



**Asia-Pacific  
Economic Cooperation**

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## **APEC Privacy Recognition for Processors System - Policies, Rules and Guidelines**

Purpose: Consideration

Submitted by: CTI Chair

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# **APEC PRIVACY RECOGNITION FOR PROCESSORS SYSTEM**

## ***POLICIES, RULES AND GUIDELINES***

*The purpose of this document is to describe the APEC Privacy Recognition for Processors (PRP) System, its core elements, governance structure and the roles and responsibilities of participating organizations, Accountability Agents and Economies. This document is to be read consistently with the APEC Privacy Framework and APEC Cross Border Privacy Rules (CBPR) System. Nothing in this document is intended to create binding international obligations, affect existing obligations under international or domestic law, or create obligations under the laws and regulations of APEC Economies.*

DEVELOPMENT OF THE PRP SYSTEM .....	2
OPERATION OF THE PRP SYSTEM.....	2
PRP PROCESSES OVERVIEW .....	6
THE PRP SYSTEM AND DOMESTIC LAWS AND REGULATION.....	9
GOVERNANCE OF THE PRP SYSTEM .....	10
SUCCESS CRITERIA FOR THE PRP SYSTEM .....	11
ANNEX A – CHARTER OF THE APEC CROSS-BORDER PRIVACY RULES AND PRIVACY RECOGNITION FOR PROCESSORS SYSTEMS JOINT OVERSIGHT PANEL .....	13

## DEVELOPMENT OF THE PRP SYSTEM

1. Recognizing that the APEC Privacy Framework and Cross Border Privacy Rules System (CBPR) System are only applicable to personal information controllers, Economies in the APEC Data Privacy Subgroup, developed the Privacy Recognition for Processors (PRP) System, which is a recognition system for personal information processors (“processors”). In the development of the PRP System, the following stakeholder considerations were identified:

- controllers should be able to identify qualified and accountable processors able to implement a controller’s privacy obligations related to the processing of personal information;
- processors should be able to demonstrate their ability to provide effective implementation of a controller’s privacy requirements; and
- the PRP System should assist small and medium-sized enterprises not known outside of their economy to become part of a global data processing network.

2. The PRP System was designed to help processors demonstrate their capacity for processing of personal information in general, but also to assure that processing is at least consistent with the controller’s applicable requirements for processing under the CBPR System. Note that there is no requirement that a CBPR-certified controller must engage a PRP-recognized processor to perform information processing in order to comply with the Accountability principle in the Framework and the CBPR System. Consistent with the above purposes, criteria and considerations, the following core documents were developed:

- a detailed intake questionnaire, which includes questions to be answered by the applicant organization and baseline program requirements against which an APEC-recognized Accountability Agent will assess an organization when certifying organizations as PRP-compliant<sup>1</sup>;
- recognition criteria to be used by APEC Economies when considering the recognition of an Accountability Agent under the PRP System.

## OPERATION OF THE PRP SYTEM

### *Overview of the PRP System*

3. Organizations that choose to participate in the PRP System should implement privacy policies and practices consistent with the PRP System requirements for all personal information that they process on behalf of controllers. These privacy policies and practices should be evaluated by an APEC-recognized Accountability Agent for compliance with the PRP System requirements. Once an organization has been certified as a participant in the PRP System, the organization’s compliance with the PRP program requirements will become binding as to that participant and will be enforceable as described under *PRP Element 4 - Enforcement* below (*see para 19-21*).

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<sup>1</sup> Available at <https://cbprs.blob.core.windows.net/files/PRP%20-%20Intake%20Questionnaire.pdf>

### ***Elements of the PRP System***

4. The PRP System consists of four elements: (1) self-assessment; (2) compliance review; (3) recognition/acceptance; and (4) complaint processing and enforcement.

## **PRP ELEMENT 1 – SELF-ASSESSMENT**

### ***Self-Assessment Questionnaire for Organizations***

5. The PRP System relies on an organization's self-assessment of its data privacy policies and practices using an APEC-recognized PRP questionnaire (*see para 16*). This questionnaire will be provided by the appropriate APEC-recognized Accountability Agent, in accordance with established selection requirements (*see para 35*).

### ***Link to Compliance Review***

6. The completed questionnaire and any associated documentation will then be submitted to the APEC-recognized Accountability Agent for confidential review against the baseline standards established in the PRP System requirements (*see para 2*).

