluntarily submits to a process where they are prepared to give, or receive, comments about the CPL issues facing the PRA. Participants also engage in this voluntary process on the basis that any recommendations made by the PRT are not binding upon the PRA, though the PRA is encouraged to take the final report into consideration when improving the effectiveness of their agency or reviewing its laws and policies. To the extent that the PRA agrees with the recommendations made in the final report, the PRA is advised to evaluate its implementation and share the outcomes with the AEGC when appropriate.

(ii) Flexibility

Given the different stages of maturity of the different AMSs' national competition law regimes, it is necessary to have adequate flexibility in the design of the ASEAN CPL Peer Review Process to accommodate the different needs and constraints of each national competition authority. Differences in the resources available to the national competition authorities in each AMS will also impact on the design and scope of each peer review exercise. A measure of discretion is thus given to the PRA and the AEGC to accordingly adjust the scope of the peer review exercise and the range of issues to be covered in the peer review report. Similarly, flexibility should be reflected in the composition of the PRT and the different roles that may be assigned to each member of the PRT.

(iii) Inclusivity

The ASEAN CPL Peer Review Process should encourage AMS to participate in the process in whatever capacity that best suits their respective circumstances – whether as a PRA, a member of the PRT or a member of AEGC who provides comment on the peer review report. This underscores the intrinsic value of the learning and sharing opportunities associated with each peer review exercise and the importance of having a broader range of intra-ASEAN perspectives from the other AMS when examining the specific competition law and policy issues facing the PRA. Any lessons learnt by the PRA through its participation in the ASEAN CPL Peer Review Process are likely to be relevant or helpful to at least some of competition authorities in the other AMS, regardless of whether they are directly involved as members of the PRT in that process. The results of the peer review should thus be shared amongst AMS in a transparent manner to facilitate discussion of the lessons that may be learned from each exercise. In doing so, the ASEAN CPL Peer Review Process leverages on the collaborative nature of the AEGC to foster an open and constructive exchange of perspectives between the national competition authorities in ASEAN.

1.3. Requirements for Peer Review

Given that the ASEAN CPL Peer Review Process flows directly from the ACAP Strategic Goal 1, the most appropriate candidates to submit their national competition law regimes to this process are those jurisdictions that have accumulated enough operational experience in this field to warrant a review of their operations and/or legal and regulatory frameworks. The peer review is thus conducted as part of a national competition authority's substantive, procedural and structural reform efforts as it seeks to improve the overall effectiveness of its domestic CPL framework. For AMS with less experience in implementing their national competition law regimes, participation in the ASEAN CPL Peer Review Process presents a unique opportunity to learn from the experiences of, and avoid the pitfalls previously encountered by, the other AMS.

The ASEAN CPL Peer Review Process builds upon the self-assessment exercise that has already been developed by the AEGC in the ASEAN Self-Assessment Toolkit on Competition Enforcement and Advocacy in 2017. Prospective PRAs should complete this self-assessment exercise that can be used as reference by the PRT as an initial document in the peer review process.

Prospective PRAs should also be prepared to assume the various responsibilities that arise from participating in the ASEAN CPL Peer Review Process. These include defining the scope of the peer review, working with the appointed External Consultant, scheduling interviews and meetings with relevant stakeholders for the field study by the PRT and providing informational assistance to the PRT over the duration of the entire peer review exercise. Appropriate manpower and financial resources should thus be set aside by the national competition authority for these purposes before embarking on the peer review process described in this Guidance Document.

1.4. Roles and Responsibilities

There are three main actors in any peer review process: the PRA, the AEGC, and the PRT (which is composed of the external consultants, the AMS peer reviewers, and the ASEAN Secretariat selected for the fact findings and preparation of the peer review report). For each peer review, the PRA informs of its decision to undertake the voluntary peer review and provide formal written request at the AEGC Meeting or inter-sessionally through the ASEAN Secretariat. A suggested number of two AMS shall voluntary convey its interest to join the PRT (although more AMS can express its interest to be part of the PRT, depending on resource availability).

The PRA and PRT may propose for the external consultant. However, the final criteria shall be determined by the AEGC members which includes the AMS reviewers, and the ASEAN Secretariat. The selection of the external consultant will be conducted through a tender process and invitation to tender will be published on the ASEAN Virtual Research Centre and the ASEAN and AEGC websites.

The external consultant will work with the other members of the PRT and the PRA, to coordinate the peer review process as outlined in this Guidance document, lead the information gathering (fact finding mission), draft the peer review report, present the findings and recommendations of the peer review during the plenary, and prepare and submit the report of the plenary discussions as well as the final peer review report to the AEGC.

The PRA will decide whether a peer review plenary shall be held to validate the final peer review report and ultimately decide whether the report should be published.

Detail roles and responsibilities of the said main actors are as follows.

Peer Reviewed Agency (PRA)

The PRA is responsible for the following:

- Inform the AEGC and the PRT on the timeline, deliverables, format, and the milestones of the peer review. The PRA is to develop the work plan for the peer review together with the external consultant and share with the ASEAN Secretariat and the AEGC. The work plan should serve as a tool for planning and scheduling all the steps outlined in the Guidance Document.
- Describe and elaborate on the type of issues that needs to be peer reviewed.

- Provide inputs on the type of expertise that will be needed from the external consultants and that will be necessary to elicit the desired level of peer review.
- Complete or update the self-assessment exercise based on the ASEAN Self-Assessment Toolkit on Competition Enforcement and Advocacy.
- Provide inputs to the Peer Review questionnaire which correspond to the scope of the peer review.
- Prepare the fact finding mission, which includes providing data and information required by the external consultant such as the list of interviewees and arranging meetings between the consultants and the interviewees.
- Review and provide inputs to the final report before the plenary discussion at the AEGC Meeting, and confirm the reliability of the data as well as its interpretation by the external consultant.
- Provide data and information required by the PRT and records all material disseminated and collected during the review.

The Peer Review Team (PRT)

The PRT is responsible for the following:

- The PRT is suggested to be composed of two representatives from AMS (more AMS may participate, subject to resource availability), external consultants who will work closely with the rest of the PRT members, and the ASEAN Secretariat.
- The PRT undertakes the fact finding process, develop the outline of the peer review, draft the peer review report, and participate in the plenary session and or present the report during the AEGC Meeting, if applicable.
- Draft and finalise the peer review report, outlining the peer review findings and recommendations.
- Prepare the agenda of the Plenary.
- Respond to questions during the plenary session if applicable.

The AMS Peer Reviewer (member of the PRT)

The AMS who volunteers to be members of the PRT is responsible for the following:

- a. Provide inputs to the scope or focus of the peer review and the work plan.
- b. Provide inputs for the fact-finding mission (participation in the fact finding mission is subject to the availability of resources).
- c. Review the draft peer review submitted by the external consultant, and provide inputs or comments.
- d. Provide additional recommendations on the final peer review report (before the plenary).

The ASEAN Secretariat

The ASEAN Secretariat is responsible for the following:

- Upon receiving a request for a peer review from an AMS, inform the AEGC of the request and seek their feedback.
- If possible, source for an appropriate funding partner to support the implementation of the peer review process.

- Select and recruit the external consultant through open tendering, in consultation with the AEGC. This process can also be facilitated by development partners while the selection of the consultant will be consulted with the AEGC and the ASEAN Secretariat.
- To organise the peer review plenary, finalise the agenda, as well as vet the final report of the plenary, together with the PRT
- Circulate draft report, coordinate, and consolidate input or comments from AMS in relation to the peer review process.
- Archive the peer review report and related peer review documents compiled by the PRT.

The External Consultant

External consultant(s) are independent, qualified experts in relevant technical fields (economics, law, regulation and related areas) whose services are retained by the ASEAN Secretariat to work closely with other members of the PRT, (which includes the AMS and the ASEAN Secretariat) and the PRA, as outlined in this Guidance Document, in conducting the peer review. In addition to these tasks and roles, detailed terms of reference for the external consultant should be prepared. A template is given in **Appendix F**.

In general, the external consultant is responsible for the following:

- Review result of the self-assessment exercise.
- Draft and review the work plan of the peer review with the PRA.
- Conduct a background study of the CPL issues identified by the PRA in its peer review request, analyse the laws and regulations, policies and strategies of the PRA and prepare assessment to be included in the PR report.
- Formulate appropriate data-gathering mechanisms, such as questionnaires (using the template found in this Guidance Document as a starting point), for use in the peer review process. Review the list of interviewees for the field mission.
- Undertake the field missions in the PRA's jurisdiction and conduct interviews.
- Draft the PR Report, including a summary of the findings of the peer review and recommendations for the PRA's consideration.
- Discuss the draft Peer Review Report with other members of the PRT and consolidate their inputs.
- Present the PR report during the Plenary or present during the AEGC Meeting, and submit a report of the plenary or meeting discussions.

