

## Privacy Please – New Categorization of Data Controller/Processor and Duty to Register as A Data Controller and Processor

### Introduction

As highlighted in our publication - [An Overview of the Nigeria Data Protection Act 2023](#), one of the key provisions of the Nigeria Data Protection Act (“NDPA” or “Act”) is the introduction of a new classification of data controllers and processors i.e., “Data Controllers and Data Processors of major importance” (“DCPMI”) and the compulsory registration obligations with the Nigeria Data Protection Commission (the “NDPC” or “Commission”) where they meet the threshold/benchmark for such registration. In this explainer we have attempted to highlight this key provision and what it may mean for businesses.

### Who is a Data Controller and Data Processor of Major Importance?

Data controller or data processor of major importance, under the Act, is a controller or processor that is 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 Commission may prescribe, or such other class of data controller or processor that is processing personal data of particular value or significance to the economy, society or security of Nigeria as the Commission may designate.

### Registration and other Regulatory Compliance Requirements

The Commission has not prescribed the number or provided guidance on the type of data that will qualify as data of particular value or significance. We anticipate in the coming weeks that the Commission will provide the relevant threshold/benchmark, any data controller/processor that falls within the threshold will be required to register and comply with other regulatory requirements.<sup>1</sup>

Apart from the need to register, DCPMI are required to appoint Data Protection Officer (“DPO”) who may be an employee of the data controller/processor or engaged by a service contract. This will need to be read in conjunction with the list of entities that are required to appoint DPO under the Nigeria Data Protection Regulation (NDPR) Implementation Framework.

The NDPA also gives power to the NDPC to prescribe fees and levies to be paid by the DCPMI.<sup>2</sup>

### Key Considerations for Businesses:

Data controllers should expect new regulations or directives in swift implementation of these provisions. Some key considerations arising from this development include:

1. **Financial Obligation:** This development will result in some form of fee obligation for business owners just reason of processing certain type of data or by reason of the volume of data processed by such entity.
2. **Regulatory Filings:** Apart from the annual data protection audit and filing, there is now additional regulatory compliance filing that must be done within 60 days after any significant change to registration information. The Act uses the word “significant change” which is subjective, DCPMI would need to take this into consideration in designing their regulatory compliance matrix. An engagement with the regulatory body for a better understanding of the classification of the term “significant change” is material for ensuring compliance. We expect some form of guidance from the regulator.
3. **Designation of DCPMI:** A quick guess may easily indicate the categories of data controllers and processors that will be captured under this designation. Taking a cue from existing regulations, the following are instructive for businesses:

<sup>1</sup> Data controller(s) and data processor(s) of major importance are required to register with the commission within six months after the commencement of the act or on becoming a data controller and data processor of major importance.

<sup>2</sup> Section 44 of the NDPA.

<sup>3</sup> NDPA, s. 44(1)

<sup>4</sup> NDPA Section 45.

- i) the existing Nigeria Data Protection Regulation (“NDPR”) already had an indicative yardstick for data controller processing data of 10,000 data subjects, as a basis for such controller to comply with certain obligations under the NDPR. It is likely that the 10,000 rule for the appointment of DPO under the NDPR may influence the volume/number of data subjects, with the number under the NDPR being the basic minimum benchmark. **It is not clear whether this indicative threshold under the NDPR will be reviewed upwards, this is a space to be monitored closely by business owners.** The potential that the new Act will capture a whole lot of business with attendant regulatory obligations is a likely outcome.
  - ii) Secondly, in terms of categorisation based on processing data of particular value or significance to the economy, society or security of Nigeria, it is indicative that, sectors such as financial sector, telecommunication sector, insurance, oil and gas, service providers to the MDA and MDAs et cetera, are likely to be considered in this regard. This assumption is backed by the recent regulatory enforcement effort in some of these sectors and subsector of the economy.
4. **NADPAP Whitelist:** Under the old regime, data controllers/processors were only required to notify the then Nigeria Data Protection Bureau (now the NDPC) of the technical and organisational measures in place for data protection compliance, in order to be on the NDPC Whitelist. Businesses that are not captured under the DCPMI considerations would still need to take the “**Whitelist**” obligation into account in their data protection compliance journey.

## Conclusion

It is essential that business owners and data processors, controllers and advocates engage the NPDC once it starts the process of such determination. More importantly, proactive steps should be taken to align your data protection framework and policies with the current data protection outlook, to stay ahead of the regulatory curve.

Aluko & Oyeboode is a registered Data Protection Compliance Organisation (DCPO) and we are able to assist organisations facilitate their data protection compliance plans in line with the prevailing practices.

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