7. The submission of this questionnaire is the first step in an evaluative process that will determine whether an organization's privacy policies and practices are consistent with the program requirements of the PRP System. This process can also be used by organizations to help them develop privacy policies or revise existing privacy policies to meet the program requirements of the PRP System.

8. This questionnaire may be supplemented by additional questions, documentation or requests for clarification as part of the APEC-recognized Accountability Agent's review process.

### ***Link to Compliance Directory***

9. An organization that is found to be compliant with the PRP System requirements by an APEC-recognized Accountability Agent will be certified as PRP compliant and will have relevant details of their certification published on an APEC-hosted website so that consumers and other stakeholders can be made aware that the organization is an active participant in the PRP System.

## **PRP ELEMENT 2 – COMPLIANCE REVIEW**

### ***Accountability Agent Recognition Criteria***

10. To become an APEC-recognized Accountability Agent for the PRP System, an Accountability Agent should meet the established recognition criteria to the satisfaction of APEC Economies (*see para 30*).

11. These criteria provide for the evaluation of an Accountability Agent's program requirements, complaint processing procedures, and policies and procedures for the avoidance of conflicts of interest as well as process issues, including the certification and re-certification processes, ongoing monitoring and compliance reviews and enforcement of program requirements.

12. As a condition of APEC recognition, Accountability Agents are required to release anonymised case notes and complaint statistics. Complaint handling is an important element of the PRP System. These actions will:

- promote understanding and increase transparency about the PRP System;
- aid consistent interpretation of the APEC Privacy Principles and the PRP System;
- provide additional guidance to organizations on the application of the APEC Privacy Principles and PRP System; and
- promote accountability of those involved in complaints handling and build stakeholders' trust in the process.

13. As a further condition of APEC recognition, an Accountability Agent should consent to respond to requests from relevant government entities in any APEC Economy that reasonably relate both to that Economy and to the PRP-related work of the Accountability Agent, where possible.

14. All APEC-recognized Accountability Agents should endeavour to cooperate when appropriate and where possible in PRP-related complaint handling matters with other recognized Accountability Agents.

### ***Compliance Review Process***

15. When reviewing an organization's privacy policies and practices as described in the self-assessment questionnaire, an APEC-recognized Accountability Agent should assess them against the PRP System requirements. These requirements are designed to provide the minimum standard that applicant organizations should meet in order to ensure that the assessment process is conducted in a consistent manner across participating Economies. An APEC-recognized Accountability Agent's assessment process may exceed this standard but may not fall below it.

16. Where an applicant Accountability Agent intends to make use of its own questionnaire and/or program requirements in lieu of the APEC-recognized self-assessment questionnaire and/or the APEC-recognized PRP System requirements (*see para 2*), it should establish its comparability to the satisfaction of APEC Economies as a condition of APEC recognition (*see para 51*).

## **PRP ELEMENT 3 – RECOGNITION**

### ***Compliance Directory and Contact Information***

17. APEC Economies will establish a publicly accessible directory of organizations that have been certified by Accountability Agents as compliant with the PRP System. The directory will include contact point information that consumers can use to contact participating organizations. Each organization's listing will include the contact point information for the APEC-recognized Accountability Agent that certified the organization and the relevant Privacy Enforcement Authority. Contact point information allows consumers or other interested parties to direct questions and complaints to the appropriate contact point in an organization or to the relevant Accountability Agent, or if necessary and where applicable, to contact the relevant Privacy Enforcement Authority.

18. The directory and contact lists will be hosted by the APEC Secretariat and maintained by the Electronic Commerce Steering Group in accordance with the APEC website Guidelines<sup>2</sup>. This website may be expanded to contain FAQs and additional information on the PRP System for potential applicant organizations and for consumers.

#### **PRP ELEMENT 4 – ENFORCEMENT**

19. While the PRP System provides a mechanism for cross-border data transfer that may satisfy the data transfer restrictions and limitations of applicable privacy and data protection laws, nothing in the PRP System changes the allocation of responsibility in the controller-processor relationship under applicable laws, the APEC Privacy Framework or the CBPR System. Under the Accountability principle in the Framework and the CBPR System, controllers are responsible for the activities processors perform on their behalf and they will remain so even when contracting with a PRP-recognized processor. Thus, processors' activities remain subject to enforcement through enforcement against the controllers. This means that CBPR-certified controllers must apply due diligence in selecting their processors and engage in appropriate oversight over their processors, regardless of whether the processors are PRP recognized.

