



Centre for Information Policy Leadership

— HUNTON ANDREWS KURTH —

## International Data Flows

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# Cross Border Privacy Rules, Privacy Recognition for Processors, and Global CBPR and PRP

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## Frequently Asked Questions

June 2023

## INTERNATIONAL DATA FLOWS

# Cross-Border Privacy Rules, Privacy Recognition for Processors, and Global CBPR and PRP Frequently Asked Questions

26 June 2023

This document<sup>1</sup> addresses commonly asked questions about the Cross-Border Privacy Rules (CBPR) and Privacy Recognition for Processors (PRP) systems, which are data transfer mechanisms developed by the Asia-Pacific Economic Cooperation (APEC) member economies. CBPR and PRP operationalize the nine Privacy Principles set forth in the 2005 APEC Privacy Framework.

In 2022, several APEC economies established the Global CBPR Forum to transition the APEC CBPR and PRP systems into a global transfer framework, known as Global CBPR and Global PRP. While the Global CBPR and PRP systems have yet to be formally launched, the Forum is actively working to operationalize these new systems, inviting jurisdictions outside APEC to participate in the process.

The Center for Information Policy Leadership (CIPL) anticipates that the elements of the current CBPR and PRP systems will transition seamlessly to the global framework.<sup>2</sup> Accordingly, our responses to Questions 9-22 (which pertain to the current systems) will likely apply to the Global CBPR. We will update these FAQs as developments warrant.

This document is not designed to be and should not be taken as legal advice.

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<sup>1</sup> This document updates and supersedes CIPL Q&A on Cross-Border Privacy Rules (CBPR) and Privacy Recognition for Processors (PRP) 2nd Edition (October 8, 2020), available at [https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl\\_cbpr\\_and\\_prp\\_q\\_a\\_2nd\\_edition\\_8\\_october\\_2020.pdf](https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_cbpr_and_prp_q_a_2nd_edition_8_october_2020.pdf).

<sup>2</sup> The Global CBPR Forum has published its own set of FAQs, available at <https://www.globalcbpr.org/about/>.

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## Q1. What is the Cross-Border Privacy Rules (CBPR) system?

The CBPR system is a government-backed data privacy and security certification program first developed in 2011 by the Asia-Pacific Economic Cooperation (APEC) member economies.<sup>3</sup> It comprises a set of 50 program requirements that operationalize the nine Privacy Principles set forth in the 2005 APEC Privacy Framework.<sup>4</sup>

The CBPR system was developed originally as a regional transfer mechanism for APEC member economies. In 2022, however, a number of APEC economies established the Global CBPR Forum<sup>5</sup> for the purpose of transforming CBPR into a global transfer mechanism and inviting participation from countries outside APEC.

Like Binding Corporate Rules (BCR) in the EU, CBPR can be used for intra-company transfers. But unlike BCR, they can also be used for transfers between unaffiliated companies, as well as for transfers to non-CBPR-certified companies anywhere in the world. The CBPR can also be used as a comprehensive domestic privacy compliance and accountability program.

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<sup>3</sup> The Asia-Pacific Economic Cooperation (APEC) is a regional forum established in 1989 dedicated to economic development and integration among member economies. See [Q7](#) for additional information.

<sup>4</sup> The APEC Privacy Framework was developed by the 21 APEC member economies and was initially finalized in 2005. It includes nine Privacy Principles which the CBPR operationalize. See APEC Privacy Framework, available at [https://www.apec.org/-/media/APEC/Publications/2005/12/APEC-Privacy-Framework/05\\_ecsg\\_privacyframewk.pdf](https://www.apec.org/-/media/APEC/Publications/2005/12/APEC-Privacy-Framework/05_ecsg_privacyframewk.pdf). Portions of the Framework were updated in 2015 and draw upon concepts introduced into the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (1980, updated in 2013) with due consideration for the different legal features and context of the APEC region [https://www.apec.org/Publications/2017/08/APEC-Privacy-Framework-\(2015\)](https://www.apec.org/Publications/2017/08/APEC-Privacy-Framework-(2015)).

<sup>5</sup> Explained in [Q4](#), *infra*. See also Global CBPR Forum website at <https://www.globalcbpr.org/>.

