

CROSS-BORDER PRIVACY RULES SYSTEM JOINT OVERSIGHT PANEL

**RECOMMENDATION REPORT ON APEC RECOGNITION OF THE INSTITUTE
FOR INFORMATION INDUSTRY**

Submitted to:

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October 28, 2020

TABLE OF CONTENTS

Executive Summary	1
Scope of Consultation Process	1
Recommendation of the Joint Oversight Panel	2
Request for Consensus Determination	3
Enforceability.....	4
Recognition Criteria.....	5
Conflicts of Interest (Recognition Criteria 1-3).....	5
Program Requirements (Recognition Criterion 4).....	6
Certification Process (Recognition Criterion 5).....	7
On-going Monitoring and Compliance Review Processes (Recognition Criteria 6, 7).....	7
Re-Certification and Annual Attestation (Recognition Criterion 8).....	8
Dispute Resolution Process (Recognition Criteria 9, 10).....	9
Mechanism for Enforcing Program Requirements (Recognition Criteria 11-15)	10
Case Notes & Statistics.....	12
Signature	13

EXECUTIVE SUMMARY

In November 2018, Chinese Taipei formally commenced participation in the Cross Border Privacy Rules (herein ‘CBPR’) system. Pursuant to Paragraph 5 of the Protocols of the Joint Oversight Panel, Chinese Taipei was then eligible to nominate one or more Accountability Agents for APEC recognition.

On December 31, 2019, the Joint Oversight Panel (JOP) received an application from Chinese Taipei nominating the Institute for Information Industry (herein ‘III’) as an APEC Accountability Agent for the CBPR System.

SCOPE OF CONSULTATION PROCESS

Pursuant to Paragraph 7.2 of the *Charter of the Joint Oversight Panel*, members of the JOP¹ began a consultative process with representatives from Chinese Taipei to:

- Confirm the enforceability of an organization’s CBPR obligations once certified as CBPR compliant by III;
- Confirm III’s location and the relevant enforcement authority;
- Confirm that III meets the recognition criteria as identified in the *Accountability Agent Application for Recognition*;
- Confirm III makes use of program requirements that meet the baseline established in the CBPR System; and
- Confirm III has provided the necessary signature and contact information.

The following Recommendation Report was drafted by members of the JOP.

¹ For purposes of this consultative process, members of the JOP are: Shannon Coe, Department of Commerce, United States; Evelyn Goh, Personal Data Protection Commission, Singapore; and Nobuyuki Matsumoto, Ministry of Economy, Trade and Industry, Japan.

RECOMMENDATION OF THE JOINT OVERSIGHT PANEL

Having verified Chinese Taipei is a participant in the APEC Cross Border Privacy Rules (CBPR) System and has demonstrated the enforceability of the CBPR program requirements pursuant to the information provided in Annex B of Chinese Taipei's Notice of Intent to Participate;

Having verified III is in Chinese Taipei and is subject to the oversight and enforcement authority described in Annex A of Chinese Taipei's Notice of Intent to Participate and Chinese Taipei's Accountability Agent APEC Recognition Application;

Having verified with the Administrators of the APEC Cross Border Privacy Enforcement Arrangement (CPEA) that Chinese Taipei has 15 Privacy Enforcement Authorities² participating in the APEC CPEA;

Having determined, in the opinion of the members of the Joint Oversight Panel, that III has policies in place that meet the established recognition criteria and makes use of program requirements that meet those established in the CBPR System; and

Having verified III has provided the required signature and contact information;

The JOP recommends APEC member Economies consider the conditions established in 7.2 (ii) of the Charter of the Joint Oversight Panel to have been met by III and to grant Chinese Taipei's request for APEC recognition of III to certify organizations within Chinese Taipei and under the jurisdiction of Chinese Taipei's Enforcement Authorities as compliant with the CBPR System pursuant to the established guidelines governing the operation of the CBPR System.

Submitted by the Joint Oversight Panel:

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Chair, Joint Oversight Panel
U.S. Department of Commerce, United States

Evelyn Goh
Member, Joint Oversight Panel
Personal Data Protection Commission, Singapore

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Ministry of Economy, Trade and Industry, Japan

² The Enforcement Authorities are: the Ministry of the Interior, Ministry of Foreign Affairs, Ministry of Education, Ministry of Economic Affairs, Ministry of Justice, Ministry of Transportation and Communications, Ministry of Labor, Council of Agriculture, Ministry of Health and Welfare, Ministry of Culture, Ministry of Science and Technology, Financial Supervisory Commission, Public Construction Commission, Fair Trade Commission, and the National Communications Commission.

