

**1st ASEAN DIGITAL MINISTERS' MEETING (ADGMIN) 2020
IMPLEMENTING GUIDELINES FOR
ASEAN DATA MANAGEMENT FRAMEWORK AND ASEAN CROSS BORDER
DATA FLOWS MECHANISM**

Background

1. The 19th ASEAN TELMIN in Vientiane, Lao PDR, noted the progress of the four initiatives under the **ASEAN Framework on Digital Data Governance** and instructed the **Working Group on the Digital Data Governance (WG-DDG) through the ASEAN Digital Senior Officials Meeting (ADGSOM)** to develop the guidelines of the **ASEAN Data Management Framework (DMF)** and the **Key Approaches for the ASEAN Cross Border Data Flows (CBDF) Mechanism** comprising Model Contractual Clauses and Certification. In this regard, ASEAN Member States (**AMS**) have prioritised the development of these initiatives through the WG-DDG to enable harmonised standards for data management and cross border data flows within ASEAN.

Benefits to ASEAN Businesses, Citizens and Member States

2. The ASEAN DMF and CBDF Mechanisms will benefit ASEAN Businesses and Citizens in AMS at all stages of development. First, it will help ASEAN businesses build a brand of trust, transparency and accountability with their business partners and consumers, meet data protection standards and regulations of other foreign clients, and build readiness to take up new digital opportunities from foreign companies. Second, citizens can be assured that the personal data held by businesses in the ASEAN digital economy that adopt these standards are safeguarded, thereby increasing citizen trust and participation in the digital economy. Third, the adoption of the DMF and CBDF Mechanism do not require AMS to introduce additional or amend existing regulations.

Effect of ASEAN DMF and ASEAN CBDF Mechanism

3. The ASEAN DMF and ASEAN CBDF Mechanism are developed for voluntary, adoption by AMS and organisations operating in them. They are non-binding on AMS and organisations and do not create additional rights or obligations under the domestic or international law of AMS.

ASEAN Data Management Framework (DMF)

4. The ASEAN DMF is a guide for businesses, particularly Small and Medium Enterprises (SMEs), to put in place a data management system, which includes data governance structures and safeguards based on data sets' purpose throughout its lifecycle. The DMF will help raise the knowledge and competence of ASEAN businesses in managing data and assist in complying with personal data protection requirements while enabling companies to use the data for business growth.

5. The ASEAN DMF proposes six foundational components consistent with globally recognised personal data protection and privacy management programmes. AMS are encouraged to work with private sector businesses to consider these concepts as part of its digital transformation journey. This is because good data management practices are key to help businesses unlock the value of personal data while ensuring adequate safeguards are in place. AMS may wish to, though are not limited to, undertake the following activities in relation to the DMF: (i) Promote awareness among businesses such as through workshops to educate businesses about the benefits of putting in place a DMF; or (ii) Gather feedback on how businesses implement the DMF in practice; or (iii) Share best practices with AMS and other businesses; or (iv) Provide clarity on additional domestic requirements on data management where applicable, such as through supplementary guidance or directives.

ASEAN Cross Border Data Flows (CBDF) Mechanism

6. While the cross-border flows of machine (or non-personal) data is generally not subject to regulations, ASEAN recognises the need for a toolbox of data transfer mechanisms to facilitate the transfer of personal data between ASEAN Member States while ensuring that it continues to be protected. The Key Approaches for the ASEAN Cross Border Data Flows Mechanism, adopted at the 19th TELMIN in Vientiane, Lao PDR, in November 2019, proposed that ASEAN focus on developing two of these mechanisms, namely ASEAN Model Contractual Clauses (MCCs) and ASEAN Certification for Cross Border Data Flows. ASEAN recognises that these two mechanisms are non-exhaustive, and there are other mechanisms for transfer of personal data including, but not limited to, self-assessment that transfer of data overseas will be protected to a comparable level of protection, consent, codes of conduct, binding corporate rules, other certifications such as ISO series relating to security and privacy techniques or APEC Cross Border Privacy Rules and Privacy Recognition for Processors Systems or other legally enforceable mechanisms. This is to ensure that companies have the flexibility to choose the most appropriate personal data protection or privacy-enhancing data transfer mechanism for a particular context.

