



# Open Banking

**A challenge to ensure informed and adequate consent from consumers concerning data collection, use and sharing**

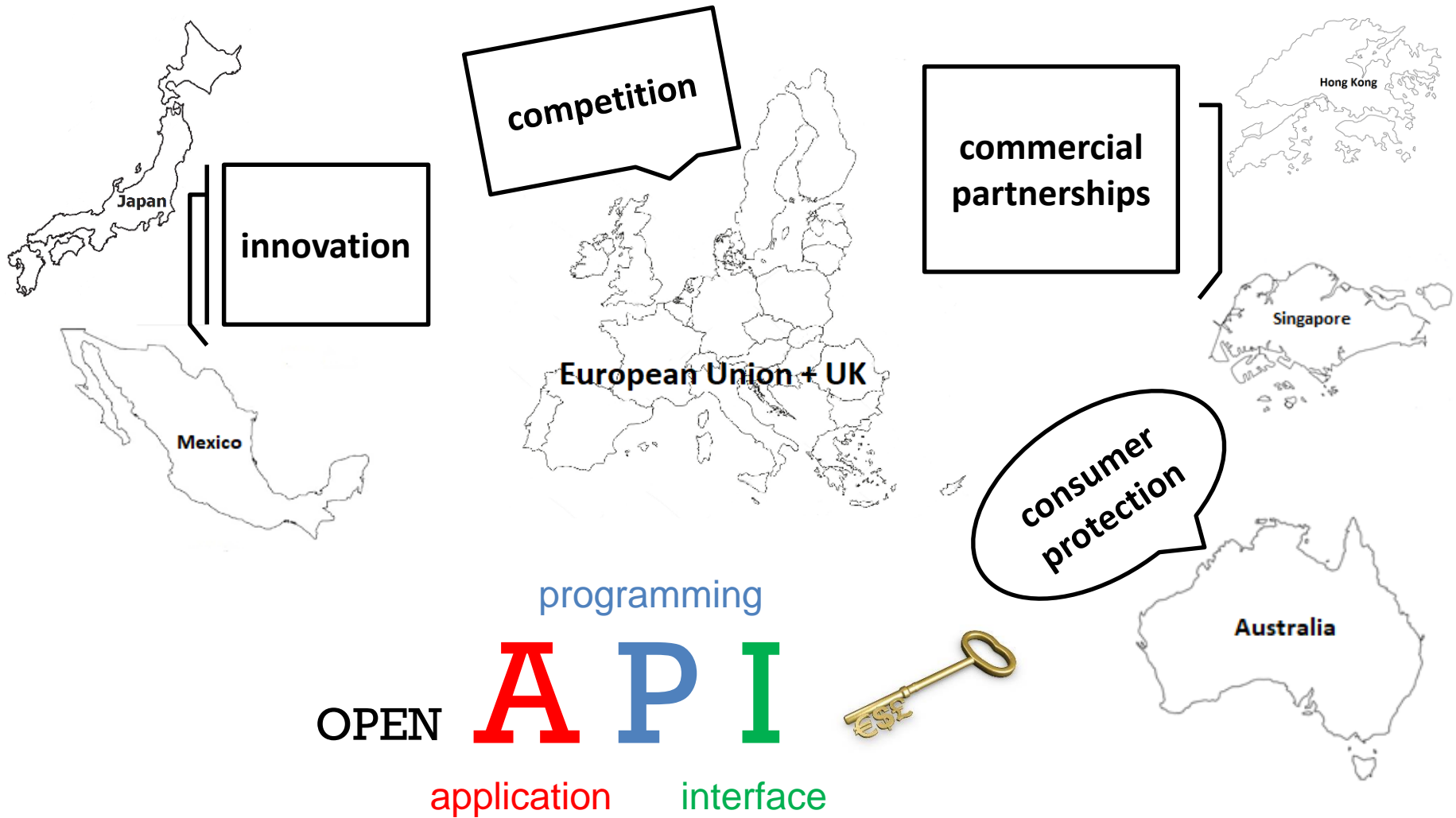
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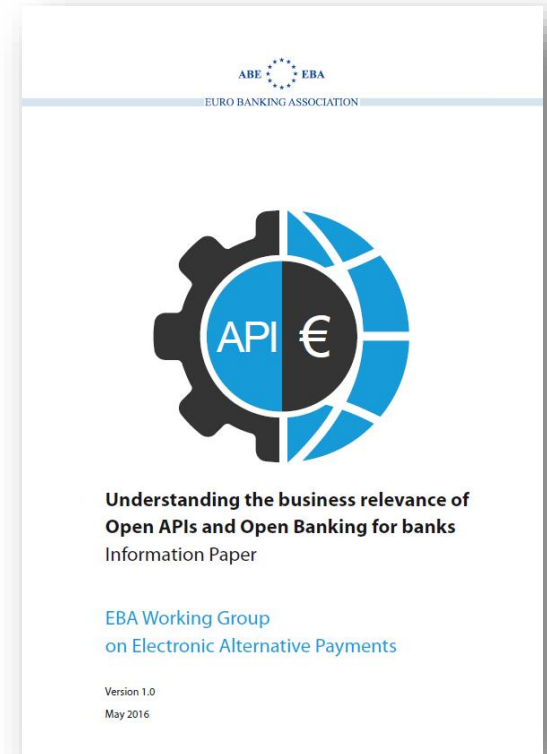
**the views, thoughts and opinions  
expressed in this presentation are  
those of its author, and do not  
necessarily reflect those of the  
Central Bank of Brazil or its members**