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## Q2. What is the Privacy Recognition for Processors (PRP) system?

The PRP system is a companion certification to the CBPR designed specifically for organizations seeking to process personal data on behalf of data controllers. APEC created the PRP in 2015. The PRP system has fewer Program Requirements than the CBPR,<sup>6</sup> focusing mostly on data security and the ability to implement the relevant CBPR requirements and other data privacy obligations of the controller.<sup>7</sup> Its main purpose is to serve as a due diligence tool for data controllers that are looking for qualified data processors. Currently, only the United States and Singapore are participating in the PRP.

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## Q3. Why are the CBPR and PRP being globalized?

The main impetus for globalizing the CBPR and PRP has been the realization that in a globalized digital and data economy, businesses require efficient global solutions for cross-border data transfers, rather than regionally limited transfer mechanisms.<sup>8</sup> Similarly, businesses are looking for efficient due diligence solutions for global vendor management. The basic idea is to create a global “one stop shop” for data transfers and vendor due diligence within a trusted and enforceable framework. A Global CBPR system will be able to co-exist alongside other transfer and due diligence mechanisms that may continue to be useful.

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## Q4. What is the Global CBPR Forum?

The Global CBPR Forum (the Forum) comprises a group of nations seeking to make the CBPR and PRP systems available beyond APEC member economies. It was established<sup>9</sup> in 2022 by seven of the nine APEC economies participating in the APEC CBPR system: Canada, Japan, Republic of Korea, Philippines, Singapore, Chinese Taipei, and the United States. Later in 2022, the other two APEC economies participating in the APEC CBPR system—Australia and Mexico—joined the Forum.

The Forum seeks to enable the global free flow of data through a multilateral privacy and data transfer framework modeled on the CBPR and PRP systems, referred to as “Global CBPR” and “Global PRP.” It also seeks to share and promote best practices on privacy and data protection among organizations, as well as promote interoperability with other privacy frameworks. The Forum operates on a consensus basis.

The Forum is open to membership to jurisdictions that accept its objectives and principles and that intend to participate in the Global CBPR system. It also enables “Associate Status” for countries that

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<sup>6</sup> Explained in [Q10](#), *infra*. The PRP Program Requirements are available at <http://cbprs.org/wp-content/uploads/2021/05/PRIVACY-RECOGNITION-FOR-PROCESSORS-SYSTEM-PROGRAM-REQUIREMENTS-1.pdf>.

<sup>7</sup> The PRP Program Requirements are available at <http://cbprs.org/wp-content/uploads/2021/05/PRIVACY-RECOGNITION-FOR-PROCESSORS-SYSTEM-PROGRAM-REQUIREMENTS-1.pdf>.

<sup>8</sup> See the Global Cross-Border Privacy Rules Declaration, issued Apr. 21, 2022, available at <https://www.globalcbpr.org/wp-content/uploads/Global-CBPR-Declaration-2022.pdf>.

<sup>9</sup> Global Cross-Border Privacy Rules (CBPR) Declaration, April 21, 2022, available at <https://www.globalcbpr.org/wp-content/uploads/Global-CBPR-Declaration-2022.pdf>

are interested in the Global CBPR and PRP system, support the principles and goals of the Forum and the Global CBPR and PRP, but are not yet committed to joining.<sup>10</sup> In April 2023, the UK applied for “Associate Status” in the Forum.<sup>11</sup>

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## **Q5. What is the status of globalizing the CBPR and PRP?**

Since April 2022, the Forum has held three biannual multi-stakeholder meetings<sup>12</sup> to discuss the process of globalizing the CBPR. Interested stakeholders from about 20 different countries have attended these meetings, including representatives from governments, privacy enforcement authorities, third-party certification bodies (known as Accountability Agents<sup>13</sup>) and businesses.

In April 2023, the Forum released the Global CBPR Framework<sup>14</sup> and its Terms of Reference.<sup>15</sup>

Other work towards globalizing the CBPR includes outreach and capacity-building with respect to countries and jurisdictions that may be interested in joining the Forum, updating the CBPR and PRP Program Requirements, and maintaining the operations of the current APEC CBPR and PRP pending the official shift to the Global CBPR and PRP systems.

