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Marine Conference

Treating Customers Fairly (TCF) & Protection of Personal Information (POPI)

**Presented by:
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Agenda

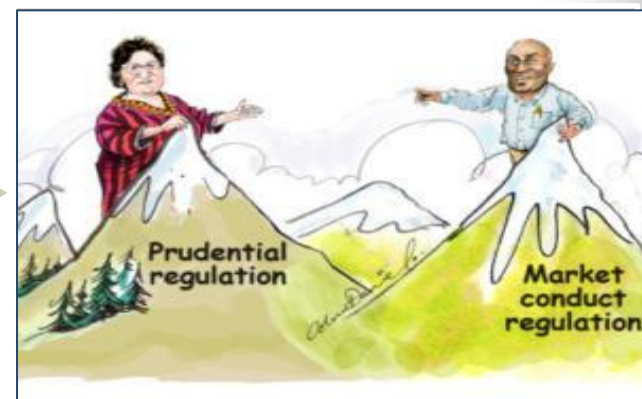
- 1. Legislative background and application**
- 2. Impact on Insurance Industry**
- 3. Enforcement and penalties**
- 4. Questions**



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Legislative background & application





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Legislative background & application (cont.)

- National Treasury published its policy position for financial sector regulation in “A Safer Financial Sector to Serve South Africa Better” – February 2011 Budget Speech.
- **Four policy objectives addressed in this new framework for South Africa:**
 - Financial stability.
 - **Consumer protection and market conduct.**
 - Expanding access through financial inclusion.
 - Combating financial crime.



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Legislative background & application (cont.)

Consumer protection and market conduct

- High fees, and, in some cases, the unfair treatment of customers.
- For savers – particularly the poor and vulnerable, savings instruments are limited, expensive and inappropriate.
- For borrowers – particularly small and medium enterprises, access to credit is often difficult.
- Complaints to the relevant ombuds demonstrated that fees and charges are problematic.
- In insurance industry, abusive charging practices were noted.



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Legislative background & application (cont.)

What have other countries done about market conduct?

South Africa reviewed the market conduct of:

- Australia.
- United States (US).
- Netherlands.
- **United Kingdom (UK).**

- South Africa's market conduct similar to UK.



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Legislative background & application (cont.)

The way forward:

- **The TCF roadmap – published March 2011.**
- **Binder regulations – published 1 January 2012.**

(crucial i.t.o. policy holder protection).

- Twin peaks regulations – “Implementing a twin peaks model of financial regulations in South Africa” – which will be regulated through a prudential (SARB) and market conduct (FSB) regulator – published 1 February 2013 for comment.



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Impact on Insurance Industry

The 6 TCF outcomes. Customers must be confident –

1. TCF must be central to the corporate culture.
2. Products & services marketed and sold in the retail market are designed to meet the needs of the customer.
3. Clear information are provided and that they are kept appropriately informed before, during and after point of sale.
4. Where advice is given, it is suitable and takes account of customer circumstances.



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Impact on Insurance Industry (cont.)

The 6 TCF outcomes. Customers must be confident –

5. Products are meeting expectations and services are of an acceptable standard as they have been led to expect.
6. Customers do not face unreasonable post-sale barriers imposed to change product, switch providers, submit a claim or make a complaint.

Note: These outcomes are to be demonstrably delivered throughout the product life cycle, from product design and promotion, through advice and servicing, to complaints and claims handling – and throughout the product value chain.



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Impact on Insurance Industry (cont.)

Some questions that should be answered under outcome 6:

- If you handle claims, have you tested your process from a TCF perspective?
- Is there a review process in place to test the fairness of repudiations/rejections?
- Do your claims service standards focus on more than just turnaround times?
- **Do you analyse and act on complaints for TCF purposes?**



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Impact on Insurance Industry (cont.)

Not all complaints are claims related but when a complaint occurs it is crucial to analyse all 6 TCF outcomes.

TCF and Complaints Management:

- Formal complaints function should be in place.
- This function must enable complaints to be captured, investigated and resolved.
- Complaints procedures must be in place for the handling of complaints in a fair and timely manner.



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Impact on Insurance Industry (cont.)

- How many complaints did your firm receive yesterday, last week, last month?
- How many complaints were generated by each business area in the past month?
- Who is handling your complaints and what is the process?
- Are you aware of the period of open complaints – e.g. 20 days, 30 days?
- How many complaints are in 'captured', 'investigated' and 'resolved'?
- Do staff, customers and brokers know how to log a complaint?