20. Under the privacy laws of some APEC economies, processors recognized under the PRP may not be subject to direct government backstop enforcement in the same way that all CBPR-certified controllers are subject to such enforcement.

21. There are a number of oversight and enforcement mechanisms available across the participating APEC economies to ensure the effective oversight of processors recognized under the PRP. These include:

- Where applicable, direct privacy enforcement authority backstop enforcement of the processor's compliance with the PRP program requirements;
- Enforcement by contract between the Accountability Agent and the processor, whereby the Accountability Agent assumes primary responsibility for enforcing the processor's compliance with the PRP program requirements;
- Government oversight over an Accountability Agent, and enforcement by the APEC Data Privacy Subgroup ("DPS") via the Joint Oversight Panel's authority to recommend to the DPS the suspension of an Accountability Agent in the event the Accountability Agent fails to perform its obligations under the Accountability Agent Recognition Criteria; and
- Mechanisms that can have the effect of enforcing privacy, such as private rights of action, and third-party beneficiary rights for enforcement authorities under the contracts between the Accountability Agents and the processors.

#### ***Cooperation Arrangement for Cross-Border Privacy Enforcement***

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<sup>2</sup> <http://webresources.apec.org/>

22. The CPEA, which was endorsed by APEC Ministers in November 2009 and commenced on 16 July 2010, aims to:

- facilitate information sharing among Privacy Enforcement Authorities (PE Authorities) in APEC Economies (which may include Privacy Commissioners' Offices, Data Protection Authorities or Consumer Protection Authorities that enforce Privacy Laws);
- provide mechanisms to promote effective cross-border cooperation between authorities in the enforcement of CBPR program requirements, PRP System requirements (where applicable), and privacy laws generally, including through referrals of matters and through parallel or joint investigations or enforcement actions; and
- encourage information sharing and cooperation on privacy investigation and enforcement with PE Authorities outside APEC (including by ensuring that the CPEA can work seamlessly with similar arrangements in other regions and at the global level).

23. The CPEA creates a framework for the voluntary sharing of information and provision of assistance for information privacy enforcement related activities. Any PE Authority in an APEC Economy may participate. Participating PE Authorities will contact each other for assistance or to make referrals regarding information privacy investigations and enforcement matters that involve each other's Economies. For example, during an investigation, a PE Authority in Economy X may seek the assistance of a PE Authority in Economy Y, if certain evidence of the alleged privacy violation (or the entity being investigated or a controller on whose behalf a processor under investigation is acting) is located in Economy Y. In that case, the PE Authority in Economy X may send a Request for Assistance to the point of contact in the PE Authority in Economy Y. The PE Authority in Economy Y may then consider the matter and provide assistance on a discretionary basis.

## **PRP PROCESS OVERVIEW**

24. The following provides an overview of the process for participation by APEC Economies in the PRP System, the process for the recognition of Accountability Agents by APEC Economies, the process for the certification of an organization, and the role Privacy Enforcement Authorities.

### ***Process for Participation and Discontinuation of Participation by APEC Economies in the PRP System***

25. To participate in the PRP System, an Economy must first satisfy the relevant conditions in 3.1 of the Charter of the APEC Cross-Border Privacy Rules and Privacy Recognition for Processors Systems Joint Oversight Panel attached as Annex A. The Economy then nominates one or more Accountability Agents for APEC recognition or notifies the ECSG Chair of receipt of application(s) for such recognition. Once at least one Accountability Agent has been recognised in relation to that Economy, organisations will be able to commence participation in the PRP System in the Economy. Where only one Accountability Agent operates in an Economy and that Accountability Agent ceases to function in that capacity, the Economy's participation in the PRP System will be suspended upon a consensus determination by all other

APEC Economies (excluding the Participating Economy in question) and the certification of those organizations certified by that Accountability Agent will be terminated until such time as the Economy is able to again fulfil the requirement for participation in the PRP System, at which time any previously-certified applicant organizations should complete a new certification process.

