

**REGULATORY ALERT: NIGERIAN DATA PROTECTION
COMMISSION ISSUES GUIDANCE NOTICE ON
REGISTRATION OF DATA CONTROLLERS
AND DATA PROCESSORS OF
MAJOR IMPORTANCE**

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1. INTRODUCTION

The Nigerian Data Protection Commission (“the NDPC” or “the Commission”) on February 14, 2024, issued a Guidance Notice on the **registration of data controllers and data processors of major importance** (“the Guidance Notice” or “the Notice”) directing all designate data controllers or data processors of major importance to register with the Commission.

The Notice was issued in accordance with the Commission's function under Section 5 (d) of the Nigerian Data Protection Act (“the NDPA” or “the Act”) to register *data controllers and data processors of major importance*; its powers pursuant to Section 6 (c) to *issue regulations, rules, directives and guidance under the Act* and the obligation on data controllers and data processors of major importance to register with the Commission within six months after the commencement of the Act pursuant to Section 44 of the Act.

The term, 'data controller and data processor of major importance' is defined under section 65 of the NDPA as:

a data controller or data 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 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.

While the NDPA defines who a data controller or data processor of major importance is, it does not specify the criteria for qualification as data controller or data processors of major importance. The Guidance Notice however clarifies and outlines the criteria for identifying a data controller or data processor of major importance.

The provisions of the Guidance Notice are highlighted below:

2. CRITERIA FOR QUALIFICATION AS DATA CONTROLLER AND DATA PROCESSOR OF MAJOR IMPORTANCE

The Commission has by the Guidance Note provided the criteria for the



designation of data controller or data processor of major importance as follows:

1. A data controller or data processor shall be deemed to have **“particular value or significance to the economy, society or security of Nigeria”** and designated to be of major importance if it keeps or has access to a filing system (whether analogue or digital) for the processing of personal data; and where it meets any of the following conditions:
 - a) Processes the personal data of more than 200 data subjects in six months; or
 - b) Carries out commercial Information Communication Technology (ICT) services on any digital device which has storage capacity and belongs to another individual; or
 - c) Processes personal data as an organisation or a service provider in any of the following sectors: (i.) Financial (ii.) Communication (iii.) Health (iv.) Education (v.) Insurance (vi.) Export and Import (vii.) Aviation (viii.) Tourism (ix.) Oil and Gas (x.) Electric Power
2. A data controller or a data processor under a fiduciary relationship with a data subject and is obligated to keep confidential information on behalf of the data subject is regarded as a data controller or data processor of major importance 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

3. **CLASSIFICATION AND REGISTRATION REQUIREMENTS OF DATA CONTROLLER OR DATA PROCESSOR OF MAJOR IMPORTANCE**

The Guidance Notice broadly categorises data Controllers and data Processors of major Importance into 3 (three) levels or categories of data processing¹, namely:

- a) Major Data Processing- Ultra High Level (MDP-UHL)
- b) Major Data Processing- Extra High Level (MDP-EHL)
- c) Major Data Processing- Ordinary High Level (MDP-OHL)

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

Organisations in this category are expected to abide by global and

¹ Paragraph 2 (1) (a)(b)(c); Nigerian Data Privacy Commission Guidance Notice (NDPC/HQ/ VOL.02/24).



highest attainable standards of data protection and are required to take into account the following factors²:

- a) the sensitivity of personal data in their care;
- b) data driven financial assets entrusted in their care by data subjects;
- c) reliance on third party servers or cloud computing services for the purpose of substantial processing of personal data;
- d) substantial involvement in cross-border data flows;
- e) processing the personal data of over 5,000 (Five-Thousand) data subjects through the means of technology under its technical control or through a service contract;
- f) legal competence to generate revenue on a commercial scale;
- g) the need for international standard certifications for people, processes and technologies involved in data confidentiality, integrity, and availability; and
- h) the need for accountability.

Any 5 (five) of the foregoing factors suffice for the purposes of categorisation. Organisations in this category include but are not limited to; Commercial banks operating at national or regional level b.) telecommunication companies c.) multinational companies d.) oil and gas companies e.) Public social media app f.) organisations that process personal data of over 5,000 (Five Thousand) Data Subjects in 6 (six) months.

The registration fee payable by organisations in this category is **N250,000 (Two Hundred and Fifty Thousand Naira).**

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

Organisations that fall in this category are expected to abide by global best practices of data protection and take into account the following³:

- a) the sensitivity of personal data in their care;
- b) data driven financial assets entrusted in their care by data subjects;
- c) functions as an establishment of government;
- d) reliance on third party servers or cloud computing services for the purpose of substantial processing of personal data;

² Paragraph 2(2); Nigerian Data Privacy Commission Guidance Notice (NDPC/HQ/ VOL.02/24).

³ Paragraph 2(3); Nigerian Data Privacy Commission Guidance Notice (NDPC/HQ/ VOL.02/24).



- e) substantial involvement in cross- border data flows;
- f) processing the personal data of over 1,000 (One- Thousand) data subjects through the means of technology under their technical control or through a service contract;
- g) legal Competence to generate revenue on a commercial scale;
- h) the need for reputable and standardized certifications for people, process and technologies involved in data confidentiality, integrity and availability, and
- i) the need for accountability.

Any 5 (five) of the foregoing factors suffice for the purposes of categorisation. Entities in this category consist of: Ministries, Departments and Agencies (MDAs) of government b.) Micro Finance Banks c.) Higher Institutions d.) Hospitals providing tertiary or secondary medical services e.) Mortgage Banks f.) Organisations that process Personal Data of over 1,000 (One Thousand) Data Subjects within 6 (six) months.

The registration fee payable by organisations in this category is **N100,000 (One Hundred Thousand Naira).**

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

Organisations in this category are also expected to abide by global best practices of data protection and take into account the following⁴:

- a) the sensitivity of data assets in their care;
- b) inherent vulnerability of data subjects they typically engage with;
- c) high risk to the privacy of data processor in a systematic or automated manner;
- d) processing the personal data of over 200 (two hundred) data subjects through the means of technology under their technical control or through a service contract;
- e) the need for adequate technical and organizational measures for data protection;
- f) the need for reputable and standardized certifications for people, processes and technologies involved in data confidentiality, integrity and availability; and
- g) the need for accountability.

Any 4 (four) of the foregoing factors suffice for the purposes of

⁴ Paragraph 2(3); Nigerian Data Privacy Commission Guidance Notice (NDPC/HQ/ VOL.02/24).



categorisation. Entities in this category include but are not limited to: Small and Medium Scale Enterprises (that have access to Personal Data which they may share, transfer, analyse, copy, compute or store in the course of carrying out their individual businesses) b. primary and secondary Schools c. primary health centres d. agents, contractors and vendors who engage with data Subjects on behalf of other organisations that are in the category of MDP UHL and MDP-EHL) e. organisations that process Personal Data of over 200 (Two Hundred) data subjects within 6 (six) months.

The registration fee payable by organisations in this category is **N10,000 (Ten Thousand Naira)**.

4. REGISTRATION TIMELINE

Organisations that fall within the highlighted categories are required to register with the NDPC between **January 30, 2024**, and **June 30, 2024**. The registration can be commenced and completed via the Commission online portal (<https://services.ndpc.gov.ng/>).

It is imperative to note that registration after the due date or failure to register is considered a default and data controllers or processors who are in default are liable to penalties as prescribed by the Commission under the Act.

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