

Policy Brief

Future of Data Governance in Asia and Operationalisation of 'Data Free Flow with Trust'^{*}

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Key Messages:

- The global transition to a data-driven society underscores the need to address emerging security risks and enhance international data governance. Asia, including ASEAN and Japan, should advocate for Data Free Flow with Trust (DFFT), which promotes a trusted, interoperable global system to facilitate cross-border data flows (CBDF). Three key policy recommendations are proposed:
- Promoting the Global Cross-Border Privacy Rules (CBPR) initiative globally through ASEAN–Japan collaboration provides more options for CBDF, simplifying market access for investors. Involving all ASEAN Member States can make the Global CBPR a truly global initiative building on an ASEAN-led initiative.
- ASEAN could work with the OECD to build a transparent data governance repository to help building a transparent data governance repository helps small and medium-sized enterprises navigate CBDF complexities.
- Consider regulatory sandboxes for encryption, data security, and privacy-enhancing technologies in collaboration, enabling testing of emerging technologies to ensure compliance with regulations across participating countries. Establishing common checkpoints for testing can streamline the process and contribute to building an international infrastructure that enhances the interoperability of national systems.
- For promoting international projects on specific policy realms that adopt these recommended efforts in addressing security risks and legal uncertainty associated with data sharing across borders and supply chains, Japan shared her interest to further work on developing DFFT projects in association with ASEAN Digital Ministers and ASEAN priorities including DEFA.

The global shift towards a data-driven society has highlighted the need for addressing emerging security risks and spurred demand for international data governance. Proposed in 2019 by former Japanese Prime Minister Shinzo Abe, Data Free Flow with Trust (DFFT) aims to tackle the fragmentation of data governance by advocating for a trusted and interoperable global system facilitating cross-border data flows (CBDF). ASEAN is accelerating its digital transformation through the Digital Economy Framework Agreement (DEFA), which aims to establish an open, secure, and inclusive digitally integrated regional economy. CBDF and Data Protections are priorities in ensuring responsible digital growth under DEFA. It is recommended that DFFT be advanced under DEFA to align with global initiatives on CBDF and data security. In this regard, a Ministerial Session on the Future of Data Governance in Asia and Operationalisation of DFFT, co-chaired by Ms Josephine Teo, Minister for Communications and Information of Singapore and Mr. Taro Kono, Minister for Digital of Japan, was held on 3 February 2024 with participants of the 4th ASEAN Digital Ministers Meeting. The discussions surrounded three main objectives. Firstly, advocating for the Cross-Border Privacy Rules initiative globally through ASEAN–Japan collaboration would facilitate market access. Secondly, building a transparent data governance repository would help SMEs navigate complexities. Lastly, considering multi-jurisdiction regulatory sandboxes for Privacy-Enhancing Technologies and other security enhancing technologies would enhance interoperability of national data protection laws. These initiatives aim to foster international data governance and support Asia's leadership in digital transformation through synergies with key areas in digital economy such as use of AI, cybersecurity, and digital payment.

Introduction

As our societies become increasingly data-driven and global supply chains are digitised, there is a growing need for innovative international governance of data. This is crucial in addressing new security risks, protecting the essential rights of citizens and companies, and maximising opportunities for growth and innovation throughout the supply chain. The stable and trustworthy access to data, both within and beyond borders, is fundamental for the growth of digital economies and the maintenance of a secure society. Governments, in response to these needs, have

implemented various policy measures with different levels of restrictions from various perspectives.

In line with these challenges, some ASEAN Member States have identified cross-border data flow as a priority. Japan, in collaboration with Indonesia, Singapore, and some ASEAN Member States like Indonesia and Singapore, is actively promoting Data Free Flow with Trust (DFFT) at the international level. Like-minded countries in ASEAN and collaborators of DFFT aim to work together on practical approaches to enhance trust across digital ecosystems, ensure interoperability and transparency, and develop and integrate new technological means to safeguard privacy, security, and intellectual property within our data governance frameworks while facilitating the free flow of data across the region.

