

POPI for loss adjusters

Does POPI apply to loss adjusters?

You must comply with the the *Protection of Personal Information Act (POPI)* when processing the personal information of insureds.

- **Personal information** includes any information which identifies and relates to a living individual or existing corporate (namely the insured).
- **Processing** is anything you do with the personal information, including collection, use, storage, sharing and deletion.
- A **responsible party** determines the purpose and means of processing personal information.
- An **operator** processes personal information on behalf of a responsible party in terms of a contract or mandate, without coming under their direct authority.

You may be both a responsible party and an operator in relation to different processing activities, depending on whether you are acting within your mandate from insurers.

Acting under mandate

If you act in terms of a mandate from the insurer, you are an **OPERATOR** and have limited compliance obligations:

- **Use.** You may only process insureds' personal information in terms of your mandate or otherwise with the insurer's authorisation.
- **Disclosure.** You may only disclose the information to third parties if required by law or necessary to properly perform your mandate.
- **Data breaches.** You must notify the insurer if there are reasonable grounds to believe that the information has been accessed by an unauthorised person.

It does not matter whether your mandate is **written** or **telephonic**. However, insurers are required to impose information security requirements on you in terms of a written contract and may therefore require you to conclude a **new** or **amended contract**.

Is consent required?

POPI contains various grounds on which responsible parties may process personal information, including performance in terms of a contract, legitimate interests and consent.

The responsible party must ensure that one of these grounds exists before instructing an operator. Operators do not need any ground of their own to process personal information in terms of their mandate.

Insurers would typically rely on the grounds that the processing of personal information is necessary to perform the contract of insurance or to protect the insurer's legitimate interests. The insurer does not need to obtain consent.

Loss adjusters acting as responsible parties must assess whether their processing is justified on grounds such as their own or the insureds' legitimate interests or where the processing complies with a law. If not, the loss adjuster would need to obtain the insureds' consent directly.

Acting without a mandate

If you act without a mandate, or beyond the scope of your mandate, you are a **RESPONSIBLE PARTY** and must comply with all requirements for lawful processing, including:

- **Notification to insureds.** You must take reasonably practical steps to make data subjects aware of various matters when collecting their personal information.
- **Information security.** You must take technical and organisational measures to protect personal information against loss, damage, unauthorised destruction and unlawful access.
- **Retention requirements.** After claims are settled, records must be destroyed after a reasonable time, considering the nature of the claim, prescription and any prescribed retention periods.
- **Cross-border transfer requirements.** There are limited circumstances in which personal information may be transferred out of South Africa.