REQUEST FOR CONSENSUS DETERMINATION

APEC Member Economies are asked to make a determination as to Chinese Taipei's nomination and request for recognition of III as an Accountability Agent, 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*. When making this determination, any APEC Member Economy may request additional information or clarification from Chinese Taipei or the JOP. If no objection is received within the deadline for consensus determination as established by the DESG Chair, the request will be considered to be approved by the DESG. Should Member Economies determine that III has met the necessary criteria, APEC recognition will be limited to one year from the date of recognition, one month prior to which, III may re-apply for APEC recognition if it so wishes, following the same process described herein.

I. ENFORCEABILITY

Is the Applicant subject to the jurisdiction of the relevant enforcement authority in a CBPR participating Economy?

Recommendation

The JOP is satisfied that III is subject to the jurisdiction of the Ministry of Economic Affairs, a participant in the Cross-Border Privacy Enforcement Arrangement (CPEA).

Discussion

III is non-profit foundation established by the Foundations Act of Chinese Taipei (Foundations Act) to provide policies and technical services to government agencies and to operate the Taiwan Personal Information Protection and Administration System (TPIPAS). Pursuant to Article 63 of the Foundations Act, III is subject to oversight by the Ministry of Economic Affairs, one of the 15 PEAs of Chinese Taipei. Article 56 of the Foundations Act authorizes the Ministry of Economic Affairs to regularly inspect III's operations, financial status and investment status in writing or by other methods and may conduct on-site inspection as the Ministry deems necessary, based on upon complaints or ex officio. For example, the Ministry of Economic Affairs may investigate if III fails to comply with CBPR program requirements in violation of the Fair Trade Act or if III causes damage to consumers in violation of the Consumer Protection Act. Government authorities at the municipal and city level have legislative power to require III to immediately bring its services into compliance within a set time period or III's license to perform CBPR certifications may be suspended or cancelled.

The JOP has confirmed that III will apply for a certification mark for CBPR certifications under the Trademark Act of Chinese Taipei, which may be revoked upon an individual complaint or ex officio if it is not used pursuant to the regulations. Violations include if the mark holder is not competent to certify and deploy the certification mark, discriminates against those who apply for certification, or uses the mark improperly that is likely to cause damage to others or the public.

II. RECOGNITION CRITERIA

The *Accountability Agent Application for Recognition* requires applicants to describe how each of the 15 Accountability Agent Recognition Criteria have been met using the Accountability Agent Recognition Criteria Checklist. Following is an overview of each listed requirement and recommendation of the sufficiency of each based on the information submitted to the JOP by Chinese Taipei.

Conflicts of Interest (Recognition Criteria 1-3)

- 1. Applicant Accountability Agent should describe how requirements 1(a) and (b) in Annex A of the Accountability Agent Application for APEC Recognition have been met and submit all applicable written policies and documentation.*
- 2. Applicant Accountability Agent should submit an overview of the internal structural and procedural safeguards to address any of the potential or actual conflicts of interest identified in 2(b) of Annex A of the Accountability Agent Application for APEC Recognition.*
- 3. Applicant Accountability Agent should describe the disclosure/withdrawal mechanisms to be used in the event of any actual conflict of interest identified.*

Recommendation

The JOP is satisfied that III meets Recognition Criteria 1-3.

Discussion

The JOP has confirmed that as a non-profit entity established under the Foundations Act, III's Directors, supervisors, the chief executive officer and persons with similar positions shall recuse themselves when conflict of interests occurs in the execution of their duties. Conflicts include a situation where directors, supervisors, the chief executive officer and persons with similar positions or their related parties, such as a spouse and certain relatives, gain interest either directly or indirectly through any act or omission in the execution of their duties. Pursuant to the Foundations Act, III established Working Rules, Code of Conducts, Ethical Management in Operating Procedures to implement this requirement.

