

**CROSS-BORDER PRIVACY RULES SYSTEM AND PRIVACY
RECOGNITION FOR PROCESSORS JOINT OVERSIGHT PANEL**

**RECOMMENDATION REPORT ON APEC CONTINUED RECOGNITION OF
JIPDEC AS AN ACCOUNTABILITY AGENT FOR THE CBPR SYSTEM**

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Chair, Digital Economy Steering Group

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EXECUTIVE SUMMARY

On January 20, 2016, JIPDEC was endorsed to serve as an APEC Accountability Agent for the CBPR System and was subsequently approved for continued recognition on April 18, 2017, and July 12, 2019. Pursuant to Paragraph 36 of the APEC Cross Border Privacy Rules System Policies, Rules and Guidelines (herein ‘Policies, Rules and Guidelines’), the first APEC recognition is limited to one year from the date of recognition and for two years thereafter, one month prior to which, an Accountability Agent may re-apply for APEC recognition, following the same process as the original request for recognition. Paragraph 36 also stipulates that during this time the Accountability Agent’s recognition will continue.

On June 9, 2021, the Ministry of Economy, Trade, and Industry of Japan (herein ‘METI’) received an application from JIPDEC to continue to be recognized as a CBPR System Accountability Agent in Japan and forwarded it to the JOP after having reviewed the completeness of this application. The JOP found that JIPDEC continues to meet the requirements to serve as an Accountability Agent in Japan. JIPDEC continued recognition as an Accountability Agent will be valid for two years from the date of endorsement.

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 JIPDEC to:

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

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

¹ Members of the JOP are: Shannon Coe, Department of Commerce, United States; Nobuyuki Matsumoto, Ministry of Economy, Trade and Industry, Japan; and Evelyn Goh, Infocomm Media Development Authority, Singapore.

RECOMMENDATION OF THE JOINT OVERSIGHT PANEL

Having verified that Japan is a participant in the APEC Cross Border Privacy Rules (CBPR) System and has demonstrated the enforceability of the CBPR program requirements;

Having verified that JIPDEC is located in Japan and is subject to the oversight and jurisdiction of the Personal Information Protection Commission of Japan (herein 'PPC');

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

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

Having verified that JIPDEC has provided the required signature and contact information;

The JOP recommends that APEC Member Economies consider the conditions established in 7.2 (ii) of the Charter of the Joint Oversight Panel to have been met by JIPDEC and to grant JIPDEC's request for APEC recognition of JIPDEC to certify organizations within Japan and under the jurisdiction of the PPC 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
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REQUEST FOR CONSENSUS DETERMINATION

APEC Member Economies are asked to make a determination as to JIPDEC's request for continued recognition 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 JIPDEC 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 JIPDEC has met the necessary criteria, APEC recognition will be limited to two years from the date of recognition, one month prior to which, JIPDEC may re-apply for APEC recognition if it so wishes, following the same process described herein.

ENFORCEABILITY

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

Recommendation

The JOP is satisfied that JIPDEC is subject to the jurisdiction of the PPC, a participant in the Cross-border Privacy Enforcement Arrangement (CPEA).

Discussion

The JOP has confirmed that Japan is a recognized participant in the CBPR system, and that the PPC is a participant in the CPEA.

In its *Notices of Intent to Participate in the Cooperation Arrangement*, Japan described that the PPC enforces laws and regulations of which have the effect of protecting personal information consistent with the APEC Privacy Framework.

According to the *Act on the Protection of Personal Information*², the PPC may call for an Accountability Agent to report on its accredited services under Article 56 of the Act.

Additionally, according to Article 57 of the Act, the PPC may order the Accountability Agent to improve a method of rendering its authorized services.

If the Accountability Agent fails to comply with this order, the PPC may rescind the authorization issued to the Accountability Agent according to Article 58 (1) of the Act. In this case, the Accountability Agent cannot continue with any businesses related to the APEC CBPR system.

JIPDEC publicly indicates its participation in the APEC CBPR system including allowing its name to appear on a list of recognized APEC Accountability Agents. JIPDEC agrees to continue to post all APEC CBPR-certified companies on its website as well as the applicable APEC CBPR program requirements. The JOP has verified that JIPDEC has completed and signed the *Accountability Agent APEC Recognition Application*.

