

## **Data retention Policy for the Office in Stellenbosch (Pty) Ltd**

**(“The Office”)**

### **Data Retention**

#### **Definitions**

**“Data subject”** (you, our client)

**“responsible party”** (we, The Office)

In terms of POPIA, records of personal information must not be retained any longer than is necessary for achieving the purpose (for as long as you are our client) for which the information was collected or subsequently processed by **The Office**.

#### **Unless:**

- Retention of the record is required or authorised by law (as in the Companies Act 71 of 2008, the Financial Intelligence Centre Act 38 of 2001, the Tax Administration Act 28 of 2011, the Income Tax Act 58 of 1962 and the Value Added Tax Act 89 of 1991); or
- **The Office** reasonably requires the record for lawful purposes related to its functions or activities; or
- Retention of the record is required by a contract between the parties thereto; or
- The data subject or a competent person, where the data subject is a child, has consented to the retention of the record.

#### **Section 24 of the Companies Act 38 of 2008 states that-**

(1) Any documents, accounts, books, writing, records or other information that a company is required to keep in terms of this Act or any other public regulation must be kept—

(a) in written form, or other form or manner that allows that information to be converted into written form within a reasonable time; and

(b) for a period of seven years, or any longer period of time specified in any other applicable public regulation, subject to subsection (2).

(2) If a company has existed for a shorter time than contemplated in subsection (1)(b), the company is required to retain records for that shorter time.

**Section 23 of the Financial Intelligence Centre Act 38 of 2001 states that**

An accountable institution must keep the records referred to in section 22 which relate to—

(a) the establishment of a business relationship, for at least five years from the date on which the business relationship is terminated;

(b) a transaction which is concluded, for at least five years from the date on which that transaction is concluded.

**Section 29 of the Tax Administration Act No 28 of 2011, contains the general record retention requirements for all Acts administered by the Commissioner.**

**Section 29 states that:**

(1) A person must keep the records, books of account or documents that—

(a) enable the person to observe the requirements of a tax Act;

(b) are specifically required under a tax Act; and

(c) enable SARS to be satisfied that the person has observed these requirements.

(2) The requirements of this Act to keep records for a tax period apply to a person who—

(a) has submitted a return for the tax period;

(b) is required to submit a return for the tax period and has not submitted a return for the tax period; or

(c) is not required to submit a return but has, during the tax period, received income, has a capital gain or capital loss, or engaged in any other activity that is subject to tax or would be subject to tax but for the application of a threshold or exemption.

(3) Records need not be retained by the person described in—

(a) subsection (2)(a), after a period of five years from the date of the submission of the return; and (b) subsection (2)(c), after a period of five years from the end of the relevant tax period.

In addition to the records required in the Tax Administration Act, the **Income Tax Act 58 of 1962**, requires tax payers to keep documents in their original form or electronic format as prescribed by die Commissioner. The retention periods for specific documents are 5 years (from date return received from Commissioner).

In addition to the Tax Administration Act, the **Value Added Tax Act, no 89 of 1991** requires VAT vendors to keep documents either in a book form or in any other form. The retention periods for specific documents are 5 years (i.e. if in book form, 5 years after the completion of the last entry; if in any another form, 5 years after the completion of the last transactions to which it relates).

Notwithstanding these exceptions, records of personal information may be retained for periods in excess of these mentioned for historical, statistical, or research purposes if **The Office** has established appropriate safeguards against the records being used for any other purposes.

**If The Office has used a record of personal information of a data subject to make a decision about the data subject, we must—**

1. retain the record for such period as may be required or prescribed by law (as according to the Companies Act 71 of 2008, the Financial Intelligence Centre Act 38 of 2001, the Tax Administration Act 28 of 2011, the Income Tax Act 58 of 1962 and the Value Added Tax At 89 of 1991)

**When must The Office destroy or delete a record of personal information or de-identify it:**

As soon as reasonably practicable after we are no longer authorised to retain the record in terms of the above. The destruction or deletion of a record of personal information must be done in a manner that prevents its reconstruction in an intelligible form.

**The Office must restrict processing of personal information if—**

1. its accuracy is contested by the data subject, for a period enabling us to verify the accuracy of the information;
2. we no longer need the personal information for achieving the purpose for which the information was collected or subsequently processed, but it has to be maintained for purposes of proof;
3. the processing is unlawful and the data subject opposes its destruction or deletion and requests the restriction of its use instead; or
4. the data subject requests to transmit the personal data into another automated processing system.

The above personal information may, with the exception of storage, only be processed for:

- purposes of proof; or
- with the data subject's consent; or
- with the consent of a competent person in respect of a child; or
- for the protection of the rights of another natural or legal person or if such processing is in the public interest.

Where processing of personal information is restricted in accordance with the above, we must inform the data subject before lifting the restriction on processing.