The AEGC

The AEGC is responsible for the following:

- Review expression of interest by AMS to undergo a peer review and approve the peer review process.
- Selection of the external consultant through open tendering. The process is facilitated by the ASEAN Secretariat and or development partners.
- Discuss the peer review report at the plenary and provide inputs or comments.
- Offer assistance to the PRA in implementing the recommendations from the peer review report, if applicable.

Chapter 2

Peer Review Process

The section outlines the steps and actions needed to initiate a peer review, elaborate on the responsibilities of the parties, work plan and timeline. It further provides guidance to the PRA on establishing the scope and timeline for the peer review. These two factors (i.e scope and timeline) should be discussed together as decisions about the scope of the peer review will likely impact decisions about the timeline, and vice versa.

Step 1: Initiating the Peer Review Process

1.1 Interested AMS to Submit a Formal Written Request for a Peer Review

The decision to embark on a peer review has to take into consideration available resources, weighing costs against benefits. The PRA must balance the level of detail of the peer review, with the time and resources available for carrying out the peer review.

Whenever possible, the PRA should provide insight into the likelihood of the peer review to influence high-impact decisions when determining the scope of the peer review. The rigor and depth of the peer review should be considered together with its potential impact on policy decisions and reforms.

While the Peer Review process can and should be based on a common set of criteria, the peer review process will need to be flexible, to accommodate the different resources available to support the process and to take into account the scale and scope of activities of the agency being reviewed.

For PRAs with limited enforcement experience, it may be appropriate for the Peer Review process to focus more exclusively on the mandate, and/or a different approach to focusing on the specific component of the mandate. For PRAs with limited resources for the Peer Review, the key process steps could be 'scaled down', while still allowing for a robust and meaningful peer review.

The request should be made orally at the meeting of AEGC or intersessional in writing to the ASEAN Secretariat. The request may address several issues as follows:

- a. Potential scope of the proposed peer review;
- b. Tentative timeline; and
- c. Expected outcomes.

In elaborating the peer review scope, the PRA will need to consult and work closely with the external consultant and the AMS Peer Reviewers to mobilise the required human and financial resources.

1.2 The AEGC to Review Requests and Inform the Peer Review Agency

In reviewing a request for a peer review, the AEGC should consider whether the proposed scope of the peer review matches its impact and expected outcomes. In this regard, the AEGC would review the request in two steps: (1) whether the overall approach and scope are suitable for the PRA, and (2) whether the review would assist the PRA in clarifying the goals of the Peer Review in detail.

The first step in the AEGC review is to consider if the proposed scope of the peer review is appropriate for the PRA. Under this Guidance Document, agencies are granted broad discretion to weigh the benefits and costs when deciding if a particular peer review scope meets their needs. Although the selection of an appropriate peer review scope is left to the PRA's discretion, the AEGC can engage the PRA in a conversation about the specific goals and the feasibility of implementing the recommendations. The conversation may include a decision of the extent to which the peer review will improve the effectiveness of the PRA, considering factors like substance, time, resources, priorities and capacities of the peer review mechanism. However, since the scope best suited to a specific peer review will depend on the nature of the topic identified and the intended use of the final peer review findings, the final decision should be left to the PRA to determine if the scope of peer review would match its impact and expected outcomes.

1.3 Elaborate Type of Issues to be Peer Reviewed

The scope of the review will determine the type of feedback obtained from peer reviewers. Therefore, when planning a peer review, the PRA should internally discuss the context and goals of the peer review, to inform its decision-making process.

The PRA should consider the following before elaborating on the scope and the approach of the peer review:

- (i) What questions or issues should be addressed by the peer review?
- (ii) How would the peer review align with other PRA priorities?
- (iii) Will the peer review address a controversial issue? If so, what is the issue? How might the peer review help address concerns of the policy makers, businesses or consumers?
- (iv) What are the key assumptions made on the expected outcomes of the peer review?
- (v) How might the peer review address these assumptions?
- (vi) Which competition and policy aspect would benefit most from being peer reviewed? How would the PRA laws and policies, in which work or intervention by the PRA is required, benefit from the peer review?
- (vii) Are there budget considerations that could limit the scope of the peer review?
- (viii) Are there internal or external timeline considerations that could limit the scope of the peer review?

The PRA can take the following criteria into consideration when reviewing the need for a peer review:

No.	Criteria	Information
1.	General Criterion	The peer review can make a difference in identifying substantive and procedural aspects of the competition law that would need to be reformed and allow the PRA to improve agency effectiveness.
2.	Related Criteria	<ul style="list-style-type: none"> • Supports major legal and enforcement reforms, including risk management initiatives. • Support leadership standing in the executive and legislative branches and its ability to mobilise financial and human resources to achieve the PRA's strategic priorities.
3.	Upgrading skills and knowledge Criteria	<ul style="list-style-type: none"> • Seek new approaches that are new to the PRA or address areas of substantial uncertainties or challenges in courts; • Strengthens the PRA's basic capabilities.
4.	Problem-Driven Criteria	<ul style="list-style-type: none"> • Involves major difficulties in the application of the competition law. • Relates to emerging competition issues or expected long-term shifts in public policies towards the competition law and the PRA.
5.	Advocacy and institutional Criteria	<ul style="list-style-type: none"> • Serves as a model for competition assessment and policy advice to government and public authorities. • Requires the commitment of Ministers, public enterprises, regulatory agencies or local authorities • Transcends organizational boundaries, within or outside the PRA (including ASEAN and international cooperation).

AMS are expected to volunteer for peer reviews over the next five years. However, the scheduling of country reviews should consider individual country circumstances and should be applied in a flexible manner. Priority should be given to member jurisdictions that request a peer review because of (recent or forthcoming) major legal reforms that would benefit from feedback received through the peer review.

The PRA should evaluate whether the self-assessment is adequate, using the guidance specified in the Self-Assessment Toolkit Manual. The PRA should consider the novelty and complexity of the scope to be reviewed, the importance of the PR findings for the planned reforms, if any, the lessons from prior peer reviews, if applicable, and the expected benefits and costs of the planned peer review.

The specific questions for the PRA will be finalized during the development of the Peer Review questionnaire, but early consideration of questions will ensure adequate time and resources are available for the collection of relevant background material, field mission and interviews.

1.4 Identify the External Consultant and AMS Peer Reviewers

When establishing the scope of the peer review, the PRA should consider the number and expertise of reviewers that will be necessary to elicit the desired level of peer review. The PRA is to provide inputs on the type of expertise that will be needed from the external consultants and that will be necessary to elicit the desired level of peer review.

This selection process which will be undertaken by the ASEAN Secretariat or facilitated by the development partner, in consultation with the AEGC, comprises of two steps: (1) identify qualified candidates for the external consultant, and (2) determine any potential conflict of interest.

A first step in selecting the external consultant is to identify several potential candidates who meet the expertise and experience requirements specified in the scope of the peer review. The second step is to determine if they are independent and likely free of conflict of interest. These identification and screening criteria for the external consultants are discussed as follows:

a. Expertise and Experience

The PRA should begin to search for peer reviewer candidates who have the necessary expertise and experience. The most important factors in selecting candidates for the PRT are expertise and experience: ensuring that the selected reviewers have the knowledge, experience, and skills necessary to perform the peer review. When identifying potential peer reviewers, it is important to identify several candidates with expertise in each relevant technical area under the scope of the PR (if possible) to ensure that all areas are represented.

When evaluating potential candidates, expertise may be demonstrated in several ways:

- Educational qualifications (e.g., a PhD in law or economics preferred, followed by a law or economic-related discipline);
- Experience or knowledge of a technical area (e.g., minimum years of relevant experience, authorship of relevant publications, specific proven experience in enforcing competition law in a CA or a practice, experience in a regulatory agency handling competition matters, teaching competition law, etc.);
- Recognition as an expert (e.g., technical leadership or participation in regional and international competition expert meetings, participation in competition agencies panels, recommendations from colleagues).

The selection of the external consultant should be done via a competitive tender process. The invitation to tender should be published on various channels including but not limited to the Virtual ASEAN Competition Research Center and/or the ASEAN and AEGC website. The invitation to tender should also include information on the evaluation criteria.

b. Balance

The selected candidates for external consultant must represent a range of economic, legal and policy perspectives relevant to the PRA's economic and social circumstances. Outlining the various perspectives for a peer review that addresses many facets may present a challenge; in such cases, it is recommended that the collective expertise of the PRT represents the necessary spectrum of knowledge.

c. Independence

"Independence" in the context of consultant identification, refers to the separation of the candidate from the previous work of the PRA (for example drafting or advising on the implementation of the competition law). This subsection describes the process for screening candidate peer reviewers for issues relating to involvement with the PRA undergoing the peer review.

The external consultants must not have participated in the formulation or enforcement of the competition law and its application.

Candidates must not have been a party or a legal representative of a defendant or a claimant in cases handled by the PRA. In general, it is best to choose candidates whose independence is not clouded by monetary arrangements with the funding agency.