# What is Open Banking?



# What is Open Banking?

**“Open Banking is a movement ‘bridging two worlds’, i.e. making it possible for customers to use their banking service in the context of other (fintech) services, thereby, combining innovative functionalities from banks and non-banks with reach through infrastructure. Functionally Open Banking is about how banks share their own products (i.e. services, functionality and data) and how they enable their customers to share their data and account functionality with third party (e.g. fintech) applications in a secure and resilient fashion.”**



## Main drivers

**competition  
and  
market efficiency**

- following international developments on this particular topic (e.g. BIS workstream on open banking)
- monitoring market trends
- assessing the impact of the recently enacted General Data Protection Legislation - Law 13,709/2018



**compatible with  
BCB`s mandates**


# Data Protection Legislation – Why is it important?

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- responds to seismic shift in global attitude concerning data privacy
- sets clear responsibilities of data controllers and processors
- grants public knowledge concerning data breaches
- levels the playing field for all market participants
- empowers consumers, improving their mobility and choice
- helps ensure a frictionless consumer experience, while improving market confidence



# Data Protection Legislation – The Brazilian Experience

**Presidência da República**  
Casa Civil  
Subchefia para Assuntos Jurídicos

LEI Nº 13.709, DE 14 DE AGOSTO DE 2018.

[Mensagem de veto](#) Dispõe sobre a proteção de dados pessoais e altera a Lei nº 12.965, de 23 de abril de 2014 (Marco Civil da Internet).

[Vigência](#)

**O PRESIDENTE DA REPÚBLICA** Faço saber que o Congresso Nacional decreta e eu sanciono a seguinte Lei:

**CAPÍTULO I**  
**DISPOSIÇÕES PRELIMINARES**

Art. 1º Esta Lei dispõe sobre o tratamento de dados pessoais, inclusive nos meios digitais, por pessoa natural ou por pessoa jurídica de direito público ou privado, com o objetivo de proteger os direitos fundamentais de liberdade e de privacidade e o livre desenvolvimento da personalidade da pessoa natural.

Art. 2º A disciplina da proteção de dados pessoais tem como fundamentos:

- I - o respeito à privacidade;
- II - a autodeterminação informativa;
- III - a liberdade de expressão, de informação, de comunicação e de opinião;
- IV - a inviolabilidade da intimidade, da honra e da imagem;
- V - o desenvolvimento econômico e tecnológico e a inovação;
- VI - a livre iniciativa, a livre concorrência e a defesa do consumidor; e
- VII - os direitos humanos, o livre desenvolvimento da personalidade, a dignidade e o exercício da cidadania pelas pessoas naturais.

