

fact sheet

Protection of Personal Information Bill • POPI

prepared by FundsAtWork

POPI ascribes specific meanings to the following terms:

data subject	<p><i>The person to whom the personal information relates.</i></p> <p>For example the employer and member.</p>
operator	<p><i>A person who processes information for a responsible party in terms of a contract or mandate, without coming under the direct authority of that party.</i></p> <p>For a pension fund, Momentum Employee Benefits (“MEB”) will be an operator as in its capacity as benefit administrator it may process personal information on behalf of the fund. A financial adviser taking into account the definition of “processing” below may also act as an operator for an employer because it may on behalf of the employer process personal information of the employees.</p>
personal information	<p><i>Broadly defined and includes almost any form of information capable of identifying a living person or an existing juristic person.</i></p> <p>From an employee benefits perspective it <u>includes</u>:</p> <ul style="list-style-type: none"> • member’s name and surname; • member’s identity number; • member’s marital status; • member’s address, contact details and bank details; • medical records (for underwriting, disability claims, medical reports and decisions); • member records; and • copies of any correspondence between the member and any operator/responsible party.
processing	<p><i>Any operations concerning personal information, including the <u>collection, receipt, recording, organisation, collation, storage, updating, modification, retrieval, alteration, consultation, use, dissemination by means of transmission, distribution or making available in any other form, merging, linking, as well as blocking, degradation, erasure or destruction of information.</u></i></p>
responsible party	<p><i>A public or private body or any other person which, <u>alone or in conjunction with others</u>, determines the purpose of and means for processing personal information.</i></p> <p>In practice, a responsible party will include Momentum Employee Benefits (MEB) because it will process personal information in respect of the employer, the employees/members and the financial adviser. It also includes a financial adviser who processes the personal information of members.</p>

What are the financial adviser's responsibilities in terms of POPI?

A financial adviser is either appointed by the employer or by the member. Due to the nature of the relationship the financial adviser will process personal information either as an operator and/or a responsible party. Each financial adviser will have to put measures in place to ensure that they protect any personal information processed. The employer as the primary responsible person will not be relieved of its responsibility under POPI if it appoints the financial adviser as an operator.

Consent from the data subject

Whenever a responsible party or operator processes personal information it must first obtain the data subject's consent and disclose the purpose of the collection. This does not mean that the financial adviser, if it is an operator for the employer, needs to get consent from each member before the information can be processed.

The financial adviser is appointed by the employer as an adviser to the scheme and any personal information relating to the employees is provided by the employer. The employer in turn is also a responsible party and a duty exists on the employer to ensure that all members are aware that their personal information is being made available to a third party and the purpose for which the information is being disclosed. This is normally covered in the employment contract between the employer and the employee where it may be compulsory for the employee to join certain employer arrangements for example a retirement fund or medical aid scheme.

HR issues

The financial adviser's staff must also ensure compliance with POPI and for example should be aware of the following:

- Securely storing personal information when it is not being used;
- Positioning computer screens so that personal information is not accidentally disclosed;
- Ensuring that visitors are accompanied in areas normally restricted to staff; and
- Encrypting personal information that may be taken out of the office in case it is lost or stolen.

Certain restrictions imposed by POPI

Records must be destroyed, deleted or "de-identified" after their retention is no longer authorised in terms of POPI. This must be done in a manner which prevents the reconstruction of the personal information. Records may be kept longer for historical, statistical or research purposes and appropriate safeguards must be implemented against the use of the records for any other purposes, provided the consent of the data subject is obtained.

Momentum's compliance with POPI

As a responsible corporate citizen MEB is already incorporating certain POPI principles into its business processes and operations. This will result in some significant changes with regard to the disclosure of personal information to financial advisers and third parties. For example:

- Momentum will not accept an instruction from a financial adviser's personal assistant to change any of the financial adviser's website access pin codes.
- Momentum will only disclose scheme information to the employer and financial adviser appointed to the scheme by the employer.
- Medical underwriting information will only be made available to the member and/or the financial adviser authorised to receive such information on behalf of the member.

The changes that will be implemented will not only ensure compliance by MEB but also ensure that employers and advisers alike are not exposed to unnecessary claims of violating a data subject's right to privacy.

Please contact your marketing adviser or portfolio head should you have any questions or require additional information on POPI.