

Security matters

The Protection of Personal Information Act No.4 of 2013 (“POPIA”)

POPIA introduces a new approach to privacy requiring organisations to integrate the principles of POPIA into their business processes. POPIA came into effect on 1 July 2020 and gives organisations (private and public) until 30 June 2021 to comply with its personal information requirements

1 What does POPIA apply to?

- POPIA applies to the **processing** of **personal information** in South Africa

2 What is personal information?

- any information that relates to an **identifiable living natural person** or **existing juristic person**
- examples: race, gender, age, marital status, religion, employment history, email address, telephone number, biometric information, correspondence of a private nature, preferences, and opinions

3 What is processing?

- processing includes any activity concerning personal information including its **collection, storage, use, dissemination** and **destruction**
- if an organisation has personal information in its possession, it is processing personal information

4 What are the consequences on non-compliance?

- non-compliance may result in a **fine** or **imprisonment** or administrative fines of up to **R10 million**
- a Data Subject or the Regulator may institute **civil action** for **damages** against a Responsible Party for a breach of POPIA
- POPIA non-compliance and related fines and/or civil actions brought against an organisation can lead to **serious reputational damage**

5 Who are the main players?

Data Subject – the person to whom the personal information relates

Responsible Party – the person who determines why and how personal information is processed

Operator – a party who processes personal information on behalf of a Responsible Party in terms of a contract or mandate

Information Regulator – statutory body that provides *inter alia* education on POPIA, monitors and enforces the provisions of POPIA

6 How to comply with POPIA?

There are 8 conditions required for lawfully processing personal information:

1. **Accountability:** ensure POPIA compliance
2. **Processing Limitation:** only process personal information which is required
3. **Purpose Specification:** personal information must only be collected for a specific purpose
4. **Further Processing Limitation:** any further processing of personal information (beyond the initial purpose) must be compatible with the initial purpose of collection
5. **Information Quality:** personal information records must be accurate and kept up to date
6. **Openness:** inform Data Subjects when, how and why their personal information is being collected
7. **Security Safeguards:** secure the integrity and confidentiality of personal information
8. **Data Subject Participation:** Data Subjects have a right to access their personal information and can request corrections or deletions

7 How Eversheds Sutherland can assist?

POPIA is going to affect the manner in which all organisations manage personal information. POPIA compliance cannot take place overnight, therefore it is imperative that organisations take the necessary steps to being fully compliant before 1 July 2021.

Eversheds Sutherland is able to assist organisations with compliance including:

- **Due Diligence:** identifying compliance gaps and recommending remedial action
- **Updating Policies & Privacy Documentation:** preparing and/or updating of policies and privacy documentation
- **Appointment of Information Officer:** assisting with the appointment and training of the Information Officer
- **Contracts:** drafting and/or amending supplier and customer contracts
- **Training:** conducting internal training sessions



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