The JOP has confirmed that III has written policies and procures to ensure that its employees avoid actual or potential conflicts of interest related to III's participation as an Accountability Agent in the CBPR System. The APEC CBPR Accountability Agent – Conflicts of Interest Policies and Management Procedures (COI Policy) applies to all employees that perform CBPR certifications, re-certifications, mid-term audits and dispute resolution. The COI Policies require all employees to submit a conflict of interest disclosure form prior to accepting an organization's application for CBPR certification and must disclose conflicts of interest throughout an organization's certification. The applicant organization must also submit a statement disclosing any conflicts of interest. Employee conflicts are broadly defined to include holding a board position or a management role in the applicant organization and require disclosure of whether the employee would receive any property or non-property interests such as a promotion while performing certification duties. An applicant organization must disclose if there are

circumstances that would allow it to exert undue influence on III or its employees, or whether there are significant monetary relationships outside of its participation in the CBPR System that would impact III's ability to render a fair decision with respect to the applicant organization. III has a three tier supervisory structure when implementing the COI Policy, and the Director General makes the final determination of whether there are no conflicts and III may accept the application, or whether there are conflicts that prohibit III from accepting the application or require mitigation by having a specific employee withdraw from the activity giving rise to the conflict or from the CBPR certification activity. All decisions regarding conflicts must be reviewed by the Director General who oversees all CBPR activities, and III's compliance of the COI Policy may be selected for review during the annual external audit. Any employee of the III who breaches the COI Policy may be subject to punishment and liability, which may include termination of employment, demotion or pay reduction.

The JOP has confirmed that III also has structural safeguards in place to address actual or potential conflicts of interest. The JOP has confirmed that III will not provide any counseling or technical services relating to personal information or information security to applicant or certified organizations.

The JOP has confirmed that III will publicize CBPR certification standards for application and participating organizations and case notes of remarkable cases at: tpipas.org.tw. The JOP has confirmed that III has confirmed that it will notify the PEAs of Chinese Taipei of information related to certification of new organizations, audits of existing participant organizations, and dispute resolution. The JOP has confirmed that as required in criterion 3, III will disclose to the JOP conflicts of interest that result in a withdrawal or affiliations that might be on their face be considered a conflict of interest but did not result in a withdrawal.

Program Requirements (Recognition Criterion 4)

Applicant Accountability Agent should indicate whether it intends to use the relevant template documentation developed by APEC or make use of Annex C of the Accountability Agent Application for APEC Recognition to map its existing intake procedures program requirements.

Recommendation

The JOP is satisfied that III meets Recognition Criterion 4.

Discussion

In consultation with the JOP, III has used Annex C of the Accountability Agent APEC Recognition Application to map the existing program requirements for Chinese Taipei's domestic privacy certification system, the *Taiwan Personal Information Protection and Administration System* (TPIPAS), to the established CBPR program requirements. The JOP has confirm that III will verify that an applicant for CBPR certification meets the TPIPAS program requirements and the CBPR Assessment Criteria set forth in Annex C.

Certification Process (Recognition Criterion 5)

Applicant Accountability Agent should submit a description of how the requirements as identified in 5 (a) – (d) of Annex A of the Accountability Agent Application for APEC Recognition have been met.

Recommendation

The JOP is satisfied that III meets Recognition Criterion 5.

Discussion

The JOP has confirmed that III has a comprehensive process to review an applicant organization's policies and practices to verify compliance with the CBPR program requirements that includes all of the required elements. As outlined in its application, when III receives an application from an organization, it will first review for any conflict of interest between III and the applicant organization following the policies and procedures outlined above in response to Criteria 1-3. Then III will review an applicant's Intake Questionnaire and application documents to verify that the content complies with the CBPR program requirements. Once III has determined that the applicant organization's submission meets these requirements, III will conduct an on-site review, which may include interviews by phone or email, observing the applicant's procedures relating to personal information, or through review of randomly selected relevant records including policies, systems, and websites.

After the on-site review, the certification team will issue a report outlining its findings as a result of its review, which may include a description of any instances of noncompliance and a request for the applicant organization to take corrective action within a certain period. III will verify all corrective actions have been made before certifying that an applicant organization, and III will issue a certificate to all applicant organizations that have met the requirements and will publicize certified organizations and all of the required information on the TPIPAS official website of III and the cbprs.org compliance directory.

