

KEY APPROACHES FOR ASEAN CROSS BORDER DATA FLOWS MECHANISM

1. The 19th ASEAN Telecommunications and Information Technology Ministers' Meeting (TELMIN) has approved the approach and way forward for the ASEAN Cross Border Data Flows Mechanism.
2. The ASEAN Cross Border Data Flows Mechanism is a voluntary mechanism that seeks to facilitate intra-ASEAN data flows, and is based on the principles of the ASEAN Framework on Personal Data Protection and a set of guiding values¹.
3. The implementation details of the ASEAN Cross Border Data Flows Mechanism will be developed by the Working Group on Digital Data Governance (WG-DDG) after the 19th TELMIN.
4. The key approaches are as follow:
 - A. Dual-track approach comprising ASEAN Certification and ASEAN Model Contractual Clauses**
 - *This dual-track approach will be aligned with global data protection principles, international frameworks and best practices such as APEC, OECD etc. The approach reflects the principle of inclusiveness which ensures that businesses in all ASEAN Member States (AMS) and of all sizes are able to participate in the Mechanism.*
 - *ASEAN Certification is a seal or mark accorded to an organisation that has demonstrated good data protection policies and practices.*
 - *ASEAN Model Contractual Clauses are to be included in agreements between organisations, where the agreements spell out the responsibilities, data protection measures and other obligations for transferring and receiving data.*
 - B. Participation in the dual-track approach:**
 - *Participation in the ASEAN Certification and ASEAN Model Contractual Clauses is voluntary for all AMS and companies.*
 - *AMS may choose to participate in the tracks, taking into account their level of readiness. Companies may choose to participate in the ASEAN Mechanism based on appropriateness of each approach on their business models and operations.*
 - *To ensure the robustness of the Mechanism, AMS will work towards developing enforcement cooperation frameworks to administer the Mechanism.*
 - *To participate in ASEAN Certification, an AMS must have the necessary legal and enforcement systems in place (e.g. data protection authority or*

¹ The Guiding Principles are: (i) A Consensus-Driven, Bottom-Up Approach Based on Accountability; (ii) An MSME-Friendly Approach that Allows Organisations of All Sizes to Participate; (iii) An Inclusive Approach that Allows Participation by all ASEAN Member States; (iv) An Interoperable Approach that Strives for Integration with Other Regional Frameworks; and (v) An Ethical Approach that Promotes Transparency and Respect Among ASEAN Member States.

enforcement agency) to administer its certification system. AMS that have such systems in place are encouraged to adopt the ASEAN Certification.

- *An AMS that does not have or is in the process of developing its domestic legal and enforcement systems can start by encouraging the adoption of the ASEAN Model Contractual Clauses, and eventually participate in the ASEAN Certification when it has put in place the necessary legal and enforcement systems.*

C. With the endorsement of A and B, the WG-DDG will develop the standards, requirements and processes for the operationalisation of the ASEAN Cross Border Data Flows Mechanism in the next phase of work.

- *The WG-DDG will develop the implementation details and guidelines for ASEAN Certification and ASEAN Model Contractual Clauses, including the appropriate enforcement mechanisms, standards, policies, and processes, as well as making recommendations to the TELSOM/TELMIN on the need for capacity building and interoperability with other international frameworks.*