



**Flight Centre Travel Group**

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**FCM's role as a *responsible party* for purposes of the Protection of Personal Information Act 4 of 2013**

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## *The role of FCM as a responsible party*

This white paper sets out how and why FCM Travel Solutions operate as a *responsible party* for the purposes of the Protection of Personal Information Act 4 of 2013 (POPIA) when processing the personal information of our clients' and clients' employees in South Africa. It was produced as part of our ongoing data protection review process, led by our internal data protection and legal teams.

## *Defining responsible parties and operators under POPIA*

The roles of 'responsible party' and 'operator' are defined within Chapter 1 of POPIA. A responsible party is an individual or entity which alone or in conjunction with others determines the purpose of and means of processing personal information. An operator means a person who processes personal information for a responsible party in terms of a contract or mandate, without coming under the direct authority of that party. It is important to note that an organisation will be a responsible party or an operator in respect of each of its processing functions as a matter of objective fact, irrespective of how it might have labelled itself. Simply contracting as an operator does not make an organisation an operator.

To place the concept of *determining the purpose of and means for processing* in context, essentially responsible parties are the decision makers in the processing of personal information, whereby an operator does not have a purpose of their own for processing that information. Rather, operators act on behalf of, and only on the instructions of, the responsible party. It is the responsible party who makes overarching

decisions, such as what types of personal information to collect and the purpose(s) for which the personal information will be used. While an operator will be responsible for ensuring the information security measures referred to within POPIA are implemented, they will not take these key decisions.

## *FCM acting as the responsible party by determining the purpose of and means for processing*

On an objective assessment of both the data processing operations undertaken by FCM and the decisions taken by FCM, either alone or in conjunction with others, when determining the purpose of and means for processing personal information it is clear we are operating as a responsible party when providing corporate travel services. A selection of these factors is set out below along with the justifying rationale based on the business processes designed and implemented by FCM.

- *FCM decides both to collect and process the personal information, as well as the purpose or outcome of the processing itself.*

The service offerings provided by FCM are ultimately determined solely by FCM, and in this regard we are deciding the purposes of the personal information processing we undertake. Mandatory personal information elements required to be provided before we can offer contracted corporate travel services to clients and their employees are also set by FCM. Finally, the development of our technical offerings such as online booking tools, including their functionality and information processing requirements, is also determined solely by FCM.

- *FCM decides what personal information should be collected.*

To provide corporate travel services, FCM sets the mandatory minimum data elements to be provided for all travellers that are prerequisites for setting up each traveller's profile; these being first-name, last-name and a unique identifier (such as email address). While additional personal information elements are optional for the traveller to provide (e.g. emergency contacts, special assistance requirements, meal preferences, frequent flyer programmes, etc.) the data elements themselves are options set by FCM.

- *FCM makes decisions about the individuals concerned as part of or because of the processing.*

The provision of global travel services utilising a massive network of third-party suppliers with a vast range of options, while operating within the constraints of the client's travel policy, is a complex and specialised endeavour. It involves FCM staff constantly making independent decisions over the processing of each traveller's personal data to ensure the contracted services are provided to them.

- *FCM exercises professional judgement in the processing of the personal information.*

While a client may develop their travel policy (i.e., the travel rules they want enforced for their employees), both the client and their travellers are relying upon the expertise of FCM staff to ensure the application and smooth operation of this policy. Indeed, the true value-add provided by FCM's corporate travel offerings is the professional judgement and expertise of our staff, enabling clients to realise saving and their staff to enjoy frictionless travel.

- *FCM has a direct relationship with the travellers (data subjects).*

Our account managers and booking teams for corporate clients directly manage both the relationship with the clients' representatives, but they also deal directly with the travellers (being the data subjects). This is to book travel services for those travellers who choose to make off-line bookings (i.e., bookings made outside of online booking tools), to providing travel advice and to troubleshoot any issues that may arise at any point from booking through travel and post-trip.