Against this backdrop, the ministerial session on the Future of Data Governance in Asia and the 'Data Free Flow with Trust' was proposed by the Governments of Singapore and Japan. The primary objective of this session was to discuss the data governance in the region and foster collaboration amongst participating countries, aligning with the priorities of governments in Southeast Asia.

The ministerial session aimed to provide the following opportunities:

- i. Share information amongst participants on advanced practices of cross-border data flow and the operationalisation of DFFT.
- ii. Exchange views on these practices to explore potential areas of future cooperation amongst participants, in collaboration with Southeast Asian countries.

In support of the ministerial session, this policy brief was prepared by the Economic Research Institute for ASEAN and East Asia (ERIA). The following section briefly examines the global discourse surrounding DFFT's evolution. The subsequent section discusses the ongoing digital transformation within ASEAN and underscores the importance of the Digital Economy Framework Agreement (DEFA), currently undergoing negotiation. Following this, the fourth section outlines challenges within DEFA and emphasises the role of DFFT in addressing these challenges. Moving forward, the fifth section elaborates on the crucial concept of interoperability and ASEAN's endeavors to implement DFFT. Finally, the last section concludes by offering policy recommendations as a way forward for Asia's future progress.

Development of DFFT

To understand the origins and global expansion of the DFFT concept, it is essential to follow its development

through chronological G20 and G7 dialogues.

In January 2019, the former Japanese Prime Minister, Shinzo Abe, introduced the concept of DFFT as a new global data governance model at the World Economic Forum (WEF). He advocated for the 2019 Osaka G20 summit to be remembered as a catalyst for global data governance. He proposes the creation of the 'Osaka Track' within the framework of the WTO to address data governance issues. He stressed the need to safeguard personal data and sensitive information while facilitating the seamless flow of non-personal, anonymous data across borders. He emphasised the importance of establishing a regime for DFFT to enable individuals to benefit from the fourth industrial revolution and the concept of 'Society 5.0.' He highlighted the transformative potential of data-driven technologies for individuals and society as a whole.

After Abe's speech at the WEF, in June 2019, G20 trade and digital economy ministers, along with G20 leaders, acknowledged both the benefits of cross-border data flow, including increased productivity, innovation, and sustainable development, and the challenges posed by it, such as privacy, data protection, intellectual property rights, and security concerns. They emphasised the importance of addressing these challenges to enhance trust amongst consumers and businesses. Additionally, they stressed the need to respect legal frameworks, both domestically and internationally. Subsequently, they affirmed that 'such data free flow with trust will harness the opportunities of the digital economy.' Furthermore, they committed to cooperation to promote interoperability amongst different frameworks and affirmed the role of data in development.

In July 2020, in Riyadh, Saudi Arabia, the G20 Digital Ministers reiterated the significance of addressing the challenges identified in Osaka the previous year to advance DFFT. This involves exchanging experiences and best practices in data policy, particularly focusing on interoperability and transfer mechanisms, and recognising similarities amongst current approaches and tools used to facilitate secure data flow across borders. Additionally, they emphasised exploring and enhancing understanding of technologies such as privacy-enhancing technologies (PETs).

In April 2021, under the chairmanship of the United Kingdom, the G7 members, drawing from previous G20 declarations and statements in Osaka and Riyadh, sought to advance DFFT through shared values and cooperation. They endorsed a Roadmap for Cooperation on Data Free Flow with Trust, centred on four key areas: data localisation, regulatory cooperation, government access to data, and data sharing for priority sectors. The roadmap entails actions such as gathering evidence on

the impacts of data localisation, fostering regulatory cooperation, upholding domestic standards for data protection, and fostering collaboration on data sharing in priority sectors, particularly in response to the COVID-19 crisis.

In May 2022, during Germany's G7 presidential year, building on the roadmap endorsed in the previous year, G7 Digital Ministers adopted a G7 Action Plan Promoting Data Free Flow with Trust. This plan includes: (1) strengthening the evidence base for DFFT, through comprehensive research on regulatory approaches, including data localisation measures and their impact on MSMEs; (2) building on commonalities for future interoperability, by analysing common practices and exploring technologies enhancing trust; (3) continuing regulatory co-operation, through ongoing dialogues, engaging with Data Supervisory Authorities, and discussing topics such as PETs and data protection frameworks; (4) promoting DFFT in digital trade; and (5) sharing Knowledge about International Data Spaces, which is an initiative in Europe aiming at building and implementing a distributed software architecture for data sovereignty.