26. An Economy may cease participation in the PRP System at any time by giving three months' written notice to the APEC ECSG Chair. In the event that an Economy discontinues participation in the PRP System, any APEC-recognized Accountability Agents in that Economy should terminate participation in the PRP System in that Economy. This requirement should be incorporated into the agreements between the Accountability Agent and any organizations they certify as PRP compliant.

### ***Process for Recognition of Accountability Agents***

27. An Economy can nominate an Accountability Agent operating within its jurisdiction for APEC recognition or, where appropriate, notify the Joint Oversight Panel that they have received a request for such recognition and submit the received application and associated documentation for consideration (*see para 52*). In either case, the Economy should describe the relevant domestic laws and regulations which may apply to the activities of Accountability Agents operating within their jurisdiction and the enforcement authority associated with these laws and regulations. Where the Privacy Enforcement Authority of an Economy assumes the role of Accountability Agent, the nomination may be done by the Economy with a confirmation that the Privacy Enforcement Authority is a participant of the CPEA as well as a summary of how that privacy enforcement authority may enforce the PRP System requirements.

28. In those instances where an Economy proposes to make use of an Accountability Agent in another participating APEC Economy to certify an applicant organization principally located within its borders, the proposing Economy should notify the Joint Oversight Panel of this proposal. The proposing Economy should describe to the Joint Oversight Panel the relevant domestic laws and regulations which may apply to the activities of Accountability Agents operating within their jurisdiction and the enforcement authority associated with these laws and regulations.

29. All applications for recognition will include a signed attestation by the Accountability Agent and all necessary supporting documentation as stipulated in the Accountability Agent recognition criteria.

30. Upon receipt of a request for recognition pursuant to paragraphs 27 or 28, the Joint Oversight Panel will commence a review of the required documentation and request any additional information necessary to ensure the recognition criteria have been met. When the Joint Oversight Panel has completed this review process they will issue a recommendation to APEC Economies as to whether or not to recognize the Accountability Agent. Economies will consider the Accountability Agent's request for recognition, considering the recommendation of the Joint Oversight Panel. If no objections are received within a set deadline, the request will be considered to be approved by the ECSG.

31. Any APEC Economy has the right to reject the request of an Accountability Agent for such recognition.

32. The Joint Oversight Panel can receive complaints regarding the conduct of a recognized Accountability Agent by Economies, businesses, consumers or others at any time.



Where appropriate, the Joint Oversight Panel 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 their 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 their domestic law. The Joint Oversight Panel may consider and recommend suspension of an Accountability Agent's recognition at any time.

33. APEC recognition will be limited to one year from the date of recognition, one month prior to which, an Accountability Agent should re-apply for APEC recognition, following the same process described above. During this time the Accountability Agent's recognition will continue.

34. When considering their recommendation to APEC Economies, the Joint Oversight Panel will consider any relevant information including complaints received regarding the conduct of a recognized Accountability Agent by Economies, businesses, consumers or others in the previous year as well as any investigation request by the Joint Oversight Panel to Privacy Enforcement Authorities or other relevant Authorities.

#### ***Process for Certification of Organizations***

35. Applicant organizations should make use of Accountability Agents located within the jurisdiction in which the applicant organization is primarily located or an Accountability Agent recognized pursuant to paragraph 28.

36. Once an applicant organization selects and contacts an eligible APEC-recognized Accountability Agent, the Accountability Agent will provide the self-assessment questionnaire to the organization for completion and will review the answers and any supporting documentation based on its assessment guidelines or make use of APEC-recognized documentation and review procedures.

37. The proposed application process would be iterative and allow for back and forth discussions between the applicant organization and the Accountability Agent.

38. The Accountability Agent Recognition Criteria describe the role of Accountability Agents as follows:

- The Accountability Agent is responsible for the self-assessment and compliance review phases of the PRP System accreditation process. Applicant organizations will be responsible for developing their privacy policies and practices and may only participate in the PRP System if these policies and practices are certified by the relevant Accountability Agent to be compliant with the requirements of the PRP System. It is the responsibility of the Accountability Agent to certify an organization's compliance with these requirements.
- The self-assessment questionnaire and assessment guidelines are publicly-available documents and prospective applicant organizations will have access to the guidelines so that they can see how their responses to the self-assessment questionnaire will be assessed. In considering how best to assist prospective applicant organizations, a recognized Accountability Agent may wish to develop additional documentation outlining their review process.