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Impact on Insurance Industry (cont.)

Why is complaints management fundamental to TCF?

- Good practice and treating customers fairly.
- Record keeping of each complaint and measures to resolve them.
- Ongoing analysis of complaints.
- Protection of the policy holder.
- Others.



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Impact on Insurance Industry (cont.)

What should this complaint management system look like:

One Point of contact

Recording complaints

Resolution of complaints

Root cause analysis

Improvements

Reporting – trends & legislative compliance



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Enforcement and penalties

Top 10 TCF related fines issued by the FSA – 2008 to 2012

Rank	Fine	Firm [Type of firm]	TCF Breach	TCF Outcome
1	R100m	A&L [Bank]	Failure in Tele-sales of PPI	1,2,3,4
2	R50m	Bank of Scotland [Bank]	Mis-handling complaints	5,6
3	R40m	CICA [Insurer]	Risk of unsuitable advice to customers	2,4
4	R40m	GMAC [Bank]	Failure to treat mortgage customers fairly	1,5,6
5	R40m	Scottish Equitable [Insurer]	Poor administrative procedures	5,6
6	R40m	Royal Bank of Scotland [Bank]	Mis-handling complaints	5,6
7	R35m	Standard Life [Insurer]	Mis-leading marketing material	2,3
8	R31m	UK Insurance Limited [Insurer]	Tampering with customer complaints files	1,5,6
9	R21m	Santander [Bank]	Failure to issue clear information on structured products	3
10	R20m	Norwich and Peterborough Building Society [Bank]	Failure to give suitable advice to customers.	4



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Legislative background & application



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SUN	MON	TUE	WED	THU	FRI	SAT
					1	2
* Ministry of Manpower (MOM) will confirm this date						
*3 Deepavali	4 public holiday	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Commencement
date – to be
advised

PROTECTION OF PERSONAL INFORMATION



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Legislative background & application (cont.)

- The lawmaker has sought to balance the right of privacy that's recognised by the Constitution.
- Various needs and interests, like the need for economic and social progress within the context of the information society, and the interest in a free flow of information, both domestically and internationally.



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Impact on Insurance Industry

Who are the role players

Data subject

The person to whom the information relates.

Responsible party

Private or public body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information.



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Impact on Insurance Industry (cont.)

Operator

A person who processes personal information for a responsible party in terms of a contract or mandate, without coming under the direct authority of the responsible party.

Regulator: The Information Protection Regulator established by the Act.



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Impact on Insurance Industry (cont.)

What does processing mean

The definition of '*processing*' – very broad and includes:

- Collecting information.
- Receiving it.
- Storing it.
- Updating it.
- Modifying it.
- Disseminating it.
- Destroying it.



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Legislative background & application (cont.)

The Protection of Personal Information Act aims:

- Regulate the collection and processing of personal information (PI).
- By both private and public bodies, including the State.

Personal information means any information related to a person, such as his/her:

- Name, address and ID number.
- Blood type and fingerprints.
- Educational, medical, criminal or employment history, as well as information pertaining to financial transactions.



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Legislative background & application (cont.)

- Views or opinions and information relating to:
 - Race, gender and sex.
 - Pregnancy.
 - Marital status.
 - Nationality.
 - Ethnic or social origin.
 - Colour.
 - Sexual orientation.
 - Age.
 - Physical or mental health.
 - Well-being.
 - Disability.
 - Religion.
 - Conscience.
 - Belief.
 - Culture.
 - Language.
 - Birth of the person.



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Legislative background & application (cont.)

Information Protection Principles:

The Act sets out eight principles for the processing of PI.

Principle 1: Processing limitation

- PI must be collected directly from the data subject.
- It may only be processed with the consent of the data subject.
- Or where it is necessary to comply with a legal obligation, public law duty or contractual obligation.



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Legislative background & application (cont.)

Principle 2: Specific purpose

- PI must be collected for a specific, explicitly defined and legitimate purpose.
- The data subject should be aware of the purpose for which the information is collected, and who the likely recipients of the information will be.

Principle 3: Further processing limitation

- PI may not be processed further in a way that is incompatible with the purpose for which the information was collected initially.



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Legislative background & application (cont.)

Principle 3 (continued)

- If information was processed for the purpose for which it was collected, it may only be processed further if it can be shown that the purpose for the further processing is compatible with the original purpose.

Principle 4: Information quality

The responsible party must take reasonably practicable steps to ensure that the information is:

- Complete.
- Accurate.
- Not misleading.
- Updated where necessary.