The G20 Digital Economy Ministers' Meeting in 2022, chaired by Indonesia, emphasised the importance of enabling data free flow with trust and cross-border data flows to drive inclusive, empowering, and sustainable digital transformation. Recognising the pivotal role of data in economic growth, especially for developing nations, ministers exchanged information to identify commonalities in regulatory approaches and promote future interoperability. Ministers 'note the discussion initiated by the Indonesian G20 Presidency on lawfulness, fairness, and transparency in the context of its proposed "principles" for data free flow with trust and cross-border data flows (KOMINFO, 2022:5)'. Ministers aimed to deepen discussions on the practical aspects of DFFT and cross-border data flows by understanding commonalities in regulatory approaches and instruments.

As part of the recent advancements in DFFT discussions, in April 2023, under Japan's chairmanship, the G7 Digital and Tech Ministers reaffirmed their commitment to operationalising DFFT. They welcomed the OECD Declaration on Government Access to Personal Data Held by Private Sector Entities as a significant step toward enhancing trust in data flows. Recognising the existing gaps in international governance for DFFT, they pledged to intensify regulatory and technological cooperation. Furthermore, they endorsed the establishment of an Institutional Arrangement for Partnership (IAP) to drive DFFT through multistakeholder collaboration. The IAP aims to focus on several key actions, including the development of compatible policies, tools, and practices to facilitate data flows while ensuring compliance with

existing regulatory requirements. Additionally, it will address impediments and challenges to DFFT, explore technological advancements like PETs, and examine legal practices enabling DFFT such as model contractual clauses and certification mechanisms. The OECD's expertise in data governance, privacy, DFFT, and the digital economy was also highlighted, acknowledging its suitability to lead this international effort.

To summarise, initially proposed by former Japanese Prime Minister Shinzo Abe in 2019, DFFT seeks to address the fragmentation of data governance by advocating for a trusted and interoperable global system that encourages cross-border data flows. During the Indonesian G20 presidency in 2022, three fundamental principles for DFFT were introduced: lawfulness, fairness, and transparency. These principles, along with discussions within the G20 and G7, set the stage for devising a practical strategy to implement DFFT and facilitate seamless cross-border data flows through the IAP.

ASEAN's Digital Transformation and DEFA

The ASEAN region is experiencing a rapid surge in digital technology adoption, driven by a youthful and tech-savvy population exceeding 680 million, with over half of them under 30 years old (Isono and Prilliadi, 2023). Internet usage in ASEAN skyrocketed by 100 million between 2015 and 2019, reaching a staggering 460 million users by 2022 (Google, Temasek, Bain & Company, 2022). Messaging, social media, ride-sharing, and mobile app-based goods delivery have become ubiquitous in daily life, further fueled by the COVID-19 pandemic, which accelerated the transition to online shopping and reshaped the retail sector. The gross merchandise value of the digital economy in Southeast Asia nearly doubled to \$200 billion in 2022 from 2019 (Google, Temasek, Bain & Company, 2022), demonstrating the profound impact of digital technologies across all sectors (World Bank, 2019).

Amidst this digital revolution, ASEAN is embarking on an accelerated path of digital transformation through the Digital Economy Framework Agreement (DEFA), a binding pact aimed at establishing an 'open, secure, interoperable, competitive, and inclusive regional economy' (ASEAN, 2021:7). First introduced in the Bandar Seri Begawan Roadmap (BSBR) and the ASEAN Collaboration Framework, DEFA outlines a comprehensive strategy to accelerate economic recovery and integrate the digital economy within ASEAN. Initially scheduled for study by 2023 and negotiation by 2025, the timeline for DEFA negotiations was expedited to 'as soon as possible' during the 40th and 41st ASEAN summits in 2022 (ASEAN, 2022). The momentum continued with

the endorsement of the Framework for Negotiating the ASEAN DEFA at the 43rd ASEAN Summit in 2023, culminating in the launch of DEFA negotiations at the 23rd AEC Council on September 3, 2023.

