



NIGERIA DATA PROTECTION ACT 2023: AN OVERVIEW

INTRODUCTION

The Nigeria Data Protection Act 2023 (“the Act”) was signed into law by the president, His Excellency Bola Ahmed Tinubu on the 12th of June 2023. The Act is the primary legislation governing data processing activities in Nigeria, the protection of personal data and safeguarding the privacy rights of data subjects.

Before the enactment of the Act, the National Information Technology Development Agency (NITDA) issued the Nigeria Data Protection Regulation (NDPR) in 2019 to safeguard the right to data privacy, protect personal data and ensure that Nigerian businesses observe the principles for lawful processing of data and develop security measures to protect personal/sensitive data processed. The NDPR has not been repealed by the Act and is still in force. Its provisions which do not contradict the Act remain enforceable and applicable.

The Act sets out its scope, the rights of data subjects, the legal basis for processing personal data and its enforcement process.

PART I & II OF THE ACT

The Act is divided into several parts, outlined in this article are Part I and II of the Act.

The Part one of the Act is titled ‘Objectives and Application’ and it sets out the objectives of the Act, its application, and the exemptions to the application.

The second part of the Act is titled ‘Establishment of the Nigeria Data Protection Commission and its Governing Council’. It spells out the functions and powers of the Nigeria Data Protection Commission (“the Commission”) and the structure of the Governing Council (“the Council”) set up to regulate the affairs of the Commission.

OBJECTIVES OF THE ACT

The objectives of the Act are set out under section 1, and they include:

- ❖ Safeguarding the fundamental rights and freedoms, and the interests of data subjects, as guaranteed under the Constitution of the Federal Republic of Nigeria 1999;
- ❖ Providing for the regulation of processing of personal data;
- ❖ Promoting data processing practices that safeguard the security of personal data and privacy of data subjects;
- ❖ Ensuring that personal data is processed in a fair, lawful and accountable manner;
- ❖ Protecting data subject's rights, and provide means of recourse and remedies, in the event of the breach of the data subject's rights; and
- ❖ Establishing an impartial, independent, and effective regulatory Commission to superintend over data protection and privacy issues and supervise data controllers and data processors.

SCOPE OF APPLICATION (SECTION 2)

The Act applies to the processing of personal data within Nigeria, or the processing of personal data of a Nigerian data subject by an entity not domiciled in Nigeria, whether automated or not.

However, there are exemptions to the application of the Act which include:

- ❖ processing of personal data carried out solely for personal or household purposes provided that such processing for personal purposes does not violate the fundamental right to privacy of the data subject;
- ❖ certain obligations under Part V (Principles and Lawful Basis Governing Processing of Personal Data) of the Act, other than sections 24, 25, 32, and 40 shall not apply to data controllers or processors if the processing is carried out by a competent authority for the purposes of preventing criminal offence, prevention of a national public health emergency, national security, journalism and education, or legal claims; or
- ❖ the Nigeria Data Protection Commission, may by regulation, exempt certain types of personal data and processing.

ESTABLISHMENT OF THE NIGERIA DATA PROTECTION COMMISSION

The Act, under section 4, establishes the Nigeria Data Protection Commission (“the Commission”). The Commission will be replacing the Nigeria Data Protection Bureau (NDPB). The Commission shall be an independent corporate body with its headquarters in the Federal Capital Territory.

FUNCTIONS OF THE COMMISSION

The functions of the Commission are spelt out in section 5 of the Act. It includes but is not limited to the following:

- ❖ Regulation of the deployment of technological and organisational measures to enhance personal data protection;
- ❖ Where necessary, accreditation, license and registration of suitable persons to provide data protection compliance services;
- ❖ Registration of data controllers and data processors of major importance;
- ❖ Promotion of public awareness and understanding of personal data protection, rights and obligations imposed under this Act, and the risks to personal data;
- ❖ Receipt of complaints relating to violations of this Act or subsidiary legislation made under this Act;
- ❖ Determining whether countries, regions, business sectors, binding corporate rules, contractual clauses, codes of conduct, or certification mechanisms, afford adequate personal data protection standards for cross-border transfers; and
- ❖ Carry out other legal actions as are necessary for the performance of the functions of the Commission.

ESTABLISHMENT OF THE GOVERNING COUNCIL

Section 8 of the Act establishes the Governing Council (“the Council”). The Council shall consist of members such as a retired judge (as its Chairman), the National Commissioner, representatives from relevant ministries and sectors, and a private sector representative.

The Council shall oversee policy direction, approve strategic plans and reports, approve the terms and conditions of service, approve staff regulations and provide advice to the National Commissioner. It may delegate any of its functions to committees set up by it.

The President, on the recommendation of the Minister, may remove any member of the Council where it is no longer in the interest of the public and the Commission that such member continues in the position.

**THANK YOU FOR YOUR
ATTENTION**

W | www.tonbofa.com
E | lawyers@tonbofa.com