On-going Monitoring and Compliance Review Processes (Recognition Criteria 6, 7)

Applicant Accountability Agent should submit a description of the written procedures to ensure the integrity of the certification process and to monitor the participant's compliance with the program requirements described in 5 (a)-(d) in the Accountability Agent Application for APEC Recognition.

Applicant Accountability Agent should describe the review process to be used in the event of a suspected breach of the program requirements described in 5(a)-(d) in the Accountability Agent Application for APEC Recognition.

Recommendation

The JOP is satisfied that III meets Recognition Criteria 6 and 7.

Discussion

The JOP has confirmed that III has comprehensive written procedures to ensure participant organizations' compliance with the CBPR program requirements throughout the certification period. III obligates participant organizations to comply with CBPR program requirements through a written contract. Under the terms of the contract, III may require participant organizations to provide III with a written report or relevant information regarding its personal information management system. Participant organizations also must agree to periodic on-site reviews at III's discretion. In addition, participant organizations are obligated to promptly notify III in writing and provide relevant documents of changes related to the participant organization's CBPR certification, including of changes in the organization's business, material changes to the personal information management system, or information specified in the CBPR application.

The JOP has confirmed that III has procedures in place to ensure it becomes aware of incidences which may impact a participant organization's certification. A participant organization is obligated to promptly report any incident involving personal information which may constitute a breach of the program requirements. Once the organization has investigated the incident, it must submit a written report outlining the cause of the incident, the resulting damage, and how the incident was handled. III may also learn about potential breaches through complaints received through the dispute resolution process.

The JOP has confirmed that if III has reasonable grounds to believe that a participant organization has breached the program requirements it will trigger an immediate review. If III determines that there was a breach, it will request that the participant organization to rectify the noncompliance within a certain period, and III will suspend or terminate the certification of the participant if III cannot verify that the changes have been made within that timeframe.

Re-Certification and Annual Attestation (Recognition Criterion 8)

Applicant Accountability Agent should describe their re-certification and review process as identified in 8 (a)-(d) in the Accountability Agent Application for APEC Recognition.

Recommendation

The JOP is satisfied that III meets Recognition Criterion 8.

Discussion

The JOP has confirmed that III requires an annual re-certification which requires the participant organization to submit an application for re-certification before the certification expires and to

undergo the entire certification review process described above. In addition, III will initiate an immediate review process outside of the annual re-certification cycle if the applicant notifies III of a material change, III receives a complaint or otherwise has reasonable grounds to believe that a participant is not in compliance.

Dispute Resolution Process (Recognition Criteria 9, 10)

Applicant Accountability Agent should describe the mechanism to receive and investigate complaints and describe the mechanism for cooperation with other APEC recognized Accountability Agents that may be used when appropriate.

Applicant Accountability Agent should describe how the dispute resolution process meets the requirements identified in 10 (a) – (h) of Annex A, whether supplied directly by itself or by a third party under contract (and identify the third party supplier of such services if applicable and how it meets the conflict of interest requirements identified in sections 1-3 of Annex A) as well as its process to submit the required information in Annexes D and E.

Recommendation

The JOP is satisfied that III meets Recognition Criteria 9 and 10.

Discussion

The JOP has confirmed that III has an internal mechanism to receive and investigate complaints about participant organizations in relation to non-compliance with CBPR program requirements. III's dispute resolution process is governed by the "Guideline for the Operation of Dispute Resolution Mechanism of the Taiwan Personal Information Protection Administration System (TPIPAS)" (Dispute Resolution Guidelines) and includes all necessary elements outlined in the application.

Per the Dispute Resolution Guidelines, any person can submit a complaint to III through the TPIPAS official website of III concerning a participant organization's compliance with the CBPR program requirements. Within seven days, III will review to determine if the complaint is within the scope of the CBPR program requirements and will notify the complainant and participant organization in writing about the initial determination.

If the complaint is determined to be in scope, III will investigate the complaint, including through methods such as interviewing the complainant and/or the participant organization, consulting with the appropriate PEA, or consulting with other Accountability Agents. III generally will complete the investigation of the complaint within one month, unless more time is needed. At the conclusion of the investigation, III will notify the complainant and the participant organization of the result. If a breach is found, III will notify the participant of the breach and the corrections that need to be made within three months, during which time the organization's certification will be suspended. III will verify that corrections have been made and if the requirements are met, it will notify the complainant and the accused. If the participant organization fails to make the

corrections with the period, its certification will be terminated.