According to ASEAN's DEFA study, the current size of the digital economy stands at approximately \$0.3 trillion, and is projected to reach \$1 trillion by 2030 at the current growth rate (BCG, 2023). Implementing DEFA could potentially double this figure to \$2 trillion by 2030, significantly impacting all ASEAN member economies (BCG, 2023). The enthusiasm amongst ASEAN Member States (AMS) for DEFA underscores their high expectations for its transformative potential.

The ASEAN DEFA negotiations will address nine elements: (1) Digital Trade, enhancing cross-border trade through streamlined processes and interoperable systems for digital trade; (2) Cross border E-commerce, fostering a fairer environment for cross-border transactions of digital goods and services; (3) Payments and E-invoicing, promoting digital payment methods and electronic invoicing; (4) Digital ID and Authentication, establishing a recognised digital identity and authentication framework; (5) Online Safety and Cybersecurity, enhancing cybersecurity collaboration for a secure online environment, (6) Cross-border Data Flows and Data Protection, facilitating data flow across borders while ensuring data privacy, (7) Competition Policy, fostering a transparent competitive environment with consistent enforcement guidelines; (8) Cooperation on Emerging Topics, establishing mechanisms for regulatory cooperation on emerging technologies like AI; and (9) Talent Mobility and Cooperation, facilitating digital talent mobility between countries (ASEAN, 2023b).

Through these nine core elements, DEFA seeks to empower businesses and stakeholders across ASEAN by accelerating growth, enhancing interoperability across ASEAN, ensuring responsible digital growth, and strengthening cooperation between nations in the region.