### ***Role of the Privacy Enforcement Authority***

39. The CPEA defines ‘Privacy Enforcement Authority’ as any public body that is responsible for enforcing Privacy Law, and that has powers to conduct investigations or pursue enforcement proceedings. ‘Privacy Law’ is then defined as laws and regulations of an APEC Economy, the enforcement of which have the effect of protecting personal information consistent with the APEC Privacy Framework.

- Where possible, the Privacy Enforcement Authority should be able to review a PRP complaint/issue if it cannot be resolved by the participating organization in the first instance or by the Accountability Agent and, when appropriate, investigate and take enforcement action. The Privacy Enforcement Authority has the discretion to decide whether or not to deal with a Request for Assistance made by another Privacy Enforcement Authority.
- In economies where enforcement action under applicable domestic laws and regulations will have the effect of protecting personal information consistent with all or certain elements of the PRP program requirements, and where these laws and regulations are enforced by a Privacy Enforcement Authority (PEA), CPEA participation will be the predicate step to the Economy’s involvement in the PRP System as the CPEA establishes that the Economy has a law in place “the enforcement of which, has the effect of implementing the APEC Privacy Framework.”

### **THE PRP SYSTEM AND DOMESTIC LAWS AND REGULATIONS**

40. The PRP System does not displace or change an Economy’s domestic laws and regulations. Where there are no applicable domestic privacy protection requirements in an Economy, the PRP System is intended to provide a minimum level of protection.

41. Participation in the PRP System does not replace a participating organization’s domestic legal obligations. The commitments which an organization carries out in order to participate in the PRP System are separate from any domestic legal requirements that may be applicable. Where domestic legal requirements exceed what is expected in the PRP System, the full extent of such domestic law and regulation will continue to apply. Where requirements of the PRP System exceed the requirements of domestic law and regulation, an organization will need to voluntarily carry out such additional requirements in order to participate. Nonetheless, where possible, Privacy Enforcement Authorities in that Economy should have the ability to take enforcement actions under applicable domestic laws and regulations that have the effect of protecting personal information consistent with the PRP System requirements.

42. For the purposes of participation in the PRP System, an Accountability Agent’s verification will only apply to an organization’s compliance with its PRP commitments, not its compliance with applicable domestic legal requirements.

43. Where an Economy’s domestic laws and regulations preclude or restrict that Economy’s ability to participate in the PRP System, it is a matter for the Economy to consider whether and how to modify the applicable domestic laws to facilitate participation.

44. It is not the purpose of the PRP System to direct Economies on whether and how to modify domestic laws and regulations. This is a matter to be addressed through capacity building activities and other guidance run through the Data Privacy Sub-Group.

45. However, when considering whether to participate in the PRP System, Economies may need to make changes to domestic laws and regulations to ensure the necessary elements of the PRP System are in place.

## **GOVERNANCE OF THE PRP SYSTEM**

### ***Objective***

46. The PRP System requires governance mechanisms that will perform essential operations in the administration and maintenance of the System. In the development of the governance model, a number of basic principles were identified:

- Simplicity;
- Transparency;
- Low cost; and
- Accountability to APEC Economies.

47. As the APEC representative body established to deal with data privacy issues, the Data Privacy Sub-Group is responsible for the governance of the PRP System. Governance mechanisms should enable the day-to-day running of the PRP System without the continuous involvement of the Sub-Group, which only meets twice a year.

48. As APEC is a non-treaty organization with a small full-time staff, governance of the PRP System cannot impose onerous duties on either the Secretariat or Economies.

### ***Functions of the Governance Model***

49. Regardless of these limitations, the governance model should nonetheless deal with the essential administrative functions required for the PRP System to effectively operate. These essential functions include:

- Developing and maintaining a staffing and revenue structure to support the PRP System;
- Managing the compliance directory (*see para 9*);
- Facilitating participation in the PRP System by APEC Economies, including through capacity-building activities;
- Assessing and monitoring the compliance of recognized Accountability Agents against the Recognition Criteria;
- Managing the Cross Border Privacy Enforcement Arrangement and associated documents and procedures; and
- Developing education materials to facilitate a region-wide understanding of the elements of the PRP System and its requirements.