Ideally, the AEGC should try to promote the available pool of AMS experts, recognising that in some cases repeated service by the same external consultant is needed because of essential expertise. This rotation can aid the process of independence and also provide a diversity of perspective on ASEAN peer reviews.

The external experts may be independent consultants (e.g. experts in competition law with legal or economic training, practicing lawyers, former members of a competition agency, academic, judges with experience in peer review).

Potential risks associated with using an "unsuitable" external consultant include the external consultant's lack of familiarity with the PRA economic, legal and social circumstances or the PRA's priorities and goals or an inadequate control over the peer review process (however, a well - written TOR), as discussed below would overcome these risks.

The external consultant selected for the peer review should keep the following guidance in mind during the peer review process:

- (i) ensure that their peer review practices are characterized by both intellectual integrity and process integrity. See definitions above.
- (ii) the PRA provides inputs on the consultant's qualifications.

Note that if a consultant was involved in the drafting or implementation of the law or its regulation, or associated activities, that same consultant should not conduct the peer review.

However, the consultant who was involved in this previous work may provide technical guidance or answer their technical questions.

The AMS Peer Reviewers serve as volunteer reviewers. One or more AMS may indicate their interest as the peer reviewers at the meeting of AEGC, or intersessional to the ASEAN Secretariat following the information of the request made by the PRA. As the peer reviewers or member of the PRT, AMS peer reviewers must sign a form committing that they do not expect to be compensated for their services and should meet the independence criteria outlined above. If no AMS volunteers, the PRA can request specific AMS to serve as a peer reviewer(s). To ensure opportunities to review are uniformly distributed and to avoid imposing an excessive burden on any one AMS, the selection and appointment of a AMS Peer Reviewer should be carried out on a rotational basis.

1.5 Methods and Sources for Identifying Candidates for the External Consultant

The external consultant will be appointed through an open tender process announced on the ASEAN Virtual Research Center and the ASEAN/ AEGC websites. The ASEAN Secretariat may share the announcement and invite suitable and qualified individuals to submit their proposals based on the procedures and requirements set out in the tender documents.

Possible sources for searches for qualified candidates include:

- (i) Academic and scholarly literature;
- (ii) Conference and workshop presenters or panelists (e.g. ASEAN Competition conferences and workshops)
- (iii) Experts from the ASEAN Academic Network, International Competition Network, UNCTAD, and OECD;
- (iv) AEGC;
- (v) AMS competition agencies;
- (vi) Development partner's competition agencies;
- (vii) Retired Competition Commissioners;
- (viii) Retired competition judges;
- (ix) Retired judges; and
- (x) Law firms.

The candidate will be required to submit a proposal which may include the following information:

- (i) A detailed resume or CV;
- (ii) Declaration of any potential conflict of interest;
- (iii) Detailed terms of reference for the work, including the general schedule for the peer review, how they will achieve the goals for the peer review (including, where possible, on the scope and expected outcomes), if available; and
- (iv) Proposed consultancy fee.

The ASEAN Secretariat, the AMS peer reviews, and/or dialogue partners funding the external consultant will collect the submitted proposals, evaluate, and decide on the external

consultant to implement the peer review. The ASEAN Secretariat and/or dialogue partners funding the external consultant will also negotiate the terms and conditions with the selected external consultant. The PRA will be informed of the chosen external consultant for further coordination.

1.6 Evaluate Candidates and Select Final PRT Members

The ASEAN Secretariat and AMS Peer Reviewers should evaluate each candidate's proposal, including the resumes/CVs and conflict of interest declaration, in order to select the most suitable external consultant(s) with the necessary expertise, independence, and group balance. When evaluating a candidate for the external consultant, the ASEAN Secretariat and AMS Peer Reviewers must also consider the following:

- (i) *Real Conflict of Interest*: a real conflict of interest is one in which the candidate's private interests would sufficiently influence the carrying out of his or her professional duty as required for the peer review.
- (ii) *Apparent Conflict of Interest*: an apparent conflict of interest is one in which a reasonable person, with knowledge of the relevant facts to the peer review at hand, would think that the candidate's impartiality in participating in the peer review is likely to be compromised. Determining whether a candidate for the external consultant has an apparent conflict of interest can be more challenging than determining a real conflict of interest. A thorough evaluation of the candidate's response to the question concerning conflict of interest during the initial contacts should be conducted.

The following tips may be useful for examining conflict of interest:

- (i) Examine prospective candidates' potential financial conflicts, including significant consulting arrangements, employer affiliations, and grants/contracts.
- (ii) Scrutinize financial ties of potential candidates to regulated entities (e.g., businesses), other stakeholders, Banks and financial institutions as well as regulatory agencies when the scope of the peer review is likely to be relevant to regulatory policy or business.
- (iii) Inquire into financial investments and business relationships, including work as an expert witness, consulting arrangements, honoraria, and sources of contracts, e.g., merger cases.

- **Time and Availability**

When selecting external consultant, the ASEAN Secretariat should take into account both the rough timeframe for peer review devised in the planning process and the availability of individual PRT candidates.

The process of selecting a final member may be iterative in several ways. Therefore, it should allow ample time (2 – 4 weeks is usually sufficient) for this iterative peer review selection process.

- **Notify Selected External Consultant**

Once the selection is finalized, the ASEAN Secretariat should inform the AEGC and contact the selected consultant to notify them that they have been selected and to give them advance notice of the final peer review schedule. The ASEAN Secretariat should request a response from all AMS peer reviewers confirming their participation in the peer review.

Once the external consultant(s) confirm their interest, the ASEAN Secretariat with or without the involvement of the development partners funding the PR should issue the contact(s). If individual contracts are contemplated, the terms of reference should designate a team leader, modalities for team work and reporting to the PRA and the ASEAN Secretariat.

As a courtesy, the ASEAN Secretariat also should notify any candidates that were not selected for the peer review.

1.7 [The PRA to Submit a Report of the Self-Assessment Exercise Using the ASEAN Self-Assessment Toolkit on Competition Enforcement and Advocacy](#)

The PRA should make use of the ASEAN Self-Assessment Toolkit on Competition Enforcement and Advocacy. The Self-Assessment Toolkit provides a detailed step-by-step approach for conducting an evaluation of the substantive and procedural rules of the competition law, its implementation policies and procedures, communication and advocacy strategies, as well as priority setting and the allocation of human and budgetary resources. The findings of the Self-Assessment report should be used to define the scope and expected outcomes of the peer review.

The PRA should brief the PRT and the external consultant in writing on how it intends to address the findings of the self-assessment report either through the planned peer review or through cross-cutting public policies.

The PRA should take a decision on whether the identified areas of concern rise to the level of a finding. If so, findings should be included in the report of the self-assessment. The PRA also should identify findings that may require more in-depth assessment and appropriate recommendations in the planned peer review.

The PRA should document the work performed to support the report of the self-assessment to assist the PRT in its analysis and in drawing conclusions and recommendations, which includes:

- (i) reports and documents as well as internal rules and procedures the self-assessment team considers significant;
- (ii) issues of concern the self-assessment team identified;
- (iii) pertinent comments or explanations for the conclusion(s) reached in the report of the self-assessment; and

- (iv) the self-assessment team's recommendation(s) or suggestion(s), if any, for addressing issues of concern identified in the report or improvements to existing procedures.

1.8 External Consultant to Assess the Self-Assessment Country Report

The findings of the Self-Assessment report are requisite for defining the scope of the peer review. In analyzing the report of the self-assessment, the PRA team must trace the report of the self-assessment's findings back to the working papers and/or documentation and determine whether the report's conclusions and recommendations logically flow from the documented findings.

The external consultant(s) may also speak with individual staff who conducted the self-assessment, in order to gain insights into the report findings. After completing the analysis of the self-assessment report findings, the external consultant may identify areas needing follow-up or clarifications, if any, and reflect these in the final outline of the peer review report accordingly.

Step 2: Conducting the Peer Review Exercise

This section outlines the process for implementing a successful peer review.

2.1 External Consultant to Compile the Peer Review Material and Undertake a Desk Study to Complement the Available Information.

In addition to the preliminary materials supplied by the PRA at the time it submits its request to initiate the peer review process, the PRT is likely to require further resource materials from the PRA to carry out an adequate background study of the relevant CPL issues that have been raised by the PRA. These supplementary resource materials should be provided by the PRA, including any documents or publications that would give the PRT a better understanding of these CPL issues and explain the positions that the PRA has taken on these issues. The consultant may also seek clarification from the PRA on specific issues encountered during the background study or in subsequent stages of the peer review exercise.

2.2 External Consultant to Formulate a Set of Questions in Accordance to the Agreed Scope of the Peer Review

As part of each peer review, the External Consultants should formulate a clear, focused set of questions that identifies the legal, economic and technical issues in which the PRA would like feedback on and accordingly, invite suggestions for improvement. The set of questions usually covers two general requests. First, it presents specific questions and concerns surrounding issues such as the adequacy of the statutory powers of the PRA, human and financial resources, the soundness of the implementation procedures, the handling of sensitive cases involving conflicting objectives etc.). Secondly, it invites general comments on the overall

work and performance of the PRA over the peer review period. See a template questionnaire in **Appendix C**.

