



HIGHLIGHTS ON THE GUIDANCE NOTICE ON REGISTRATION OF **DATA CONTROLLERS AND DATA PROCESSORS** OF MAJOR IMPORTANCE

Pursuant to the provisions of the Nigeria Data Protection Act 2023 (“the Act”), the Nigeria Data Protection Commission (“the Commission”) has the authority to register data controller or data processor of major importance. The Act, by Section 65, defines data controller or data processor of major importance 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. The Commission issued a Guidance Notice dated 14th February 2024 (“the GN”) to guide the public in ascertaining data controllers and data processors who fall into this category and are required to register with the Commission. This Newsletter summarizes the Guidance Notice and serves as an alert to persons who fall into this category to take steps to comply with the registration requirement set out under the Guidance Notice.

1. PERSONS TO WHOM THE GUIDANCE NOTICE APPLY

According to Paragraph 1 of the GN, a data controller of major importance (“DCMI”) or data processor of major importance (“DPMI”) is one who keeps or has access to a filing system (be it analogue or digital) which processes personal data of more than 200 data subjects or carries out commercial ICT services on devices that has storage capacity or operates in any of the Financial, Communication, Health, Education, Insurance, Export and Import, Aviation, Tourism, Oil & Gas, and Electric Power.

A further categorization of DCMI/DPMI is made by the GN into three levels based on the nature and volume of the personal data processed such as sensitivity of personal data processed, vulnerability of data subjects, the involvement of cross-border data flow and the need for accountability. The levels of the DCMI/DPMI determine the registration fee to be paid to the Commission.

The Three Levels Of DCMI/DPMI Categorization With Application Registration Fee Are As Follows:

A

Major Data Processing – Ultra High Level (MDP-UHL): They process personal data of over 5,000 data subjects through the means of technology under its technical control or through a service contract. They process data driven financial assets entrusted into their care. They rely on third party servers or cloud computing services for the purpose of substantial processing of personal data. These categories are expected to abide by global and highest attainable standards of data protection. Registration fee for this category is N200, 000 (Two Hundred and Fifty Thousand Naira).