### ***Joint Oversight Panel***

50. In recognition of these requirements, Economies amended the *Charter of the APEC Cross-Border Privacy Rules System Joint Oversight Panel* established upon endorsement

of the *APEC Cross-Border Privacy Rules System Policies, Rules and Guidelines* in 2011 to enable the Joint Oversight Panel to provide a similar oversight role with regard to the PRP System as it provides with regard to the CBPR System. An amended charter entitled, *Charter of the APEC Cross-Border Privacy Rules System and Privacy Recognition for Processors Joint Oversight Panel*, which enables the Joint Oversight Panel to provide oversight over the PRP System, is provided as Annex A.

51. The core functions of the Joint Oversight Panel are set out in 7.2 of *Charter of the APEC Cross-Border Privacy Rules System and Privacy Recognition for Processors Joint Oversight Panel*.

52. The Joint Oversight Panel is made up of nominated Economies approved by, and operating on behalf of, the Data Privacy Sub-Group. This model provides a clear line of authority for the operation of the CBPR and PRP Systems from the ECSG through the Data Privacy Sub-Group, in which all APEC Economies can participate.

53. To assist the Joint Oversight Panel with the identified core functions, working groups on certification and enforcement should be established. The working groups are to provide representative oversight and leadership for the certification, operations, and enforcement of the PRP System. The Joint Oversight Panel may establish more working groups as needed.

54. In addition to the foregoing, it is necessary to establish a process through which the Data Privacy Sub-Group can monitor, evaluate and review the entirety of the PRP System. This process should allow Economies to develop and revise the PRP System in response to practical experience and the changing needs of Economies.

## **SUCCESS CRITERIA FOR THE PRP SYSTEM**

55. The PRP System is intended to complement the CBPR System, which implements the Data Privacy Pathfinder. The PRP System should recognise and incorporate the core APEC principles of voluntarism, comprehensiveness, consensus-based decision making, flexibility, transparency, open regionalism and differentiated implementation timetables for developed and developing Economies.

56. In recognition of these core APEC principles, the PRP System, like the CBPR System, should satisfy the objectives set out in the Data Privacy Pathfinder:

- promote a conceptual framework of principles of how cross-border privacy rules should work across APEC Economies;
- develop and support consultative processes between regulators, responsible agencies, lawmaking bodies, industry, third party solution providers, consumer and privacy representatives;
- produce practical documents and procedures that underpin cross-border privacy rules;
- explore ways in which various documents and procedures can be implemented in practice; and
- promote education and outreach on how an accountable PRP System work.

57. There are three key specific criterion for judging success of both the individual projects and the Pathfinder as a whole:

- the effective protection of consumer personal information privacy in a system trusted by consumers;
- that implementation can be flexible enough to be adapted to the particular domestic legal environment of APEC Economies, while providing certainty for system participants; and
- the regulatory burden on business is minimised while allowing business to develop and comply with effective and coherent rules for cross-border flows of personal information.

**CHARTER OF THE APEC CROSS-BORDER PRIVACY RULES AND  
PRIVACY RECOGNITION FOR PROCESSORS SYSTEMS  
JOINT OVERSIGHT PANEL**

**1. CHARACTER OF THIS DOCUMENT**

1.1 This Charter is to be read consistently with the APEC Privacy Framework.

Nothing in this Charter is intended to:

- i. Create any binding obligations on APEC Economies and/or their government agencies, or affect their existing rights and obligations under international or domestic law;
- ii. Impede any governmental activities authorized by domestic or international law;
- iii. Create any obligations or expectations of cooperation that would exceed a CBPR or PRP Participant's scope of authority and jurisdiction; or
- iv. Create obligations or expectations for non-participating government agencies.

1.2 This Charter, and any amendments thereto, will take effect upon endorsement by the Electronic Commerce Steering Group (ECSG)..

