

APEC CROSS-BORDER PRIVACY RULES SYSTEM
JOINT OVERSIGHT PANEL

2019 RECOMMENDATION REPORT ON THE
CONTINUED APEC RECOGNITION OF JIPDEC

Submitted To: Shannon Coe
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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.....	6
Conflicts of Interest (Recognition Criteria 1-3).....	6
Program Requirements (Recognition Criterion 4)	7
Certification Process (Recognition Criterion 5)	7
On-going Monitoring and Compliance Review Processes (Recognition Criteria 6-7)	8
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)	9
Case Notes and Statistics.....	11
Signature and Contact Information.....	12

EXECUTIVE SUMMARY

On January 20, 2016, JIPDEC¹ became Japan's first Accountability Agent in the Asia-Pacific Economic Cooperation (APEC) Cross Border Privacy Rules (herein 'CBPR') System. Pursuant to Paragraph 20 of the Protocols of the Joint Oversight Panel (herein 'JOP Protocols'), APEC Member Economies had been given the opportunity to take into account the Joint Oversight Panel (herein 'JOP') Recommendation Report and Addendum to the Recommendation Report, and the Member Economies ultimately granted JIPDEC's request for recognition.

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; recognition for the same Accountability Agent will be for two years thereafter; one month prior to the end of the recognition period, an Accountability Agent should 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 April 16, 2019, the Ministry of Economy, Trade and Industry of Japan (herein 'METI') received a timely application from JIPDEC for the renewal of its APEC recognition. After having reviewed the completeness of this application, METI forwarded this submission to the JOP on April 25, 2019.

SCOPE OF CONSULTATION PROCESS

Pursuant to Paragraph 24 of the JOP Protocols and Paragraph 37 of the Policies, Rules and Guidelines, members of the JOP began a consultative process to:

- Confirm the enforceability of an organization's APEC CBPR system obligations;
- Confirm JIPDEC's location and the relevant Privacy 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 APEC CBPR system; and,
- Confirm that JIPDEC has provided the necessary signature and contact information.

The following Recommendation Report was drafted by the JOP² pursuant to paragraph 24 of the JOP Protocols and complies with the requirements set out in paragraph 16 of the JOP Protocols. The JOP's consultative process included, but was not limited to, consultations directly with JIPDEC, consultations with METI and the Personal Information Protection Commission of Japan (herein 'PPC'), and review of JIPDEC's relevant program requirements.

¹ Japan Institute for Promotion of Digital Economy and Community

² For the purpose of this consultative process, JOP membership consist of Shannon Coe, United States Department of Commerce; Shuji Tamura, Ministry of Economy, Trade and Industry of Japan; and Evelyn Goh, Personal Data Protection Commission of Singapore.

RECOMMENDATION OF THE JOINT OVERSIGHT PANEL

Having verified that Japan is a participant in the APEC CBPR system and has demonstrated the enforceability of the APEC CBPR program requirements pursuant to the information provided in Annex B of Japan's Notice of Intent to Participate;

Having verified that JIPDEC is located in Japan and is subject to the Personal Information Protection Commission of Japan (herein 'PPC'), the Privacy Enforcement Authority described in Notice of Intent to Participate in the APEC Cooperation Arrangement by Personal Information Protection Commission;

Having verified with Administrators of the APEC CPEA that Japan's PPC is a participant in the APEC CPEA;

Having determined that pursuant to the Amended Act on the Protection of Personal Information, in effect as of May 30, 2017, the PPC is empowered to enforce the Amended Act and has participated in the APEC CPEA from that date.

