

Nigeria Data Protection Commission's Guidance Notice on Registration of Data Processors/ Controllers of Major Importance.

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The Nigeria Data Protection Act (NDPA) was passed into law on 12 June 2023, in a bid to codify and introduce structure to the Nigerian Data Protection Regime. Among other concepts, it introduces the concept of data controllers and data processors¹ of 'major importance' who are mandated to register with the Nigeria Data Protection Commission (NDPC or "the Commission"). The NDPA further defines data controllers and processors of major importance as one domiciled, resident in, or operating in Nigeria and processes or intends to process personal data of more than such number of data subjects who are within Nigeria, as the NDPC may prescribe, or such other class of data controller or data processor that is processing personal data of particular value or significance to the economy, society or security of Nigeria as the Commission may designate.

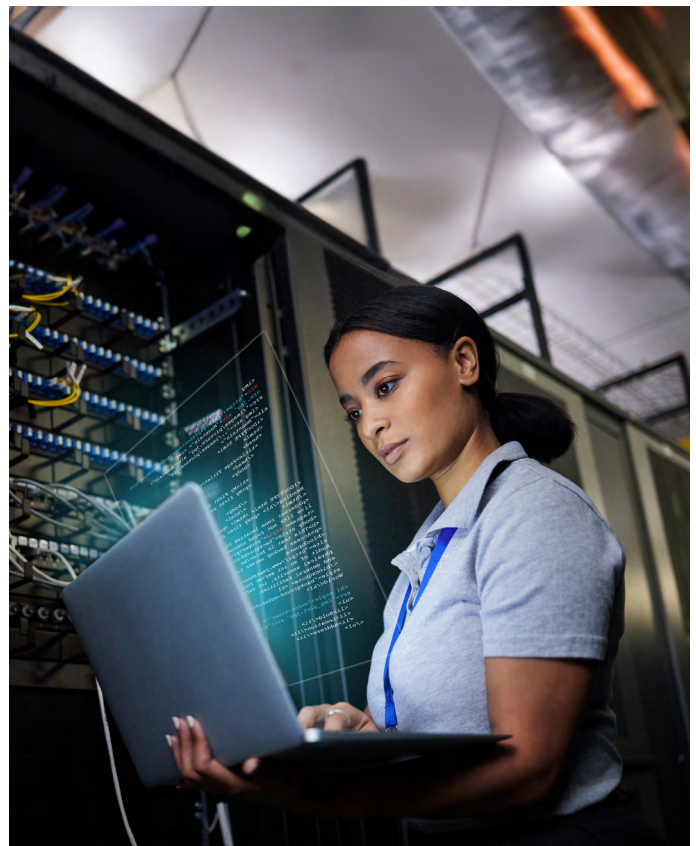
The Act highlights that further regulations will be released, to provide more detailed requirements. You can read our newsletter on the NDPA by clicking this [link](#).

Definition of a Data Controller/Processor of Major Importance

On the 14th of February 2024, the NDPC issued a Guidance Notice ("the Notice") on the registration of data controllers and data processors of major importance pursuant to Sections 5d, 6(c), 44, 45 and 65 of the NPDA. The Guidance Notice highlights that, while the personal data of data subjects is being processed by various organizations or persons within and outside Nigeria, it is pivotal for the privacy and security of data subjects to ensure that their personal data be processed only by genuine processors for valid reasons recognized by law.

To this effect, it has highlighted that a data controller or data processor shall be deemed to be of major importance if it keeps or has access to a filing system for the processing of personal data where it:

- 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 organization or a service provider in the listed major sectors of the economy.



¹ A data controller is an individual, private entity, public Commission, agency, or any other body who, alone or jointly with others, determines the purposes and means of processing personal data while a data processor is an individual, private entity, public authority, or any other body, who processes personal data on behalf of or at the direction of a data controller or another data processor.

- d. Is in a fiduciary relationship with a data subject by reason of which it is expected to keep confidential information on its behalf, taking into consideration the significant harm that may be done to a data subject if such data controller or processor is not under the obligations imposed on data controllers or processors of major importance.

The NDPC has now defined the metrics for who can be classified as a data processor/controller of major importance and are mandated to be registered with the NDPC on or before 30th June 2024.

Classification of Data Controllers and Data Processors of Major Importance

The NDPC also classifies data controllers & processors into 3 categories of data processing:

- a. Major Data Processing-Ultra High Level (MDP-UHL) – This is a category of data controllers & processors who are, among other obligations, generally expected to abide by 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.

Data controllers/processors that would 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 ₦250,000.

- b. Major Data Processing-Extra High Level (MDP-EHL) – This is a category of data controllers & processors

who are expected to abide by global best practices of data protection considering:

- 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.

Data controllers/processors 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 ₦100,000.

- c. 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:
- 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.

Data controllers/processors 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 ₦10,000.

This classification indicates that the major difference across the categories of data processors, as defined in the Notice, is the number of data subjects they work with. The Notice requires each data processor and controller to register with NDPC and specify the processing fees and industries that are classified under

each of the categories. It is worthy of note that the registration is required to be completed by all affected data processors and controllers before 30th June 2024, or risk exposure to penalties and regulatory sanctions as may be prescribed by the NDPC.

The interpretation of this Guidance Notice impacts the operations of every organization that collects and works with customers' data. Although the Guidance Notice fails to specify the documentary requirements for the registration as a data controller/processor, it is important that all affected companies commence discussions with their consultants ahead of the deadline, as this would aid speedy compliance during the registration process.

KPMG is a licensed Data Protection Compliance Organization (DPCO) and provides Data Compliance Audit services, Data Privacy Policy Development services, and Data Protection Training services, amongst others, to its clients. As such, we are happy to support you with the relevant registrations at the NDPC and other data protection services.



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