Challenges in DEFA and the Role of DFFT

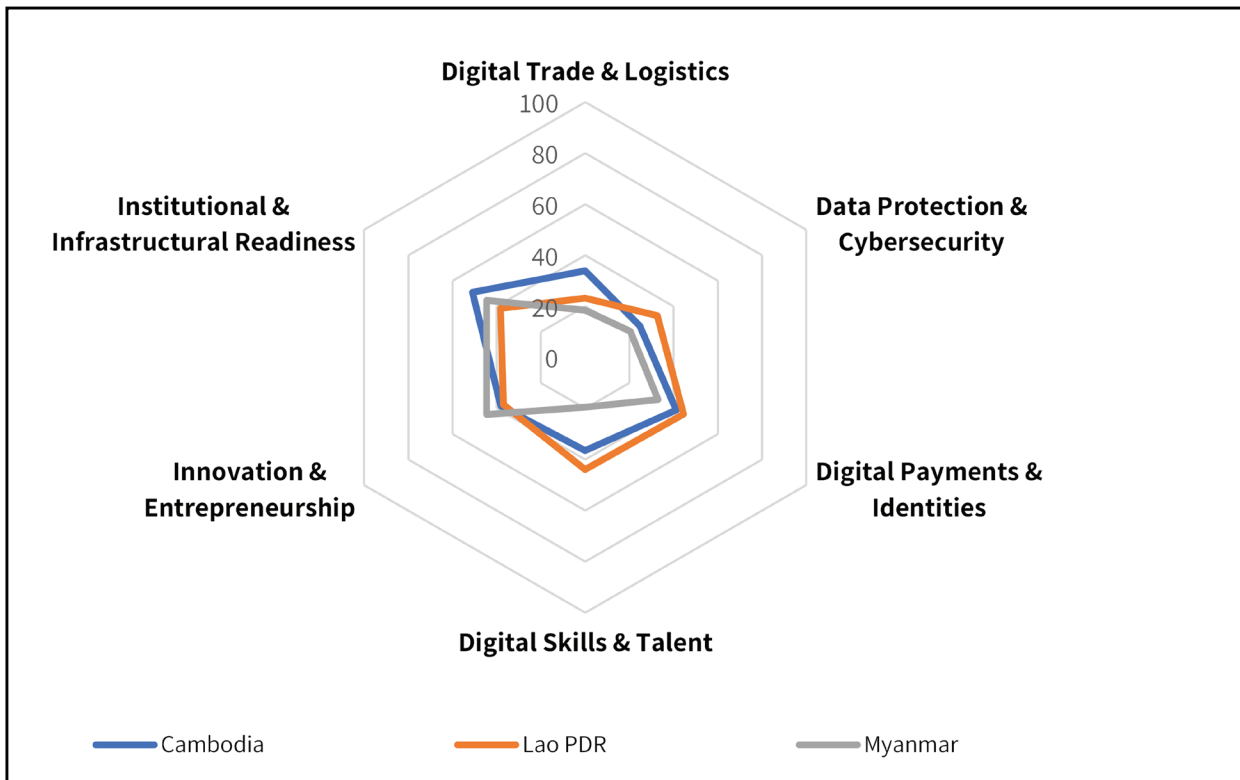
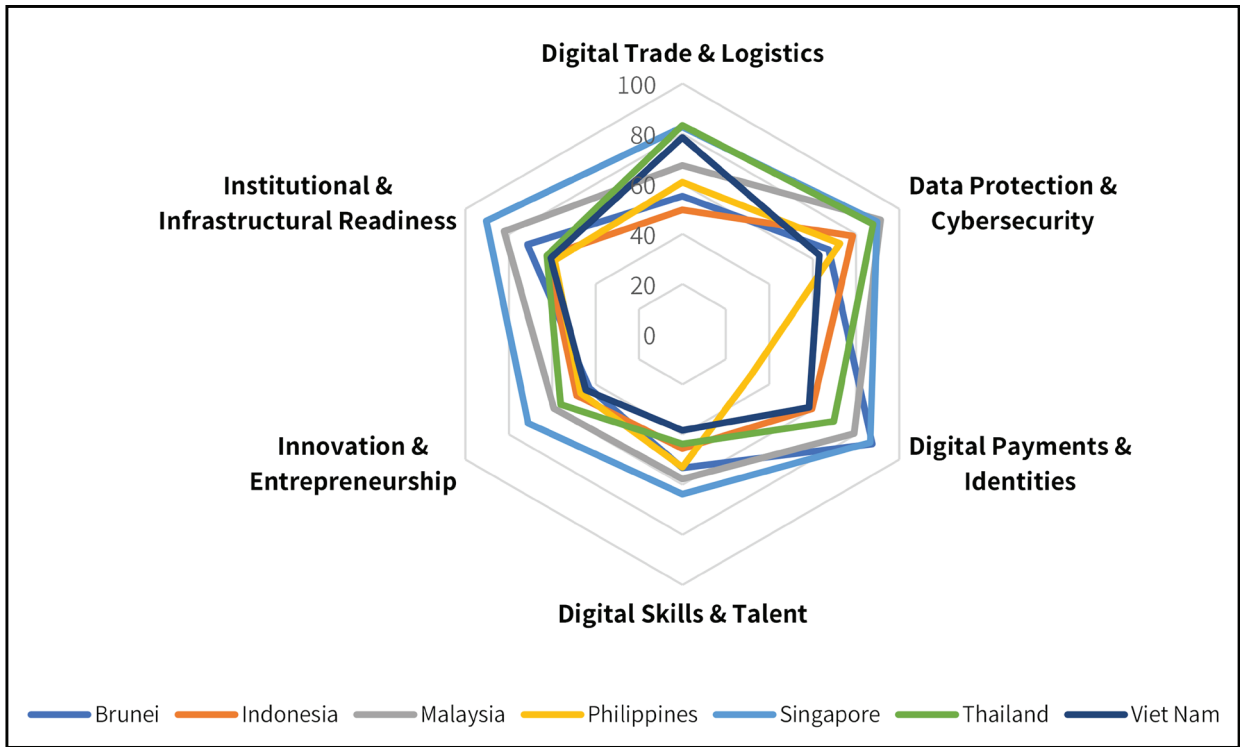
To gain a comprehensive understanding of the challenges facing DEFA, it is essential to address the digital readiness gaps within ASEAN, thereby realising DEFA's full potential in forming a unified digital economy. The ASEAN Digital Integration Index (ADII) serves as a good tool, offering insights into the current state of digital integration across ASEAN through its six pillars: Digital Trade & Logistics, Data Protection & Cybersecurity, Digital Payment & Identities, Digital Skills & Talent, Innovation

