

VAN WYK VAN HEERDEN INCORPORATED t/a VAN WYK VAN HEERDEN

POPIA COMPLIANCE POLICY (JUNE 2021)



VAN WYK VAN HEERDEN INCORPORATED t/a VAN WYK VAN HEERDEN

(REGISTRATION NUMBER: 1995/003663/21)

(Hereinafter referred to as “Van Wyk Van Heerden” or “the company”)

MANUAL IN TERMS OF THE PROTECTION OF PERSONAL INFORMATION ACT 4
OF 2013

(hereinafter referred to as “The Act”)

PURPOSE OF THIS DOCUMENT:

Van Wyk Van Heerden is committed to protecting the privacy of Staff, Clients and Shareholders and will adhere to strict compliance with the Act. This manual sets out the privacy policy of Van Wyk Van Heerden and provides user-friendly guidelines.

COMPANY PARTICULARS

Full name	:	VAN WYK VAN HEERDEN INCORPORATED t/a VAN WYK VAN HEERDEN
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1. Interpretation

1.1 Interpretation

In this document the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this document;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender-neutral or gender-specific include each gender
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings
- (e) the words “such as”, “including”, “particularly” and similar expressions are not used as, nor are intended to be interpreted as, words of limitation
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate
 - (ii) a party includes its agents, successors and permitted assigns
 - (iii) a document includes all amendments or supplements to that document
 - (iv) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this document;
 - (v) this document includes all schedules and attachments to it

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- (vi) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced
- (vii) a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it
- (viii) an agreement other than this document includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing
- (g) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document or any part of it
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day
- (i) in determining the time of day where relevant to this document, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located
 - (ii) for any other purpose under this [deed/agreement], the time of day in the place where the party required to perform an obligation is located
- (j) a day is the period of time commencing at midnight and ending immediately before the next midnight is to occur;

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- (i) if a period of time is calculated from a particular day, act or event (such as the giving of a notice), it is to be calculated exclusive of that day, or the day of that act or event
- (k) If there is any conflict between the body of this document and its schedules and/or attachments the terms of the main body of this document will prevail.

2. The Purpose of Processing Personal Information

The purpose of the Act is:

- to promote the protection of personal information processed by public and private bodies;
- to introduce certain conditions so as to establish minimum requirements for the processing of personal information;
- to provide for the establishment of an Information Regulator to exercise certain powers and to perform certain duties and functions in terms of this Act and the Promotion of Access to Information Act;
- to provide for the issuing of codes of conduct;
- to provide for the rights of persons regarding unsolicited electronic communications and automated decision making;
- to regulate the flow of personal information across the borders of the Republic;
- and to provide for matters connected therewith.

"Processing" means:

- Any operation or activity whether or not by automatic means concerning personal information including the collection, receipt, recording, organisation,

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collation, storage, updating or modification, retrieval, alteration, consultation or use.

- Dissemination by means of transmission, distribution or making available in any other form.
- Merging, linking as well as restriction, degradation, erasure or destruction of information.

The company will utilise the Personal Information in its care in the following ways:

- To set up a client profile on its electronic data base and to provide legal advice pertaining to various issues to its clients;
- To request consent from Data Subjects to process their personal information and/or distribute their personal information to third parties for specified purposes;
- To notify Data Subjects whenever their personal information is being distributed to third parties, and/or used for marketing purposes;
- To provide Data Subjects the opportunity to opt-out of further marketing and business-related communications (i.e.: direct marketing) and/or the processing and/or further distribution of their personal information;
- To process business-related communications to data subjects whose personal information has been acquired through the purchasing of products or use of services;
- To protect the legitimate business interests of a Data Subject and any Third Party to whom such information was supplied;

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3. Application and Interpretation of the Act

This Act applies to the processing of personal information by the company which is entered into an electronic record which consists of software such as Ghost Practise, Microsoft Excel, Microsoft Word, and Lexis Convey.

The processing of personal information occurs whenever a Data Subject provides personal information to the company in order for it to deliver a service.

This Act applies to the exclusion of any provision of any other legislation that regulates the processing of personal information and that is materially inconsistent with an object, or a specific provision, of this Act. If any other legislation provides for conditions that are more extensive, the extensive provisions will prevail.

4. Categories of Data Subjects and their Personal Information collected by the company

A “data subject” is defined by the Act as the person to whom the personal information relates. Van Wyk Van Heerden may process records relating to its Staff, Clients, Shareholders, Directors and Third-Party Operators (hereinafter referred to as “Data Subjects”).

