

POPI Act, 2013, and its impact on pension funds and their administrators

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POPI – overview

Overview of

- ▶ the purpose of POPI,
- ▶ its principal features,
- ▶ conditions, requirements and
- ▶ likely implementation date

Why does the Act include information relating to juristic persons in the definition of “personal information”? Please give some examples of personal information relating to a company that would be protected under the Act.

POPI – what happens in practice?

- Disclosures
- Single view of client
- Information security (e.g. encryption, data classification, NDLP)
- Training
- Data governance
- Privacy by design
- Identify location of all PI
- Data breach process
- Third party management
- Data sharing
- Policies and guidelines

POPI – what happens in practice?

Is there any obligation under the Act for a pension fund or its service providers to enter into a contract governing the protection of personal information relating to fund members, or are the legislative protections / requirements in the Act sufficient?

If such a contract is required or the parties agree to enter into one in any event, what contractual obligations should a service provider (as an “operator”) to a pension fund (as the “responsible party”) reasonably be expected to assume? My understanding is that the obligations under the Act fall primarily on the responsible party, so it would be unduly onerous and possibly unfair for an operator to assume all of those obligations itself (for example, by undertaking to comply with all of the provisions of the Act)

POPI – challenges & liability

- ▶ What are the chief challenges facing institutions – volume of information, accurate records, ensuring no leakage?
 - Awareness
 - Information security (not only IT)
 - Third party management / Operators
 - Management of consents and system requirements
- ▶ Where does liability lie when there is a breach when there is a contractual relationship btw Fund and administrator?

POPI – what happens in practice?

- ▶ Are these challenges the same or are they industry specific ?

POPI

- ▶ Is it necessary (or only recommended) for retirement funds to include POPI type disclosure clauses in member communication / forms?

If a service provider to a pension fund, in the ordinary course of providing its services to the fund, receives personal information relating to fund members (whether from the fund itself or from the fund's administrator or from the employer), is the service provider entitled to assume (i.e. without enquiry or any further action) that the necessary member consents have been obtained to it processing that information?

POPI vs PAJA

- ▶ How do you balance privacy requirements of POPI with s37C death benefit investigations (i.e. where PAJA applies – in what circumstances are beneficiaries entitled to private information of other beneficiaries in order to motivate their own claims and tease out disputes of fact)?

POPI

- ▶ What is the progress on the draft code for retirement funds with regard to POPI and who is driving this?
 - ▶ Does the PLA have a standard data protection agreement which it advocates be accepted by pension funds and their service providers?
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