2.3 External Consultant to Adjust the List of Stakeholders to be Interviewed during the Field Visits

The external consultant and PRA should jointly identify the relevant stakeholders from the PRA's jurisdiction who can contribute to the ASEAN CPL Peer Review Process. Stakeholders will be invited to participate by responding to the PRT's questionnaire and/or engaging with the PRT during the Field Study. Ideally, a diverse range of stakeholders should be selected from the following categories:

- (i) Private Practitioners (i.e. competition lawyers and economists);
- (ii) Corporate Counsel;
- (iii) Trade Association Representatives;
- (iv) Academics, think-tank analysts and researchers; and
- (v) Public servants – e.g. Sectoral Regulators, Consumer Protection Agencies, other members of the executive or judicial branches of government.

A broad cross-section of stakeholders within the PRA's jurisdiction is desirable because they are more likely to provide the consultant with a more complete picture of the CPL issues under scrutiny during the peer review. The number of stakeholders invited for interviews by the PRT should commensurate with the time allocated for the Field Study stage of the process.

2.4 PRA to Develop a Schedule for Interviewing the Stakeholders during the Field Visits.

The PRA should develop the final schedule for interviewing the stakeholder during the field visit, taking into account the following considerations discussed in Step 2.1, 2.2 and 2.3 above: issues rising from the desk study, perception of the PRA by the stakeholders, role of other actors in the competition regime (regulators, judiciary, public entities etc..). The PRA should consider factors like time and travel logistics, and availability of key stakeholders. To finalise the schedule, the PRA should assign specific dates (for each of the following phase of the interview process; finalizing the list of questions and stakeholders; setting the dates for interviews and assigning tasks to members of the PRT; and notifying the selected stakeholders once the schedule is finalized. The PRA should set a date for a debriefing meeting after the interviews have been conducted.

2.5 Organise a Debriefing by the External Consultant and the Rest of the PRT Members at the End of the Field Mission and Address any Outstanding Substantive or Logistical Issues

During the Field Study, one or more members of the PRT will meet with the stakeholders identified in Step 3(c) to conduct the scheduled interviews. Other PRT members, the AMS peer reviewers, may also join the Field Study. To ensure that stakeholder-interviewees are candid in their responses to the PRT's questions, appropriate assurances of confidentiality to

protect their identities may need to be given. The PRT should also give due consideration to the propriety of having representatives from the PRA present at such interviews.

Where only one member of the PRT is available to conduct these scheduled interviews, prudence dictates that adequate records or transcripts of these exchanges should be maintained for future reference and verification purposes. Clarifications should be sought at the earliest opportunity in response to factual inconsistencies or ambiguities encountered by the PRT representative(s) during the Field Study.

Apart from face-to-face interviews, which might be resource intensive and subject to the practical constraints of coordinating the schedules of the different parties involved, the PRT may also choose to conduct interviews via teleconferencing, instant messaging, electronic mail exchanges or other technology-enabled methods of interaction with the relevant stakeholders.

Following the completion of the Field Study, a debriefing exercise should be carried out by PRT members who participated in the Field Study for the benefit of those members of the PRT who did not. This discussion within the PRT should help crystallise the primary, albeit preliminary, findings from the Field Study and address any outstanding substantive or logistical issues that need to be resolved before the draft Peer Review Report is prepared. The PRT member(s) conducting the debriefing exercise should address the following issues:

- (i) A descriptive overview of the structure and outcomes of the Field Study;
- (ii) A summary of the responses given by stakeholder-interviewees during the Field Study; and
- (iii) A tentative indication of the inferences and conclusions drawn so far.

The PRT's discussions in relation to the issues identified above may then be applied towards constructing the initial draft of the Peer Review Report by the external consultant. The initial draft shall be consulted with AMS peer reviewers, as the member of PRT, because it is important to formulate recommendations made by the PRT in the Peer Review Report.

2.6 Submission of the First Draft of the Peer Review Report to the PRT

The external consultant submits the first draft of the peer review report to members of the PRT for their comments and review.

The first draft should reflect the outcomes of the debriefing among the members of the PRT at the end of the field mission. The PRT should hold discussions during the drafting period, whenever necessary, to consider suggestions from the members for the external consultant. If the PRT so decides, its other members apart from the external consultant, can participate in drafting the report.

2.7 PRT Sends the Draft Report to the PRA

At this stage, the external consultant sends the draft report to the PRA to verify the accuracy of the data/information collected. PRT incorporates inputs from the PRA, responds to any

comments, and submits a revised report to the PRA. The report recommendations should not be shared with the agency at this stage.

Upon completing the initial draft of the Peer Review Report, the PRT should send this draft to the PRA; excluding the PRT's final recommendations at this stage, to ensure that the factual basis for its findings is accurate. The PRA should verify, to the greatest extent possible, the accuracy of the data and information relied upon by the PRT for its analysis and may make factual corrections where necessary. The PRA may also comment upon the initial draft report prepared by the PRT at this stage, which the PRT should respond to when preparing a revised version of the Peer Review Report. Both the PRA and the PRT should be satisfied that the revised version of the Peer Review Report does not contain any factual inaccuracies before the report is read, or commented upon, by any of the other ASEAN national competition authorities.

2.8 Consolidate inputs and Revise the Peer Review Report

All peer reviewer comments (where relevant and valid) must be given consideration and be incorporated in the final peer review report. The team leader/consultant would be responsible for incorporating comments into the PR report. However, once the team leader/consultant has analyzed the peer reviewer comments, she/he should consult with the other members of the PRT to seek consensus in responses to the comments, including any subsequent recommended revisions to the PR report before incorporating the comments. If some comments are not included in the revised PR report, the team leader/consultant should report the comments to the plenary, either verbatim or summarised. If the PR report is not discussed during a plenary, the team leader/consultant should draft a response on behalf of the PRT; the response to the comments must address agreement or disagreement with views expressed in the comments; and possible actions or inaction that the PRA will undertake in response to the comments.

Step 3: Presenting the Peer Review Report and Concluding the Peer Review Exercise

This Section provides guidance on several tasks that should be undertaken by the PRA and the ASEAN Secretariat if a decision to discuss the Peer Review report in a plenary is taken. The PRA and PRT tasks include; deciding which version of the peer review report is to be discussed at the plenary, what follow-up to the findings of the PR report, as well as possible technical assistance and capacity building to be extended to the PRA.

Option 1 – Presentation of the Peer Review Report to the AEGC at the Peer Review Plenary

Peer review plenary refers to a structured discussion of the findings and the recommendations of the peer review report among AMS during a closed meeting of the AEGC, in which the comments from the AMS competition agencies or relevant departments are solicited. Although the peer review only involves certain AMS, comments from other AMS can be useful to help ensure that the Peer Review findings and recommendations are sound and

appropriate. One of the essential benefits of the peer review plenary is that the feedback provided by a group of independent AMS's experts involved in the application of competition law can help ensure adequate comments with a broad range of AMS perspectives.

3.1.1 The ASEAN Secretariat and PRA to Finalise the Agenda for the Plenary, including the Selection of Topics to be Discussed (see Appendix H)

Prior to finalising the plenary agenda, the PRA and the PRT should discuss and agree on the following:

- Specific dates or range of dates for the plenary session;
- Dates for compiling and sending out materials to the participants in the plenary;
- Non-PRT members from AMS as the Plenary Reviewers;
- The ASEAN Secretariat should contact the Plenary Reviewers and to notify the final peer review schedule;
- The ASEAN Secretariat to send the Plenary Reviewers a copy of the final PR report and request them to send their comments and/or questions in advance of the plenary; and
- Develop an agenda for the peer review plenary session and distribute the agenda to attendees prior to the meeting.

The agenda for the plenary session should aim to achieve the following:

- Facilitate interactions among reviewers:
Whenever possible, the agenda should provide ample time for discussion among peer reviewers, which can improve the quality of reviewer feedback. The list of speaker/peer reviewers should be structured in a way to elicit balanced participation (e.g. time to speak, and broad range of views).
- Facilitate interactions between Plenary Reviewers and the PRA:
In addition to the external consultant, the PRT should be present to answer questions from the AMS and the PRA about the Peer Review findings and recommendations. The interactive part of the peer review should provide for a non-adversarial dialogue among equal peers. The plenary moderator should ensure that these discussions are on-topic and an effective use of plenary time.
- Manage the flow of the meeting:
The plenary moderator should keep track of the time allotted for each portion of the discussion and manage the flow of discussion as necessary.

3.1.2 Chair of the Plenary Session

The peer review chair should be from an AMS not represented among the PRT. He or she should be fluent in English and has experience in chairing/conducting meetings. The proposed peer review chair is the Chair of the AEGC at the time the peer review is conducted, he or she may hand over this role to another AMS if the required profile is not met.

