

**CROSS-BORDER PRIVACY RULES SYSTEM
PARTICIPATION OF THE PHILIPPINES**

**CROSS BORDER PRIVACY RULES SYSTEM JOINT OVERSIGHT
PANEL**

FINDINGS REPORT

Submitted To: Mr. Julio Pertuze
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OVERVIEW AND PURPOSE

The purpose of this findings report is to assess the Philippines’s application to formally participate in the APEC Cross Border Privacy Rules system (herein “CBPR”). Paragraph 7.2 of the Charter of the APEC Cross Border Privacy Rules System and Privacy Recognition for Processors System Joint Oversight Panel (herein “Charter”) identifies the core functions of the Joint Oversight Panel (herein “JOP”) and instructs the JOP to “[e]ngage 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.” This report details how the conditions in paragraph 2.1 have been met.

Conditions set out in paragraph 2.1 of the Charter require that the following be submitted to the Chair of the Digital Economy Steering Group (herein “DESG”), the Chair of the Data Privacy Subgroup (herein “DPS”) and the Chair of the JOP:

- 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 (herein “CPEA”);
- Confirmation that the Economy intends to make use of at least one APEC-recognized Accountability Agent subject to the procedures outlined in paragraph 7.2 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-recognized 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 System 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 System program requirements.

Following is a findings report that details the consultative process undertaken with the relevant government representatives from the Philippines and an explanation of how each of the conditions set out in paragraph 2.1 of the Charter has been met.

This report is to be circulated to all Member Economies by the APEC Secretariat and made publicly available on the CBPR System website.

SUMMARY OF FINDINGS

In a letter dated August 19, 2019, the Philippines's Privacy Commissioner, Raymund Liboro of the National Privacy Commission, provided the Philippines's *Notice of Intent to Participate in the CBPR System* to the Chair of the Electronic Commerce Steering Group¹, the acting Chair of the DPS, and the Chair of the JOP. The letter contained confirmation of the following: 1) The National Privacy Commission of the Philippines is a participant in the CPEA; and 2) The Philippines intends to make use of at least one APEC-recognized Accountability Agent subject to the procedures outlined in paragraph 7.2 of the Charter. After consultation with representatives from the Philippines's National Privacy Commission, the Joint Oversight Panel (JOP) has determined that the Philippines meets the requirements for participation in the CBPR System. The following findings report outlines the Philippines's application for participation in the CBPR System and the JOP's determination. Upon submission of this report on March 9, 2020, the Philippines is deemed a participant in the CBPR System.

¹ The ECSG has been reformed as the Digital Economy Steering Group (DESG).

FINDINGS OF THE JOINT OVERSIGHT PANEL

Having verified the completeness of the Philippines's Notice of Intent to Participate;

Having consulted with representatives from the National Privacy Commission on the narrative description of domestic laws applicable to the certification-related activities of Accountability Agents operating in the Philippines, and on the completed APEC Cross Border Privacy Rules System Program Requirements Enforcement Map;

Having verified with the Administrators of the APEC Cross Border Privacy Enforcement Arrangement (CPEA) that the National Privacy Commission is a participant in the APEC CPEA;

The Cross Border Privacy Rules System Joint Oversight Panel finds that the conditions established in paragraph 2.1 (i-iii) of the Charter, establishing the requirements for recognition as a participant in the Cross Border Privacy Rules System, have been met by the Philippines.

The Cross Border Privacy Rules Joint Oversight Panel invites the Chair of the APEC DESG to notify the Philippines that the conditions set out in paragraph 2.1 of the Charter have been met, and to advise them that they are hereby considered a Participant in the CBPR System.

Once the notification has been given by the Chair of the DESG, the Philippines may nominate one or more Accountability Agents for APEC recognition or notify the JOP of a request by the Accountability Agent(s), for recognition under the CBPR System.

Submitted by the Joint Oversight Panel

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DISCUSSION OF FINDINGS

Letter of Intent

In a letter dated August 19, 2019, the Philippines's Privacy Commissioner, Raymund Liboro of the National Privacy Commission, provided the Philippines's *Notice of Intent to Participate in the CBPR System* to the Chair of the JOP. The letter contained confirmation of the following:

- 1) The Philippines National Privacy Commission is a participant in the Cross Border Privacy Enforcement Arrangement (CPEA); and
- 2) The Philippines intends to make use of at least one APEC-recognized Accountability Agent subject to the procedures outlined in paragraph 7.2 of the Charter.

Appended to this Notice of Intent were the following documents:

- 1) A narrative description of the relevant domestic laws and regulations that may apply to any CBPR certification-related activities of an Accountability Agent operating within the Philippines's jurisdiction and the enforcement authority associated with these laws and regulations; and
- 2) The completed APEC CBPR System Program Requirements Enforcement Map.