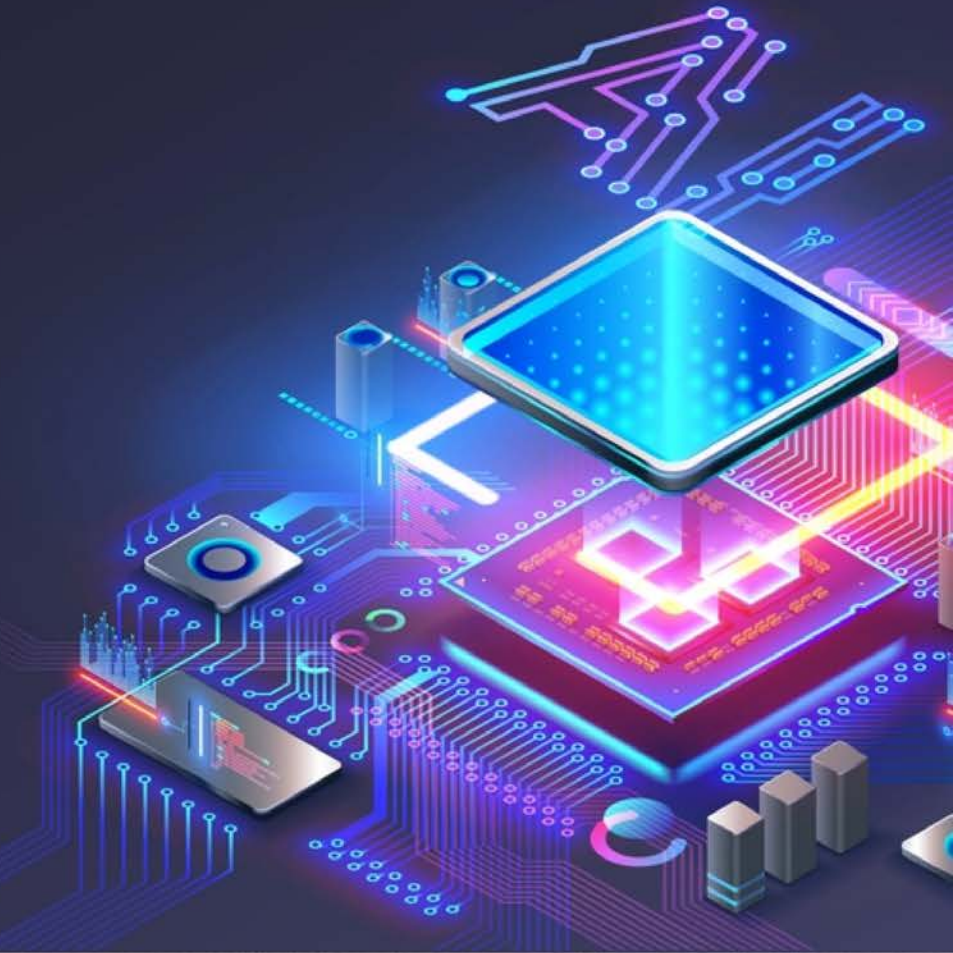
B

Major Data Processing – Extra High Level (MDP-EHL): They process personal data of over 1,000 data subjects and like the MDP-UHL, process data driven financial assets entrusted into their care by data subjects. This category is expected to abide by global best practices in data processing, and include establishments of government such as Regulators. Registration fee for this category is N100, 000 (One Hundred Thousand Naira).



C

Major Data Processing – Ordinary High Level (MDP-OHL): These categories are expected to abide by global best practices based on inherent vulnerability of data subjects they typically engage with. This category process personal data of over 200 data subjects and include Small and Medium Scale Enterprises. Registration fee for this category is N10, 000 (Ten Thousand Naira).



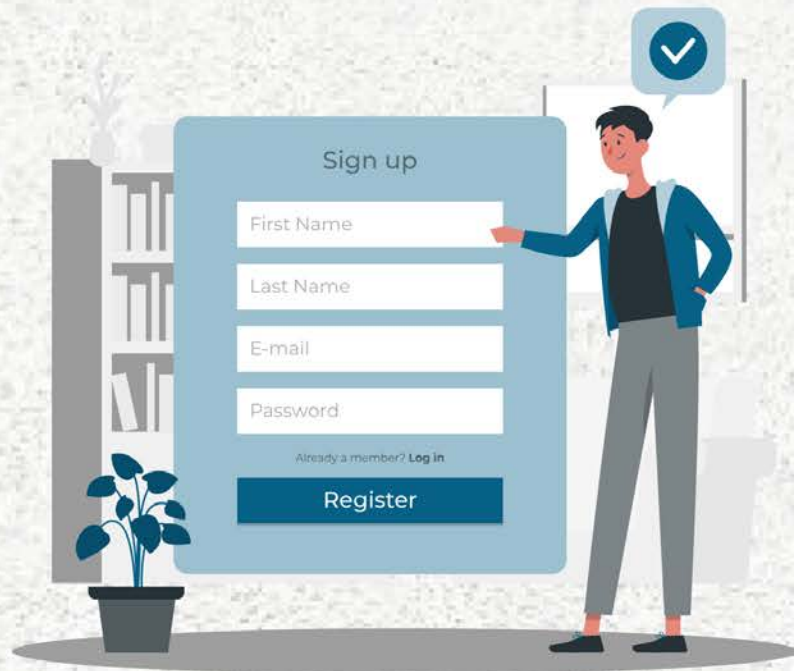
2. WHAT IS CONSIDERED AS PERSONAL DATA

The Act defines personal data as any information relating to an individual, who can be identified or is identifiable, directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, psychological, cultural, social, or economic identity of that individual.



3. REGISTRATION AND FAILURE TO REGISTER

The GN states that the existing DCMI/DPMI are to register with the Commission between 30th January 2024 to 30th June 2024 by paying the prescribed fee for its category of data processing and providing the registration details. A DCMI/DPMI who fails to register will be liable to default penalty up to 2% of the DCMI/DPMI's annual gross revenue in the preceding financial year. New DCMI/DPMI are to register with the Commission within 6 months of becoming one.



4. LEGALITY/ BINDINGNESS OF THE GUIDANCE NOTE

- ▶ Section 5 of the Act expressly gives the Commission authority to register DCMI/DPMI.
- ▶ Section 44 of the Act specifically imposes an obligation on DCMI/DPMI to register with the Commission.
- ▶ Section 61 (2) & 62 of the Act states that the Commission may make regulations or issue directives with respect to the protection of personal data and any matter under the Act.
- ▶ Furthermore, the GN derives its validity from an Act of the National Assembly of the Federal Republic of Nigeria which ultimately derives its validity from the Constitution.

CONCLUSION

Based on our analysis of the GN, we are of the opinion that many service providers, fintech companies, ICT service providers are DCMI/DPMIs such as platform owners, software owners, and tech companies and businesses. The GN categorizes payment gateway service providers as one of the Major Data Processing – Ultra High Level (MDP-UHL) whilst primary and secondary schools are Major Data Processing – Ordinary High Level (MDP-OHL). The registration period commenced on January 30th 2024 and concludes June 30th 2024. Entities that fail to register within this time frame will be subject to penalties.

DISCLAIMER

Nothing in this article should be construed as legal advice from any of our lawyers or the firm. The article published is a general summary of developments and principles of interest and may not apply directly to any specific circumstances. Professional advice should therefore be sought before action based on any article is taken.

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