Art. 3º Esta Lei aplica-se a qualquer operação de tratamento realizada por pessoa natural ou por pessoa jurídica de direito público ou privado, independentemente do meio, do país de sua sede ou do país onde estejam localizados os dados, desde que:

- I - a operação de tratamento seja realizada no território nacional;
- II - a atividade de tratamento tenha por objetivo a oferta ou o fornecimento de bens ou serviços ou o tratamento de dados de indivíduos localizados no território nacional;
- III - os dados pessoais objeto do tratamento tenham sido coletados no território nacional.

§ 1º Consideram-se coletados no território nacional os dados pessoais cujo titular nele se encontre no momento da coleta.

§ 2º Excetua-se do disposto no inciso I deste artigo o tratamento de dados previsto no inciso IV do caput do art. 4º desta Lei.

Art. 4º Esta Lei não se aplica ao tratamento de dados pessoais:

- I - realizado por pessoa natural para fins exclusivamente particulares e não econômicos;
- II - realizado para fins exclusivamente:

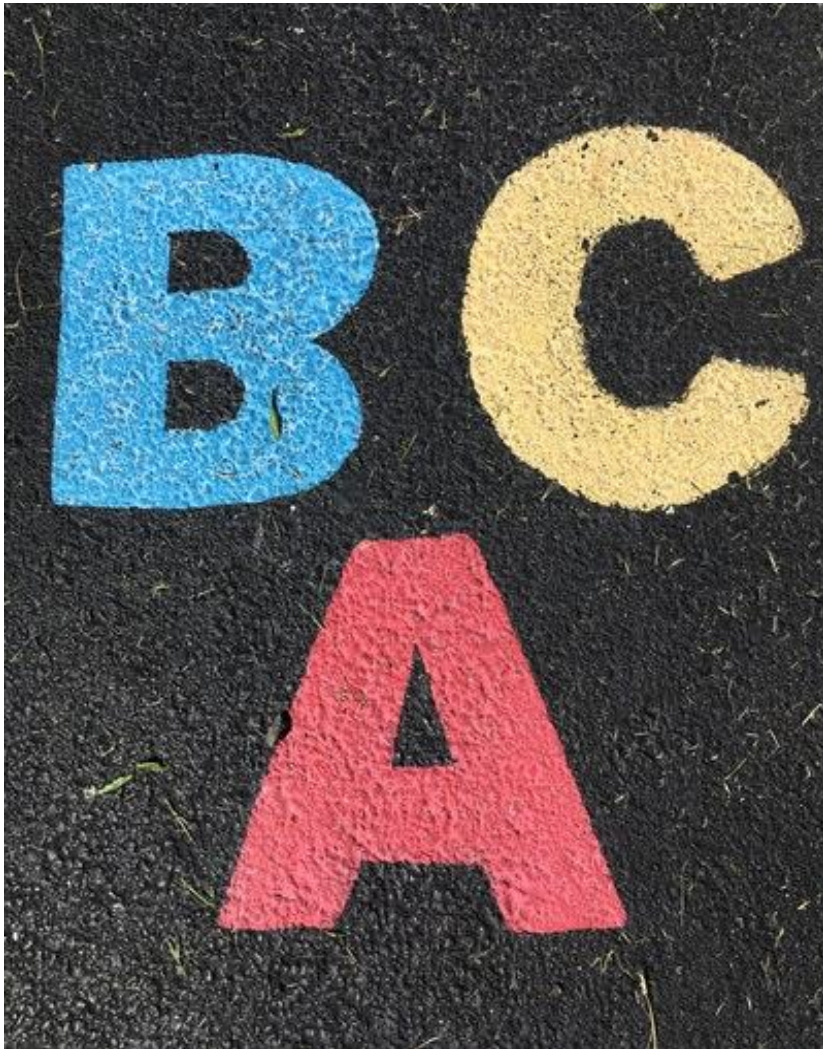
## Law 13,709/2018 @ a glance

- scope
- objective
- previous experience
- main influences
- supervisory authority
- commencement date