3.1.3 The ASEAN Secretariat to Send the Peer Review Report and the List of Questions for Discussion to the Non-PRT Member Peer Reviewers (Plenary Reviewers)

Once the Peer Review report is finalised and reviewed by the PRA and the selection of the AMS peer reviewers who are not members of the PRT have been identified, the ASEAN Secretariat should undertake the following actions:

- With the PRA, the PRT and the external consultant, the ASEAN Secretariat invites the non-PRT member to send written questions in advance of the meeting and indicate the names of the experts who will attend and take part in the discussions;
- With the PRA, the PRT and the external consultant, the ASEAN Secretariat compiles the list of questions and sends them to the chair/moderator of the peer review plenary;
- The ASEAN Secretariat forwards the questions to the PRA and invites the PRA to prepare and designate PRA experts to reply to the questions; and
- The ASEAN Secretariat revises the agenda to allow sufficient time for discussions, taking into account the type of questions received.

3.1.4 External Consultant to Prepare a Draft Summary of the Discussions during the Plenary

After the plenary meeting, the external consultant should draft the plenary report and circulate to AMS peer reviewers for comments within a week. The external consultant should finalise the draft report and incorporate the PRT comments prior to submitting the report to the ASEAN Secretariat.

The ASEAN Secretariat should distribute the draft meeting summary to the AMS peer reviewers for approval before finalising the document in consultation with the PRA and the external consultant.

3.1.5 Create an Archive for all Documents Related to the Peer Review

The Peer Review archive should serve as the complete and formal record of the entire peer review process, including the results and final report. The PRA and the ASEAN Secretariat should begin compiling the Peer Review Record during the initiating phase (see Step 1). The completion of the Peer Review archive by the PRA marks the end of the peer review process. The Peer Review archive should include sufficient information for readers to understand what transpired during the peer review and the basis for any changes made to the peer review process or actions taken as a result of the peer review. The Peer Review archive must include all relevant materials from the peer review exercise.

Documents that should be included in the archive are:

- Goals and objectives of the peer review;
- Peer Review Plan;
- Final peer review report and its annexes;
- Materials provided to the PRT;

- Replies to the PR questionnaire;
- Peer Review Implementation Report;
- Comment received from AMS;
- Report of the plenary session; and
- Report on the implementation of the peer review.

3.1.6 ASEAN Secretariat to Send Final Report Including Annexes to AEGC

The ASEAN Secretariat is responsible for the general oversight of the peer review process. Once the peer review is completed, the ASEAN Secretariat should:

- Together with the PRA, hold a meeting to take stock of the work accomplished during the peer review and debrief the PRA, external Consultant and the PRT;
- Together with the PRA, discuss and agree on the measures and actions to follow-up on the peer review recommendations, if any;
- Together with the PRA, discuss and agree whether to publish the full PR report, selected components or a summary of the findings and recommendations; and
- To submit the report to the AEGC for consideration and appropriate action once steps above have been completed.

3.1.7 Publication of Peer Review Content

The PRA and the PRT should discuss the benefits and the costs of publishing the full report or the summary of its findings and recommendations. It is possible that the finalised Peer Review Report could contain confidential or sensitive information that is not suitable for public disclosure. It is the PRA's discretion and responsibility to decide what information should be excluded from being disclosed to the public. In considering the information to be excluded, it is highly recommended that the PRA discusses with the PRT and takes the position not to omit any fundamental findings from the published version. However, the credibility of the peer review findings and the peer review itself depends on transparency and independence of the peer review process. Each of these requirements would need to be given sufficient weightage in taking a decision on the publication of the peer review report.

3.1.8 PRA and the ASEAN Secretariat to publish the report

If a decision is taken to publish the PR report in full or its summary, the ASEAN Secretariat and the PRA should publish the appropriate version of the report in English on their respective websites. If there is any differing opinion from the AEGC and the ASEAN Secretariat regarding what to exclude, they should further discuss with the PRA, keeping in mind that it is ultimately the PRA's decision. When there is no differing opinion or when all the differences have been settled, the AEGC, the ASEAN Secretariat, and the PRA will agree on the version of the peer review report to be published.

Option 2: Circulate the Draft Peer Review Report for AEGC's feedback and Present the Final Report at the AEGC Meeting

It is conceivable that the Plenary may not always be held within the appropriate time span to discuss the draft Peer Review Report. If the AEGC so decides, instead of holding the AEGC Plenary, the draft Peer Review Report can be circulated to the AMS for their review and input.

3.2.1 The ASEAN Secretariat to Circulate Report and Seek Inputs from the AMS

If the AEGC decides to present the draft Peer Review Report without holding the Plenary, the ASEAN Secretariat will circulate the report to all the AMS that are not members of PRT for their comments and inputs. The ASEAN Secretariat will also set the deadline for comments and inputs, giving sufficient time for them to be considered. Although the time needed for the review might differ from case to case, at least one week should be given to the AMS for comments and inputs. While the AMS will be expected to review the whole draft report to check its accuracy and adequacy, the AMS is expected to focus on the evaluation part based on the evidence presented in the report and, if necessary, the recommendations.

Subsequently, the ASEAN Secretariat will compile the comments and inputs received from the AMS and send them to the PRT and PRA to be addressed.

3.2.2 The PRT to Revise and Present the Final Report to the AEGC

The PRT, in this case the external consultant, will revise the draft Peer Review Report to reflect the comments and inputs from the AMS. The PRT will accommodate them as much as possible, if they are considered appropriate. For questions or difficulties in accommodating any comments and inputs, the PRT can discuss further with the AMS through the ASEAN Secretariat. In the case when substantial issues are raised by the AMS but the PRT does not share the same view, the PRT should discuss the matter with the AMS. The discussion should generally be led by the external consultant. After the revised report is completed, the PRT will send it to the AEGC to be presented for discussion.

To finalise the Peer Review Report, the PRT will present it at the AEGC meeting. The agenda for the meeting will contain, at least, the presentation of the report, a question and an answer session, as well as discussions to gather any final inputs. In general, a whole day should be set aside for this exercise in order to have sufficient discussion time.

After all the inputs from the meeting have been reflected in the Peer Review Report, the AEGC will send the report to the PRA for its final comment. The AEGC can reflect PRA's comments, if necessary. The AEGC will confirm the report as final when there are no further comments or inputs.

3.2.3 The PRA to Consider Publishing the Peer Review Report

It is possible that the finalised Peer Review Report could contain confidential or sensitive information that is not suitable for public disclosure. It is the PRA's discretion and

responsibility to decide what information should be excluded from being disclosed to the public. In considering the information to be excluded, it is highly recommended that the PRA discusses with the PRT and takes the position not to omit any fundamental findings from the published version. It is very important to keep the transparency and thus credibility of the peer review report. When the PRA has decided what to exclude, it will send the draft version of the peer review report to be published to the AEGC and ASEAN Secretariat for their review.

3.2.4 The ASEAN Secretariat and PRA to Publish the Report as Appropriate

If there is any differing opinion from the AEGC and the ASEAN Secretariat regarding what to exclude, they should further discuss with the PRA, keeping in mind that it is ultimately the PRA's decision. When there is no differing opinion or when all the differences have been settled, the AEGC, the ASEAN Secretariat, and the PRA will agree on the version of the peer review report to be published.

The ASEAN Secretariat and PRA will then publish the report as appropriate.

3.2.5 The PRA to Create the Peer Review Archive

Following the publication of the peer review report, the PRA will create the archive containing all the relevant documents from the inception of the peer review process. The archive must be kept by the PRA for reference. With the creation of the archive, the entire peer review process concludes.

Appendix A: Peer Review Checklist

The PRA, the AEGC and the ASEAN Secretariat should use this checklist to determine whether; (i) the steps and milestones indicated below are adequate for the proposed peer review, and whether (ii) the recommended steps, if properly adopted and performed, would lead to a successful completion of the peer review.

This checklist is meant to be flexible with regard to the steps performed and the order of their accomplishment. The PRA may adjust the checklist to reflect the process agreed-to with the ASEAN Secretariat and as appropriate for the scope and methodology of the specific scope of the peer review. However, it is recommended that an induction/coordination session be organized prior to starting Step II to review the content of the Guidance Document and allocate tasks among the parties taking part in the peer review. For details see **Appendix I: Induction and Coordination Session**.

