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# Data Protection in the Asia-Pacific Region and Cross-Border Privacy Rules

Submitted by: United States

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**Free Trade Area of Asia-Pacific Capacity Building Workshop on E-Commerce Elements in Free Trade Agreements and Regional Trade Agreements**
**8-9 September 2021**

INTERNATIONAL TRADE ADMINISTRATION

# Data Protection in the Asia-Pacific Region & CBPRs

CBPRs
CROSS BORDER PRIVACY RULES SYSTEM

# APEC Privacy Landscape

**APEC Privacy Principles**

- Set of principles created to establish effective privacy protections in the APEC region.

**2005**

**2011**

- CBPR System established and endorsed.
- Based on the APEC Privacy Principles

- PRP System established and endorsed.
- APEC Privacy Principles Updated

**2015**

**2020**

- 9 participating economies
- 8 Accountability Agents (5 in U.S.)
- Working to expand CBPRs outside of APEC

# Introduction to Cross-Border Privacy Rules

- The APEC Cross-Border Privacy Rules (CBPR) System is a government recognized data privacy certification that companies can join to demonstrate compliance with internationally-recognized data privacy protections.
- The APEC CBPR System bridges differing national privacy laws within the APEC region.
- The APEC CBPR System is a voluntary, enforceable certification that companies can join to demonstrate compliance with internationally-recognized data privacy protections.

# Introduction to Privacy Recognition for Processors

- The Privacy Recognition for Processors (PRP) represents the baseline requirements for a processor to be recognized by an Accountability Agent.

- The PRP does not directly implement the APEC Framework, but was designed to help processors demonstrate their ability to implement a controller's privacy requirements and help controllers identify qualified processors.

- The PRP does not change the allocation of responsibility in the controller-processor relationship. Controllers remain responsible for the processor's activities.

CBPRs
CROSS BORDER PRIVACY RULES SYSTEM

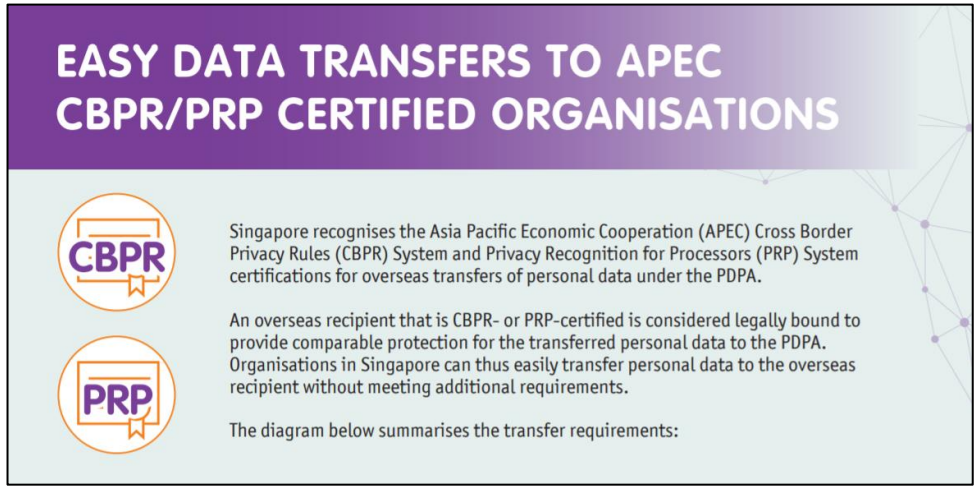
# Growth of the APEC CBPR System

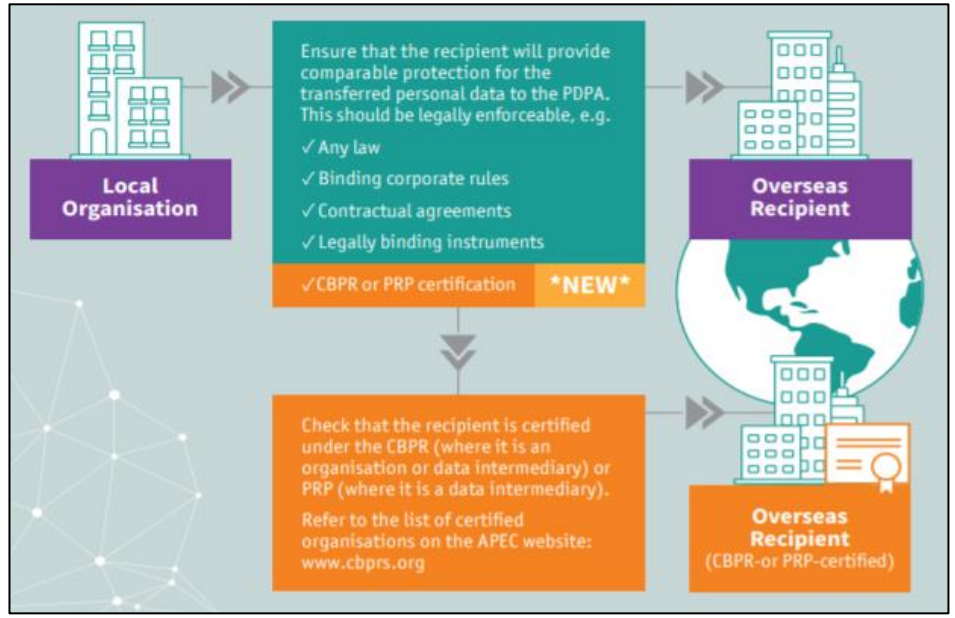
The CBPR and PRP system has experienced significant growth in adoption since 2011:

