



NAVIGATING THE NIGERIAN DATA PROTECTION ACT, 2023: INSIGHTS, PROVISIONS AND INNOVATIONS YOU NEED TO KNOW

Dear Valued Clients,

We hope this newsletter finds you well. At AMOFIN SOLICITORS, we strive to keep our clients informed about crucial legal developments that impact their businesses and daily lives. In this edition, we shed light on the newly enacted Nigerian Data Protection Act, 2023 and its implications for your organization.

1.0 Understanding the Nigerian Data Protection Act, 2023:

The Nigerian Data Protection Act (NDPA), enacted in 2023, is a landmark legislation aimed at safeguarding the privacy and security of personal data within the country. The Act is modelled to align with international best practices, providing a comprehensive framework for data protection and promoting trust in digital transactions.

2.0 Key Provisions of the NDPA:

The NDPA have certain provisions and innovations that are important to your organization and are consequently worthy of discourse in this edition of our newsletter. We briefly outline and discuss some of these provisions and innovations below as they may apply or affect or concern your organization:

2.1 Application of the Act: By virtue of section 2 of the Act, the NDPA applies where the Data Controller is domicile, resident or operates in Nigeria or notwithstanding its location, it is processing personal data of a data subject in Nigeria, or the processing of personal data is occurring within Nigeria.

2.2 Establishment of Data Protection Commission: Data Protection Commission (DPC) is established under section 4 of the Act with functions prescribed under section 5 to include:

regulation of deployment of technology and organizational measure to safeguard personal data, register data controller and data processor, receive complaint relating to violation of the Act or any subsidiary legislation made thereunder, determine adequacy of personal data protection for cross-border data transfer, ensure national and international data protection obligations and best practice etc.

2.3 Lawful Processing: by virtue of the combined reading of sections 24 and 25 of the Act, Organizations must comply with the principles of personal data processing and ensure there is a lawful basis for such processing. To this end, organizations must obtain the data subject's consent which should be affirmative before processing their personal data and have a legitimate basis for collecting, using, or storing such information.

2.4 Right to Information prior to collection of personal data directly from the data subject, the data subject is entitled to be informed of the followings; identity, residence, place of business or means of communicating with the data controller or its representatives, the specific lawful basis of the processing, recipients or categories of recipients of the personal data, data subject rights and the retention period of the data, existence of the right to lodge a complaint with the DPC. See section 27 of NDPA.

2.5 Sensitive Personal Data: the Act generally prohibits the processing of sensitive personal data either by the data controller or data processor unless the data subject gives consent or the processing is necessary for the performance of an obligation under employment or social security or any other similar laws or the processing is necessary to protect the vital interest of the data subject or another person where physically or legally incapable of giving consent, processing is necessary for the establishment or defence of a legal claim, processing is necessary for medical or

community or public health or for substantial reason of public interest or for archiving purposes. Sensitive personal data is defined to mean personal data relating to genetic/biometric data, race or ethnic origin, religious or philosophical beliefs, health status, sex life, political opinions, trade union membership and other information prescribed by the Commission as sensitive personal data, See sections 30 and 65 of the NDPA.

2.6 Data Protection Officer (DPO): Certain organizations are required to appoint a DPO responsible for ensuring compliance with the NDPA and handling data protection matters. The DPO can either be an employee of the organization or engaged by a service contract. In either case, the DPO shall possess expert knowledge of data protection law and practice. See section 32 of NDPA.

2.7 Rights of Data Subject: The Data Subject is entitled to a number of rights under section 33 of the Act which include the right to know the purpose of the processing and object to the processing, right to lodge a complaint, right to a copy of his personal data being held, right to correction and erasure of his personal, right to withdraw consent and right to data portability etc. See sections 34-38 NDPA.

2.8 Cross-Border Data Transfer: The Act outlines rules for transferring personal data outside Nigeria to ensure adequate protection in foreign jurisdictions. One of these rules is that the recipient of the personal data should be subject to a law, binding corporate rules, contractual clauses, code of conduct or certification mechanism that afford adequate level of protection to the personal data in accordance with the NDPA. See section 41-43 of NPDA.

2.9 Data Breach Notification: Organizations must promptly report data breaches to the Data Protection Commission (DPC) and affected data subjects to mitigate potential harm of the nature of the breach, categories and approximate number of data subjects or personal record concerned. Where the breach will result in risk to the data subject's right and freedom of

individuals, the organization shall within 72 hours notify the DPC. See section 40 of the NDPA

2.10 Privacy by Design and Default: The NDPA emphasizes embedding privacy measures at the core of data processing activities, enhancing data protection throughout the entire lifecycle.

3.0 Implications for Your Organization:

The NDPA introduces significant changes for businesses operating in Nigeria. To comply with the Act and avoid penalties, it is essential to:

3.1 Conduct Data Audits: Identify and categorize personal data collected, processed, or stored, assessing your organization's data protection practices.

3.2 Obtain Consent: Review consent mechanisms to ensure they meet NDPA requirements for lawful data processing.

3.3 Appoint a DPO: Determine whether your organization is obligated to appoint a Data Protection Officer and assign the role if necessary.

3.4 Enhance Security Measures: Strengthen data security protocols and implement measures to prevent data breaches and unauthorized access.

3.5 Update Policies and Procedures: Revise your privacy policy, data protection, and breach notification procedures to align with NDPA provisions.

4.0 Innovation in Data Protection:

As the legal landscape evolves, so do our services. At AMOFIN SOLICITORS, we are committed to helping you navigate the complexities of data protection law and ensuring compliance with the NDPA. Our team of experts leverages innovative approaches to:

4.1 tailored legal advice on NDPA compliance specific to your industry and business model.

4.2 Develop comprehensive data protection strategies that align with your organization's goals and values.

4.3 Conduct staff training sessions to foster a culture of data protection awareness within your organization.

For any legal assistance or guidance regarding the Nigerian Data Protection Act, 2023, feel free to reach out to our team. We are here to protect your data and safeguard your interests.

Stay tuned for more updates and insights from AMOFIN SOLICITORS!

Best regards,

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