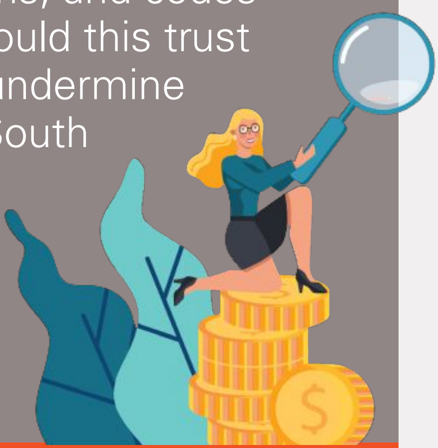
ELEVATING QUALITY ON AUDITS OF LEGAL PRACTITIONERS' ACCOUNTS

Legal practitioners are entrusted with a significant level of confidence by their clients and the public, who view them as epitomes of trustworthiness. They carry a fiduciary duty to manage and protect the money and property entrusted to them, adhering strictly to the mandates provided. This inherent expectation of trust means that legal practitioners must consistently demonstrate the highest levels of integrity, complying with legislative requirements, rules, regulations, and codes of conduct. Should this trust falter, it could undermine public faith in South Africa's justice system, a fundamental pillar of our democracy.



THE LEGAL PROFESSION earns its high level of trust through consistent day-to-day conduct. A crucial element in maintaining this trust is the annual audit of a trust account practice, which serves as a key assurance process for the public. This annual audit is required in terms of the South African Legal Practice Council Rule 54.20 made under the authority of the Legal Practice Act. The rule states that a firm shall, at its expense, once in each calendar year or at such other times as the council may require, appoint an auditor to discharge the duties assigned to the auditor in terms of the rules.

The audit engagement on legal practitioners' trust accounts is a reasonable assurance engagement within the scope of the International Standard on Assurance Engagements (ISAE) 3000 (Revised), *Assurance Engagements Other than Audits or Reviews of Historical Financial Information.*

The main purpose of an engagement on legal practitioners' trust accounts is for the auditor to express a reasonable assurance opinion on whether, for the relevant financial period, the legal practitioner's trust accounts were maintained in compliance with the Act and the Rules.

The auditor is also required to report on the following:

THE LEGAL PRACTITIONER'S ANNUAL STATEMENT ON TRUST ACCOUNTS

- To agree the information included in the Legal Practitioner's Annual Statement on Trust Accounts to the underlying records that were the subject of the engagement on the compliance of legal practitioners' trust accounts with the Act and the Rules; and then to report, as required, and
- To also read the legal practitioner's representations, the disclosures, and other information contained in the Legal Practitioner's Annual Statement on Trust Accounts in order to identify any inconsistencies with the auditor's knowledge obtained in the course of the engagement on the compliance of legal practitioners' trust accounts with the Act and the Rules, and report thereon

THE LEGAL PRACTITIONER'S INVESTMENT PRACTICE

- To report on whether or not, to the best of the auditor's knowledge, the legal practitioner carried on the business of an investment practice (if applicable) and complied with the related investment practice Rules, as required

The Rules and Act, however, do not require a legal practitioner's financial statements to be audited (the business accounts of the firm) to be audited. Such a requirement may emanate from another Act, such as the Companies Act, or an audit may be undertaken voluntarily.

In recent developments, the Law Society of South Africa (LSSA) brought an application against the Companies and Intellectual Property Commission (CIPC) which resulted in a court order being granted in the High Court of South Africa, Gauteng Division, on 8 March 2024. In terms of the court order, legal practitioners who practise in the form of a personal liability company (an Inc) are exempt from having their annual financial statements (the firm's business accounts) audited or reviewed.

