

Conditions to be met when storing a client's personal information on the cloud

Countless businesses in South Africa use cloud services to store data generated through their business operations. In many instances, cloud servers reside outside the borders of South Africa. When data is stored in the cloud, such data becomes subject to the jurisdiction of the country in which the cloud servers are stored. Where such data contains personal information, the provisions of the Protection of Personal Information Act, 4 of 2013 ("POPI") becomes applicable to the transfer of personal information to cloud storage.

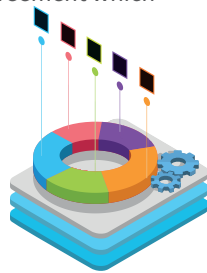


Bear in mind that the provisions of POPI apply to municipal data, as well as personal information of municipal consumers held by municipalities and its service providers.

Section 72 of POPI deals with the transfer of personal information outside the borders of South Africa. This section contains 5 conditions on which personal information may be transferred outside the borders of South Africa. One of these conditions must be met before a business may transfer personal information to cloud storage with cloud servers located outside the borders of South Africa.

Briefly, the 5 conditions set by POPI are as follows:

1. the data receiving third party must be subject to a law, binding corporate rules or binding agreement which provide an adequate level of protection that effectively upholds principles of POPI; **or**



3. the transfer must be necessary for the performance of a contract between the data subject and the responsible party, or for the implementation of pre-contractual measures taken in response to the data subject's request; **or**



5. the transfer must be for the benefit of the data subject and it is not reasonably practicable to obtain the consent of the data subject to that transfer; and if it were reasonably practicable to obtain such consent, the data subject would be likely to give it.



2. the data subject must consent to the transfer of personal information outside the borders of South Africa; **or**



4. the transfer must be necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the responsible party and a third party; **or**



If any one of the requirements listed above are met, the relevant personal information may be stored using a cloud service with servers outside the borders of South Africa.

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