

## Privacy Please – An Overview of the Nigeria Data Protection Act 2023

The Nigeria Data Protection Act 2023 (the “Act”) is the first major federal legislative instrument for the processing and protection of personal data in Nigeria and supersedes any other law or enactment that relates directly or indirectly to the processing of personal data. For a better understanding of the Act, we have prepared an overview of some of the salient provisions in the Act.

### Subject

### Overview

#### Introduction

The draft Data Protection Bill was introduced by the National Data Protection Bureau (“NDPB”) on the 4th of October 2022 and was approved by the Federal Executive Council in February 2023. The bill was assented into law and formally became the Nigeria Data Protection Act 2023 on Tuesday 12th of June 2023, by President Bola Ahmed Tinubu.

#### Scope

The Act applies to processing of personal data within Nigeria or the processing of the personal data of a data subject that is in Nigeria by both foreign and local data controllers and processors. Irrespective of whether the processing is by automated means.

The Act does not apply to processing of personal data that is done solely for personal and or household purposes, subject to the fundamental right to privacy of a data subject<sup>1</sup>. It further includes a number of **limited** exceptions.

#### Key Highlights

##### ***Introduction of New Categorization of Data Controller/Processor and Duty to Register as a Data controller and Processor:***

The Act introduces a new classification of data controllers and processors i.e., “Data Controllers and Data Processors of major importance” (“DCPMI”) with compulsory registration obligations<sup>2</sup> with the Commission where they meet the threshold for such registration<sup>3</sup>.

##### ***Cross-Border Transfer of Personal Data:***

The Act presents a significant shift in the rules applicable to cross-border processing/transfer. It establishes two main bases for cross border transfers, the conditions provided under section 43 of the Act and where the recipient of the personal data is subject to a law, binding corporate rules, contractual clauses, code of conduct, or certification mechanism that affords an adequate level of protection with respect to the personal data in accordance with the Act.

##### ***New Legal Basis of Processing:***

The Act has newly introduced legitimate interest as one of the legal bases for the processing of personal data, among others. This provision was lacking under the Nigeria Data Protection Regulation (“NDPR”) and impacted on processing of

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

<sup>2</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>3</sup> Section 44 of the NDPA. We note that specific thresholds/designations are yet to be provided, we expect this to come in the form of regulations.

personal data for purposes which were not clearly identified under the other available bases for processing under NDPR.

***Establishment of a new Data Protection Authority and Transition from the Bureau to Commission:***

The Act establishes a new commission to be known as the Nigeria Data Protection Commission<sup>4</sup> (the “Commission”). The Commission will replace the Nigeria Data Protection Bureau as the apex regulator for data protection related matters in Nigeria.

***Third Party Data Processing Agreement and Notification Requirements:***

The Act reinforces the existing requirement for a data processing agreement between data controller and a third party engaged in processing data under the NDPR Implementation Framework.

***Transparency - Indirect Collection of Data, Provision of Information to Data Subject (Further Authentication):***

The NDPA introduces further protection for the data subject in section 27 (2). The provision expands the scope of the right earlier provided in the Article 3.1(7) of the NDPR. The Act now requires that before a data controller collects personal data OTHER than directly from the data subject, it must comply with some of the obligations placed on the original data controller.

***Digital Age of Consent for Children:***

There is now an elaborate provision in respect of processing children’s data, particularly with the adoption of the EU digital age of consent for children aged 13 years and above. The Act also makes provisions for persons lacking the legal capacity to give consent.

***New Penalty Regime:***

In terms of enforcement, the above classification of data controller/processor has led to the introduction of two types of fines applicable where there is a breach of the provisions of the Act.

**Challenges**

A key concern when it comes to the Act is the frequent use of open-ended provisions. Whilst it is entirely possible that the Act was deliberately drafted to be as broad as possible so that it can cover any new development in the sector and give the regulator sufficient powers, this may also lead to weakening the provisions of the Act by leaving too many grey areas. We will analyse the possible challenges that may arise with the implementation of various provisions in the Act.

**Conclusion**

The primary objective of the Act is to safeguard the fundamental rights and freedom of privacy as guaranteed under the constitution of the Federal Republic of Nigeria. It is a great step in the right direction.






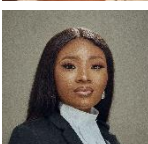
Over the course of the next few weeks, our **Privacy Please** series will provide a detailed analysis of the various provisions of the Act and how it impacts businesses for both local and international corporations that deal with personal data.

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<sup>4</sup> NDPA, Section 4

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