

DOMESTIC LAWS AND REGULATIONS APPLICABLE TO ACCOUNTABILITY AGENT ACTIVITIES

The following domestic laws and regulations may be applicable to the Accountability Agent's certification activities:

1. Contract

To become an APEC Accountability Agent, an applicant (which is not a Privacy Enforcement Authority) will be required to enter into a contractual agreement with the Privacy Enforcement Authority in respect of its certification mark activities. In particular, the contract will include a representation and warranty by the Accountability Agent that it complies with all requirements applicable to an APEC-recognised Accountability Agent.

Various measures will be provided for under the contract. In particular, the Accountability Agent will have reporting obligations, for example, in respect of each CBPR application that is approved and whether the Accountability Agent has any affiliation with the applicant organisation. The Privacy Enforcement Authority will also have the right to audit the Accountability Agent, and impose other supervisory and disciplinary procedures on the Accountability Agent. Written notices may also be issued to the Accountability Agent to remedy any breach.

The Privacy Enforcement Authority may also take enforcement action through a contractual right to suspend the Accountability Agent, such that it should not conduct further certification activities for a stipulated period of time.

The contract with the Accountability Agent will also include rights to terminate in the event of significant breaches of the contract, such that the Accountability Agent should not continue with its business as an Accountability Agent upon such termination.

Further, there are various remedies that are generally available for breach of contract under Singapore law. In particular, the court may grant civil damages for loss suffered, as well as alternative discretionary remedies such as specific performance and injunctions.

2. Certification Mark

Under the Trade Marks Act, a trade mark includes a certification mark. The main feature of a certification mark is that it is used by the proprietor's authorised users as a badge of quality, i.e. to signify that the authorised users' goods or services possess certain defined characteristics. The proprietor of the mark may authorise the use of the mark to persons who can demonstrate that the goods or services possess such characteristics. Accordingly,

¹ Annex A does not purport to provide a complete and comprehensive account of the applicable domestic laws and regulations. It is not intended to be relied on as legal advice and should not be used as statements of law in the context of legal proceedings.

an Accountability Agent may authorise the use of a certification mark to signify compliance with the CBPR programme requirements.

More precisely, section 61 of the Trade Marks Act defined a certification mark as a sign used, or intended to be used, to distinguish goods or services —

- (a) dealt with or provided in the course of trade; and
- (b) certified by the proprietor of the certification mark in relation to origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics,

from other goods or services dealt with or provided in the course of trade but not so certified.

If the Accountability Agent is to authorise the use of a certification mark, the certification mark must be registered with the Registrar of Trade Marks together with regulations governing the use of the mark. These regulations must indicate who is authorised to use the mark, the characteristics to be certified by the mark, how the certifying body is to test those characteristics and to supervise the use of the mark, as well as the procedures for resolving disputes. Examples of methods of supervision may include, but are not limited to:

- Periodic site visits to premises of organisations using the certification marks
- Provision of periodic reports and samples by organisations using the certification marks
- Issuance of compliance certificates to evince compliance with the certification regime

The regulations should include the checks that are in place and specify any timeframes at which inspections will occur.

Overall, the Registrar of Trade Marks needs to be satisfied that there is adequate control over the use of the mark.

The registration of the mark can be revoked by the Registrar of Trade Marks or the Singapore High Court if (among others):

- (a) the proprietor has begun to carry on a business involving the supply of goods or services of the kind certified;
- (b) the manner in which the mark has been used by the proprietor has caused it to become liable to mislead the public as regards the character or significance of the mark;
- (c) the proprietor has failed to observe, or to secure the observance of, the regulations governing the use of the mark; or
- (d) the proprietor is no longer competent to certify the mark.

An action for infringement of the mark may be commenced under section 31 of the Trade Marks Act against any person who commits an act amounting to infringement under section 27 of the Trade Marks Act. Under section 44 of the Trade Marks Act, a licensee is entitled to call on the proprietor of the registered mark to take infringement proceedings in respect of any matter which affects his interests.

3. Consumer Protection Laws

Consumer protection laws may also apply to specific acts of the Accountability Agent, such as the following:

(i) Consumer Protection (Fair Trading) Act

An injunction may potentially be applied for against an Accountability Agent if it knowingly abets, aids or permits a supplier to engage in an unfair practice. Under the Consumer Protection (Fair Trading) Act, it is an unfair practice for a supplier, in relation to a consumer transaction to (among other things) make a false claim or to do or say anything if as a result a consumer might reasonably be deceived or misled. Pursuant to section 10 of this Act, the District Court or High Court of Singapore may, on the application of the Standards, Productivity and Innovation Board, grant an injunction restraining a person from knowingly abetting, aiding, permitting or procuring a supplier to engage in an unfair practice, if the Court is satisfied that the person has done so or is likely to do so.

(ii) Consumer Protection (Trade Descriptions and Safety Requirements) Act

Depending on the particular circumstances, if the Accountability Agent gives any false indication that any methods it adopts are approved by any agency or international body, the Accountability Agent may potentially be guilty of an offence under this Act. In particular, section 14 of this Act provides that, if any person in the course of any trade or business gives by whatever means any false indication, direct or indirect, that any goods supplied by him or any methods adopted by him are or are of a kind supplied to or approved by any person including any government or government department or agency or any international body or agency whether in Singapore or abroad, he shall, subject to the provisions of this Act, be guilty of an offence.