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## **Q6. Will the Global CBPR and PRP be the same as the APEC CBPR and PRP?**

Essentially, yes. The Global CBPR and Global PRP will be based upon and combine the current APEC CBPR and PRP systems and will preserve the core features of the governance and enforcement model of the current systems. However, Forum participants will be reviewing and updating the Program Requirements as well as adapting the governance structure for a non-APEC context, as necessary and appropriate. As the Global CBPR system further develops, CIPL will update the following FAQs as necessary.

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## **Q7. What is APEC?**

The Asia-Pacific Economic Cooperation (APEC) is a regional forum established in 1989 dedicated to economic development and integration among member economies. Its members are: Australia; Brunei Darussalam; Canada; Chile; People’s Republic of China; Hong Kong, China; Indonesia; Japan;

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<sup>10</sup> See Membership of the Global CBPR Forum at <https://www.globalcbpr.org/membership/>.

<sup>11</sup> See Press Release: “Commerce Department Welcomes UK’s Application to the Global CBPR Forum,” available at <https://www.trade.gov/press-release/commerce-department-welcomes-uks-application-global-cbpr-forum>.

<sup>12</sup> Meetings were held in Honolulu, Seoul, and London.

<sup>13</sup> Explained in [Q11](#), *infra*.

<sup>14</sup> Global CBPR Framework, available at <https://www.globalcbpr.org/wp-content/uploads/Global-CBPR-Framework-2023.pdf>.

<sup>15</sup> Global CBPR Terms of Reference, available at <https://www.globalcbpr.org/wp-content/uploads/Global-CBPR-Forum-Terms-of-Reference-2023.pdf>.

Republic of Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; Philippines; Russia; Singapore; Chinese Taipei; Thailand; United States; and Vietnam.

APEC works through committees, working groups and projects on a wide range of policy issues related to the economy and trade. One of APEC’s significant areas of focus has been data protection and privacy, which it has pursued mainly through its Digital Economy Steering Group (DESG) (formerly the Electronic Commerce Steering Group (ECSG)) and its Data Privacy Subgroup (DPS).

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## **Q8. Which APEC economies participate in the CBPR?**

Nine APEC economies have joined the CBPR system to date—the United States, Mexico, Canada, Japan, South Korea, Singapore, Chinese Taipei, Australia and the Philippines. All 21 APEC economies have endorsed the CBPR, and Malaysia has announced its intention to submit an application to join the system. After an economy joins the CBPR system, it must implement and operationalize it. The CBPR have been fully implemented and operationalized in the United States, Japan, South Korea, Singapore and Chinese Taipei. The other participating economies are at varying stages of implementation and operationalization.

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## **Q9. How can companies become CBPR or PRP certified?**

Companies must apply to a recognized APEC Accountability Agent, which is a third-party certification body within an APEC economy that has formally joined the APEC CBPR system. A company must be certified in the participating CBPR economy in which it is “primarily located.” A company that is “primarily located” in a CBPR economy can include all or some of its global corporate affiliates in the certification. As noted above, the Global CBPR system is open to membership in all regions. Once operationalized, the Global CBPR will permit organizations to apply to a recognized Accountability Agent in a participating country in which it is primarily located, even if that country is not an APEC economy.

The Accountability Agent evaluates whether a company’s privacy policies and practices comply with the CBPR (or PRP) Program Requirements and assists the company to come into compliance with them if they do not. Once a company is certified, complying with the CBPR (or PRP) becomes an enforceable obligation. The certification is subject to annual recertification.

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## **Q10. What are CBPR Program Requirements?**

The CBPR Program Requirements are the 50 privacy requirements to which companies must adhere and must implement in order to be certified under the CBPR.<sup>16</sup> These 50 requirements operationalise the nine APEC Privacy Principles. During the certification process, Accountability Agents use a set of

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<sup>16</sup> The CBPR Program Requirements are available at <http://cbprs.org/wp-content/uploads/2019/11/5.-Cross-Border-Privacy-Rules-Program-Requirements-updated-17-09-2019.pdf>.

specific assessment criteria associated with each of these Program Requirements to assess the privacy policies and practices of the applicants. A similar process applies to the PRP.<sup>17</sup>

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## Q11. What is an “Accountability Agent”?