The JOP has confirmed that III will publish statistics on the amounts and types of disputes, as well as the outcomes of the dispute resolution process on the website of TPIPAS, and III will notify the relevant PEAs and the JOP of the information. The JOP has confirmed that III will include the contact information for the PEAs on the TPIPAS official website, and III will obtain an individual's consent before sharing that individual's personal information with the relevant enforcement authority in connection with a request for assistance. Finally, the JOP has confirmed that III will publish anonymized case notes on remarkable complaints.

Mechanism for Enforcing Program Requirements (Recognition Criteria 11-15)

Applicant Accountability Agent should provide an explanation of its authority to enforce its program requirements against participants.

Applicant Accountability Agent should describe the policies and procedures for notifying a participant of non-compliance with Applicant's program requirements and provide a description of the processes in place to ensure the participant remedy the non-compliance.

Applicant Accountability Agent should describe the policies and procedures to impose any of the penalties identified in 13 (a) – (e) of Annex A.

Applicant Accountability Agent should describe its policies and procedures for referring matters to the appropriate public authority or enforcement agency for review and possible law enforcement action. [NOTE: immediate notification of violations may be appropriate in some instances].

Applicant Accountability Agent should describe its policies and procedures to respond to requests from enforcement entities in APEC Economies where possible.

Recommendation

The JOP is satisfied that III meets Recognition Criteria 11-15.

Discussion

The JOP has confirmed that III enforces the program requirements through contract with the applicant organization. As discussed in response to criterion 7, if III determines that a participant organization has breached the program requirements, it will request that the participant organization rectify the noncompliance within a certain period, and III will suspend or terminate the certification of the participant if III cannot verify that the changes have been made within that timeframe. The JOP has confirmed that pursuant to the contract, III can impose penalties when a participant organization fails to remedy a non-compliance within a specified time frame, including by suspending or terminating the certification, terminating the right to use the CBPR seal,

publicizing the name of the participant organization and the breach, and referring violations to the appropriate PEA if the breach constitutes a violation of applicable law.

Finally, the JOP has confirmed that III commits to cooperating with and responding to requests from enforcement entities in APEC Economies that reasonably relate to relevant activities of APEC Economies, Accountability Agents, and to the CBPR System. III can receive such requests through email and may report the requests to the PEAs of Chinese Taipei if necessary.

III. CASE NOTES AND STATISTICS

Will the Applicant provide relevant information on case notes and statistics as outlined in Annexes D and E of the Accountability Agent Application for APEC Recognition?

Recommendation

The JOP is satisfied that III meets the Case Notes and Statistics requirements as stipulated in Annexes D and E of the *Accountability Agent Application for APEC Recognition*.

Discussion

The Accountability Agent Recognition Criteria 10 (g) & (h) require Accountability Agents to have a process for making publicly available statistics on the types of complaints and the outcomes of such complaints (see Annex E), and a process for releasing, in anonymized form, case notes on a selection of resolved complaints illustrating typical or significant interpretations and notable outcomes (see Annex D). The JOP has confirmed that III will collate and provide information on the number of complaints and outcomes of such complaints and release case notes on a selection of resolved complaints illustrating typical or significant interpretations and notable outcomes yearly in its website. III has agreed to make use of the templates in Annexes D and E of the *Accountability Agent Application for APEC Recognition* to annually send this information to APEC member Economies as a condition of their recognition.

SIGNATURE AND CONTACT INFORMATION

By signing this document, the signing party agrees to the findings of the Joint Oversight Panel contained herein and attests to the truth of the information provided to the Joint Oversight Panel pursuant to the Application for APEC Recognition.

[Signature of person who has authority to commit party to the agreement]

[Typed name]:

[Date]:

[Typed title]:

[Typed name of organization]:

[Address of organization]:

[Email address]:

[Telephone number]:

APEC recognition is limited to one year from the date of recognition. Each year one month prior to the anniversary of the date of recognition, the Accountability Agent must resubmit this form and any associated documentation to the appropriate government agency or public authority or as soon as practicable in the event of a material change (e.g. ownership, structure, policies).

NOTE: Failure to comply with any of the requirements outlined in this document may result in appropriate sanctions under applicable domestic law.