

Overlap Matrix | South Africa | Direct Marketing

To help you identify what is relevant and determine what prevails

- The marketing principle is down the left-hand side and the laws, rules and codes along the top relating to direct marketing in South Africa.
- A column has been added for "Other" in cases where we have influences from other laws including foreign law guidance.
- **Note:** If there is an inconsistency between POPIA and another law, POPIA applies or prevails. However, if the other law provides greater protection that law will prevail.
- This is a generic document that is not specific to any one organisation. You will need to adapt it for your specific requirements within the Direct Marketing Industry.
- This matrix is by no means exhaustive. There will be codes that apply that are specific to your industry that you must also look to. This matrix will develop over time. If you notice any inconsistencies, please let us know.
- Version 1.1

LEGISLATION

	Constitution	CPA	POPIA	ECTA	RICA	Other
PRINCIPLES OF MARKETING:						

Outcome 1: Growth Created (Principle 1- 4)

Manage the relationship with others	Section 14 - right to privacy	Section 11	<p>Justifications for processing personal information include:</p> <p>Consent from the data subject.(s11(1)(a))</p> <p>Processing to conclude or perform in a contract.</p> <p>Processing is an obligation on the responsible party by law.</p> <p>Processing protects a legitimate interest of the data subject.</p> <p>Processing is necessary to pursue a legitimate interest of the responsible party or a third party. (s11(1))</p>	<p>A responsible party must have the express written permission of the data subject to process or disclose a data subject's personal information (s51(1))</p> <p>A responsible party may process personal information if a law permits or requires this.</p> <p>Marketers can only electronically process personal information for a lawful purpose (s51(2)).</p>	<p>Collecting directly from the data subject: interception of communication by a party to the communication (s4)</p> <p>These sections prohibit telecom service providers and their employees from providing real-time or archived communication-related information and also include exceptions (s12 – s15)</p> <p>The telecom service provider must obtain information from the person (customer)</p>	
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			Collect personal information directly from the data subject (s12).		they intend to enter into a contract (s39(c)) s42	
Understand the need						
Process information responsibly		Right to fair and responsible marketing - (s29 - 39)	s17 and 19 Marketers must ensure that the conditions are complied with at all stages of the processing process. (s8)			Foreign Law guidance and influence
Practice good governance			Appointment of a Information Officer.			King IV TM ; Foreign Law guidance and influence
Outcome 2: Value Received (Principle 5 - 8)						
Define the target		Identify who are prospects and who are customers. The lists must be able to be segmented.				
Use the right channel						
Obtain the consent where necessary	Section 14 (d)	s11(1)(c)	s10(1) s66(1)(a) You can only collect and use personal information if you have consent from the consumer. You may be able to rely on the 'legitimate interest' subsection.			Foreign Law guidance and influence relating to consent
Adopt good universal marketing practices	Section 9 - right to equality Section 32 - right to access of information.	s29 to prevent Being misleading, fraudulent or deceptive when advertising.	s 11 Data subjects need to be informed that their information is being collected.	A supplier using an electronic transaction to offer goods or services must make the following information	Inform a person in advance who intends to use the communication system concerned that indirect communications may	Children's Act s127(3) PAIA makes provision for the

		Right to information in plain and understandable language (s22)	They need to know the purpose of the collection and consequences of failing to provide information. A person can also consent to the non-compliance of s 18(1). (ss17 & 18)	available to consumers: the security procedures and privacy policy regarding payment, payment information and personal information (s43(1)(p))	be intercepted (s6(2)(d)) s7(2) – (6) Information to be provided to customers by electronic communication service providers (62B)	right to access to information.
Outcome 3: Consumers Respected (Principle 9 - 12)						
Exclude disinterested people		What is important to note with this section is that it applies to parties that 'authorise, direct or conduct' and so is applicable to all parties involved in direct marketing. This section makes all those involved in the direct marketing process responsible to ensure that a) That all these parties have systems in place to deal with opt-out requests and b) people who have opted out are not contacted.	A responsible party needs to take proper steps to ensure that the personal information is complete, accurate, not misleading and updated where necessary (s16).			DMA National OPT OUT Service
Allow people to opt out		The basic right to an 'opt-out' clause s11(2). You must have a means of handling opt-out requests in order to be compliant. Must be read with s 11(4).	s10(2) s69 - unsolicited electronic communications.	s45 relating to unsolicited goods, service or communications. (for electronic transactions only).		Opt-out registers and databases. DMA National OPT OUT Service
Use appropriate tools			Secure integrity and confidentiality (s19)	s45 relating to unsolicited goods, service or communications. (for	s 7, s8, s10, s11, s40(4)(iii), s43(b)	Children's Act s22(2) s232(2) and (3)

			Information processed by an operator or authorised person (s20) Security measures for information processed by an operator (s21) Notification of security compromises (s22) s11(3)(b) and 69(3)(c)	electronic transactions only).		
Protect children	Section 28 - the right to protect children.		s26, 27, 34, 35 and 37 s34 prohibits the processing of children's personal information subject to s35 exceptions. The exceptions to processing children's information are more limited than the general exceptions in s11 and s32(1)(a) and (b).			The Children's Act defines 'child'.
Outcome 4: Disputes Resolved (Principle 13 - 16)						
Try to resolve disputes themselves	Section 38 – Enforcement of rights	s70 - provides a dispute resolution procedure for consumers and suppliers. s82 - Industry Codes. The Consumer Tribunal has a complaints procedure in place where consumers can lodge their complaints: https://www.thedti.gov.za/agencies/ncc.jsp	The Information Regulator will have a complaints procedure for data subjects who believe their personal information is being processed unlawfully. http://www.justice.gov.za/infor eg/			Industry Bodies provide complaint mechanisms to ensure the complaints do not go directly to the Regulators.
Agree to mediation by the DMASA		s83 and 84 - National Consumer Protection Institutions	The Information Regulator will have a procedure in place.			Other ADR agents like AFSA:

			This will be updated when the Information Regulator is functioning fully.			http://www.arbitration.co.za/pages/default.aspx
Submit to the relevant regulatory authority or court	Section 18 – right to freedom of association	s93 - Development of Codes of Practice	s62 - Code of Conduct			
Learn and always strive to improve		s77 - 78 Civil society support for consumers rights				Marketers must be aware of the laws that apply to them at all times.