



NDPC GUIDANCE NOTICE ON REGISTRATION OF DATA CONTROLLERS AND DATA PROCESSORS OF MAJOR IMPORTANCE

On February 14, 2024, the National Data Protection Commission (NDPC) issued a Guidance Notice (the "Notice") regarding the registration of data controllers and data processors of major importance, as mandated by Sections 5(d), 6(c), 44, 45, and 65 of the Nigerian Data Protection Act (NPDA).

The Guidance Notice emphasizes the importance of ensuring that personal data is processed only by legitimate and authorized processors for purposes recognized by law. This is crucial for safeguarding the privacy and security of data subjects, whose personal data may be handled by various organizations or individuals within and outside Nigeria.

WHO IS A DATA CONTROLLER OR PROCESSOR?

Section 65 of the NDPA defines a Data Controller or Data Processor of Major Importance as an entity domiciled, resident in, or operating in Nigeria that does any of the following:

- a. Processes the personal data of more than 200 data subjects in six months;
- b. Carries out commercial technology services on any digital device that has storage capacity and belongs to another individual.
- c. processes personal data as an organisation or a service provider in any of the following sectors: (i) finance; (ii) communication; (iii) health; (iv) education; (v) insurance; (vi) export and import; (vii) aviation; (viii) tourism; (ix) oil and gas; and (x) electric power.

Additionally, any data controller or processor that is in a fiduciary relationship with a data subject, where confidentiality is a key expectation, is also classified as a DCMI/DPMI under this framework.



WHO IS A DATA CONTROLLER OR PROCESSOR?

The NDPC has categorised data controllers and data processors of major importance based on the scale and significance of their data processing activities. The three major categories of data processing are:

1. Major Data Processing-Ultra High Level (MDP-UHL)

In this category, data controllers & processors are, among other obligations, generally expected to adhere to global and highest attainable standards of data protection considering the following factors:

- i. The sensitivity of personal data in its care;
- ii. Data-driven financial assets entrusted in their care by data subjects;
- iii. Reliance on third-party servers or cloud computing services for data processing;
- iv. Substantial involvement in cross-border data flows;
- v. Processing the personal data of over 5,000 data subjects within 6 months through the means of technology under its technical control or through a service contract;
- vi. Legal competence to generate revenue on a commercial scale;
- vii. The need for international standard certifications for people, processes and technologies involved in data confidentiality, integrity and availability; and
- viii. The need for accountability;

Any 5 (five) of the foregoing factors above shall suffice for the purposes of categorization.

Entities that fall under this category are: Commercial banks operating at the national or regional level, Telecommunication companies, Insurance companies, Multinational companies, Electricity distribution companies, Oil and Gas companies, Public social media app developers and proprietors, public e-mail App developers and proprietors, Communication devices manufacturers, Payment gateway service providers, etc.

The processing fee for this category of processors is N250,000.



2. Major Data Processing – Extra High Level (MDP-EHL)

Data controllers and Processors categorized under this level are required to abide by global best practices of data protection. Criteria for classification include factors such as:

- i. The sensitivity of personal data in their care;
- ii. Data-driven financial assets entrusted in their care by data subjects;
- iii. Functions as an establishment of government;
- iv. Reliance on third-party servers or cloud computing services for the purpose of substantial processing of personal data;
- v. Substantial involvement in cross-border data flows;
- vi. Processing the personal data of over 1,000 data subjects within 6 months through the means of technology under their technical control or through a service contract;
- vii. Legal competence to generate revenue on a commercial scale;
- viii. The need for reputable and standardized certifications for people, processes and technologies involved in data confidentiality, integrity, and availability; and
- ix. The need for accountability.

Any 5 (five) of the foregoing factors in the above list shall suffice for categorization.

Entities that would fall under this category are: Ministries, Departments and Agencies (MDAs) of government, Micro Finance Banks, Higher Institutions, Hospitals providing tertiary or secondary medical services, Mortgage Banks etc.

The processing fee for this category of processors is N250,000.

3. Major Data Processing–Ordinary High Level (MDP-OHL)

This is a category of data controllers & processors who are, among other obligations, generally expected to abide by global best practices of data protection considering the following factors:

- i. The sensitivity of data assets in their care;
- ii. Inherent vulnerability of data subjects they typically engage with;
- iii. High risk to the privacy of data subjects if such personal data are processed by the data controller or data processor in a systematic or automated manner;
- iv. Processing the personal data of over 200 data subjects within 6 months through the means of technology under their technical control or through a service contract;
- v. The need for adequate technical and organisational measures for data protection;
- vi. The need for reputable and standardized certifications for people, processes, and technologies involved in data confidentiality, integrity, and availability; and
- vii. The need for accountability.

Any 4 (four) of the foregoing factors in the above list shall suffice for categorization.

Entities that fall under this category are: Small and Medium Scale Enterprises, Primary and Secondary Schools, Primary Health Centers, and Agents, contractors and vendors who engage with data subjects on behalf of other organizations that are in the category of MDP-UHL and MDP-EHL.

The processing fee for this category of processors is N10,000.

REGISTRATION PROCESS & TIMEFRAME

The registration portal opened on 30 January 2024 and the deadline for registration which was initially on the 30th of June 2024 has now been extended till September 30 2024. All existing Data controllers or Data Processors that fall under the classification of DC/PMI are required to register within this timeline. Pursuant to Section 44(1) of the NDPA, new entities that fall under the category of DC/PMI will also be required to register with the commission within six months of becoming a DC/PMI.

FAILURE TO REGISTER/PENALTY

Data controllers and data processors of major importance (DCPMIs) that fail to register with the NDPC by the due date or fail to register at all shall be considered in default. Such defaults will be subject to penalties as stipulated in the NDPA. The applicable penalty will be the higher amount between N10,000,000 (Ten Million Naira) and 2% of the DCPMI's annual gross revenue in the preceding financial year.

CONCLUSION

For information and specialised assistance on the above subject, do not hesitate to contact temiloluwa.dosumu@famsvillesolicitors.com via email or call +234 9068909300