TYPE OF DATA SUBJECT	PERSONAL INFORMATION PROCESSED
Shareholders	Physical and postal addresses; contact details; financial information such as account details, credit reports, asset and liabilities statements, bank statements etc; and tax-related information.
Directors	Physical and postal addresses; contact details; financial information such as account details, credit reports, asset and liabilities statements, bank statements etc; gender; age; pregnancy; marital status and tax-related

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	information; loan accounts; equity; remuneration packages; financial details; identification number; location information; banking details; confidential correspondence; email, name; contact details; mailing lists for bulk communication services.
Staff	Gender; pregnancy; marital status; age; education information; criminal record; financial information such as account details, credit reports, etc; employment history; id number; physical and postal addresses; contact details; financial details; identification number; location information; banking details; confidential correspondence; email; name; mailing lists for bulk communication services.
Clients	Physical and postal addresses; contact details; financial information such as account details, credit reports, asset and liabilities statements, bank statements, credit references etc; registration number; tax-related information, correspondence, information of their directors and shareholders (if a legal entity); financial details; identification number; location information; confidential correspondence; email, social networks; name; contact details; mailing lists for bulk communication services.
Third-Party Operators	Physical and postal addresses; contact details; financial information such as account details, credit reports, asset and liabilities statements, bank statements, credit references etc; registration number; tax-related information, correspondence, information of their directors and shareholders; identification number; location information; banking details; confidential correspondence;

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	email, social networks; mailing lists for bulk communication services.
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The company collects the aforesaid information to build a profile on its Data Subjects and to deliver satisfactory service to him/her/it. This is done by providing the company with the necessary personal information (as mentioned above) in order to render associated services.

5. Lawful Processing of Personal Information

The responsibilities of the company are to adhere to the 8 (eight) conditions that the Act sets out and entails the following:

5.1. Accountability

- 5.1.1. This condition entails that the company ensures that the Act is given effect in its day-to-day business operations.
- 5.1.2. The company confirms that it will be held liable if it breaches any of the applicable sections in this Act and that Consumers have the right to notify the Information Regulator if any misconduct is evident.

5.2. Processing Limitation

- 5.2.1. The company acknowledges that there are limitations in place to ensure that the processing of a Data Subject's information is lawful and limited.
- 5.2.2. The processing of personal information is lawful as a Data Subject is always notified and made aware of any personal information that is being collected and that it is done in a reasonable manner that does not infringe the privacy of the Data Subject.
- 5.2.3. A Data Subject is made aware that their consent for the processing of personal information can at any time be withdrawn by way of "opting out" of further direct marketing of business-related services. Furthermore, a Data Subject is notified that they may object to the

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processing of such personal information unless legislation makes provision for the lawful processing thereof.

- 5.2.4. The Data Subject is made aware that this company frequently shares personal information pertaining to its Data Subjects to Third Party Operators in so far as it is reasonably required to render legal services in accordance with the mandate provided by the Client.

5.3. Purpose Specification

- 5.3.1. The company notifies the Data Subjects of the purpose of collecting personal information.
- 5.3.2. The personal information of a Data Subject is stored in archives after such file is closed and will be kept for a period of at least 7 (seven) years and is thereafter destroyed.
- 5.3.3. The company indicates to its Data Subjects that their information will only further be kept for statistical, historical and research purposes provided there are proper safeguards in place to protect the personal information.

5.4. Further Processing Limitation

- 5.4.1. The company warrants that personal information will not be processed in a manner that is incompatible with its original purpose.
- 5.4.2. The further processing of personal information is not incompatible with the purpose of its collection if the Data Subject has consented to the further processing of such information.
- 5.4.3. The company ensures that personal information will not be published in an identifiable form and that further processing is in line with the exemptions in terms of section 37.

5.5. Information Quality

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5.5.1. The company takes reasonably practicable steps to ensure that the personal information is complete, accurate, not misleading and updated where necessary.

5.6. Openness

5.6.1. The company has a PAIA Manual (see PAIA Manual June 2021) with a request form which the Data Subjects can complete in order to determine what personal information is being held and to request access to such information;

5.6.2. This condition is adhered to in that a Data Subject is always informed of the personal information that is being collected, and the purpose for its collection.

5.7. Security Safeguards

5.7.1. The company applies appropriate, reasonable, technical, and organisational steps as is envisaged by section 19 of the Act.

5.7.2. The company has the necessary safeguards in place for the protection of personal information.

5.8. Data Subject Participation (Sections 23 and 25)

5.8.1. The Data Subject may require access to any personal information (see PAIA Manual June 2021), and/or its correction or deletion. This may occur at a prescribed fee and a copy of the information that the company has in their possession. The information must be provided in a reasonable format and in a manner that is understandable. The Data Subject may contact the Information or Deputy Information Officer appointed herein for such information.

5.8.2. The Data Subject may request that outdated or incorrect information be updated or may request its deletion if, for instance, the company is not authorized to process it. The company must investigate and

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follow the Data Subject's instruction relating to its update or deletion unless there are lawful grounds indicating otherwise. The deletion or amendment and/or refusal will be provided in writing within 7 (seven) days of the written request.

- 5.8.3. The company must inform the Data Subject of its actions taken, and if a dispute arises the parties must reach an agreement, failing which either party may refer the matter to the Information Regulator.
- 5.8.4. All data subjects affected due to a change in information must be informed.
- 5.8.5. If you cease to be a client of the company, it will delete your personal information, except for statistics and records which will be stored in a de-identified and aggregated manner.
- 5.8.6. After cancellation, invoices are archived for up to 7 years. Cancelled accounts will be archived and classified as such.