Step I: Initiating the Peer Review Process				
Milestone and activity	Steps in GD	To-Do	In Progress	Complete
Interested AMS to submit a formal written request for a peer review				
The AEGC to review the requests and inform the agency				
The Peer Reviewed Agency (PRA) to define the scope of issues to be peer reviewed				
The PRA to provide the report of the self-assessment using the ASEAN Self-Assessment Toolkit on Competition Enforcement and Advocacy				
PRA to provide the list of interviewees				
Agree on the General responsibilities of the external consultant and the peer review panel (could be adjusted based on the requirement of the PRA) (Appendix F)				
Short list the Peer Review Team (PRT) and the external consultant				
The PRA and the ASEAN Secretariat agree on the scope, work plan and timeline				
Notes:				

Step II: Conducting the Peer Review Exercise				
Milestone and Activity	Step in GD	To-Do	In Progress	Complete
The PRT to review the self-assessment and other materials as well as undertake a desk study to complement the available information. The PRA to provide all relevant documents needed for the exercise.				
The PRT to adjust and finalise the peer review questionnaire in accordance with the agreed scope of the peer review				
The ASEAN Secretariat and the PRA to organize for the PRT an induction and coordination session (Appendix I)				
The PRT to adjust and finalise the list of stakeholders to be interviewed prior to the field visits				
The PRA to develop a schedule for interviewing the stakeholders during the field visits.				
Organise a debriefing by the external consultant and the rest of the PRT members at the end of the field mission and address any outstanding substantive or logistical issues (for members of the PRT that did not participate in the field visits)				
The external consultant submits the first draft of peer review report to members of the PRT for their comments and review. Other members of the PRT can participate in drafting the report				
The PRT sends the draft report to the PRA for accuracy of data. Note that the report recommendations should not be shared with the agency at this stage. The PRT respond to the comments and submit a revised report to the PRA				
Notes:				

Step III: Presenting the Peer Review Report and Concluding the Peer Review Exercise

Milestone and activity:	Step in GD	To-Do	In Progress	Complete
Option1 - The peer review Plenary				
The PRA and the ASEAN Secretariat to finalise the agenda for the plenary, including the selection of topics to be discussed at the plenary and the non-PRT member peer reviewers				
The ASEAN Secretariat to consult the AEGC on the selection and designation of the chair of the peer review (In general the AEGC Chair will chair the session)				
The ASEAN Secretariat to send the peer review report and the list of questions for discussion to the PRT and the non-PRT member peer reviewers				
The external consultant to prepare a draft summary of the discussions during the plenary. The external consultant to request for inputs from other PRT members				
The external consultant to attach the report of the plenary to the peer review report. The ASEAN Secretariat to send to the PRA for comments				
The PRA and the ASEAN Secretariat to create an archive for all documents related to the peer review				
The ASEAN Secretariat to send the final report including Annexes to the AEGC				
The PRA and the ASEAN Secretariat to reach an agreement on whether some content of the peer review should be removed before publication				
As appropriate, the PRA and the ASEAN Secretariat to publish the report				
Notes				
Activity: Option 2: Presentation of the Peer Review Report to the AEGC				
The ASEAN Secretariat to circulate report and seek inputs from the AEGC				
The Consultant to present the final report to the AEGC				
The PRA and the ASEAN Secretariat to reach an agreement on whether some content of the peer review should be removed before publication				
As appropriate, the PRA and the ASEAN Secretariat to publish the report				
Notes:				

APPENDIX B: Requesting Form

The Letter for Requesting a Peer Review Addressed by the PRA to the AEGC through the ASEAN Secretariat could be structured as follows:

I. PURPOSE

The Letter of Agreement should outline briefly the intention to organise a peer review and indicate the timeframe.

II. SCOPE

The scope of the competition policy peer review will be decided by the PRA and communicated to the ASEAN Secretariat and the AEGC in detail after the self-assessment. The request may include the areas to be covered by the peer review as well as the expected outcomes and their intended use.

III. BUDGETARY IMPLICATION AND POSSIBLE SOURCES OF FUNDING

The PRA-to-be should provide tentative estimates of the costs of the peer review, sources of funding, including possible self-funding or grants from a development partner.

IV. POINTS OF CONTACT

Provide the name, title and phone number for responsible contact at PRA

APPENDIX C : Template for a Sample Questionnaire

This Template questionnaire is designed to assist the PRT in finalising the scope of the peer review. It should facilitate the collection of the information required for a peer review. It does not provide recommendations on what information should be collected in every case. In addition, the design, roll-out and ultimately the success of an assessment may involve a much more focused questionnaire. The PRT in consultation with the PRA may expand or narrow the set of questions as may be necessary for conducting the peer review.

Each section in this appendix corresponds to one of the core features of an effective competition law and its enforcement. The questionnaire should be amended to include any additional other aspects covered in the peer review. For additional information, the PRT should refer to the Guidance Document.

The PRA should provide a “Yes,” “No,” or “N/A [Not Applicable],” answer to each question, reflecting its assessment of the PRA’s law, policies and procedures. The PRA also should provide a narrative explanation or comment supporting each determination. If the PRT finds that the PRA’s answers does not adequately address a question or part of a question, the PRT should seek clarification from the PRA’s Point of Contact (POC).

Part 1. POWERS AND FUNCTIONS OF THE AGENCY		
	Questions	Peer reviewed agency explanation and comments
Q1.1	Does the competition law apply to firms located outside your jurisdiction whose behaviour directly affects competition and/or consumers in domestic markets?	
Q1.2	Are state-owned enterprises exempt from the application of competition law when conducting commercial activities in competition with private firms?	
Q1.3	Does the law exempt certain sectors of the economy? Which ones?	
Q1.4	Can your competition agency compel (or ask a court to compel) firms investigated for a possible antitrust infringement to provide information?	
Q1.5	Can your competition agency compel (or ask a court to compel) third parties to provide information to help an investigation on an antitrust infringement? (Q3.2)	
Q1.6	Can your competition agency perform unannounced inspections/searches (with or without a warrant/court authorization) in the premises of firms investigated for a possible antitrust infringement?	
Q1.7	If yes, has your competition agency performed unannounced inspections in the premises of firms investigated for a possible antitrust infringement at least once in the last five years?	

Q1.8	Can your competition agency compel (or ask a court to compel) merging firms to provide information to help in its assessment of the merger?	
Q1.9	Can your competition agency impose (or ask a court to impose) remedies or a cease and desist order on firms that have committed an antitrust infringement?	
Q1.10	Can your competition agency impose (or ask a court to impose) sanctions on firms that have committed an antitrust infringement?	
Q1.11	Can your competition agency impose (or ask a court to impose) sanctions on a firm that hinders an investigation on an alleged antitrust infringement?	
Q1.12	If yes, have sanctions been imposed on a firm and/or individuals for hindering an investigation on an antitrust infringement at least once in the last ten years? (Q4.6)	
Section2. AUTONOMY AND ACCOUNTABILITY		
Q2.2	Does the competition law provide for an autonomous competition agency?	
Q.2.2	Have the government/ministers given binding directions to the competition agency on whether it should open an investigation on an alleged antitrust infringement at least once in the last five years?	
Q2.3	Have the government/ministers given binding directions to the decision-maker in your jurisdiction on whether it should close an investigation on an alleged antitrust infringement at least once in the last five years?	
Q2.4	Have the government/ministers given binding directions to the competition agency on whether it should impose/not impose (or ask a court to impose/not impose) specific remedies when closing an investigation on an alleged antitrust infringement at least once in the last five years?	
Q2.5	Have the government/ministers given binding directions to the competition agency (or other public bodies) on whether it should not undertake a market/sectoral study at least once in the last five years?	
Q2.6	Have the government/ministers overturned a decision concerning the clearance of a merger at least once in the last five years?	
Q2.7	Have the government/ministers overturned a decision concerning the prohibition of a merger at least once in the last five years?	
Q2.8	Can your competition agency compel (or ask a court to compel) firms investigated for a possible antitrust infringement to provide information	

Q2.9	Can your competition agency (or a court) settle voluntarily with the parties investigated for an alleged antitrust infringement and thus close the investigation?	
Q2.10	Can your competition agency (or a court) clear a merger that raises anticompetitive concerns by negotiating/accepting remedies that address these concerns at an early stage and thus avoid performing a more in-depth investigation?	
Q2.11	Do you regularly publish a report on the agency 's activities?	
Q2.12	Are infringement decisions published by the agency?	
Q2.13	Can decisions on infringements and mergers assessments (whether taken by a competition agency or a court) be subject to judicial review with respect to their substance? Procedural challenges?	
Q3.1	Do the party/parties under investigation for an infringement have an opportunity to consult with you with on significant legal, factual or procedural issues during the investigation?	
Q3.2	Do parties have the right to be heard and present evidence before the imposition of any sanctions or remedies for having committed an infringement or in a merger case?	
Q3.3	Does your competition agency publish procedural guidelines or public documents explaining its investigative procedures? (Q11.5	
Q3.4	Do you publish guidelines that explain how abuse of dominance cases are assessed?	
Q3.5	Do you publish guidelines that explain how horizontal agreements are assessed?	
Q3.6	Do you publish guidelines that explain how vertical agreements are assessed?	
Q3.7	Do you publish guidelines that explain how mergers are assessed?	
Q3.8	Do you publish administrative guidelines that explain how monetary sanctions for infringements are set by your agency, or recommended by it to the court?	
Section3: HORIZONTAL AGREEMENTS		
Q4.1	Are anticompetitive horizontal agreements (including cartels) prohibited in your jurisdiction?	
Q4.2	Does the decision-maker conduct an economic analysis of the competitive effects of horizontal agreements when investigating them?	
Q4.3	When investigating an alleged anticompetitive horizontal agreement, can the decision-maker consider any efficiency it may generate?	