² Available at <http://www.japaneselawtranslation.go.jp/law/detail/?id=2781&vm=04&re=02>

RECOGNITION CRITERIA

The *Accountability Agent APEC Recognition Application* 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 Japan.

Conflicts of Interest (Recognition Criteria 1-3)

Applicant Accountability Agent should describe how requirements 1(a) and (b) in Annex A of the Accountability Agent APEC Recognition Applications have been met and submit all applicable written policies and documentation.

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 APEC Recognition Applications.

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 JIPDEC meets Recognition Criteria 1-3.

Discussion

JIPDEC submitted their internal documents on Rules for CBPR Certification (herein NTK 300), Rules for Operation of the CBPR Certification (herein NTK 310), and Rules for Complaints Handling regarding CBPR certification (herein NTK 320), which describe how JIPDEC would avoid actual or potential conflicts of interest in performing its duties under the CBPR System.

Regarding requirement 1, the JOP has confirmed that JIPDEC continues to commit to avoid any acts that could raise doubts concerning its fair and neutral position as an Accountability Agent. JIPDEC does not offer or provide services including consulting services related to CBPR certification that could influence its fairness. JIPDEC carries out an annual audit of potential conflicts of interest and continues to use and publish certification standards³. In addition, JIPDEC is obliged to publicly announce the names of participant organizations and submit a report on its businesses accredited by the PPC upon request. JIPDEC submits to the JOP an annual report on activities related to the processing of complaints and requests for cooperation.

Regarding requirement 2, the JOP has confirmed that JIPDEC continues to commit not to allow

³ https://english.jipdec.or.jp/protection_org/CertificationStandards.pdf

any officer and employee of the CBPR certification work who has interest with an applicant organization to be engaged in the CBPR certification work for such applicant organization. If JIPDEC finds that any officer or employee has an interest with an applicant organization in the course of certification work, it shall promptly dismiss such officer or employee from the CBPR certification work, and the CBPR certification work shall be carried out again. In addition, JIPDEC shall require persons involved in the CBPR certification work to submit a written pledge to ensure compliance with the Article 7.3 and 7.4 of NTK 300.

Regarding requirement 3, the JOP has confirmed that JIPDEC continues to commit to disclose all relevant information when it receives an inquiry or is asked for explanation from the JOP or APEC member economies concerning possible conflict of interests in order to ensure that there is no such conflict of interest. In the event that JIPDEC identifies a conflict of interest, it shall take immediate action to remedy the conflict.

Program Requirements (Recognition Criteria 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 APEC Recognition Application to map its existing intake procedures to CBPR program requirements.

Recommendation

The JOP is satisfied that JIPDEC meets Recognition Criteria 4.

Discussion

The JOP has confirmed that JIPDEC has used Annex C of the *Accountability Agent APEC Recognition Application* to map their existing intake procedures program requirements to the established CBPR program requirements.

Certification Process (Recognition Criteria 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 APEC Recognition Applications have been met.

Recommendation

The JOP is satisfied that JIPDEC meets Recognition Criteria 5.

Discussion

The JOP has confirmed that JIPDEC has documents of internal procedures for assessing an applicant organization's policies and practices to confirm their compliance with the CBPR System requirements. In its application, JIPDEC explained the following outline of its certification process:

1. A company that intends to apply for CBPR certification shall submit the application form and the CBPR intake questionnaire, internal rules and forms concerning personal information transferred across borders, and other necessary documents or materials (herein 'application document') to JIPDEC, and pay the assessment fee.
2. JIPDEC assesses application documents for fulfilling all fifty (50) CBPR program requirements by means of written documents, interviews, on-site inspection and other methods specified by JIPDEC.
3. When JIPDEC finds non-fulfillment, it will submit a report to the applicant organization and gives the applicant an opportunity to ask questions about the non-fulfillment of the JIPDEC certification standards and the grounds for the judgement.
4. JIPDEC will prepare an assessment report to demonstrate the completion of the certification assessment.
5. When JIPDEC confirms that the applicant organization fulfills all requirements as a result of the certification assessment, it shall grant a CBPR certification.

The JOP has confirmed JIPDEC's commitment that if all requirements are met, JIPDEC will issue the certification and will provide details for the CBPR 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) of Annex A in the Accountability Agent APEC Recognition Applications.