Organizations certify to the CBPR (or PRP) through an approved third-party certification body known as an “Accountability Agent” in the jurisdiction in which the company is “primarily located.” At present, organizations must certify in the jurisdiction where they are “primarily located” in the APEC region. Once operationalized, the Global CBPR will permit organizations to certify in any participating jurisdiction where the company is “primarily located,” regardless of whether that is an APEC economy or not.

Currently, there are eight approved CBPR Accountability Agents operating in five jurisdictions.<sup>18</sup> Several of the participating economies are still in the process of identifying their Accountability Agents. Until an Accountability Agent has been identified in an economy, companies “primarily located” in that economy cannot get certified.

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## Q12. How do APEC economies join the CBPR and PRP systems?

APEC has developed a process for its member economies to join the CBPR system. This process includes:

1. Drafting a formal statement of intent to join the system by the government of the applying economy.
2. Identifying at least one Accountability Agent that will be responsible for certifying businesses in that economy.
3. Requiring at least one Privacy Enforcement Authority (PEA) capable of enforcing the CBPR join the APEC Cross-Border Privacy Enforcement Arrangement (CPEA).<sup>19</sup>

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<sup>17</sup> The PRP Program Requirements are available at <http://cbprs.org/wp-content/uploads/2021/05/PRIVACY-RECOGNITION-FOR-PROCESSORS-SYSTEM-PROGRAM-REQUIREMENTS-1.pdf>.

<sup>18</sup> The eight Accountability Agents are:

- (1) BBB National Programs (United States), <https://bbbprograms.org/programs/all-programs/GlobalPrivacyDivision/CrossBorderPrivacyRules>;
- (2) Infocomm Media Development Authority (Singapore), <https://www.imda.gov.sg/programme-listing/Cross-Border-Privacy-Rules-Certification>; and
- (3) Institute for Information Industry (Chinese Taipei), <https://web.iii.org.tw/>.
- (4) JIPDEC (Japan), [https://english.jipdec.or.jp/protection\\_org/cbpr/about.html](https://english.jipdec.or.jp/protection_org/cbpr/about.html);
- (5) Korea Internet & Security Agency (South Korea), <https://www.kisa.or.kr/eng/main.jsp>;
- (6) NCC Group (United States), <https://www.nccgroup.trust/us/>;
- (7) Schellman (United States), <https://www.schellman.com/apec>;
- (8) TrustArc (United States), <https://www.trustarc.com/products/apec-certification/>;

As further accountability agents are added, they will be listed at <http://cbprs.org/business/>.

<sup>19</sup> Explained in [Q14](#), *infra*.

Applications are vetted through a process involving the APEC Joint Oversight Panel (which was created for CBPR administration purposes) and the APEC Digital Economy Steering Group (DESG) and its Data Privacy Subgroup (DPS).

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### Q13. Are the CBPR and PRP enforceable?

Yes. Once an organization joins the system and is certified by a third-party Accountability Agent under the CBPR Program Requirements, the certification becomes legally enforceable by the Privacy Enforcement Authority (PEA) in the economy in which the organization has been certified.

To join the CBPR system, APEC economies must demonstrate that the CBPR are enforceable under their laws and by their PEA. Enforcement of the CBPR is currently provided by APEC-based PEAs that have joined the APEC Cross-Border Privacy Enforcement Arrangement (CPEA). Once operationalized, the Global CBPR will expand the CPEA to allow participation by PEAs from non-APEC economies. Organizations can certify to the CBPR only if they are subject to the enforcement jurisdiction of the PEA in the economy in which they seek certification.

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### Q14. What is the APEC Cross-Border Privacy Enforcement Arrangement (CPEA)?

