

Accreditation assessment checklist: Members

To be completed by secretariat	
Applicant contact	Tana Pistorius
Name of Authority and country/economy	Information Regulator, South Africa/Africa
Description of Authority	Commission

To be completed by principal assessor (Morocco)	
<i>Recommendation (select appropriate recommendation):</i> <b>Applicant meets criteria</b>	
<p>1. Is the applicant a public entity created by an appropriate legal instrument?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	<p><b>Brief comments</b></p> <p>The Information Regulator is created by Article 39 of the “Protection of Personal Information Act” (2013) of South Africa (No. 37067 of the South African Government Gazette).</p>
<p>2. Does the applicant have the supervision of the implementation of the legislation on the protection of personal data or privacy as one of its principal regulatory mandates?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	<p><b>Brief comments</b></p> <p>The Information Regulator is in charge of the supervision of the implementation of the Personal Information Act (art. 40)</p>
<p>3. Is the legislation under which the applicant operates compatible with the principal international instruments dealing with data protection or privacy?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	<p><b>Brief comments</b></p> <ol style="list-style-type: none"> <li>1. The Constitution the Republic of South Africa (1996) provides that everyone has the right to privacy (section 14 of the Constitution);</li> <li>2. Preamble of the Personal Information Act : “RECOGNISING THAT ... AND IN ORDER TO— regulate, in harmony with international standards, the processing of personal information by public and private bodies in a manner that gives effect to the right to privacy subject to justifiable limitations that are aimed at protecting other rights and important interests”</li> <li>3. The main data protection principles adopted by the Law are: <ul style="list-style-type: none"> <li>- Personal data must be processed lawfully (Art. 4 &amp; 9);</li> </ul> </li> </ol>

	<ul style="list-style-type: none"> <li>- Purpose specification and limitation (Art. 13);</li> <li>- Prior consent (Art. 11 (1) &amp; (2));</li> <li>- Right to be informed (Art. 5(a) &amp; 18);</li> <li>- Right to access (Art. 5(b) &amp; 23) and to rectify (Art. 5(c) &amp; 24 &amp; 25);</li> <li>- Right to object (Art. 5(d)&amp; (e) &amp; 11 (3) &amp; (4));</li> <li>- Data retention no longer than it is necessary for the purposes of its processing (Art. 14);</li> <li>- Data accuracy (Art. 16);</li> <li>- Data security and confidentiality (Art. 19 to 22).</li> </ul>
<p>4. Does the applicant have an appropriate range of legal powers to perform its functions?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	<p><b>Brief comments</b></p> <p>The Data Protection Law gives the Information Regulator the following powers:</p> <ul style="list-style-type: none"> <li>- Supervision over the protection of personal data and compliance enforcement (Art 40(1)(b));</li> <li>- Prior approvals (Chapter 6)</li> <li>- Receiving complaints (Art. 40 (1) (d));</li> <li>- Guidance (Art. 40 (1) (a) &amp; (f));</li> <li>- Rule-making (Art. 40 (1) (c));</li> <li>- Policy advice for Government (40 (1) (a) &amp; (e));</li> <li>- Investigations (Art. 76 to 99);</li> <li>- Applying administrative sanctions (Art. 109)</li> </ul> <p>NB : Fines and imprisonment can be pronounced against any infringer to the Personal Information Protection act by the court.</p>
<p>Does the applicant have appropriate autonomy and independence?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	<p><b>Brief comments</b></p> <p>Autonomy and independency of the Agency are granted by law as below :</p> <ul style="list-style-type: none"> <li>- The Regulator is independent and is subject only to the Constitution and to the law and must be impartial and perform its functions and exercise its powers without fear, favour or prejudice (Art. 39);</li> <li>- The Chairperson and the members of the Regulator must be appointed by the President of the Republic of South Africa on the recommendation of the National Assembly (Art. 41);</li> <li>- Conditions of dismissing The Chairperson and members before the expiry of their terms are listed on the Art. 41;</li> <li>- The work of the Regulator shall be financed from budget allowed by the Parliament and other fees (Art. 52).</li> </ul>

<b>To be completed by ExCo member other than principal assessor (NZ)</b>	
I agree with the principal assessor's evaluation that the applicant ( <b>tick the statements that apply</b> )	
1. is a public entity created by an appropriate legal instrument	✓
2. has the supervision of the implementation of the legislation on the protection of personal data or privacy as one of its principal regulatory mandates	✓
3. has a legislation under which it operates is compatible with the principal international instruments dealing with data protection or privacy	✓
4. has an appropriate range of legal powers to perform its functions	✓
5. has appropriate autonomy and independence	✓
Brief comments	----
Name of ExCo member	NZ

<b>To be completed by ExCo member other than principal assessor (CA)</b>	
I agree with the principal assessor's evaluation that the applicant ( <b>tick the statements that apply</b> )	
1. is a public entity created by an appropriate legal instrument	✓
2. has the supervision of the implementation of the legislation on the protection of personal data or privacy as one of its principal regulatory mandates	✓
3. has a legislation under which it operates is compatible with the principal international instruments dealing with data protection or privacy	✓
4. has an appropriate range of legal powers to perform its functions	✓
5. has appropriate autonomy and independence	✓
Brief comments	None.
Name of ExCo member	CA

<b>To be completed by ExCo member other than principal assessor (HK)</b>	
I agree with the principal assessor's evaluation that the applicant ( <b>tick the statements that apply</b> )	
1. is a public entity created by an appropriate legal instrument	✓
2. has the supervision of the implementation of the legislation on the protection of personal data or privacy as one of its principal regulatory mandates	✓
3. has a legislation under which it operates is compatible with the principal international instruments dealing with data protection or privacy	✓
4. has an appropriate range of legal powers to perform its functions	✓
5. has appropriate autonomy and independence	✓
Brief comments	
Name of ExCo member	HK

<b>To be completed by ExCo member other than principal assessor (FR)</b>	
I agree with the principal assessor's evaluation that the applicant ( <b>tick the statements that apply</b> )	
1. is a public entity created by an appropriate legal instrument	✓
2. has the supervision of the implementation of the legislation on the protection of personal data or privacy as one of its principal regulatory mandates	✓
3. has a legislation under which it operates is compatible with the principal international instruments dealing with data protection or privacy	✓
4. has an appropriate range of legal powers to perform its functions	✓
5. has appropriate autonomy and independence	✓
Brief comments	
Name of ExCo member	CNIL (FR)

Notes:

1. Where more information is required from the applicant the principal assessor should get the relevant information from the applicant.
2. Principal assessor's recommendation will be circulated via email to ExCo members. Where the ExCo agrees with the principal assessor's recommendation the secretariat will notify the applicant of the ExCo's decision.
3. If any member of the ExCo disagrees with the principal assessor's recommendation the relevant application/s will be discussed at the following ExCo meeting.