

**PROTOCOLS OF THE APEC CROSS-BORDER PRIVACY RULES SYSTEM JOINT
OVERSIGHT PANEL**

Paragraph 6.2 of the Charter of the APEC Cross Border Privacy Rules Joint Oversight Panel (herein “Charter”) identifies the core functions of the JOP. The purpose of this document is to establish the procedures associated with each of the identified functions.

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ECONOMY PARTICIPATION PROCESS

1. An APEC member Economy that intends to participate in the Cross Border Privacy Rules (CBPR) System must provide the Chair of the Electronic Commerce Steering Group (ECSG), the Chair of the Data Privacy Subgroup (DPS) and the Chair of the Joint Oversight Panel (JOP) with the following information:

- a letter of intent to participate in the CBPR System;
- confirmation that a Privacy Enforcement Authority in that Economy is a participant in the Cross Border Privacy Enforcement Arrangement (CPEA);
- confirmation that the Economy intends to make use of at least one APEC-recognized Accountability Agent subject to the procedures outlined in paragraph 6.2 of the Charter (*note: the Economy need not name a specific Accountability Agent at this point, only affirm its intention to use the services of an APEC-recognised Accountability Agent once it has been identified and approved*);
- with respect to Accountability Agents, a narrative description of the relevant domestic laws and regulations and administrative measures which may apply to any CBPR certification-related activities of an Accountability Agent operating within the Economy's jurisdiction and the enforcement authority associated with these laws and regulations and administrative measures; and the Completed APEC Cross-Border Privacy Rules System Program Requirements Enforcement Map and additional narrative explanation of the Economy's ability to take enforcement actions under applicable domestic laws and regulations that have the effect of protecting personal information consistent with the CBPR program requirements.

Findings Report and Commencement of Economy's Participation

2. Paragraph 6.2 of the Charter instructs the JOP to "(e)ngage in consultations with those Economies that have indicated an intention to participate in the CBPR System and issue a report as to how the conditions set out in paragraph 2.2 have been met." The JOP will draft a findings report that details this consultative process and explains how each of the conditions has been met. This report will be circulated to all member Economies by the APEC Secretariat and will be made publicly available on the APEC website developed as part of the implementation of the CBPR System (CBPR website).

3. A determination in the findings report that each of the conditions listed in paragraph 2.2 of the Charter has been met will be made by simple majority of the JOP. A dissenting member of the JOP may circulate his or her dissent from the majority's report to APEC Economies. This opinion will be appended to the findings report.

4. A member of the JOP should not participate in the consultative and determination process described in paragraphs 2 and 3 with that JOP member's own Economy. In those instances, the DPS Chair will designate another volunteer APEC Economy to temporarily function as a member of the JOP for the purposes of this consultation and determination process.

5. An APEC member Economy that has successfully met the conditions established in paragraph 2.2 of the Charter as indicated in the findings report will be considered a participant in the CBPR System and may nominate one or more Accountability Agents for APEC Recognition or notify the JOP a request for recognition by the Accountability Agent.

Suspension of Economy's Participation

6. Participation by an APEC member Economy in the CBPR System may be suspended by a consensus determination by all APEC member Economies (excluding both the requesting Economy and the Economy in question) that one or more of the following situations has occurred:

- Revocation, repeal or amendment of any domestic laws and/or regulations having the effect of making participation in the CBPR system impossible (such as repeal of a law that has the effect of protecting personal information consistent with the CBPR program requirements);
- The CBPR Participant's Privacy Enforcement Authority as defined in paragraph 4.1 of the CPEA ceases participation pursuant to paragraph 8.2 of the CPEA; or
- Dissolution or disqualification of a previously recognized Accountability Agent where this function is provided in the CBPR Participant's Economy exclusively by that entity (*note: certification of those organizations only certified by that Accountability Agent will be terminated until such time as the Economy is able to again fulfill the requirement for participation in the CBPR System pursuant to the process described in paragraphs 1-5, at which time any previously-certified applicant organizations should complete a new certification process. However, existing legal obligations may remain in effect under domestic law.*)

7. Only CBPR Participating Economies may initiate a request for a consensus determination that any situation identified in paragraph 6 has occurred.

8. Requests for consensus determination should be sent to the Chair of the ECSG, the Chair of the DPS and the Chair of the JOP along with an explanation of the basis for the request. Any APEC member Economy may request additional information or clarification from the requesting Economy or the Economy in question. Any information provided is at the discretion of the requesting Economy or Economy in question and will be shared with the ECSG.

9. The JOP will ensure that any suspension of participation by an Economy in the CBPR System and the terms associated with it are circulated to all member Economies by the APEC Secretariat and that notice of this suspension is reflected on the CBPR website.