& Entrepreneurship, and Institutional & Infrastructural Readiness (USAID and US–ASEAN Connect, 2021). Visual representations of the index scores (Figure 1) depict the diversity in digital readiness amongst ASEAN Member States. While countries like Malaysia and Singapore demonstrate relatively high scores across all pillars, others, particularly Cambodia, Lao PDR, and Myanmar, exhibit limited digital readiness across the board. To fully harness the benefits of DEFA and establish a cohesive digital economy within ASEAN, it is imperative to not only outline best practices within the digital agreement but also prioritise enhancing the digital capacity of each ASEAN Member State.

Amongst the evaluation pillars, Pillar 2, Data Protection & Cybersecurity, is considered a crucial cornerstone of the digital economy (USAID and US–ASEAN Connect, 2021). The processes of globalisation and digitalisation have significantly enhanced connectivity, resulting in a substantial increase in the volume of data accessed, transferred, and exchanged both domestically and internationally. For digital integration to succeed, it is imperative that consumer and business data move across borders and jurisdictions safely, securely, and responsibly. This necessity has been acknowledged by ASEAN itself as a priority under the ASEAN Framework on Digital Data Governance (ASEAN, 2018), aiming to facilitate data flows within ASEAN and propel the growth of the digital economy. According to the ADII score, ASEAN's digital economy is still in its early stages, leaving it susceptible to emerging risks and security threats (USAID and US–ASEAN Connect, 2021). Therefore, recalling the discussion in the above section about the development of DFFT, we can say that the fundamental challenge that ASEAN faces in establishing a fully digitally integrated economy is how to operationalise DFFT in the ASEAN region.

To address the challenge that ASEAN faces, we can learn from the stock of knowledge through the discussion on DFFT in international fora as seen above. In particular, based on Indonesia's G20 presidency, the operationalisation of DFFT requires an approach that recognises and respects diverse perspectives and regulations. Diversity is essential in the context of ASEAN's digital integration. Rather than aligning each country's data governance, it is important to identify commonalities and promote 'interoperability' amongst AMS.

Figure 1: ASEAN Digital Integration Index for each of ASEAN Member States



Source: USAID and US-ASEAN Connect (2021).

Interoperability and ASEAN's Efforts to Operationalise DFFT

In the context of DFFT, interoperability refers to the capability of different data governance systems to collaborate effectively, enabling seamless cross-border data flows while ensuring essential data protection measures. Rather than seeking uniformity in data governance regulations across nations, interoperability respects the distinct data protection schemes of each country. Given the improbable global alignment on data governance laws, the question arises: how can we cultivate this capability?

According to Robinson et al. (2021), there are three types of measures to foster interoperability: (1) international and regional agreements, which can be both binding and non-binding, aiming to encourage countries to adopt data protection principles; (2) harmonisation and mutual recognition, which represent the most significant binding approaches and legal frameworks; and (3) initiatives involving the private sector, such as model contract clauses, binding corporate rules, codes of conduct, and certificate schemes. To secure interoperability amongst countries, we should use these tools strategically.

ASEAN has already progressed in a variety of measures for interoperability. Focusing on personal data protection, the ASEAN Framework on Personal Data Protection, which is a non-binding guideline and established in 2016, aims to enhance understanding and cooperation on data protection amongst ASEAN countries through information sharing, exchanges of good practices, and joint activities. It outlines privacy principles covering various aspects such as consent, accuracy, security, access, and accountability. Notably, it emphasises obtaining consent or ensuring adequate protection before transferring data across borders.