**2. COMMENCEMENT OF PARTICIPATION IN THE CROSS BORDER PRIVACY RULES SYSTEM**

2.1 An APEC Member Economy is considered a Participant in the Cross Border Privacy Rules (CBPR) System (CBPR Participant), after the Chair of the Electronic Commerce Steering Group (ECSG Chair) has notified the Economy that the following conditions have been met:

- (i) The Economy's ECSG delegation, or appropriate governmental representative, submits to the ECSG Chair a letter indicating its intention to participate in the CBPR System and confirming that at least one Privacy Enforcement Authority in that Economy is a participant in the APEC Cross Border Privacy Enforcement Arrangement (CPEA);
- (ii) The Economy indicates its intention to make use of at least one APEC-recognized Accountability Agent subject to the procedures outlined in paragraph 7.2;
- (iii) The Economy's ECSG delegation, or appropriate governmental representative, after consulting with the Joint Oversight Panel, submits

to the Chair of the ECSG an explanation of how the CBPR System program requirements may be enforced in that Economy; and

- (iv) The Joint Oversight Panel submits to the Chair of the ECSG a report as to how the conditions in (i)-(iii) above have been satisfied.

### 3. COMMENCEMENT OF PARTICIPATION IN THE PRIVACY RECOGNITION FOR PROCESSORS SYSTEM

3.1 An APEC Member Economy is considered a Participant in the Privacy Recognition for Processors (PRP) System (PRP Participant), after the ECSG Chair has notified the Economy that the following conditions have been met:

- (i) The Economy's ECSG delegation, or appropriate governmental representative, submits to the ECSG Chair a letter indicating its intention to participate in the PRP System and where under (iii), the oversight of processors recognized under the PRP includes direct government backstop enforcement through a Privacy Enforcement Authority, confirming that the relevant Privacy Enforcement Authority or Authorities in that Economy are participants in the APEC CPEA;
- (ii) The Economy indicates its intention to make use of at least one APEC-recognized Accountability Agent subject to the procedures outlined in paragraph 7.2;
- (iii) The Economy's ECSG delegation, or appropriate governmental representative, after consulting with the Joint Oversight Panel, submits to the Chair of the ECSG an explanation of oversight and enforcement mechanisms available to ensure the effective oversight of processors recognized under the PRP in that Economy, even if direct government backstop enforcement is not applicable; and
- (iv) The Joint Oversight Panel submits to the Chair of the ECSG a report as to how the conditions in (i)-(iii) above have been satisfied.

### 4. TRANSPARENCY

- 4.1 A CBPR and/or PRP Participant will provide notice to the APEC ECSG Chair of any new laws or regulations and any amendments to existing laws or regulations as well as all other developments that may affect the operation and enforcement of either system.
- 4.2 The APEC ECSG Chair will promptly notify APEC Economies of any notification received pursuant to paragraph 4.1.

## 5. TERMINATION OF PARTICIPATION

- 5.1 A CBPR Participant may cease participation in the CBPR System by giving one month's written notice to the APEC ECSG Chair. A PRP Participant may cease participation in the PRP System by giving three months' written notice to the APEC ECSG Chair.
- 5.2 The APEC ECSG Chair will promptly notify APEC Economies of any notification received pursuant to paragraph 5.1.
- 5.3 In the event that a CBPR and/or PRP Participant terminates participation in either system, or is suspended or terminated from either system, recognition of any previously recognized Accountability Agent to operate in that Participant's Economy will automatically be suspended or terminated from the applicable system and the certification of those organizations certified by that Accountability Agent will be terminated from the applicable system until such time as the Economy is able to again fulfil the requirement for participation in the CBPR and/or PRP System, at which time any previously-certified applicant organizations should complete a new certification process.

## 6. CAUSE FOR SUSPENSION OR TERMINATION

- 6.1 Participation by an APEC Economy in the CBPR and/or PRP Systems may be suspended or terminated by a consensus determination by the other APEC Economies that one or more of the following conditions have been met:
  - i. Revocation, repeal or amendment of any domestic laws and/or regulations having the effect of making participation in the APEC CBPR and/or PRP Systems impossible;
  - ii. The Participant's Privacy Enforcement Authority as defined in paragraph 4.1 of the CPEA ceases participation pursuant to paragraph 8.2 of the CPEA;
  - iii. the oversight and enforcement mechanisms available to ensure the effective oversight of processors recognized under the PRP in that Economy cease to be available; or
  - iv. Dissolution or disqualification of a previously recognized Accountability Agent where this function is provided exclusively in the Participant's Economy by that entity.
- 6.2 A request for a consensus determination that any condition identified in paragraph 6.1 has been met may be made by any CBPR or PRP Participant at any time.