7. As a first step to implementing the ASEAN CBDF Mechanism, ASEAN has developed **ASEAN Model Contractual Clauses**, in the form of a living document that is subject to further review by the WG-DDG through ADGSOM, to enable data transfers across ASEAN Member States, regardless of whether they have data protection laws. It is guided by the following principles:

- a. **Intra-ASEAN flow of personal data to support the regional digital economy and digital trade.** ASEAN Model Contractual Clauses is considered to be included in agreements between organisations operating in ASEAN Member States, where the contract spells out the responsibilities, personal data protection measures and other obligations for transferring and receiving personal data. This does not preclude AMS businesses for adopting these

clauses for transfers between businesses intra-country in ASEAN Member States, nor transfers to non-ASEAN Member States. This paves the way for ASEAN to work with regional and global partners on creating interoperable intra- and cross- border data flows standards.

- b. **Baseline set of clauses consistent with the ASEAN Framework on Personal Data Protection.** The Clauses are baseline in nature, and derived from the ASEAN Framework on Personal Data Protection. AMS are encouraged to promote the use of MCCs as the minimum standard for transferring data regionally between private sector businesses. Where there are differences in requirements across AMS on specific clauses (e.g. Data Breach Notification, Definitions of Personal Data), AMS are encouraged to refine the MCCs with further guidance or templates to provide clarity to businesses operating in their countries, while businesses should check whether there are additional requirements set out by AMS. Where there are sector-specific requirements that may be different from the MCCs (e.g. financial sector), it is recommended that AMS adopt the sector requirements given the baseline nature of the MCCs.
 - c. **Voluntary for ASEAN Member States and businesses who are at various stages of development in their data protection journey.** The ASEAN Model Contractual Clauses are intended to be a baseline standard for ASEAN businesses who do not already have existing contracts in place with their business partners, particularly Small and Medium Enterprises (SMEs). It is not intended to displace existing arrangements that businesses already have. The aim is to set the minimum standards for cross border data transfers within the region. Further, AMS which are still in the process drafting relevant regulations on personal data protection may choose to adopt and promote the MCCs later.
 - d. **Flexible template with optional supplemental obligations.** Businesses may adopt or modify the core obligations clauses provided they are in accordance with the principles in the ASEAN Framework on Personal Data Protection or as required by any AMS Law. Optional clauses may be omitted from the contract. Parties are free to negotiate other sections in commercial clauses where required provided they are not data protection related and do not contradict the MCCs.
8. The WG-DDG continues to develop the implementation details of the ASEAN Certification for Cross Border Data Flows and details will be finalised in 2021.

Implementation Timeline

9. Recognising the different levels of digital data governance development amongst the AMS, the implementation timeline would differ depending on the respective AMS.

10. **AMS with Data Protection Authorities** are encouraged to help organisations implement the ASEAN Data Management Framework through capacity building programmes or guidelines. They may also promote the use of the ASEAN Model Contractual Clauses among SMEs, including, but not limited to, translation into national language(s), dissemination to businesses and provision of guidance and regulations, if necessary, on further requirements to meet domestic law.

11. **AMS without Data Protection Authorities** are encouraged to promote the Data Management Framework and Model Contractual Clauses for voluntary adoption among their businesses.

12. AMS agree to designate their respective authorities to be the implementing Body responsible for coordinating, implementing and managing activities relating to this set of Implementing Guidelines. Each authority shall determine its own timeline for domestic implementation of these Frameworks.

Capacity Building

13. Capacity building programmes will also be developed in partnership with external stakeholders to equip AMS and ASEAN organisations on the implementation of the ASEAN Data Management Framework and ASEAN Model Contractual Clauses for Cross Border Data Flows.

Review

14. The Implementing Guidelines and timeline may be reviewed periodically by mutual agreement amongst all AMS.