

# **Data Privacy Regulations in Nigeria : The Financial (Services) Institution Approach**

**Presentation by**

**Olusegun Adeyemi**

**Managing Partner, Hastrup Solicitors**



**Webinar for 1st Central Credit Bureau  
Theme: Security and Privacy of Data  
December 9, 2021**





If the right to privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion.

— *William J. Brennan* —

AZ QUOTES

Without privacy there was no point in being an individual.

*Jonathan Franzen*

meetville.com

**“PRIVACY IS ONE OF THE BIGGEST PROBLEMS  
IN THIS NEW ELECTRONIC AGE.”**

**ANDY GROVE**

© Lifeshack Quotes



OVERVIEW OF PRIVACY LEGISLATIONS AND GUIDELINES IN NIGERIA



NDPR OVERVIEW



IMPERATIVES FOR FINANCIAL INSTITUTIONS

# Data Privacy Legislations and Guidelines in Nigeria – An Overview

## ❑ 1999 Constitution

Citizens' right to Privacy in their homes, correspondence, telephone conversations and telegraphic communications guaranteed. – S37

- ❑ Privacy scope not defined
- ❑ Right no absolute

## ❑ Child Rights Act 2003

Constitutional right to privacy as relates to children- S8

## ❑ Credit Reporting Act 2017

Data subjects (i.e., persons whose credit data are held by a credit bureau) have a right to privacy, confidentiality and protection of their credit information – S 9 (1).



# Overview of Data Protection Legislations and Guidelines in Nigeria

## - Contd

### ❑ CBN Guideline on e-Banking -2003

Banks should protect the privacy of the customer's data by ensuring that customer's personal data are used for the purpose for which they are compiled.

### ❑ Consumer Protection Framework 2016 - CBN

Financial institutions have appropriate data protection measures and staff training programs in place to prevent unauthorized access, alteration, disclosure, accidental loss or destruction of customer data.

### ❑ Cybercrimes (Prohibition, Prevention Etc) Act 2015

- Financial institutions to retain and protect data
- Interception of electronic communications criminalised.



# NDPR OVERVIEW

# Nigerian Data Protection Regulation (NDPR)



- ❑ Issued 25 January 2019
- ❑ Regulatory framework for collection, processing and management of data of private individuals, particularly of Nigerians residing in Nigeria and abroad and of foreigners residing in Nigeria.

## Objectives



Safeguarding

Safeguard the rights of natural persons to data privacy



Prevent

Prevent manipulation of personal data



Exchange

Foster the safe conduct of transactions involving exchange of personal data



Competition

Ensure Nigerian businesses remain competitive





- ❑ **(Data) processing includes the collection, recording, storage, retrieval, use, disclosure, transmission, erasure and destruction of personal data. – 1.3 (XX1)**
- ❑ **“Personal Data” means any information relating to an identified or identifiable natural person (‘Data Subject’) – Article 1.3 (XIX)**

## SCOPE of NDPR



‘All transactions intended for the processing of Personal Data, to the **processing of Personal Data** notwithstanding the means by which the data processing is being conducted or intended to be conducted in respect of natural persons in Nigeria’



Natural persons residing in Nigeria or residing outside Nigeria who are citizens of Nigeria



Regulation shall not operate to deny any Nigerian or any natural person the privacy rights he is entitled to under any law, regulation, policy, contract for the time being in force in Nigeria or in any foreign jurisdiction.



# Who does NDPR apply to?

9

## Data Controller:

‘a person who either alone, jointly with other persons or in common with other persons or a statutory body determines the purposes for and the manner in which Personal Data is processed or is to be processed’ – 1.3 (X)



