

# King III, Privacy & Protection of Personal Information

## COMPLYING WITH THE REQUIREMENTS OF KING III - THE PROTECTION OF PERSONAL INFORMATION

The King Committee on Corporate Governance in South Africa has emphasised the need for companies to ensure that there are systems in place for personal information to be treated by the company as an important business asset and that all 'personal information' processed by the company be identified.

### Overview

King III became effective from the 1 March 2010. All companies are required to apply the King III principles or explain why not and what alternatives have been applied.

The protection of personal information is one of the King III requirements. All companies, regardless of size, are expected to treat personal information as an important business asset. This has wide ranging consequences for any company seeking to apply the King III Code. Current organisational and technical arrangements will have to be changed as few companies in South Africa are following generally accepted practices for the protection of personal information.

Companies are now required to respect the rights of consumers and employees when using personal data and must be mindful of the potential consequences from the misuse and loss of personal data in their hands.

### The Purpose of Protecting Personal Information

In identifying the need for companies to treat personal information as an important business asset, the King Code is following the example already set across Europe, the United Kingdom and the United States where legislation and considerable experience has already been obtained in balancing the rights of individuals with the legitimate needs of business to collect, use and store personal information.

The many advances in information technology are not without a growing number of dangers to business and the rights of individuals. When companies fail to recognise the dangers or do something about them, regulators often step in to protect the interests of the affected parties.

King III is driving the protection of personal information in SA.

### Responding to the King III requirements regarding Personal Information

Personal data is ubiquitous and therefore the King III Code requires systems to be put in place for the management of personal information. These systems should result in proper planning, data models, naming conventions, records management, administration procedures and controlling the processing and secondary processing of data.

Attention must be given to

- ❖ Identifying personal information
- ❖ Staff and customer interaction, consent and objection
- ❖ Data collection and handling methods
- ❖ Access controls, data and resource protection
- ❖ Lawfulness of processing
- ❖ Internal controls over processing and stored data
- ❖ Contracts with service providers
- ❖ Staff awareness and respect for individual rights.

### The Right to Privacy

Section 14 of the Constitution of the Republic of South Africa, 1996, provides that **everyone has the right to privacy**. The right to privacy includes a **right to protection against the unlawful collection**, retention, dissemination and use of personal information.

However few companies have taken steps to ensure that an individual's right to privacy is respected. King III has identified this oversight. Companies planning on applying King III are required to change the way personal information is treated.

### Current best practice for the protection of Personal Information

The European Directive 95/46 is widely regarded as the authoritative source on the protection of personal information. Countries around the world, including South Africa, have modelled their local legislation on this EU Directive.

### The Challenge

Companies are required to ensure that their IT infrastructure and business procedures properly balance the right of companies to use personal data with the individuals' right to privacy.

This means that all personal information must be identified and secured in a manner so that only those with a legitimate business need can access the data and use it only for the stated purpose. Secondary processing is not permitted and must be prevented.

Companies must now make certain that all their formal and informal business, IT and internal processes comply with the necessary procedures for the protection of personal information.

### Privacy differs from Security:

Privacy of information is related to controlling the collection, storage, processing, dissemination and destruction of personal information.

Security focuses on ensuring that information is protected from unauthorised access or manipulation.

The main difference is that privacy is about the protection of persons, not of data. So, every process using personal data, which isn't allowed explicitly, is forbidden.

### Other forms of Privacy

- ❖ personal privacy (e.g. physical and psychological privacy)
- ❖ privacy of space (e.g. freedom from surveillance)
- ❖ privacy of communication (e.g. freedom from monitoring and interception).