The ASEAN Model Contract Clauses (MCCs), endorsed in January 2021, provide standardised contractual terms and conditions for businesses engaging in cross-border transfer of personal data. These clauses can be incorporated into binding legal agreements between businesses, streamlining negotiations and reducing costs and time associated with compliance, particularly beneficial for SMEs, while also ensuring personal data protection.

Moreover, the ASEAN Data Management Framework (DMF), endorsed in January 2021, offers voluntary guidance to businesses, including SMEs, on setting up data management systems and governance structures. The DMF advocates for robust data governance practices by assisting organisations in identifying their datasets, categorising them appropriately, managing the data,

ensuring its protection, and maintaining compliance with relevant regulations throughout the process.

While not including all AMS, the Asia–Pacific Economic Cooperation (APEC) Cross-Border Privacy Rules (CBPR) System is worth mentioning as a significant initiative involving the private sector for ASEAN. Endorsed by APEC leaders in 2011, the APEC CBPR System is built on the APEC Privacy Framework, which aims to eliminate unnecessary barriers to data flows while acknowledging the legal differences amongst APEC member economies. Under this system, companies are certified for compliance with internationally recognised data privacy standards, facilitating trust in stakeholders that is essential to cross-border transfer of data within APEC economies. Presently, nine APEC economies, including the Philippines, Singapore, and Japan, participate in the CBPR System. Through this system, certified companies ensure that personal information is safeguarded according to established privacy standards across participating jurisdictions. Importantly, the system does not replace or amend domestic laws and regulations but provides a baseline level of protection, with participating economies having the flexibility in how to operationalise their alignment with CBPR requirements. In 2022, the nine APEC CBPR-participating economies established the Global CBPR Forum to create an international certification based on the APEC CBPR System, and facilitate global participation.

As seen above, ASEAN has made progress in non-binding regional agreements and initiatives involving the private sector. While the ADII score alone may not indicate a sufficient level of advancement, significant initiatives are already underway. ASEAN now needs to implement best practices across all member states while building the capacity of less advanced ones. DEFA, a binding agreement amongst AMS, serves as a crucial component in achieving this objective. The final section below will provide several policy recommendations as a way forward for Asia in operationalising DFFT.

Way Forward for Asia

As the world increasingly transitions into a data-driven society, the digitalisation of markets and supply chains necessitates addressing new security risks. Across nations, there is a growing demand for international data governance to seize growth opportunities. To meet these demands, Asia, including ASEAN and Japan, should advocate for DFFT, which aims to protect personal data and sensitive information while facilitating the smooth flow of data across borders. To achieve this objective, three key policy recommendations are proposed.

Firstly, it is crucial to promote the Global CBPR globally through collaboration between ASEAN and Japan. Providing more options for cross-border data transfer facilitates easier access to markets for business investors. While MCCs are one example, there are other options such as interoperable certification systems. Japan's Personal Information Protection Commission and the Ministry of Economy, Trade and Industry are actively promoting Global CBPR alongside the Philippines, Singapore, and other jurisdictions. By expanding participation to all AMS, Global CBPR can become a truly global initiative building on an ASEAN-led initiative, contributing to our leadership in international data governance.

Secondly, ASEAN and Japan should collaborate on building a transparent data governance repository. Given the myriad rules and regulations surrounding cross-border data flows, particularly for SMEs, who may not have the resources to navigate these complexities, a centralised repository would be invaluable. Japan is proposing to IAP to create an international database

of policies and regulations for data and regulations on data and cross-border data transfers. By continuously updating this database, SMEs can accurately understand their requirements. ERIA is developing a prototype of the data governance repository for transparency, focusing on the ASEAN region. By enhancing the quality of this repository collaboratively, Asia's data governance and practices can become a global standard.

Lastly, we should consider regulatory sandboxes for PETs in collaboration. Regulatory sandboxes enable testing of emerging technologies, including anonymisation techniques, to verify compliance with regulations across participating countries. By establishing common checkpoints for testing in a template for regulatory sandboxes, we can streamline the testing process. Launching concrete projects like these and accumulating their results will contribute to building an international infrastructure that enhances the interoperability of national systems regarding cross-border data flows.

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