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Legislative background & application (cont.)

Principle 5: Openness

Where PI of a data subject is collected, the person or institution responsible for such collection must ensure that the data subject is aware of:

- The fact that the information is being collected.
- The name and address of the person or institution collecting the information.
- Whether or not the supply of the information by that data subject is voluntary or mandatory.
- The consequences of failure to reply.
- Where the collection of information is authorised or required under any law, the particular law to which the collection is subject.



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Legislative background & application (cont.)

Principle 6: Security Safeguards

- The Act requires the implementation of technical and organisational measures to secure the integrity of PI, to guard against the risk of loss, damage or destruction of PI.
- PI should be protected against any unauthorised or unlawful access or processing.

Principle 7: Individual Participation

- A data subject is entitled to the particulars of his or her PI held by any institution or person.
- As well as to the identity of any person that had access to his or her PI.



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Legislative background & application (cont.)

Principle 7 (continued)

- The data subject is also entitled to require the correction of any information held by another party.

Principle 8: Accountability

- The party or institution that holds PI must ensure compliance with the Act.
- The Commission may authorise the **processing of PI where it will be in the public interest**, or where there is a clear benefit for the people concerned.



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Legislative background & application (cont.)

The '**public interest**' as referred to here may include:

- Interests of State security.
- The prevention, detection and prosecution of criminal offences.
- Important economic and financial interests of the State and other public bodies.
- Scientific research and government statistics.



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Impact on Insurance Industry (cont.)

Exclusions

POPI does not affect the processing of personal information:

- In the course of a purely personal or household activity.
- That has been deleted to the extent that it can't be resurrected.



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Impact on Insurance Industry (cont.)

Exclusions (continued)

- By or for the State, if it involves national security, defence, public safety, or the prevention of crime.
- For exclusively journalistic purposes, by media companies that are subject to a code of ethics that has safeguards for the protection of personal information.
- By Cabinet, Provincial Executive Councils and Municipal Councils.
- If it relates to the exercise of judicial functions.
- If it has been specifically exempted.
- In cases where other legislation regulates the processing of that information.



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Impact on Insurance Industry (cont.)

The Regulator

- POPI creates an '*Information Regulator*'.
- The Regulator:
 - Who will be independent and subject only to the Constitution.
 - Will be responsible for, amongst other things, promoting, monitoring and enforcing compliance with the provisions of POPI on a national level.
 - Will have the power to investigate complaints.
- The Regulator will also have the power to draft or approve category-specific or industry-specific codes of conduct.



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Impact on Insurance Industry (cont.)

The Regulator (continued)

- Once a code of conduct has been created, it will regulate the processing of information within that category or industry.
- A failure to comply with a code will be deemed to be a breach of the conditions for the lawful processing of personal information.



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Impact on Insurance Industry (cont.)

Practical application of POPI in Insurance:

1. Permission

- Tacit consent from customer for underwriting purposes.
- Collection of personal information only if the information is used for a legitimate reason and consent is obtained.
- Amend applications for insurance to require consent.
- Consent must be extended.



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Impact on Insurance Industry (cont.)

1. Permission (continued)

- Information to intermediary only used for the purpose it was provided for.
- Requirements for compliance with POPI, the same for Insurer, binder holder, intermediary and outsource provider.

2. Systems

- Current systems in place.
- Beef up existing security measures.

3. Direct Marketing

- Personal information databases used for direct marketing.



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Impact on Insurance Industry (cont.)

4. Compliance Costs

- Compliance costs will increase.

5. POPI rights and obligations

- Information Officer.
- Acquaintance with process of Regulator.



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Enforcement and penalties

Enforcement

- The data subject may lodge a complaint with the Regulator.
- The Regulator may try and secure settlement.
- If no settlement possible, the Regulator may initiate investigation.
- If breach, the Regulator may issue enforcement notice.
- Data subject/Regulator may sue responsible party for damages.



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Enforcement and penalties (cont.)

Enforcement (continued)

- Uncertain what amounts would be awarded, but court would be entitled to award:
 - Payment of damages as compensation.
 - Aggravated damages.
 - Interest.
 - Legal fees.



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Enforcement and penalties (cont.)

Offences and Penalties

1. Offences:

- Obstructing or unlawfully influencing the Regulator.
- Breach by persons acting for Regulator of duty of confidentiality.
- Failure to comply with enforcement notice.
- Making false statements.



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Enforcement and penalties (cont.)