UNDERSTANDING THE LEGAL PRACTITIONER'S ACCOUNTS AND COMPLIANCE THEREOF WITH THE ACT AND THE RULES

The accounting records of a legal practitioner relate to all monies received and expended by the legal practitioner, including monies deposited into a trust account or invested in savings or other interest-bearing accounts, and all transactions relating to the legal practitioner's business. A legal practitioner's trust accounts relate to records of deposits, withdrawals, transfers to and from the legal practitioner's business bank account, and balances on hand, which could include fees paid to the legal practitioner and any adjusting journal entries, in terms of the client mandate. A legal practitioner's business bank accounts relate to records necessary to prepare and present the financial position, financial performance, and cash flows as reflected in the financial statements of the legal practitioner, in accordance with an acceptable financial reporting framework. Therefore, a legal practitioner's financial statements are prepared from the transactions that relate to the legal practitioner's business and trust accounts.

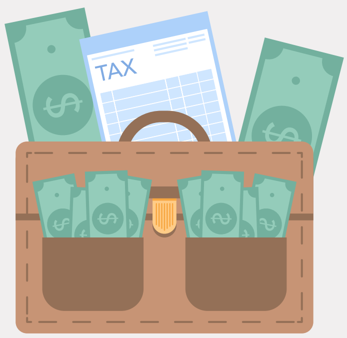
The auditor of a legal practitioner's trust accounts performs sufficient work to obtain sufficient appropriate evidence to (a) evaluate whether the identified records were maintained in compliance with the Act and the Rules and whether trust account transactions were in accordance with the client mandate, including whether transactions were supported by adequate documentation and narratives, (b) report on the Legal Practitioner's Annual Statement on Trust Accounts, as required, and (c) report on the Legal Practitioner's Investment Practice business, as required.

The auditor's engagement on a legal practitioner's financial statements covers only the legal practitioner's trust accounts to the extent that these may affect the auditor's opinion on the financial statements, while the auditor's engagement on a legal practitioner's trust accounts covers only the legal practitioner's financial statements to the extent that these may affect the auditor's opinion on whether the trust accounts were maintained in compliance with the Act and the Rules. The auditor undertaking an engagement on a legal practitioner's trust accounts requires access to the business account and trust account transactions for the purpose of evaluating whether the legal practitioner's trust accounts were maintained in compliance with the Act and the Rules. Additionally, an auditor accepting an engagement to report on the legal practitioners' trust accounts should obtain an understanding of the Act, the Rules, and the engagement circumstances. The understanding obtained of the underlying subject matter and engagement circumstances should be sufficient to enable the auditor to identify and assess the risks of material misstatements, thereby providing a basis for designing and performing procedures to respond to the assessed risks and obtain reasonable assurance to support the auditor's conclusion. Therefore, the auditor is required to obtain the same level of understanding of the business transaction that impacts on the trust accounts as obtained in a reasonable assurance engagement up to the point of the commencement of the risk assessment and design of procedures that respond to the assessed risks.

The auditor should be cognisant of the additional risk and work that may be involved in accepting an engagement on the audit of the legal practitioners' trust accounts where the legal practitioners' business accounts are not subject to an audit. The auditor may encounter difficulty in complying with his/her responsibilities in performing all the required procedures and obtaining sufficient appropriate audit evidence where access to the business accounts is restricted or the business accounts are not kept up to date because they are not subject to audit. This may place a limitation on the scope of the auditor's work, which should be considered by the auditor in accepting or continuing the engagement.

While business accounts may not be audited, there are certain procedures that the auditor is required to perform in fulfilling his/her responsibilities in terms of the engagement on a legal practitioner's trust account and to address risks of material misstatements that may be identified. These procedures are dependent on the inspection of legal practitioners' business accounts. The IRBA Guide for Registered Auditors: Engagements on Legal Practitioners' Trust Accounts have illustrative procedures that are dependent on the auditor having access to the legal practitioners' business accounts, including those in the table on the following page.

The integrity of legal practitioners' trust accounts is fundamental to upholding public confidence in the legal profession and, by extension, the justice system. The audit of these accounts is not merely a regulatory requirement but a vital mechanism for ensuring transparency, accountability, and compliance with the Legal Practice Act and its associated Rules. As the legal and regulatory landscape evolves, auditors must remain vigilant, applying professional scepticism and a thorough understanding of both trust and business account transactions. Legal practitioners, in turn, must maintain meticulous records and foster a culture of compliance to support the audit process. Ultimately, the collaborative effort between auditors and legal practitioners serves to reinforce the fiduciary duty owed to clients andthe broader public, safeguarding the profession's reputation and the rule of law in South Africa.