Q4.4	Have sanctions and/or remedies been imposed on at least one cartel in your jurisdiction in the last five years? If yes, please provide list and summary of cases.	
Q4.5	Have sanctions and/or remedies been imposed on at least one anticompetitive agreement that is not a cartel in your jurisdiction in the last five years?	
Q4.6	Does your jurisdiction have a leniency/immunity program for cartel participants (firms and/or individuals)? If yes, has the leniency/immunity program generated at least one application?	
SECTION 4: VERTICAL AGREEMENTS		
Q5.1	Are anticompetitive vertical agreements prohibited in your jurisdiction?	
Q5.2	Does the decision-maker conduct an economic analysis of the competitive effects of vertical agreements when investigating them?	
Q5.3	When investigating an allegedly anticompetitive vertical agreement can the decision-maker consider any efficiencies this may generate?	
Q5.4	Have sanctions and/or remedies been imposed on at least one anticompetitive vertical agreement in your jurisdiction in the last five years? If yes, please provide list and summary of cases.	
Q5.5	Are exclusionary conducts by dominant firms and/or by firms with substantial market power prohibited in your jurisdiction?	
Q5.6	Does the assessment of the agreement take non-market-share factors (such as conditions of entry, ability of smaller firms to expand, and ability of customers to switch to smaller rivals) into account when determining dominance?	
Q5.7	Does the economic analysis take into account the competitive effects of exclusionary conducts when investigating them?	
Q5.8	Has your competition agency imposed sanctions and/or remedies on at least one firm for exclusionary conduct over the past five years? If yes, please provide list and summary of cases.	
Section 6: MERGERS		
Q6.1	Does your competition law apply to mergers and acquisitions?	
Q6.2	Are there other laws that applies to mergers in specific sectors? If yes, which ones?	
Q6.3	Does your competition agency conduct an economic analysis of the competitive effects of mergers when investigating them?	

Q6.4	When assessing a merger can the competition agency consider whether the merger is likely to generate efficiencies?	
Q6.5	Has the competition agency blocked or cleared with remedies at least one merger in the last five years?	
Q6.6	When investigating an allegedly anticompetitive merger can the competition agency consider public interest or employment issues this may generate?	
Q6.7	Can your competition agency (or a court) settle voluntarily with the parties investigated for an alleged anti-competitive merger and thus close the investigation?	
Q6.8	Has the competition agency blocked or cleared with remedies at least one merger in the last five years? If yes, please list the decision(s) and provide a summary	
SECTION 7: ABUSE OF DOMINANCE		
Q7.1	Are exclusionary conducts by dominant firms and/or by firms with substantial market power prohibited in your jurisdiction?	
Q7.2	Are exploitative conducts by dominant firms and/or by firms with substantial market power prohibited in your jurisdiction?	
Q7.3	Does the competition agency take non-market-share factors (such as conditions of entry, ability of smaller firms to expand, and ability of customers to switch to smaller rivals) into account when determining dominance?	
Q7.4	When investigating an allegedly exclusionary conduct can the competition agency consider any efficiency this may generate?	
Q7.5	Has the competition agency imposed sanctions and/or remedies on at least one firm for exclusionary conduct over the past five years? If yes, please list the decision(s) and provide a summary of the cases	
SECTION 8: COMMUNICATION AND ADVOCACY		
Q8.1	Do you advocate competition at the central government level?	
Q8.2	Do you advocate competition at local or regional government levels?	
Q8.3	Are new public policies that may have implications for competition subject to a competition assessment in your country?	
Q8.4	If a market/sectoral study identifies an obstacle or a restriction to competition caused by an existing public policy, can the study include an	

	opinion/recommendation to the government to remove or reduce such an obstacle or restriction? Is the government required to respond to this opinion/recommendation?	
SECTION 9: PRIVATE DAMAGES		
9.1	Can individuals bring a legal action to seek damages from firms that have committed an infringement? if yes, please provide cases.	
9.2	Can firms bring a legal action to seek damages from firms that have committed an infringement? if yes, please provide cases.	
9.3	Can a group of consumers bring a legal action to seek damages from firms that have committed an infringement? if yes, please provide cases.	

Appendix D: The List of Stakeholders to be Interviewed during the Field Visits

Proposed list of Stakeholders to be interviewed by PRT

In consultation with the PRT, the PRA has identified the following parties as relevant stakeholders whose views of the [*state name of AMS being peer reviewed*] competition law regime will help the PRT better understand the issues that fall within the scope of this peer review exercise.

The PRA will facilitate access to these stakeholders by organising a suitable interview schedule so that they may be interviewed during the PRT’s field study, either separately or in groups.

Group 1: Private Practitioners (i.e. competition lawyers and economists)

Organisation	Name of Representative	Designation of Representative	Contact details of Representative

Group 2: Corporate Counsel

Organisation	Name of Representative	Designation of Representative	Contact details of Representative

Group 3: Trade Association Representatives

Organisation	Name of Representative	Designation of Representative	Contact details of Representative

Group 4: Academics, Think-tank Analysts and Researchers

Organisation	Name of Representative	Designation of Representative	Contact details of Representative

Group 5: Public servants – e.g. Sectoral Regulators, Consumer Protection Agencies, consumer associations, academia, as well as other members of the executive or judicial branches of government

APPENDIX E: Induction/Coordination Sessions

It would be necessary for the PRA to hold an induction-cum–coordination session on the procedures and the steps outlined in the Guidance Document, to ensure all parties involved in the exercise are familiar with the Guidance Document.

The main objectives of the induction/coordination session are:

- ✓ **Ensuring PRT members understand the purpose of the ASEAN peer review and the process for conducting the peer review as outlined in this Guidance Document;**
- ✓ **Reviewing the individual roles and tasks of the PRT members, the PRA, as well as the AEGC;**
- ✓ **Review the template questionnaire, Peer Review report outline, conduct of interviews, debriefing, etc;**
- ✓ **Complete the Work plan, timeline and deliverables (Templates in Appendices); and**
- ✓ **Discuss and finalise the logistical arrangements and other requirements for obtaining access to needed information, people, facilities, etc.**

APPENDIX F: Template for Statement of Work for the External Consultant

Statement of External Consultant's Work Scope

This template may be used when drafting the letter of engagement for the external consultant after a peer review process has been initiated by an AMS. In addition to the scope of the responsibilities delegated to the external consultant, outlined below, the letter of engagement should also specify the supervising agency or agencies involved, the anticipated timeline for the peer review process and the nature of the role of the external consultant as a representative of the PRT.

The External Consultant is appointed to carry out the following tasks in consultation with the Peer Review Team (PRA):

1. Prepare a Background Study Report on the CPL issues, identified by the PRA to fall within the scope of the peer review exercise. This includes reviewing the result of self-assessment exercise.
2. Finalise the questionnaire in preparation of the field visit.
3. Draft and review the work plan of the peer review with the PRA and the list of interviewees for the field visit.
4. Conduct interviews with relevant stakeholders, and collating their responses, during the Field Study at the PRA.
5. Debriefing other members of the PRT on the outcomes of the Field Study at the PRA.
6. Draft the Peer Review Report, including a summary of the findings of the peer review and recommendations for the PRA's consideration.
7. Present the PR report during the Plenary and submit a report of the plenary discussions.
8. Revise and finalise the drafts of the Peer Review Report on behalf of the PRT.

APPENDIX G: Template for Lessons Learned/ Feedback Form

Lessons learnt from the Peer Review Exercise

Upon completion of the peer review exercise, this template may be used by the participants to record the lessons they have learnt from engaging in the process – as PRA, PRT member or non-PRT AMS

Having reflected upon the outcomes of this Peer Review Exercise, the following lessons have been learnt by the various participants in this process.

(A) Reflections from the PRA

From the Peer Review Report submitted by the PRT, which included the comments made by AMSs who were not members of the PRT, the PRA has reached the following conclusions:

- 1) ...
- 2) ...

(B) Reflections from the PRT

From studying the issues within the scope of this Peer Review Exercise and its participation in the process as members of the PRT, [*state the names of the AMS members of the PRT*] have acquired a deeper understanding of the following aspects of the PRA's national competition law regime.

- 1) ...
- 2) ...

(C) Reflections from the non-PRT AMS

From reviewing and commenting upon the Peer Review Report prepared by the PRT, as well as participating in the Peer Review Plenary / Presentation, the following observations are made by the AMS who were not directly involved in this Peer Review Exercise.

This Peer Review Process has enabled [*state the name of AMS 1*] to familiarize itself with the competition law concerns of the PRA in respect of....

This Peer Review Process has allowed [*state the name of AMS 2*] to better appreciate the challenges faced by the PRA in....