2. Penalties

- Any person convicted of an offence in terms of POPI may be liable for a fine or to imprisonment, for a period not exceeding 12 months/10 years or both the term of which will depend on the contravention.
- Administrative fines up to R10 million may also be applicable in certain cases.



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Enforcement and penalties (cont.)

- Zurich insurance fined £ 2.3 million over customers data loss and failed to take reasonable care to insure that it had effective systems and controls to manage the risks relating to the security of customer data resulting from the outsourcing arrangement.
- The data on policy holders including in some cases bank account and credit card information, went missing in August 2008.

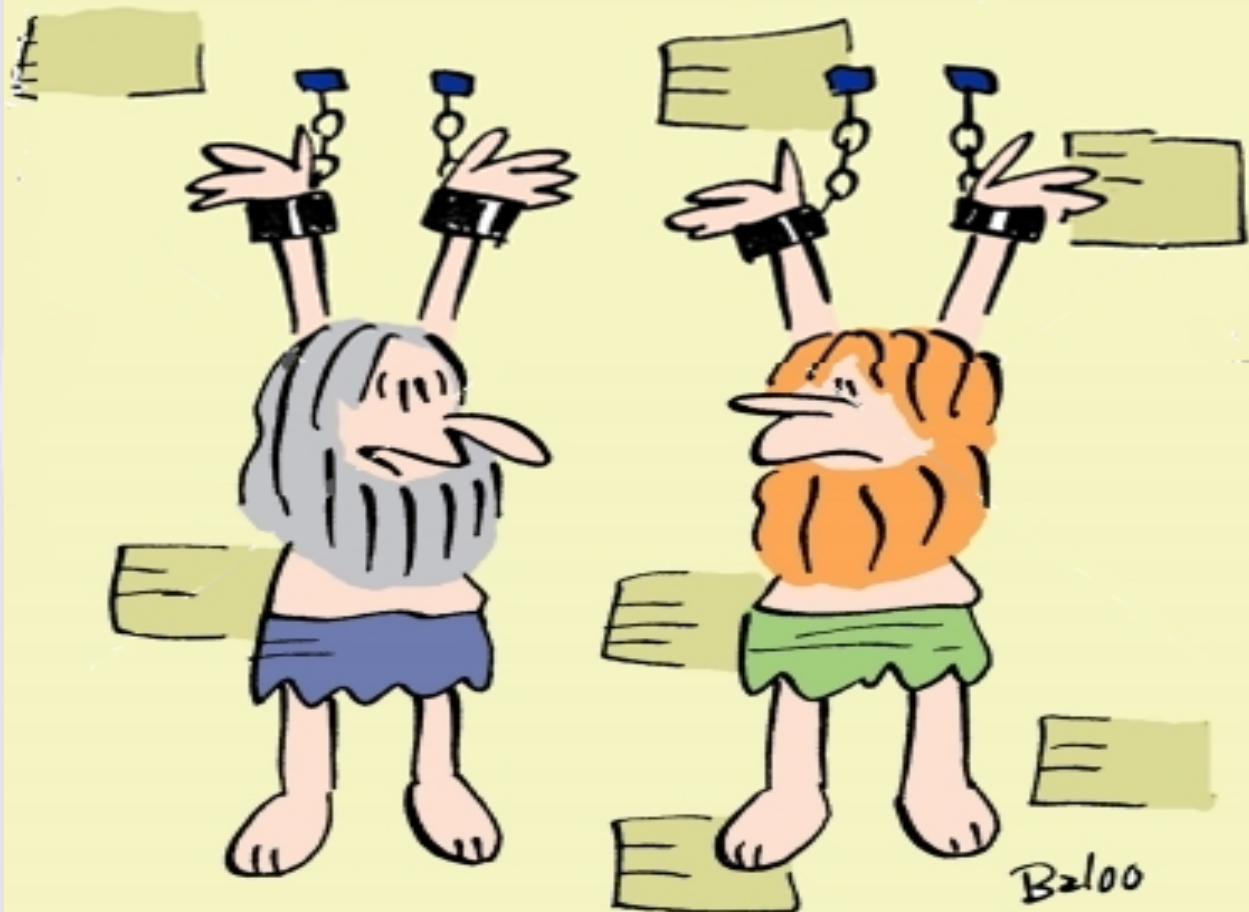


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**"I'VE BEEN HERE SO LONG I
DON'T REMEMBER WHAT I DID,
BUT IT HAD SOMETHING TO
DO WITH NON-COMPLIANCE."**





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