- *FCM has appointed operators to process personal information on our behalf.*

The establishment of a network capable of providing global travel services to clients, ranging from micro-enterprises through to multinational conglomerates, would not be possible without the involvement of third-party suppliers. Given travel services often require the transfer of personal information, it is unavoidable that some of these vendors will be operators of FCM. Each operator appointed by FCM are subject to our strict due diligence processes, thereby ensuring the requirements for our operators under Condition 7 of POPIA are met.

### ***FCM provides contracted travel services for clients as a responsible party***

The fact that our corporate businesses process personal information in the performance of contracted travel services for clients does not negate our status as a responsible party. This is because a service relationship does not, in and of itself, mean that the service provider is an operator. Whether an entity is operating as a responsible party or operator under POPIA is

a determination of fact whereby the overall context of the processing activities and relationships must be evaluated. Based on the contextual analysis of the factors set out above, FCM is a responsible party in respect of the information it processes in its corporate businesses regardless of the fact we are providing contracted services to clients.

In addition, should the client choose to provide their employees information directly to FCM (e.g., via HR feeds, our API, SFTP, protected CSV files, etc.) this will have no impact on our role as responsible party. This process has been anticipated and authorised within POPIA (see 12(2)(d)(v)).

### ***Responsibilities of FCM as the responsible party***

As a responsible party, FCM is responsible for ensuring all data processing we undertake complies with POPIA. These responsibilities include, but are not limited to, the following:

- Complying with the overarching *conditions for lawful processing of personal information* as set out in Chapter 3 of the POPIA.
- Ensuring individual data subjects can exercise their rights regarding our processing of their personal information.
- Implementing appropriate technical and organisational measures to ensure the security of personal information.
- Only engaging operators under written contracts that ensure our technical and organisational measures are being maintained and applied by them.
- Notifying security compromises of personal information to the Information Regulator and affected individuals, in accordance with POPIA requirements.

- Maintaining documentation for those processing operations under our responsibility.
- Complying with all accountability obligations under the POPIA, including the appointment of a data protection officer.
- Ensuring all transfers of personal information outside of the Republic comply with the requirements set out in Chapter 9 of the POPIA.
- Cooperating with the Information Regulator and helping them perform their duties.

### ***Benefits to clients of FCM operating as a responsible party***

POPIA imposes substantive risks and obligations on responsible parties. By outsourcing their corporate travel services to an expert travel management company that operates as a responsible party, our clients benefit from the fact that these risks and obligations are necessarily assumed by FCM. Key benefits enjoyed by our clients include the following:

- *Reduction in documentation obligations:* As the responsible party, FCM takes ownership of the obligation to maintain documentation of all our processing operations.
- *Reduction in ongoing compliance obligations:* Clients reduce the overall compliance burden for their travel programme, as it falls to FCM as the responsible party to ensure all personal information is lawfully processed in accordance with Chapter 3 POPIA, as well as being able to demonstrate such compliance if challenged by the Information Regulator.

- *Transfer of risk:* As the responsible party, FCM assumes responsibility for the information collected from the client. This includes meeting all the POPIA obligations in relation to ascertaining the appropriateness of technical and organisations measures for securing the data, as well as for any appointment of operators by FCM. As such, it becomes the responsibility of FCM to conduct risk assessments of both our internal systems as well as those of our vendors.
- *Transfer of legal and technical obligations:* FCM becomes directly responsible for all assessments and actions in the event of a security compromise, including reporting to the Information Regulator and impacted individuals. FCM also has the obligation to ensure appropriate technical and organisational measures are implemented across all our systems (and those of our selected operators) to maintain the integrity and confidentiality of personal information in our possession or under our control.

### *Other responsible parties in the provision of travel services*

Due to the inherent complexity of providing travel services, and the requirement to make independent decisions on the purpose and means of processing personal information, most entities within this ecosystem are necessarily responsible parties. In addition to corporate travel providers (i.e., FCM), other independent responsible parties include global distribution systems (GDS), online booking tools, airlines, hotels, rail companies, car hire providers and cruise operators.