| Nine (9) Members | Nine (9) Accountability Agents |
| --- | --- |
| ➢ United States<br>➢ Canada<br>➢ Mexico<br>➢ Japan<br>➢ Singapore<br>➢ Chinese Taipei<br>➢ Australia<br>➢ Republic of Korea<br>➢ Philippines | ➢ Established across five (5) member economies<br>➢ Four (4) established in the last year<br>➢ Five (5) U.S.-based accountability agents |

# Examples of CBPR Recognition & Implementation

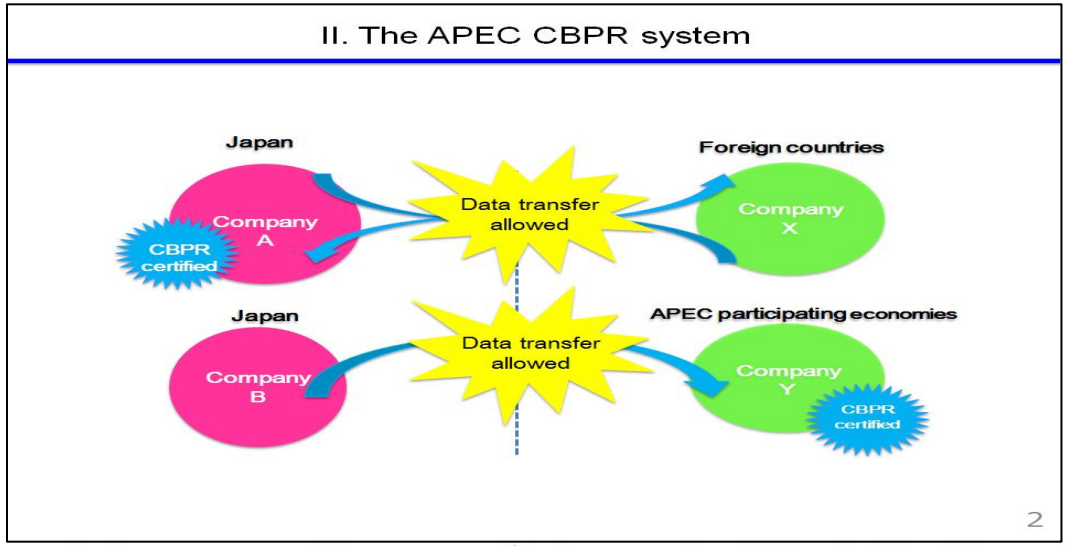
**Singapore** (joined 2018)




**Source:** Singapore InfoComm Media Development Authority (IMDA) – APEC CBPR/PRP Brochure, June 2020

**Japan** (joined 2014)




**Source:** Japan Personal Information Protection Commission

# Recognition of CBPRs in National Privacy Law

## Singapore Now Recognises APEC CBPR and PRP Certifications Under PDPA

**02 Jun 2020**

The PDPC has amended the Personal Data Protection Regulations to recognise the Asia Pacific Economic Cooperation (APEC) Cross Border Privacy Rules (CBPR) System and Privacy Recognition for Processors (PRP) System certifications as one of the modes for transfers of data overseas.

An overseas recipient that is CBPR- or PRP-certified is considered legally bound to provide comparable protection for the transferred personal data to the PDPA. Organisations in Singapore can thus easily transfer personal data to the overseas recipient without meeting additional requirements.

Singapore has also developed a template contract clause that transferring organisations could include in their contract with recipients.