# Data Protection – ABC

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## Main definitions - Law 13,709/2018

- personal data / sensitive data
- processing / consent
- data controllers
- data ownership
- data minimisation
- right of information
- right to be forgotten
- data portability



# Data Protection – Proper Consent

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## Data Subject Consent - Law 13,709/2018

- freely given, informed and unambiguous pronouncement by data subjects to the processing of their data for a specific purpose
- provided in writing or by other means that attests the manifestation of the will of the data subject
  - (if provided in writing,) presented separately from other contractual clauses
  - burden of proof solely on the data controller
  - entails specific, defined purposes; generic authorizations to be considered null
  - revoked at any time by data subject's request, through free and facilitated procedures

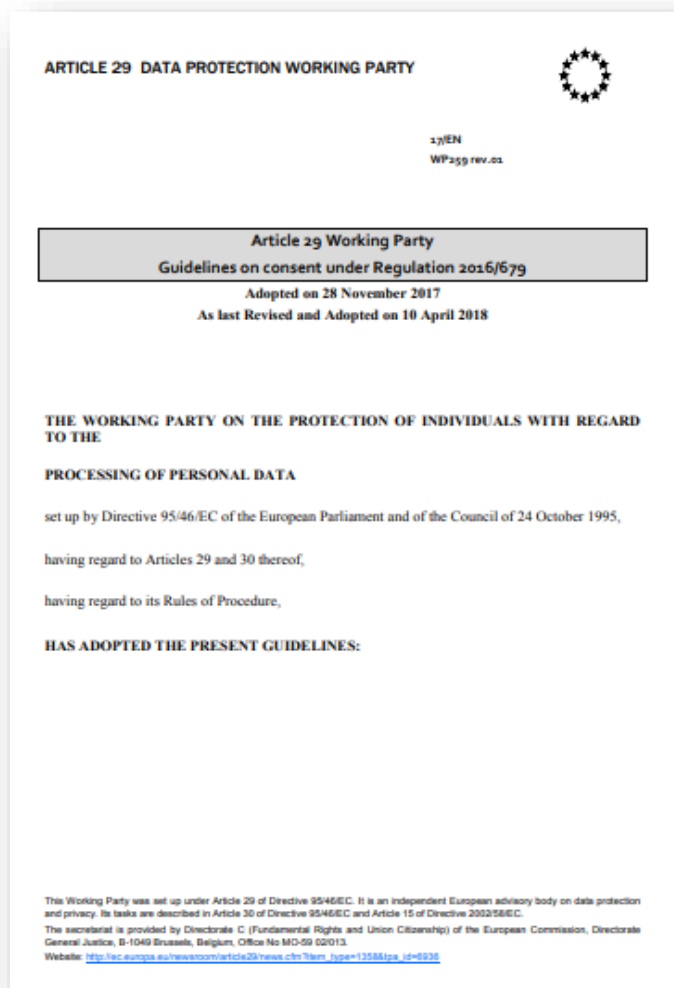


# Data Protection – Proper Consent

## Experience from other jurisdictions

### – European Union

- freely given
  - cannot be bundled up as a non-negotiable part of terms and conditions
  - data subject should be able to refuse or withdraw their consent without any negative consequences (e.g. no additional costs)
  - cannot tie the performance of contracts on obtaining data subject's consent
  - no risk of deception, coercion or significant adverse consequences
  - granularity on processing operations