Confirmation of CPEA Participation

In its August 19, 2019, *Notice of Intent to Participate in the APEC CBPR System*, the Philippines confirmed that the Philippines' National Privacy Commission is a participant in the Cross Border Privacy Enforcement Arrangement (CPEA).

Having verified with the CPEA Administrators that the Philippines' National Privacy Commission is a participant in the CPEA, the JOP finds that the Philippines meets the corresponding requirement for Member Economy participation, as set out in paragraph 2.1 of the Charter.

Stated Intent to Make Use of APEC-Recognized Accountability Agent(s)

The Philippines's *Notice of Intent to Participate in the CBPR System* includes a confirmation that the Philippines intends to make use of at least one APEC-recognized Accountability Agent,

subject to the procedures outlined in paragraph 7.2 of the Charter. The JOP finds that this confirmation by National Privacy Commission meets the corresponding requirement for Member Economy participation, as set out in paragraph 2.1 of the Charter.

Relevant Laws, Regulations and Administrative Measures which may Apply to CBPR-Certification-Related Activities of an Accountability Agent Operating in The Philippines

Annex A of the Philippines's *Notice of Intent to Participate in the CBPR System* outlines certification-related activities that CBPR system Accountability Agents operating in the Philippines would be expected to engage in. The *Notice of Intent* also outlines the laws and associated enforcement authority that may apply to these Accountability Agents in respect of their certification-related activities.

In the Philippines, Accountability Agents may be established in the form of a single proprietorship, partnership or a corporation. In whatever form, an Accountability Agent's activities are regulated by the Consumer Act of the Philippines (Republic Act No. 7394), which mandates the protection of the interests of the consumer, promotion of general welfare, and establishes standards of conduct for business. Under the Consumer Act, if an Accountability Agent fails to comply with the requirements set forth in the Accountability Agent Application, it could constitute a deceptive, unfair or unconscionable act subject to penalty and enforcement by the Department of Trade and Industry.

In addition, the Philippines has submitted various additional laws that apply to Accountability Agents operating in the Philippines. All Accountability Agents are subject to the Philippines Penal Laws for criminal offenses and the Civil Code of the Philippines which governs transactions, including enforcement of contracts. Under the Intellectual Property Code, if an APEC-recognized Accountability Agent authorizes the use of its certification mark to convey compliance with the CBPR program requirements, the Bureau of Trademarks may cancel the registered mark if it the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.

In addition, the Philippines has submitted specific laws that apply to an Accountability Agent depending on the type of entity it is established as and which establish oversight and guidelines for its operations. For example, if an Accountability Agent is established as a corporation or a joint venture, it would be subject to the Corporation Code and under the supervision of the Securities and Exchange Commission. If an Accountability Agent is organized as a government owned or controlled corporation, it is subject to the GOCC Governance Act of 2011, which mandates them to be transparent and responsive to the needs of the public.

APEC Cross Border Privacy Rules System Program Requirements Enforcement Map

Annex B of The Philippines' *Notice of Intent to Participate in the CBPR System* contains the completed APEC Cross Border Privacy Rules System Program Requirements Enforcement Map. In this Map, the Philippines provided citations to all relevant provisions in the Data Privacy Act of 2012 (Republic Act 10173) (herein 'Act') and the Implementing Rules and Regulations of Data Privacy Act of 2012 (herein 'Implementing Rules'), that have the effect of protecting personal information consistent with the CBPR System program requirements². The Joint Oversight Panel reviewed the Philippines' submission to verify the applicability of each cited Article of the Act and/or Implementing Rules to the relevant program requirement (see *Appendix*).

Consultation Process

As instructed in the Charter and in the JOP Protocols document, the JOP engaged in consultations with relevant parties in preparation for the submission of this report to the Chair of the DESG. The purpose of these consultations was to obtain further details and confirmation of certain elements of The Philippines' *Notice of Intent to Participate in the CBPR System*, including information provided in Annex A and Annex B, and to obtain confirmation of the identified Privacy Enforcement Authority's participation in the CPEA. Consultations were undertaken with representatives of the National Privacy Commission via email.

² The Act and Implementing Rules can be found at: <https://www.privacy.gov.ph/data-privacy-act-primer/>.

SUSPENSION OR WITHDRAWAL OF PARTICIPATION

Participation by the Philippines 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); or,
- 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.

Only CBPR Participating Economies may initiate a request for a consensus determination that any situation identified above has occurred.

The Philippines 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 DESG Chair.

If the Philippines ceases participation (whether by way of withdrawal or suspension) in the CBPR System, any certifications performed by APEC-recognized Accountability Agents operating in the Philippines 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.

RE-INITIATION OF PARTICIPATION

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 the Protocols of the Joint Oversight Panel at any time.