

---

# **Protection of Personal Information Act (POPI)**

## **Introduction:**

The Protection of Personal Information Act (POPI) is a new piece of legislation that will have a major impact on the manner in which organizations handle personal information of both natural and juristic persons.

The reason for POPI is to give effect to people's Constitutional right of Privacy (Section 14 of the Constitution of the Republic of South Africa) and to combat the growing problem of Identity Theft.

POPI has been in the Pipe Line for a number of years but it seems that the process is finally coming to an end, as POPI was finally signed into law and it seems that it is only a matter of time before POPI will be in full force and its dramatic impact will be felt sooner rather than later. The exact date that POPI will become effective is uncertain, but the general consensus is that it will be in the very near future. Once POPI becomes effective organizations will have one year to comply with its provisions.

## **Application of POPI:**

POPI will apply to all organizations that process personal information. Processing of personal Information is broadly defined in the act and include but are not limited to the collection, storage, receipt, updating, distribution and destruction of personal information.

Personal information also has a broad definition and includes such information of a natural person and where applicable a juristic person such as:

- information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
- information relating to the education, medical, financial, criminal or employment history of the person;
- any identifying number, symbol, e-mail address, physical address, telephone number or other particular assignment to the person;
- the biometric information of the person;
- the personal opinions, view or preferences of the person;

- correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that will reveal the contents of the original correspondence;
- the view or opinions of another individual about the person; and
- the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person.

### **Lawful Processing of Personal Information:**

POPI introduces the following 8 principles that organizations will have to comply with in order to process information lawfully:

- Accountability (section 8);
- Processing Limitation (Section 9 - 12);
- Purpose Specification (Section 13 -14);
- Further Processing Limitation (Section 15);
- Information Quality (Section 16);
- Openness (Section 17 - 18);
- Security Safeguards (Section 19 -22);
- Data Subject Participation (Section 23 -25).

If personal information is processed for the purpose of direct marketing (by means of unsolicited electronic communications, directories and automated decision making), organizations will have to comply with these 8 principles as well as section 69 of the act in order for the processing to be lawful.

The impact of POPI on direct marketing is extensive. As the situation currently stands many organizations contact potential customers directly via electronic media for marketing purposes on a regular basis and then give the potential customers a choice to "Opt out" if they are not interested in being contacted. POPI will effectively ensure that the opposite is true. Instead of the so called "opt - out" option, potential customers will have to "Opt - in", meaning that organizations will only be able to contact potential customers if the organization has the customers go ahead to do so.

---

### **Call to action:**

The following documentation and/or Agreements need to be revised and drafted to make provision for POPI:

- Non-disclosure and Confidentiality Agreements;
- Terms of sale;
- Instruction forms;
- Client information forms;
- Credit applications; and
- Any other form and/or document that contain personal information of a client or deals with the collection, distribution or any other form of processing of personal information of a client.

Originations will also have to ensure that proper safeguards are put in place to protect the integrity of personal information and to ensure that such information in no way ends up in the wrong hands. The following are examples of what organizations should consider when repositioning their internal structure:

- Given the extremely large fines that may be warranted, it is recommended that insurance be taken out to cover any loss arising out of data breach;
- Organizations need to ensure that proper security measures are in place in areas where personal information is stored. Security measures could include alarm systems, cameras, a safe etc.;
- Insure that all personal information kept on any database is protected by passwords and that only designated staff have access to such passwords. Further insure that all staff that have access to personal information sign a non-disclosure and confidentiality agreement with regards to such personal information;
- Insure that all staff are aware and understand the risks involved with POPI and further that they know how to process personal information lawfully.

### **Penalties:**

POPI should not be taken lightly. As I mentioned earlier, after the act becomes effective organizations will have one year to comply with the provisions of the act. Non-compliance with the conditions of the act could result in serious reputational and financial harm and could even result in imprisonment.

Penalties include:

- Fines up to ten million Rand
- Imprisonment, ranging from 12 months to 10 years.

**Conclusion:**

The enforcement date of POPI is imminent, the effects will be extensive and real and the penalties severe and potentially career threatening. As it is only a matter of time before the provisions of the act will be in full force, organizations should start getting their structures in place to ensure that all aspects of the act is complied with before it is too late.

Article by

Bertus Coetzee

Candidate Attorney - Commercial Law

KMG & Associates Inc.

LLB(UP) & BCom(Law)(UP)