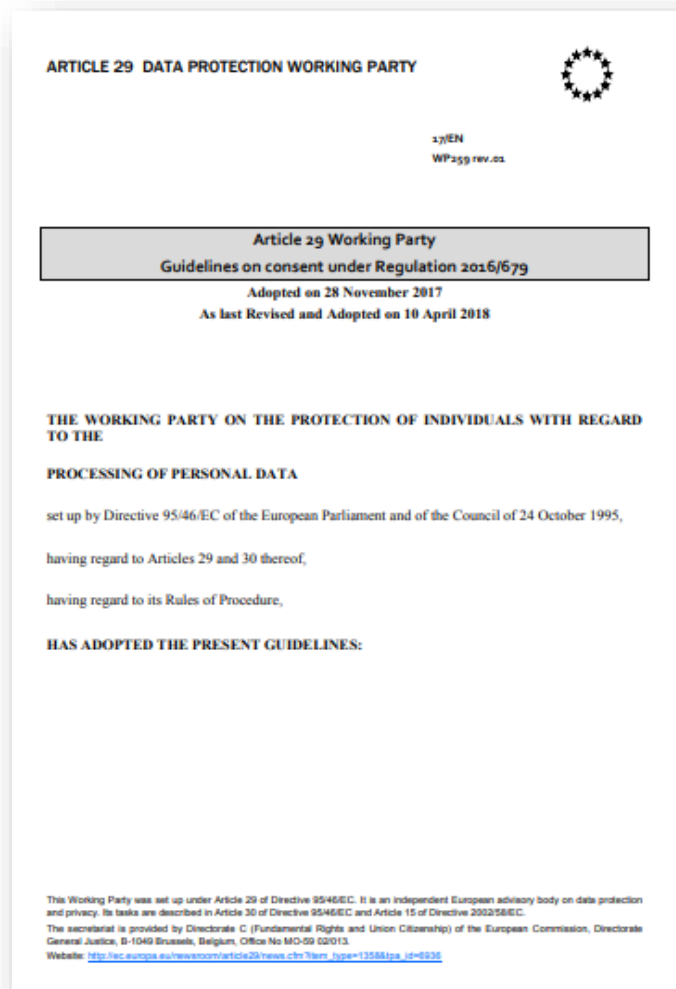


# Data Protection – Proper Consent

## Experience from other jurisdictions

### – European Union

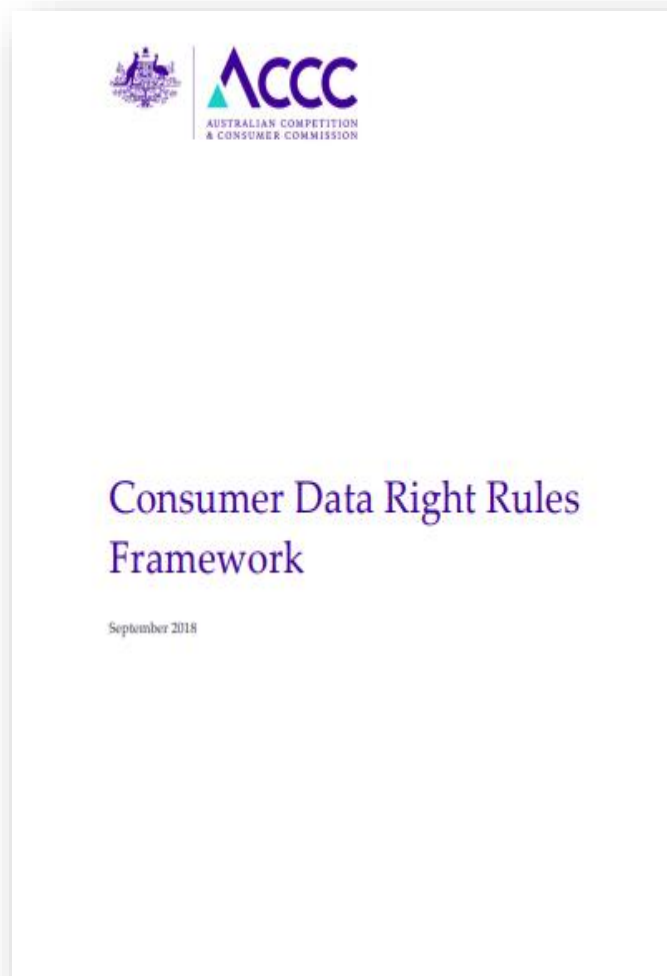
- specific
  - purpose limitation
  - granularity in consent requests
  - clear separation from other matters
- informed
  - transparent and accessible information
  - minimum content for consent to be informed
  - how to provide information