## 7. JOINT OVERSIGHT PANEL

- 7.1 The ECSG hereby establishes a Joint Oversight Panel, consisting of representatives from three APEC Economies, for a two-year appointment, subject to ECSG endorsement and the terms set out in paragraph 8.2. The ECSG will endorse a



Chairperson for a two-year appointment from these three Economies. The Joint Oversight Panel will meet at the request of the ECSG, or more frequently as decided by CBPR and PRP Participants to assist in the effective implementation of the CBPR and/or PRP Systems. The ECSG may appoint succeeding panels as it may deem appropriate.

7.2 The Joint Oversight Panel will perform the following functions:

- i. Engage in consultations with those Economies that have indicated an intention to participate in the CBPR and/or PRP Systems and issue a report as to how the conditions set out in paragraph 2.1 and/or 3.1 respectively have been met;
- ii. Make recommendations to the APEC Economies whether to recognize an applicant Accountability Agent as compliant with the requirements of the CBPR and/or PRP Systems. In making such recommendations, the Joint Oversight Panel should be satisfied of the following:
  - a) The applicant Accountability Agent has a location in an Economy participating in the relevant system or is otherwise subject to the enforcement and oversight identified by the economy for the relevant system, and
  - b) The applicant Accountability Agent meets the Recognition Criteria established under the system in which it is seeking recognition and has provided all necessary documentation as requested by the Joint Oversight Panel;
- iii. Consider and recommend suspension of the recognition of an Accountability Agent at any time;
- iv. Collect all case notes received by recognized Accountability Agents as required under the Accountability Agent Recognition Criteria and circulate to APEC Economies;
- v. Collect complaint statistics from recognized Accountability Agents as required under the Accountability Agent Recognition Criteria and circulate to APEC Economies;
- vi. Advise recognized Accountability Agents whether or not to withdraw from particular engagements if a potential conflict is alleged, considering any evidence provided by the recognized Accountability Agents as to internal structure and procedural safeguards that are in place to address any potential and actual conflicts of interest;
- vii. Verify that each recognized Accountability Agent complies with the re-certification process as required under the Accountability Agent Recognition Criteria;

- viii. Review any reported material change by the recognized Accountability Agent (e.g. ownership, structure or policies) as required under the Accountability Agent Recognition Criteria and report to APEC Economies its recommendation as to whether such change impacts the appropriateness of recognizing the Accountability Agent as compliant with the requirements of the CBPR and/or PRP Systems;
  - ix. Facilitate the review and edit of primary documentation associated with the CBPR and PRP Systems when necessary in conjunction with APEC Economies; and
  - x. Perform all other functions as identified and decided by APEC Economies as necessary to the operation of the CBPR and PRP Systems.
- 7.3 All recommendations of the Joint Oversight Panel will be made by simple majority. A dissenting member of the Joint Oversight Panel may circulate its dissent from the majority's recommendation on any matter to APEC Economies.
- 7.4 In no circumstance should a member of the Joint Oversight Panel participate in any of the activities under 7.2 when the Accountability Agent is a public (or governmental) entity in the member's Economy or any of the activities under 2.1 and/or 3.1 where the interested Economy is a member of the Joint Oversight Panel. In such instances, the Data Privacy Subgroup Chair will designate another APEC Economy to temporarily function as a member of the Joint Oversight Panel.
- 7.5 The Joint Oversight Panel may establish working teams to address each of the above functions and request assistance from the APEC Secretariat or APEC Economies as necessary.
- 7.6 Recommendations by the Joint Oversight Panel will take effect upon endorsement by the ECSG.

## 78. ADMINISTRATIVE MATTERS

- 8.1 The Chairperson of the Joint Oversight Panel will provide a summary report detailing all activities carried out by the Joint Oversight Panel under paragraph 7 to the Data Privacy Subgroup Chair no later than one month in advance of each Data Privacy Subgroup meeting.
- 8.2 The initial terms of membership for the initial Joint Oversight Panel are as follows:
- i. One Chair to be appointed for a two-year term;
  - ii. One member to be appointed for an 18 month-term, and;
  - iii. One member to be appointed for a one-year term.
- 8.3 Upon expiration of the initial term, each appointment will have a two-year term subject to re-appointment at the discretion of the ECSG based on 7.1.