Having determined, in the opinion of the members of the JOP, that JIPDEC has policies in place that meet the established recognition criteria and makes use of program requirements that meet those established in the APEC CBPR system; and,

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

The JOP recommends APEC member economies consider the conditions established in Paragraph 7.2 (ii) of the *Charter of the APEC Cross-Border Privacy Rules System Joint Oversight Panel* to remain met by JIPDEC; the conditions for re-attestation established in Paragraph 24 of the Protocols of the Joint Oversight Panel to have been met; and to grant JIPDEC's request for continued APEC recognition to certify organizations within Japan and under the jurisdiction of the competent authorities of the *Act on the Protection of Personal Information* as compliant with the APEC CBPR system pursuant to the established guidelines governing the operation of the APEC CBPR system.

Submitted by the Joint Oversight Panel:

Shannon Coe

Chair, Joint Oversight Panel

U.S. Department of Commerce, United States

Evelyn Goh

Member, Joint Oversight Panel

Personal Data Protection Commission, Singapore

Shuji Tamura

Member, Joint Oversight Panel

Ministry of Economy, Trade and Industry, Japan

REQUEST FOR CONSENSUS DETERMINATION

APEC member economies are asked to make a determination as to JIPDEC's request for renewal of its APEC recognition, taking into account the JOP's recommendation. Any APEC member economy has the right to reject the request of an applicant Accountability Agent for APEC recognition for failure to meet any of the recognition criteria required in the *Accountability Agent APEC 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 APEC/ECSG Chair, the request will be considered to be approved by the APEC/ECSG as recommended in this report. Should APEC member economies determine that JIPDEC has met the necessary criteria, APEC recognition will be limited to two years from the date of recognition, which is the date of endorsement of this report, proposed to be May 30, 2019. JIPDEC may re-apply for renewal of its APEC recognition one month prior to the end of its APEC recognition period if it so wishes, following the same process described herein.

1. ENFORCEABILITY

Is the Applicant subject to the jurisdiction of the relevant Privacy Enforcement Authority in an APEC CBPR system participating economy?

Recommendation:

The JOP is satisfied that JIPDEC is subject to the jurisdiction of the PPC, the competent enforcement authority of the *Act or the Amended Act on the Protection of Personal Information*.

Discussion:

In its Notice of Intent to Participate, Japan described its enforcement authority for personal information protection as follows:

According to Article 56 of *the Amended Act on the Protection of Personal Information*, PPC may call for the Accountability Agent to report on its accredited services under Article 47 of the Act.

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

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

The Amended Act on the Protection of Personal Information (effective on May 30, 2017)

(Calling for a Report)

Article 56

The Personal Information Protection Commission may, to the extent necessary to implement the provisions under this section, call for an accredited personal information protection organization to report on its accredited services.

(Order)

Article 57

The Personal Information Protection Commission may, to the extent necessary to implement the provisions of this section, order an accredited personal information protection organization to improve a method of rendering accredited services, amend a personal information protection guideline, or take any other necessary action.

(Rescinding the Accreditation)

Article 58 (1)

The Personal Information Protection Commission may, when an accredited personal information protection organization falls under any of each following item, rescind the accreditation.

- (i) when having led to falling under Article 48 (Disqualification), item (i) or item (iii)
- (ii) when having become unconformable to any of each item of Article 49 (Accreditation Standards)
- (iii) when having violated the provisions of Article 54 (Prohibition of Utilization for Unintended Purpose)
- (iv) when disobeying an order under the preceding Article
- (v) when having received an accreditation under Article 47 (Accreditation), paragraph (1) by improper means

The JOP has confirmed that JIPDEC has been authorized by the Minister of Economy, Trade and Industry (METI) as an Accredited Personal Information Protection Organization under the Act on the Protection of Personal Information since June 2005 and was subject to the regulatory oversight by METI until the amended Act come into effect on May 30, 2017. JIPDEC has been authorized by and subject to the regulatory oversight of PPC since that time.

As mentioned above, PPC may order the Accountability Agent to improve its methods of conducting its authorized services. If the Accountability Agent fails to comply with this order, PPC may rescind its authorization. In this case, the Accountability Agent cannot continue functions related to the APEC CBPR system, which is conducted also as an Accredited Personal Information Protection Organization under the Act on the Protection of Personal Information in Japan.