# Data Protection – Proper Consent

## Experience from other jurisdictions

- Australia (CDR's public consultation)
  - principles
    - unbundled with other permissions
    - must not rely on default settings or silence
    - concise and easy to understand process
    - freely given, express, **informed**, specific, time limited and easily withdrawn
  - envisaged rules
    - minimum information to be provided
    - use of easy to understand language
    - focus on presentation aspects and consumer comprehension testing



# Data Protection – Proper Consent

## Experience from other jurisdictions

- Japan (Review Committee on Open APIs)
  - (on internet-based transactions,) employ a display method and screen configuration that assists users give adequate consent
  - (when providing services,) a list of minimum information to be provided to consumer, in order to obtain their consent
  - attention points concerning the roles of banks and 3rd parties, in order to prevent consumer misunderstanding

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Report of Review Committee on Open APIs:  
Promoting Open Innovation

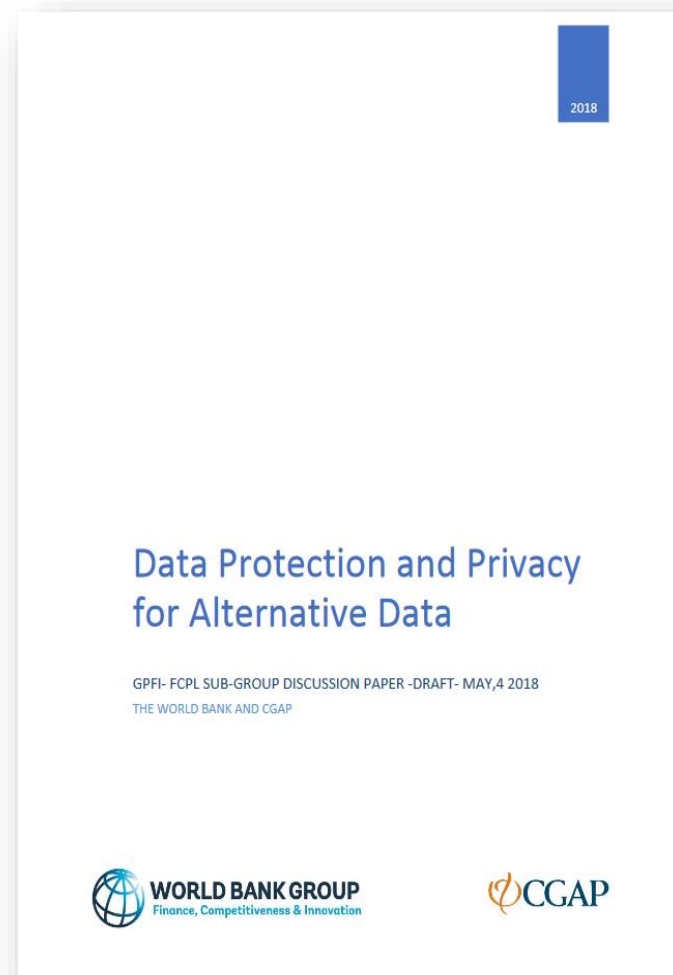
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July 13, 2017  
Review Committee on Open APIs  
Secretariat: Japanese Bankers Association (JBA)

# Data Protection – Proper Consent

## Experience from other jurisdictions

- World Bank/CGAP's recommendation
  - tiered consent
  - consent to be given in any format convenient to the consumer
  - revocation of consent should be made as easy as it is to provide consent
  - expiry date for consents
  - opt-in, rather than opt-out, consent
  - record evidence of consent provided





Thank you!

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