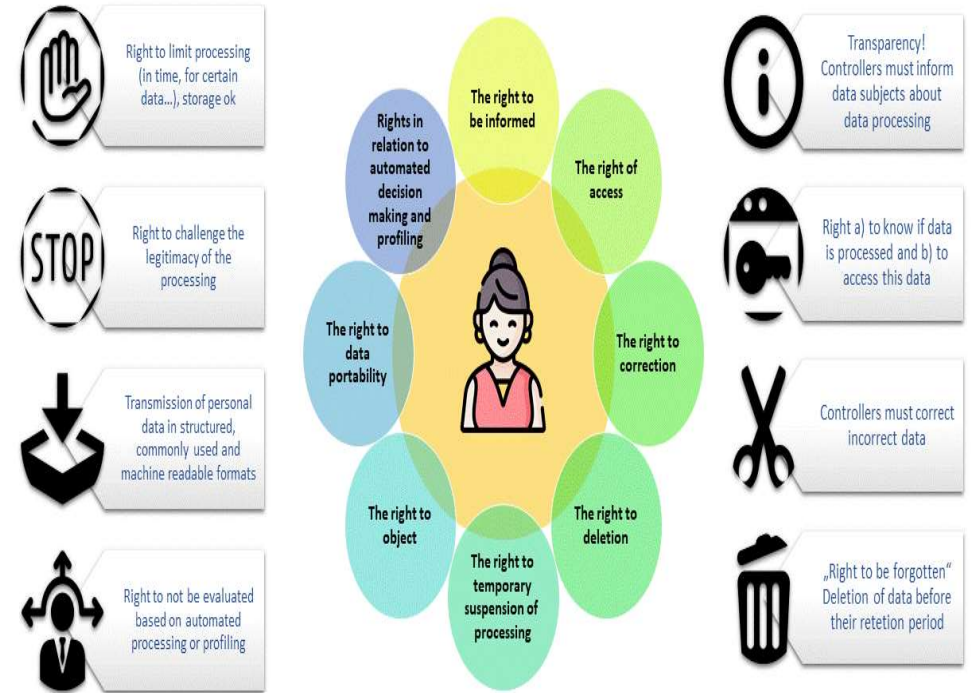
## Data Administrator (Processor)”

“a person or an organization that processes data – Article 1.3 (XIX)



# Data Subject Privacy Rights – Article 3.1

- ❑ Object to processing of their personal data for marketing purposes.
- ❑ Access and transfer of their personal data to another data controller.
- ❑ Obtain information about processing their personal data.
- ❑ Deleting their personal data (under certain criteria)
- ❑ Correction of their personal data.
- ❑ Personal data processing restriction.
- ❑ Withdraw consent to processing of personal data.
- ❑ Lodge complaint with NITDA or another regulator



# Lawful grounds for personal data processing – Article 2.2

11

Consent

Contract

Legal Obligation

Protection of vital  
interest

Public interest/mandate  
vested in Controller



## Role Of The DPCO



The Agency shall by this Regulation register and license Data Protection Compliance Organisations (DPCOs) who shall on behalf of the Agency monitor, audit, conduct training and data protection compliance consulting to all Data Controllers under this Regulation. The DPCOs shall be subject to Regulations and Directives of NITDA issued from time to time – Regulation 4.1

## Between DPCO and NITDA

Submit data protection audit report to NITDA

Act as contact point between Data Controller and NITDA before, during and after audit.

Get feedback/necessary approval to confirm acceptance of audit report from NITDA

Liaise with NITDA on behalf of Data Controller to obtain any clarification

## Between DPCO And Data Controller

Conduct data protection Audit

Report identified gaps during audit

Support with implementation to close identified gaps

Prepare and sign-off on data protection audit report

Train Data Controller's key stakeholders

# NDPR Compliance Obligations

Rights of Data Subjects

Privacy and Data Protection Audit

Consent

Data Security

Third Party Contracts

Designation of a DPO

Transparency

Data Transfers

Penalties

# LIABILITY FOR NON-COMPLIANCE

## Fines

2% of Annual Gross Revenue or ₦10 million, whichever is greater – 10,000 Data Subjects or more

1% of Annual Gross Revenue or ₦2 million, whichever is greater - less than 10,000 Data Subjects

## Breach of Duty of Care - Article 2.1(2)

Data controller 'owes a duty of care to the.. Data Subject'

## Civil / Criminal Liability

Incorporated Trustee - Digital Rights Initiative  
v  
Minister of Justice, Trade & Investment & Ors.

## Reputational Risk

Data Theft, ID theft, cybercrime



# MORE TO COME.....

## FEDERAL GOVERNMENT OF NIGERIA DATA PROTECTION BILLS

- Draft Bill for the establishment of a Data Protection Commission charged with the responsibility for the protection of personal data, rights of data subjects, regulation of the processing of personal data and for related matters.
- Expression of interest for Legal Consultancy Services for the drafting of a comprehensive data protection legislation for the **Federal Government Of Nigeria** (November 2021) - FMCDE

## LAGOS STATE DATA PROTECTION BILL

- Second reading stage passed
- Stakeholder engagement stage



# IMPERATIVES FOR FINANCIAL INSTITUTIONS

# IMPERATIVES FOR FINANCIAL INSTITUTIONS

- ❑ Engage DPCO to undertake NDPR Compliance Audit
- ❑ Designate a DPO
- ❑ Develop Policies, Processes and Procedures for data management and incident preparedness
- ❑ Ensure capacity building and NDPR awareness training for staff who handle personal data



**Thank You**