The CPEA is an enforcement cooperation arrangement between Privacy Enforcement Authorities (PEAs) in APEC member economies. The current participants are 26 PEAs from 10 APEC member economies.<sup>20</sup> The CPEA was created to ensure cross-border enforcement cooperation of the CBPR

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<sup>20</sup> The 26 participating PEAs include:

- (1) **Australia** – The Office of the Australian Information Commissioner (OAIC)
- (2) **Australia (Victoria)** – Office of the Victorian Information Commissioner, Privacy and Data Protection
- (3) **Canada** – The Office of the Privacy Commissioner of Canada (OPC)
- (4) **Chinese Taipei** – Council of Agriculture
- (5) **Chinese Taipei** – Fair Trade Commission
- (6) **Chinese Taipei** – Financial Supervisory Commission
- (7) **Chinese Taipei** – Ministry of Culture
- (8) **Chinese Taipei** – Ministry of Economic Affairs
- (9) **Chinese Taipei** – Ministry of Education
- (10) **Chinese Taipei** – Ministry of Foreign Affairs
- (11) **Chinese Taipei** – Ministry of Health and Welfare
- (12) **Chinese Taipei** – Ministry of the Interior
- (13) **Chinese Taipei** – Ministry of Justice
- (14) **Chinese Taipei** – Ministry of Labor
- (15) **Chinese Taipei** – Ministry of Science and Technology
- (16) **Chinese Taipei** – Ministry of Transportation and Communications
- (17) **Chinese Taipei** – National Communications Commission
- (18) **Chinese Taipei** – Public Construction Commission
- (19) **Hong Kong, China** – The Office of the Privacy Commissioner for Personal Data, Hong Kong, China (PCPD)
- (20) **Japan** – Personal Information Protection Commission
- (21) **Korea** – Korean Communications Commission (KCC)
- (22) **Korea** – Ministry of Interior – Korea (MOI)
- (23) **New Zealand** – New Zealand Office of the Privacy Commissioner (NZOPC)



among participating APEC economies, but it is not limited to CBPR enforcement. It also enables enforcement cooperation on all data protection and privacy-related enforcement matters. The Global CBPR Forum is in the process of developing its own CPEA that non-APEC-based PEAs can join. It will likely be modelled on the current APEC CPEA.

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### Q15. How do CBPR and PRP interact with domestic privacy laws?

The CBPR do not replace domestic privacy laws or other laws. In addition to complying with the CBPR Program Requirements, CBPR-certified organizations must also comply with domestic privacy laws. CBPR are enforceable under the domestic laws of participating economies. When a CBPR-certified organization transfers covered personal data across borders, it must apply the CBPR protections plus any additional domestic requirements.

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### Q16. What happens if companies don't comply with their certification?

Certified organizations are required to have effective privacy complaint and redress mechanisms to address customer complaints concerning CBPR violations. Companies that don't comply with their certification are subject to sanctions by their certifying Accountability Agent, including suspension or revocation of certification. They are also subject to enforcement actions by the Privacy Enforcement Authority in the jurisdiction in which they certified.

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### Q17. Why should companies seek CBPR or PRP certification?

There are many benefits in certifying to the CBPR and PRP:

- **Facilitates Data Transfers:** In an increasing number of APEC economies, CBPR can serve as a formally recognized cross-border transfer mechanism for personal data. When Global CBPR is operationalized, organizations will have access to certification under the first global data protection transfer mechanism.
- **Enables Compliance:** The CBPR system provides a comprehensive privacy management program that can enable compliance with domestic privacy law as well as with other internationally recognized privacy standards.
- **Assists SMEs:** CBPR can be particularly helpful for SMEs that may lack the expertise, staff, or resources to devise their own comprehensive privacy programs.
- **Due Diligence Tool:** CBPR and PRP can serve as due diligence and risk management tools for companies seeking qualified third-party vendors, processors, and business partners.
- **Demonstrates Privacy Accountability:** Participation in privacy certifications such as the CBPR and PRP can demonstrate corporate digital responsibility to consumers, potential business partners, and Privacy Enforcement Authorities, increasing the level of trust in the data management practices of the certified company.

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(24) **Philippines** – National Privacy Commission (NPC)

(25) **Singapore** – Personal Information Protection Commission

(26) **United States** – Federal Trade Commission

- **Mitigating Factor in Enforcement:** CBPR and PRP can serve as a mitigation factor in enforcement contexts where privacy laws allow consideration of good faith compliance efforts (such as participation in privacy codes of conduct and certifications) in enforcement and fine-setting decisions.

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## Q18. How do CBPR help consumers?