6. Prior to Collection of Personal Information

Van Wyk Van Heerden must inform the Data Subjects of the:

- 6.1. Purpose of the collection of information;
- 6.2. Information required in order to fill out the necessary documents to provide a service to such Data Subject;
- 6.3. The information which is voluntary (consent) and information which is mandatory (justification or authorization);
- 6.4. Source of data acquisition by the Data Subject or Third Party;
- 6.5. Consequences of a failure to provide the information;
- 6.6. Recipients of such information;
- 6.7. Category of information;
- 6.8. Credit and reference checks being done;
- 6.9. Name and address of Van Wyk Van Heerden;
- 6.10. Transfer of information to another country and the security provided pertaining to such information (if any);

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- 6.11. Right of access to information (see PAIA Manual June 2021);
- 6.12. Right to object to the processing of certain information;
- 6.13. Right to complain to the Information Officer or Deputy Information Officer regarding any breach or malpractice in terms of the Act, or to apply to a court or the information regulator (see PAIA Manual June 2021);

7. Information that may not be collected by the company

- 7.1. In accordance with Sections 26 and 27 of the Act, the following information will not be processed:
 - 7.1.1. Religious or philosophical beliefs of the Data Subject;
 - 7.1.2. Race or ethnic origin of the Data Subject;
 - 7.1.3. Trade union membership;
 - 7.1.4. Political persuasion;
 - 7.1.5. Health or sex life;
 - 7.1.6. Biometric information;
 - 7.1.7. Alleged criminal offences.
- 7.2. The abovementioned list will not apply if:
 - 7.2.1. Consent is given by the Data Subject;
 - 7.2.2. It is justified in terms of law or is required for the protection of a right;
 - 7.2.3. Processing is for historical, statistical or research purposes in the public interest or consent cannot be obtained, and safeguards are provided to prevent a breach of the right to privacy;
 - 7.2.4. Information has become public knowledge due to the intention of the Data Subject;
 - 7.2.5. The Information Officer has authorized the process; or
 - 7.2.6. Sections 28 and 33 have been complied with (the specific authorization provisions).

8. Trans-border flows of Personal Information

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Section 72 regulates transborder transfers of Personal Information. In the event that it shall become necessary or be deemed necessary for the company to enter into transborder transfers of personal information, the company will only do so by acquiring the required consent from Data Subjects and otherwise complying with the precepts of this document, as well as ensuring that the transfer is necessary for the performance of the agreement between the company and the Data Subject.

Van Wyk Van Heerden warrants that it will only enter into transborder transfers of personal information in a manner that is compliant with the conditions for the lawful processing of personal information, and any other applicable domestic or international legislation.

9. Security Measures

The company places emphasis on the importance of security measures when processing personal information by notifying Data Subjects that personal information may not be collected and processed without their consent. Furthermore, that such information will not be distributed to any Third Party, unless the necessary consent is given, and undertaken for a specified purpose:

Van Wyk Van Heerden utilises:

- Third-party operators who are POPIA compliant;
- Firewalls;
- Only authorised laptops can access the files on the company's server and cloud;
- Virus protection software and updated protocols;
- Physical access control such as passwords;
- On-premises security systems such as locked cabinets, locked doors, alarm system, and a safe;

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- Regularly updating the financial accounting software such as Ghost Practise;
- Password management best practice and routine password changes;
- All Staff members ensure that callers to the office or other unauthorised persons are unable to view personal or sensitive information, whether held on paper documents or information displayed on PC monitors, etc;
- All staff members that have access to personal information of Data Subjects ensure that their PCs are logged off or “locked” when left unattended for any period of time;
- Access privileges on a scaled “Need-to-know” basis and further limitations on outright access;
- The company shreds all discarded paper records that contain confidential information;
- Fax machines are not used for transmitting documents containing personal data.

10. Security Breach

In the event of a security breach as mentioned by section 12 of the Act, the company will report to the Information Regulator that:

- 10.1.** a data breach of personal information has occurred; or
- 10.2.** a reasonable belief exists that this has occurred, or
- 10.3.** an unauthorised person has acquired or assessed personal information regarding the Data Subject.

In the event that a security breach does occur, the company will immediately, or as soon as be reasonably possible after the breach, communicate the event to the Data

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Subject. The company will then notify the Information Regulator immediately, or as soon as is reasonably possible after the discovery of the breach.

11. Remedies Available if Request for Personal Information is Refused

Should a request for access to personal information be refused:

- 11.1.** See the PAIA Manual June 2021 for a prescriptive guideline on Requests for Access to Information in terms of PAIA;
- 11.2.** Within 10 days of receipt of rejection of such notice, the Requester may apply to the Information Office to review such decision;
- 11.3.** The request should clearly state the grounds for such review;
- 11.4.** Should the Information Officer fail to provide the documents as envisioned, the Requester may report the matter to the Regulator at info@vwwh.co.za.