ADISA® CERTIFICATION

Guidance Note: AGN 3			
Operating as a subsidiary or group.			
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Introduction

When ITADs operate as a full owned subsidiary to another company there are some complexities regarding UK GDPR compliance which should be considered. These guidelines provide an overview of those considerations which ADISA will assess during the audit process.

Scope

This guidance note applies to:

- Any company wishing to be certified which is a wholly owned subsidiary of another company.
- Any company wishing to be certified which is owned by the same individuals as another company.
- Any company operating as a group of companies.

Details

Data Controller / Processor / Sub-Processor

Under UK GDPR, the designation of the company being certified as a data controller, processor or sub-processor is essential to assess compliance with Standard 8.0.

Every company will be a data controller as they will be making controlling decisions on the data which they hold about their customers, employees and any other data which is used in their general business operations. In all but extreme situations, which are very unlikely they will NOT be a data controller for the data on hardware which they are processing on behalf of a customer.

When an ITAD is sanitising data on hardware they will either be a data processor, when contracted directly with the data controller, OR a sub-processor when they are employed by a processor to work on behalf of their contracted data controller.

Operating as an ITAD which is a wholly owned subsidiary.

The UK Information Commissioner's Office is clear that even if a company is fully owned by a parent, if it provides data processing services for the parent company on data which the parent is the controller, it is a data processor and must follow the requirements of Article 28.

If it provides data processing services for the parent company on data which the parent is the processor to a different controller, then the ITAD is a sub-processor and must follow the requirements of Article 28 (4).

Operating as an ITAD with same shareholders as another company.

Should the ownership of an ITAD be the same shareholders as another company with separate registration at Companies House, the Processor / Sub-Processor relationship must be set up correctly to ensure compliance. The same rules apply here as when operating as a wholly owned subsidiary.

Operating as an ITAD within a Group of companies.

Should a company operate as part of a Group which is made up of separate legal entities as registered on Companies House and performing data processing at multiple locations all under a single contract, they are operating as a group of separate data processors. In this situation, the Processor / Sub-Processor relationship must be set up correctly to ensure compliance. Typically, there would be a single data processor which is the primary company within the group with all other entities operating as sub-processors to them as the primary processor.

Operating as an ITAD in the channel.

For ITAD services, if a company is operating underneath a reseller, the ICO would again look at Companies House to ascertain if it is a separate legal entity. Wherever this is the case, regardless of ownership, the ITAD would be viewed as either a data processor to the parent or a sub-processor should the parent be a data processor themselves.

Impact on Certification.

During the audit process ADISA would assess customer contracts which would highlight the relationship between the ITAD under audit and the direct customer. This would help determine whether there is a controller / processor relationship or processor / sub-processor relationship, and ADISA would require the correct terms to be in the contract to legitimise this relationship.

Where the ITAD utilises another location which is part of the Group for processing activities and, where the location is owned and operated by a separate legal entity, this would need to be permitted in the terms of the customer contract (use of sub-processors) and the ITAD would also need to comply with the requirements of working with sub-processors / operating as a sub-processor which are listed within Standard 8.0 Section 2 Modules 8, 9 and 10.

Source: ICO Case Reference: IC-174826-F3D6. (Document available from ADISA on request)