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) of Annex A in the Accountability Agent APEC Recognition Applications.

Recommendation

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

Discussion

The JOP has confirmed that JIPDEC has documents of its internal procedures to ensure integrity of its certification processes and to monitor compliance of the certified organization. JIPDEC has confirmed that it may set up a review committee of external experts to monitor compliance,

including through monitoring public announcements, complaints and inquiries from authorities or other Accountability Agents.

As JIPDEC explains in the application documents, it may carry out a special assessment during the validity period of certification, if it suspends the certification and intends to revoke or suspend the certification, or if a CBPR certified company is suspected of breaching the CBPR certification. This special assessment includes following functions and procedures:

1. JIPDEC shall notify the relevant CBPR certified company the reason for carrying out a special assessment and its scope, in writing.
2. If JIPDEC confirms that the relevant CBPR certified company does not meet the JIPDEC certification standards as a result of the special assessment and considers that the nonconformity have not been improved even after pointing out the findings based on Article 3.2.4 of NTK 310, it shall notify the CBPR certified company and may suspend or revoke the CBPR certification in accordance with provisions described by JIPDEC.

Re-Certification and Annual Attestation (Recognition Criteria 8)

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

Recommendation

The JOP is satisfied that JIPDEC meets Recognition Criteria 8.

Discussion

The JOP has confirmed that JIPDEC maintains a procedure in which a CBPR certified company may undergo assessment by JIPDEC and obtain re-certification prior to the expiration date of its CBPR certification described in Article 10 of NTK 300.

JIPDEC will undertake the assessment process based on the JIPDEC certification standards and will provide the CBPR certified company with a report of a list of changes that should be corrected to meet the JIPDEC certification standards.

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 on complaints.

Recommendation

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

Discussion

The JOP has confirmed that JIPDEC has an internal dispute resolution mechanism including being entrusted to a third party if necessary that conforms to requirements identified in 10 (a)-(h) of Annex A of the *Accountability Agent APEC Recognition Application*. JIPDEC also shall continue the cooperation with Privacy Enforcement Authorities and other APEC recognized Accountability Agents for handling complaints. JIPDEC provides an annual report to the JOP on activities related to the processing of complaints and request for cooperation.

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 in the Accountability Agent APEC Recognition Applications.

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 JIPDEC meets Recognition Criteria 11-15.

Discussion

The JOP has confirmed that JIPDEC has established mechanism to enforce the program requirements and to ensure compliance of CBPR certified organizations. These mechanisms include the following procedures;

1. When JIPDEC finds that a CBPR certified company does not meet the JIPDEC certification standards, it shall notify the CBPR certified company of the nonconformities and an implementation deadline of corrective measures.
2. JIPDEC shall suspend or revoke the certification of the CBPR certified company in accordance with the Article 15 of NTK 300.
3. JIPDEC shall report name of the CBPR certified company and the violation to relevant administrative authorities.
4. JIPDEC will cooperate with relevant administrative authorities or accountability agents to handle complaints where necessary.

CASE NOTES AND STATISTICS

Will the Applicant provide relevant information on case notes and statistics as outlined in the Accountability Agent APEC Recognition Applications?

Recommendation

The JOP is satisfied that JIPDEC meets the case notes and statistics requirements as stipulated in the *Accountability Agent APEC Recognition Applications*.

Discussion

For the CBPR System, 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 of the *Accountability Agent APEC Recognition Application*), and a process for releasing, in anonymized form, case notes on a selection of resolved CBPR-related complaints illustrating typical or significant interpretations and notable outcomes (see Annex D of the *Accountability Agent APEC Recognition Application*).

The JOP has confirmed that JIPDEC has not submitted any case notes and statistics since there are no complaints. The JOP has confirmed that once JIPDEC receives any complaints, JIPDEC will make publicly available information on the number of complaints and outcomes of such complaints and release case notes on a selection of important complaints. JIPDEC has agreed to make use of the templates in Annexes D and E of the *Accountability Agent APEC Recognition Application* 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 Accountability Agent Applications for APEC Recognition for the CBPR and PRP Systems.

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

[Typed name]: Tetsuya SAKASHITA

[Date]: June 9, 2021

**[Typed title]: Director, Accredited Personal Information Protection Organization
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APEC recognition is limited to two years from the date of recognition. 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.