The JOP has further confirmed that Japan is a recognized participant in the CBPR system, and that the PPC is a participant in the Cross Border Privacy Enforcement Arrangement (herein ‘CPEA’)³. 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*.

³ See <https://www.apec.org/Groups/Committee-on-Trade-and-Investment/Electronic-Commerce-Steering-Group/Cross-border-Privacy-Enforcement-Arrangement.aspx>

2. 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 Checklist. Following is an update of each listed requirement and recommendation of the continuing sufficiency of each based on the information submitted to the JOP by JIPDEC.

Conflict 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 APEC Recognition Application 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 APEC Recognition Application.*
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 JIPDEC meets Recognition Criteria 1-3.

Discussion:

JIPDEC submitted their internal documents on Rules for Operation as an Accredited Personal Information Protection Organization (herein ‘NTK 100’), Rules for Operation of the CBPR Certification Business (herein ‘NTK 300’) and Detailed Rules for Operation of the CBPR Certification Business (herein ‘NTK 310’), which describe how JIPDEC would avoid actual or potential conflicts of interest.

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 consulting businesses or other servicing businesses that could impair its fairness. JIPDEC carries out an annual audit of potential conflicts of interest and continues to use and publish certification standards. In addition, JIPDEC is obliged to publicly announce the names of participant organizations and submit a report on its businesses authorized or 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 any officer and employee of the CBPR Certification Businesses Office who has interest with an applicant organization to be engaged in the CBPR certification businesses for such applicant organization. If JIPDEC finds that any officer or employee has an interest with an applicant organization in the course of certification business, it shall immediately disclose to the JOP and dismiss such officer or employee from the CBPR Certification Business Office.

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 Criterion 4)

- 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 program requirements.*

Recommendation:

The JOP is satisfied that JIPDEC meets Recognition Criterion 4.

Discussion

In consultation with the JOP, JIPDEC has used Annex C of the Accountability Agent APEC Recognition Application to map their existing program requirements to the established CBPR program requirements.

JIPDEC has adjusted their Certification Standard to correspond to Amended Act on the Protection of Personal Information and has made some adjustments for clarification and explanation purposes corresponding to inquiries and questions made to the Certification Standards by businesses which were interested in the CBPR certification. JIPDEC's Certification Standards described in Annex C have already reflected these adjustments.

Certification Process (Recognition Criterion 5)

- 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 Application have been met.*

Recommendation:

The JOP is satisfied that JIPDEC meets Recognition Criterion 5.

Discussion:

The JOP has confirmed that JIPDEC has 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) JIPDEC assesses application documents for fulfilling all fifty (50) CBPR program requirements, and identifies non-compliance, if any.
- 2) When JIPDEC finds non-compliance, it will inform the applicant organization about its non-compliance and provide the applicant with an opportunity to make inquiries and take remedial

actions.

- 3) After JIPDEC confirms that the applicant has completed the remedy measures to correct the non-compliance, it will prepare an assessment report to demonstrate the completion of the certification assessment.
- 4) When JIPDEC confirms that the applicant organization fulfills all requirements as a result of the certification assessment, it shall grant a CBPR certification.

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

6. *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 of the Accountability Agent APEC Recognition Application.*
7. *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 of the Accountability Agent APEC Recognition Application.*

Recommendation:

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

Discussion:

The JOP has confirmed that JIPDEC has internal procedures to ensure integrity of its certification processes and to monitor compliance of the certified organization. As JIPDEC explains in the application documents, it has established monitoring and compliance review mechanisms. These mechanisms include following functions and procedures:

- 1) JIPDEC reviews matters disclosed on the website of the certified organizations, and handles inquires and complaints from individuals, privacy enforcement authorities and other Accountability Agents within and /outside of Japan.
- 2) JIPDEC prepares and maintains a record of the implementation of the monitoring and the results thereof.
- 3) If any suspected breach of the program requirements by a certified organization is found as a result of the monitoring processes, JIPDEC shall carry out a special assessment, which includes notifying the certified organization of the Special Assessment, to review whether the certified organization continues to meet the program requirements, identifying and notifying the certified organization any non-compliance, if any, and taking necessary measures (including without limitation, the suspension or rescission of the certification, publicly announcing such suspension or rescission) if the certified organization does not remedy the non-compliance..