Having undergone a certification review process (and re-certifying on an annual basis) ensures that a company has an effective privacy program in place that meets the high standard of the CBPR. This results in stronger and more effective and consistent privacy protections for consumers. Also, the CBPR provide complaint and dispute resolution mechanisms for consumers that might otherwise not be available.

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## Q19. How do CBPR help data protection authorities?

Having a comprehensive privacy program that can be demonstrated on request enables more streamlined and efficient privacy investigations and enforcement actions. Thus, formal accountability and compliance programs like the CBPR can make enforcement matters less costly and time-intensive for both the enforcement authority and the company. In addition, the CBPR require organizations to have formal dispute resolution mechanisms, which can help relieve the burden on enforcement authorities associated with handling individual complaints. Also, to the extent privacy certifications raise the general level of privacy compliance, there may be fewer enforcement actions necessary.

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## Q20. Can non-APEC economies join the CBPR and PRP systems?

The Global CBPR Forum is currently open to new members and “associate members” both from within the APEC region and outside of the region.<sup>21</sup> Once the Global CBPR have been operationalized, businesses in all participating countries can seek CBPR certification.

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## Q21. Can companies based in non-APEC economies obtain CBPR and PRP certification?

Not currently. See the response to Q20. That said, a corporate affiliate based in an APEC economy that participates in the CBPR may obtain certification for itself in that economy (but not for corporate affiliates located elsewhere).

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<sup>21</sup> Discussed *supra* at [Q4](#). Membership information is available at <https://www.globalcbpr.org/membership/>.

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## Q22. Could there be interoperability between the CBPR and EU mechanisms like Binding Corporate Rules (BCR) and GDPR certifications?

Yes. From 2013-2014, APEC and the EU's Article 29 Working Party (now the European Data Protection Board) mapped the substantive requirements of EU Binding Corporate Rules (BCR) and the CBPR. Together they developed a common referential to identify substantive overlap and gaps between the two accountability and transfer mechanisms.<sup>22</sup> They subsequently explored the possibility of interoperability tools that would allow companies that already were certified/approved in one system to get credit for compliance with overlapping requirements when seeking approval in the other system (to avoid duplicative approval and certification processes). However, this work was placed on hold due to other developments (significantly, the advent of the GDPR). In principle, their exploration of interoperability measures could continue.

Inasmuch as GDPR Art. 42 permits the establishment of certification mechanisms, interoperability between the CBPR and GDPR certifications should be possible, especially if the EU develops programmatic GDPR certifications that enable certification of entire privacy programs. Global CBPR may provide new impetus for making CBPR and BCR interoperable.

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## Q23. Where can I find more information?

The official website for the current APEC framework is [www.cbprs.org](http://www.cbprs.org). The official website for the Global CBPR is [www.globalcbpr.org](http://www.globalcbpr.org).

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## About CIPL

The Centre for Information Policy Leadership (CIPL) is a global privacy and data policy think tank in the law firm of Hunton Andrews Kurth LLP and is financially supported by the law firm and 85+ member companies that are leaders in key sectors of the global economy. CIPL's mission is to engage in thought leadership and develop best practices that ensure both effective privacy protections and the responsible use of personal information in the modern information age. CIPL's work facilitates constructive engagement between business leaders, privacy and security professionals, regulators, and policymakers around the world. For more information, please see CIPL's website at <http://www.informationpolicycentre.com/>. Nothing in this submission should be construed as representing the views of any individual CIPL member company or of the law firm of Hunton Andrews Kurth.

If you would like to discuss this FAQ in more detail or if you require additional information, please contact Markus Heyder ([mheyder@huntonak.com](mailto:mheyder@huntonak.com)), Sam Grogan ([sgrogan@huntonak.com](mailto:sgrogan@huntonak.com)), or Mark Smith ([msmith@huntonak.com](mailto:msmith@huntonak.com)).

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<sup>22</sup> See Article 29 Working Party Opinion 02/2014 on a referential for requirements for Binding Corporate Rules submitted to national Data Protection Authorities in the EU and Cross Border Privacy Rules submitted to APEC CBPR Accountability Agents, adopted on 27 February 2014, available at [https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2014/wp212\\_en.pdf](https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2014/wp212_en.pdf).