Withdrawal of Economy's Participation

10. An APEC member Economy may cease participation in the CBPR System at any time by giving 30 days' written notice (beginning from the date the notice is received) to the ECSG Chair.

Suspension of Accountability Agent's Certifications

11. If an APEC member Economy ceases participation (whether by way of withdrawal or suspension) in the CBPR System, any certifications performed by APEC-recognized Accountability Agents in that Economy must be suspended at the same time as the cessation of the Economy's participation in the CBPR System. This requirement must be incorporated into the agreements between the Accountability Agents and any organizations they certify as CBPR-compliant. However, existing legal obligations may remain in effect under domestic law.

12. The JOP will ensure that a suspension or withdrawal of an APEC-recognized Accountability Agent operating in that Economy is circulated to all member Economies by the APEC Secretariat and that such suspension or withdrawal is reflected on the CBPR website within 30 days notice of that suspension or withdrawal.

Re-Initiation of Participation

13. Any APEC member Economy that has withdrawn or is suspended from participation in the CBPR System may engage in consultations with the JOP to re-initiate participation pursuant to the process described in paragraphs 1-5 at any time.

ACCOUNTABILITY AGENT APPLICATION PROCESS

Consultation Process

14. Paragraph 6.2 of the Charter instructs the JOP to “[m]ake recommendations to APEC Economies whether to recognize an applicant Accountability Agent as compliant with the requirements of the CBPR System” after a request for recognition through the process described in the *APEC Accountability Agent Recognition Application*. Upon receipt of such a request, the JOP will commence its review of the required documentation.

15. In reviewing the required documentation, members of the JOP will engage in consultations with an applicant Accountability Agent to ascertain whether that the established criteria required in the *APEC Accountability Agent Recognition Application* are met. Members of the JOP may request any additional information from relevant stakeholders, including the applicant Accountability Agent, where necessary.

Recommendation Report

16. Upon completion of the consultation process, the JOP will draft a report that recommends whether APEC member Economies should recognize that the applicant Accountability Agent has met the recognition criteria established in the *APEC Accountability Agent Recognition Application*. This report must describe how, in the opinion of members of the JOP, each of the following criteria have or have not been met:

- **Confirmation of Enforceability of an Organization’s CBPR Obligations:** Once recognized, an Accountability Agent may only certify organizations located in an APEC member Economy in which the Accountability Agent has been approved to operate. These organizations must be subject to the enforcement authority of a CPEA-participating privacy enforcement authority in that Economy. The JOP will seek confirmation of this from relevant enforcement authority(ies) in the Economy in which the Accountability Agent will operate. These organizations must publicly state that they will comply with the CBPR program requirements. This public statement must link to the applicable APEC CBPRs program requirements on the certifying Accountability Agent’s website and on the APEC CBPR website.
- **Confirmation of an Accountability Agent’s Location or Jurisdiction of the Relevant Enforcement Authority or Appropriate Government Entity:** An applicant Accountability Agent must have a location in a CBPR Participant’s Economy in which it seeks to operate and/or be subject to the jurisdiction (including administrative measures) of the relevant enforcement authority or appropriate government entity in that Economy. The JOP will consult with relevant enforcement authorities or government entities in that Economy regarding that the description of the relevant domestic laws, regulations and administrative measures provided by the CBPR Participating Economy in Annex A of the *Template Notice of Intent to Participate* may that may apply to the applicant Accountability Agent.

- **Confirmation of Recognition Criteria:** An applicant Accountability Agent must describe how each of the *Accountability Agent Recognition Criteria* have been met. The JOP will work with the applicant Accountability Agent to confirm these criteria have been met.
- **Confirmation of Program Requirements:** Recognized Accountability Agents must make use of the template documentation developed and endorsed by APEC Economies (the *CBPR Intake Questionnaire* and the *CBPR Program Requirements*) to assess applicant organizations when certifying organizations as CBPR-compliant or demonstrate how their existing intake and review processes meet or exceed those established in the CBPR System using the *CBPR Program Requirements Map*. The JOP will work with the applicant Accountability Agent to confirm that the intake and review processes meet or exceed the requirements of the CBPR System.
- **Confirmation of Signature and Contact Information:** An applicant Accountability Agent must complete the signature and contact information sheet as part of the *APEC Accountability Agent Recognition Application*. The JOP will confirm this has been completed and include the information provided in its recommendation report.

17. The JOP's recommendation will be made by simple majority. A dissenting member of the JOP may circulate his or her dissent from the majority's recommendation on any matter to APEC member Economies.