Re-Certification and Annual Attestation (Recognition Criterion 8)

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

Recommendation:

The JOP is satisfied that JIPDEC meets Recognition Criterion 8.

Discussion:

The JOP has confirmed that JIPDEC maintains a procedure in which CBPR certified organizations are required to receive a re-certification assessment prior to the expiration date of its CBPR certification.

Dispute Resolution Process (Recognition Criteria 9-10)

- 9. 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.*
- 10. 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 JIPDEC meets Recognition Criteria 9-10.

Discussion:

The JOP has confirmed that JIPDEC has an established dispute resolution mechanism that conforms to the requirements identified in 10 (a)-(h) of Annex A and operates it according to its documented procedures. In addition, JIPDEC continues to commit not to consign business relating to handling of complaints and consultation to any third party. Furthermore, JIPDEC cooperates 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 requests for cooperation.

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

- 11. Applicant Accountability Agent should provide an explanation of its authority to enforce its program requirements against participants.*
- 12. 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.*
- 13. Applicant Accountability Agent should describe the policies and procedures to impose any of the penalties identified in 13 (a) – (e) of Annex A of the Accountability Agent APEC Recognition Application.*
- 14. 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].

15. 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 enforces the program requirements through contract with the certified organizations and under authority derived from *the Amended Act on the Protection of Personal Information*. JIPDEC's review process includes the following procedures:

- When JIPDEC identifies non-compliance of a CBPR certified organization, it shall send the finding to the CBPR certified organization and request a report on the remedy. JIPDEC will then conduct assessment of the improvement.
- JIPDEC shall rescind the certification when it finds false information in the application documents or a CBPR certified organization does not perform its obligations as a CBPR certified organization.
- JIPDEC shall disclose the name of a CBPR certified organization on JIPDEC's website when the certification is rescinded or the registration is cancelled.
- JIPDEC shall report on the non-compliance to the PPC.
- JIPDEC will cooperate with other Accountability Agents and enforcement authorities to handle complaints where necessary.

3. CASE NOTE AND STATISTICS

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

Recommendation:

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

Discussion:

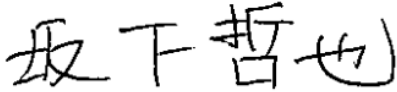
JIPDEC continues to express their intent to make use of the case note template in Annex D of the Accountability Agent APEC Recognition Application to annually send anonymized case notes to APEC member economies as a condition of their APEC recognition. The case notes and statistics will be also posted on the website of JIPDEC periodically.

In addition, competent authorities of the Act or the Amended Act on the Protection of Personal Information may collect reports on the status of implementation of the act or the amended act from the Accredited Personal Information Protection Organization, which are submitted to the Prime Minister's Office. The compiled reports will be then made public periodically.

On the date of submission of the application for the renewal of its APEC recognition, JIPDEC has no Case Notes to report yet. JIPDEC has not accepted any complaints since APEC's recognition of JIPDEC as an Accountability Agent.

4. 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 the APEC Recognition.



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

[Typed name]: Tetsuya SAKASHITA

[Date]: 20 May, 2019

[Typed title]: Managing Director

[Typed name of organization]: JIPDEC

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The first APEC recognition for an Accountability Agent is limited to one year from the date of recognition. Recognition for the same Accountability Agent will be for two years thereafter. One month prior to the end of the recognition period, 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.