**Source:** https://www.pdpc.gov.sg/news-and-events/announcements/2020/06/singapore-now-recognises-apec-cbpr-and-prp-certifications-under-pdpa

# Recognition of CBPRs in Trade Agreements

USMCA United States-Mexico-Canada Agreement

## Article 19.8: Personal Information Protection

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6. Recognizing that the Parties may take different legal approaches to protecting personal information, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. The Parties shall endeavor to exchange information on the mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them. **The Parties recognize that the APEC Cross Border Privacy Rules system is a valid mechanism to facilitate cross-border information transfers while protecting personal information.**

**Source:** https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/19-Digital-Trade.pdf

# Recognition of CBPRs (continued)

ARTICLE 17

***Personal Information Protection***

1. The Parties recognise the economic and social benefits of protecting the personal information of persons who conduct or engage in electronic transactions and the contribution that this makes to enhancing consumer confidence in electronic commerce.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of persons who conduct or engage in electronic transactions. In the development of its legal framework for the protection of personal information, each Party shall take into account the principles and guidelines of relevant international bodies, such as the APEC Cross-Border Privacy Rules ("CBPR") System and the *OECD Guidelines Governing the Protection of Privacy and Trans-border Flows of Personal Data*.

…

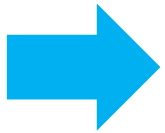
8. The Parties recognise that the CBPR System is a valid mechanism to facilitate cross-border information transfers while protecting personal information.

9. The Parties shall endeavour to jointly promote the CBPR System, with the aim to improving awareness of, and participation in, the CBPR System, including by industry.

**Source:** https://www.dfat.gov.au/sites/default/files/australia-singapore-digital-economy-agreement.pdf

# APEC Core Privacy Protections

| APEC Privacy Framework Core Principles |
| --- |
| I. Preventing Harm |
| II. Notice |
| III. Collection Limitation |
| IV. Uses of Personal Information |
| V. Choice |
| VI. Integrity of Personal Information |
| VII. Security Safeguards |
| VIII. Access and Correction |
| IX. Accountability |



**The APEC CBPR Program Requirements implement the core privacy principles of the original APEC Privacy Framework.**

| Participation Requirements |
| --- |
| Enforceable Standards |
| Cross-Border Enforcement Cooperation |
| Accountability |
| Risk-Based Protections |
| Consumer Empowerment |
| Consumer-Friendly Complaint Handling |
| Consistent Protection |

**Source:** http://cbprs.org/wp-content/uploads/2019/11/5.-Cross-Border-Privacy-Rules-Program-Requirements-updated-17-09-2019.pdf

# CBPR Process Overview

**Cross- border Privacy Enforcement Arrangement**

- Example: FTC
- **Step 1**: Evaluated by CPEA Administrators
- **Step 2**: Accepted CPEA participation

**Economy**

- **Step 1**: Submits required information for review by the Joint Oversight Panel (JOP)
- **Step 2**: Accepted as a participating Member Economy

**Accountability Agent**

- **Step 1**: Submits required information for review by the Joint Oversight Panel (JOP)
- **Step 2**: JOP recommendation and required documentation reviewed by participating Member Economies
- **Step 3**: Certified Accountability Agent

**Company**

- **Step 1**: Applicant submits documentation to Accountability Agent for review.
  - ✓Intake Questionnaire (50 Questions)
  - ✓ AA evaluation of privacy policies and practices.
- **Step 2**: Become CBPR Certified Company

# How to Apply for CBPR Certification

**Applicants must select one of five U.S. accountability agents to begin**

**Each has slightly different process, but typically involves the following:**

- **Intake -** Applicant submits requested documentation
- **Assessment –** Accountability Agent conducts due diligence of Applicant's policies and practices
- **Remediation –** Applicant modifications to meet CBPR requirements
- **Attestation –** Accountability Agent provides proof of certification

# Role of the Accountability Agents

**Assessment and Due Diligence**

**Certification and Re-Certification**

**Ongoing Monitoring and Guidance**

**Dispute Resolution and Enforcement**

# Benefits of APEC CBPR Certification

CBPRs
CROSS BORDER PRIVACY RULES SYSTEM

## For Companies

- Creates basis for global corporate privacy program and facilitates compliance abroad
- Converts companies' existing privacy programs into a cross-border transfer mechanism
- Demonstrates accountability and trust to consumers and national enforcement bodies
- Streamlines business operations in Asia-Pacific markets and throughout the U.S., Mexico, and Canada

## For All Stakeholders

- Establishes consistent requirements across jurisdictions with varying approaches to data protection
- Enables enforcement and cooperation between different national authorities
- Prevents barriers to cross-border flows, while ensuring common protections travel with data
- Allows flexibility in implementation, while also ensuring legally enforceable protections

# Benefits of the Privacy Recognition for Processors (PRP)

**Helps personal information "processors" demonstrate their ability to assist controllers in complying with APEC CBPR privacy obligations**

**Helps CBPR-certified controllers identify qualified and accountable processors.**

**Assists small and medium-sized enterprises not known outside of their economy to become part of a global data processing network.**

**Accountability Agents have noted that CBPR-certified Controllers often seek out vendors with PRP as it signals reliability**

# Thank you!