18. In no circumstance should a member of the JOP participate in any of the activities under paragraph 6.2 of the Charter when the Accountability Agent is a public (or governmental) entity (whether partially or wholly) in that JOP member's Economy or any of the activities under paragraph 2.2 of the Charter where the interested Economy is a member of the JOP. In such instances, the DPS Chair will designate another APEC member Economy to temporarily function as a member of the JOP pursuant to paragraph 6.4 of the Charter for this purpose.

Publication and Distribution for Consensus Determination

19. The JOP's recommendation report will be circulated to all APEC member Economies by the APEC Secretariat for their consideration and will be made publicly available on the CBPR website. The recommendation report will not contain any business proprietary or confidential information of the applicant Accountability Agent.

20. APEC member Economies will make a determination on whether to grant the applicant Accountability Agent's request for recognition, taking into account the JOP's recommendation. Any APEC member Economy has the right to reject the request of an applicant Accountability Agent for recognition for failure to meet any of the recognition criteria required in the *APEC Accountability Agent Recognition Application*. Any APEC member Economy may request additional information or clarification from the applicant Accountability Agent. If no objection is received within a set deadline, the request will be considered to be approved by the ECSG. APEC recognition is limited to one year from the date of recognition.

21. Once recognized, Accountability Agents must make their completed *APEC Accountability Agent Recognition Application* (excluding all business proprietary or confidential information) available on their website and easily accessible to consumers. The JOP will ensure that *the Accountability Agent Recognition Application* and associated findings report are circulated to all APEC member Economies by the APEC Secretariat and are posted on the CBPR website.

ONGOING ENGAGEMENT

Case Notes

22. The *Accountability Agent Recognition Criteria* require applicant Accountability Agents to attest that as part of their dispute resolution mechanism they have a process for releasing case notes in anonymized form on a selection of resolved complaints illustrating typical or significant interpretations and notable outcomes. This information will promote understanding about the operation of the CBPR program and build stakeholder trust in APEC recognized Accountability Agents. Recognized Accountability Agents will submit these case notes to the JOP using the template document provided in Annex D of the *Accountability Agent Recognition Criteria*. The JOP will ensure that all case notes are circulated to all APEC member Economies by the APEC Secretariat and are posted on the CBPR website.

Complaint Statistics

23. The *Accountability Agent Recognition Criteria* require applicant Accountability Agents to attest that as part of their dispute resolution mechanism they have a process for releasing complaint statistics and for communicating that information to the relevant government agency and privacy enforcement authority. Recognized Accountability Agents will submit these complaint statistics to the JOP using the template document provided in Annex E of the *Accountability Agent Recognition Criteria*. The JOP will ensure that all complaint statistics are circulated to all APEC member Economies by the APEC Secretariat and are posted on the CBPR website.

Re-Attestation

24. The JOP will verify that each recognized Accountability Agent complies with the re-certification process as required under the *Accountability Agent Recognition Criteria*. Each year one month prior to the anniversary of the date of recognition, the Accountability Agent must attest to the continuing adherence to the Recognition Criteria by resubmitting the completed signature and contact information form found in Annex F of the Accountability Agent Recognition Criteria and any associated documentation to the appropriate government agency or public authority and to the JOP. This information must be provided to the appropriate government agency or public authority and to the JOP as soon as practicable in the event of a material change (e.g. ownership, structure, policies). The JOP will ensure that this information is circulated to all APEC member Economies by the APEC Secretariat and is posted on the CBPR website. The JOP will issue a recommendation report to APEC Economies as to whether or not to continue to recognize the Accountability Agent. Economies will consider the Accountability Agent's request for continued recognition, considering the recommendation of the JOP. If no objection is received within a set deadline, the request will be considered to be approved by the ECSG.

Advice on Conflicts of Interest

25. Pursuant to paragraph 6.2(vi) of the Charter, when a potential conflict of interest has been alleged, the JOP may consult with the recognized Accountability Agent and advise it whether to withdraw from a particular engagement, considering any evidence provided by the recognized Accountability Agent as to its internal structure and procedural safeguards that are in place to address any potential and actual conflict of interest.

Complaint Handling

26. The JOP can receive complaints regarding the conduct of a recognized Accountability Agent by APEC member Economies, businesses, consumers or others at any time. Where appropriate, the JOP can request the relevant Privacy Enforcement Authority or other relevant Authority in the Economy where the Accountability Agent is located to investigate the compliance of that Accountability Agent with its obligations established in the *Recognition Criteria*. The Privacy Enforcement Authority or other relevant Authority may investigate and take remedial action as necessary at its discretion as authorized under its domestic law. The JOP may consider and recommend discontinuing an Accountability Agent's recognition pursuant to paragraph 27.