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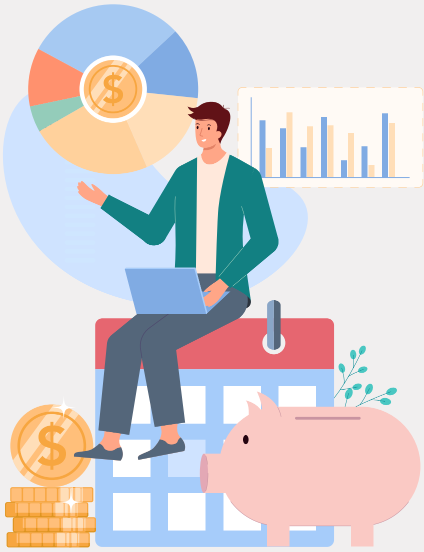
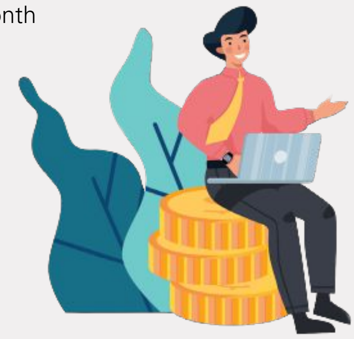
Act/Rule reference	Act/Rule requirement	Illustrative risk	Illustrative procedures
Act Section 88 Rule 54.8	The accounting records shall distinguish in readily discernible form between business account transactions and trust account transactions 	The firm's accounting records may not distinguish between the business account transactions and the trust account transactions, and this could potentially lead to inaccurate and incomplete accounting for the trust account transactions	Using the knowledge obtained during the understanding of the nature of the legal practitioner's trust account transactions and service activities – acquired during the planning stage – determine by the inspection of the accounting records whether a clear distinction, in readily discernible form, has been made between the trust account transactions and the business account transactions Inspect the business accounting records for all bank accounts maintained by the legal practitioner. Discuss with management the nature of these bank accounts and confirm whether these were correctly recorded as business accounts or trust accounts Determine through the inspection of internal and external correspondence and minutes of meetings, and through discussion with management, whether all bank accounts held by the legal practitioner have been identified and accounted for (completeness)
Rule 54.11	Trust money shall in no circumstances be deposited in or credited to a business banking account. Money other than trust money found in a trust banking account at any time shall be transferred to a business banking account without undue delay A firm shall be deemed to have complied sufficiently with this Rule if it makes transfers from its trust banking account to its business banking account at least once a month 	Trust money must be kept separate from other money Not keeping trust money separate may lead to the misappropriation of the trust money, and that may go undetected. Money other than trust money was not transferred to the business banking account at least once a month	On a test basis, agree receipts and payments reflected in the business bank account with the business client (debtor) ledger in order to ascertain whether any trust account items have been erroneously dealt with as a business transaction. • Inspect the business debtors to identify credit balances, and • Inquire whether they should be trust creditors On a test basis, select reverse transfer journals from business to trust accounts, discuss with management, and corroborate with supporting evidence In circumstances where money other than the trust money was found in a trust banking account, confirm that these were transferred to the business account without undue delay and that such transfers were made at least once per month, where applicable
Rule 54.11	When making a transfer from its trust banking account to its business banking account, a firm shall ensure that: • The amount transferred is identifiable with and does not exceed the amount due to firm • The trust creditor from whose account the transfer is made is identified, and • The balance of any amount due to the firm remaining in its trust banking account is capable of identification with corresponding entries appearing in its trust ledger	Transfers from the trust banking account may not be in compliance with the provisions of the Rules This may lead to irreconcilable differences in the trust banking account and debit balances	On a test basis, select individual transfers from the trust banking account that relate to fees and expenses and inspect supporting documentation to verify that: • The fees or expenses are due • The fee has been raised in the business books before the transfer is effected, and • The transfer is in respect of a valid expense relating to the specific creditor and trace the payment to the creditor's account