This Peer Review Process has given [*state the name of AMS 3*] the opportunity to compare the approaches taken by the PRA and [*state the name of another AMS*] towards addressing the issue of....

Appendix H: Draft agenda of the plenary session

Agenda Item:

1. Introduction of the peer review, its scope and the peer reviewers by the AEGC Chair

The Team leader of the PRT or the ASEAN Secretariat should prepare a set of speaking notes for the chair to present the peer review process, the scope of the peer review as well as the selection of the team members.

2. The main findings of the peer review presented by the team leader/consultant

The Peer review team should prepare a concise presentation of the main findings, insights and lessons learned as well as recommendations as appropriate. The team leader should present this report and if necessary invite other members of the team to provide additional comments.

3. The Peer reviewed agency's response to the peer review report

The PRA should respond to the main findings of the report as well as its recommendations. The PRA may wish to include in its delegation experts who can provide technical comments and insights on the findings of the report.

4. Interactive session:

- a. Discussion on specific aspects of the peer review report
- b. Sharing of insights, good practices and lessons learned
- c. Follow-up on the recommendations as appropriate

The interactive session should provide an opportunity for participating agencies to comment on the peer review report as to learn from the insights and lessons drawn in the report. Given the limited time available for this session, it's important that the list of questions and speakers are finalised in advance of the plenary. Agencies should be encouraged to submit written comments and limit their oral comments to areas topics deserving further discussions in the plenary.

5. Closing remarks by:

- a. The Peer reviewed agency
- b. The AEGC Chair

The Chair may invite the PRA to give its overall assessment of the peer review, as well as the extent to which the peer review can help the PRA meet some of the goals of the ACAP 2025.

APPENDIX I: Template for the Peer Review Plenary Report

1. Background

The plenary discussion of the PR report by peers within the AEGC represents a key element of the review process. It should be an open and frank dialogue and exchange of views among AMS, as well as other invited participants, that should add value to ASEAN peer reviews. All AMS should therefore be encouraged to actively participate in the plenary, both by submitting comments beforehand and by contributing to the discussions.

Prior to the plenary session, the PR report should be shared with the peers participating in the discussions in order to provide their own comments and views on the analysis and the findings of the PR report, so that they can be discussed as appropriate during the plenary. Given the overall constraint on the time allocated to the plenary, the peers' comments and the PRA's responses should be concise and focused primarily on topics in which they have a major difference of opinion with the analysis and findings of the PR report.

The PR report should be presented by the team leader of the PRT, assisted as needed by the other team members. The plenary discussion should ensue under the direction of AEGC Chair. The peer reviewed jurisdiction should be entitled to bring, if needed, a larger delegation and should be invited to take the floor prior to the discussion to comment on the peer review report and to explain how it intends to respond to the peer review findings.

2. Structure of the presentation of the peer review report

The Team leader should lead the drafting of the plenary report with input from other members of the review team as well as the ASEAN Secretariat. The report should follow a standardised format that will differ to some extent for full peer reviews and thematic reviews, while the length of each report should depend on the issues to be covered for the jurisdiction or theme under review. The plenary report should comprise a summary of the deliberations, sections describing the discussions under each agenda item, and a concluding section containing recommended actions to address any limitations identified. Recommended actions, as well as the elements upon which they are based, should be clearly articulated and prioritised in the concluding section, with proposed capacity building where possible.

The report, including any comments and responses by the peer reviewed agency, should be re-circulated to the peer reviewers for approval before being finalised. The length of each country report (main body excluding Annexes) should generally be about 15 pages in length. Additional detailed information, can be provided in Annexes. Progress vis-à-vis the ASEAN collective efforts to meet the ASAPCP 2025 should be self-reported by the peer reviewed jurisdiction in a table that would appear as Annex 6 to the report, but ***that information should not be evaluated by the review team.***

3. Structure of the Plenary report

I. SUMMARY

- a) Scope of the peer review
- b) Methodology
- c) Main findings
- d) recommendations

II. GENERAL INFORMATION

- a) Status of competition in country xxx
- b) Legal and institutional framework

III. PEER REVIEW ASSESSMENT

- a) Autonomy and resource adequacy
- b) Capacity to respond to market development
- c) Enforcement record
- d) Advocacy activities
- e) Business compliance with competition law
- f) Public policy coherence with the competition law
- g) Steps taken to meet ACAP 2025

IV. SHARING INSIGHTS, GOOD PRACTICES AND LESSONS LEARNED

- a) General good practices and lessons
- b) Specific good practices and lessons per topic
- c) Recommendations

ANNEXES

ANNEX 1: The agenda

ANNEX 2: List of participants

ANNEX 3: PRT Members

ANNEX 4: List of relevant laws, rules and other material

APPENDIX J: Template for the Peer Review Report

Date

Table of contents

Abbreviations

1. Executive Summary

This section summarises the contents of the whole Peer Review Report, mainly the sections below.

2. Introduction

The introduction should provide basic information of the ASEAN Peer Review including, but not limited to, an explanation of the ASEAN Peer Review process and its objective, how the PRA volunteered to undergo the peer review in the case concerned, the scope of the peer review, and the members of the PRT.

3. Background

In this section, the background information of the competition policy and law of the PRA that is necessary to understand the contents of the findings and recommendations – for example, its legal framework – should be stated, especially when the PRA has chosen a limited scope of review based on its circumstances.

4. Findings

It is preferable to provide specific evidence to support the findings while taking the conciseness of the report into account so that the reader can easily understand them.

5. Recommendations

It is suggested that recommendations be stated in the order that reflects the respective findings.

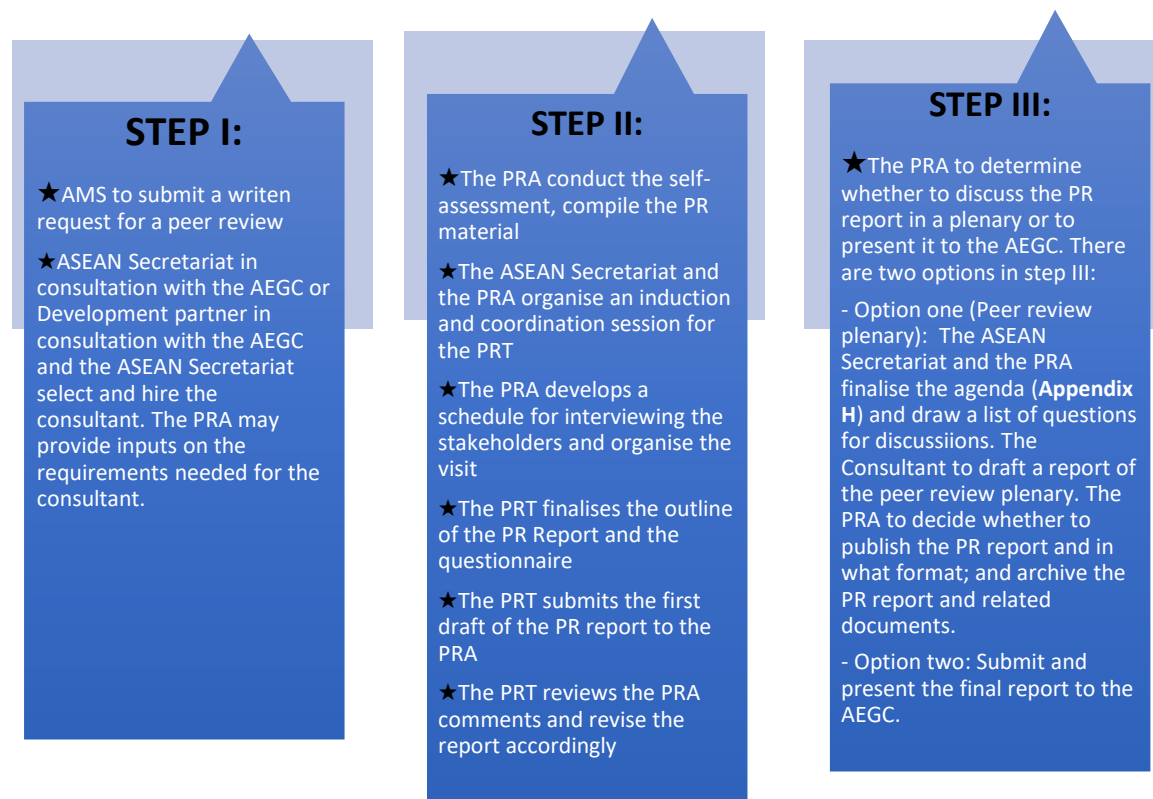
6. Conclusion

In this section, conclusions based on the findings stated above – including recommendations – will be mentioned.

Appendixes

Information, including in the form of tables and figures and relevant to the main content should be compiled here.

Appendix K: Peer review work flow¹



¹This appendix should be read in conjunction with Appendix A: **Peer review Checklist**, and Appendix E: **Induction and coordination session**.