REQUEST FOR CONSENSUS DETERMINATION OF CONTINUED APEC RECOGNITION

JOP-Initiated Request

27. The JOP may consider and recommend discontinuing an Accountability Agent's recognition for failure to meet any of the *Recognition Criteria* required in the *APEC Accountability Agent Recognition Application* at any time pursuant to the process established in paragraphs 14 and 15. The JOP will draft a recommendation report as to whether APEC member Economies should continue to recognize the Accountability Agent as having met the established recognition criteria. When making this recommendation, the JOP may consider any relevant information including complaints received regarding the conduct of a recognized Accountability Agent by APEC member Economies, businesses, consumers or others. This report should explain how, in the opinion of members of the JOP, the Accountability Agent has failed to meet one or more elements of the criteria in the *APEC Accountability Agent Recognition Application*.

28. A recommendation by the JOP to discontinue an Accountability Agent's recognition will be made by simple majority. A dissenting member of the JOP may circulate his or her dissent from the majority's recommendation on any matter to APEC member Economies. This opinion will be appended to the findings report.

29. In no circumstance should a member of the JOP participate in any of the activities under paragraph 6.2 of the Charter when the Accountability Agent is a public (or governmental) entity (whether partially or wholly) in that JOP member's Economy. In such instances, the DPS Chair will designate another APEC Economy to temporarily function as a member of the JOP pursuant to paragraph 6.4 of the Charter for this purpose.

30. A JOP recommendation to immediately suspend a recognized Accountability Agent will trigger a consensus determination by all member Economies as to whether to allow the Accountability Agent to nevertheless remain recognized for the balance of its term of recognition. If no objections are received within a set deadline, the recommendation to continue the recognition of the Accountability Agent will be deemed to be approved.

Economy-Initiated Request

31. An APEC member Economy that has nominated an Accountability Agent can unilaterally withdraw that nomination. This will have the effect of ending the Accountability Agent's APEC recognition in that Economy. Any certifications performed by that Accountability Agent in that Economy will be suspended. This requirement should be incorporated into the agreements between the Accountability Agent and any organizations they certify as CBPR-compliant.

32. An APEC member Economy can make a request to the JOP for a determination that the recognition of an Accountability Agent should be discontinued if the Economy believes that any recognized Accountability Agent operating in its jurisdiction has failed to meet any of the Recognition Criteria listed in the *APEC Accountability Agent Recognition Application*. This

request should explain how, in the opinion of that Economy, the Accountability Agent has failed to meet one or more elements of the criteria.

33. A request by an APEC member Economy to suspend a recognized Accountability Agent operating in its jurisdiction will trigger a consensus determination of continued recognition by APEC member Economies. Economies will consider whether to allow the Accountability Agent to nevertheless remain recognized for the remainder of its term, taking into account the recommendation of the JOP. If no objections are received within a set deadline, the recommendation to continue the recognition of the Accountability Agent will be deemed to be approved.

34. An APEC member Economy can make a request to the JOP for a determination that the recognition of an Accountability Agent should be discontinued if the Economy believes that the Accountability Agent operating in another CBPR-participating Economy has failed to meet any of the recognition criteria listed in the *APEC Accountability Agent Recognition Application*. This request should explain how, in the opinion of that Economy, the Accountability Agent has failed to one or more elements of the criteria.

35. A request by an APEC member Economy to suspend a recognized Accountability Agent operating in another Economy will trigger a consensus determination of continued recognition by APEC member Economies (excluding the requesting Economy) for the remainder of the Accountability Agent's term of recognition. If no objections are received within a set deadline, the recommendation to continue the recognition of the Accountability Agent will be deemed to be approved.

Mandatory Suspension of Recognition

36. In the event that an Economy discontinues participation in the CBPR System, any recognition of an Accountability Agent in that Economy should automatically be terminated at the same time.

Suspension of Accountability Agent's Certifications

37. Any certifications performed by an Accountability Agent will be suspended at the same time as the suspension or cessation of the Accountability Agent's recognition. This requirement should be incorporated into the agreements between the Accountability Agent and any organizations they certify as CBPR-compliant.

Publication of Suspension of Recognition

38. The JOP will ensure that any suspension of an Accountability Agent's recognition and the terms associated with it are circulated to all member Economies by the APEC Secretariat and that this is displayed on the CBPR website within 30 days of the suspension.

ADDITIONAL PROVISIONS

Establishment of Working Teams

39. The JOP may by simple majority determine to establish working teams to address any function identified in paragraph 6.2 of the Charter and request assistance from the APEC Secretariat or APEC Economies as necessary.

Editing and Drafting CBPR Documentation

40. The JOP will support the DPS in facilitating the review and edit of primary documentation associated with the CBPR System when appropriate.