

Ref# 654200

5 March 2018

National Forum for the Legal Profession (National Forum)

Email: BonGumede@justice.gov.za

Dear Sir

SAICA SUBMISSION ON THE DRAFT RULES PUBLISHED IN TERMS OF SECTIONS 95(1), 95(3) AND 109(2)(a) OF THE LEGAL PRACTICE ACT 28 OF 2014

In response to your request for comments on the **Draft Rules Published in terms of Sections 95(1), 95(3) and 109(2)(a) of the Legal Practice Act 28 of 2014 (Draft Rules)** please find attached comments prepared by The South African Institute of Chartered Accountants (SAICA).

We thank you for the opportunity to provide comments on this document.

Please do not hesitate to contact us should you wish to discuss any of our comments.

Yours sincerely

Hayley Barker Hoogwerf
Project Director – Assurance

INTRODUCTION

1. On 2 February 2018, the National Forum, a transitional body established in terms of Chapter 10 of the Legal Practice Act 28 of 2014 (the Act), published the Draft Rules required by section 95(1), 95(3) and 109(2)(a) of the Act for comment.
2. Section 94(2) and 109(2)(b) read with section 97(1) and 109(2) and (3) of the Act as amended by the Legal Practice Amendment Act 16 of 2017, requires the National Forum to publish a draft of the proposed Rules in the Gazette, for public comment.
3. After finalisation, the Draft Rules will apply to all legal practitioners (attorneys and advocates) as well as all candidate legal practitioners and juristic entities as defined, when the Act comes into operation in terms of section 120(4) thereof.

SAICA'S APPROACH TO RESPOND

4. The SAICA Assurance & Practice technical team studied and debated the Draft Rules, including performing a comparison with the extant Rules of the Attorneys Profession (the extant Rules) in order to identify relevant changes. We prepared initial thoughts pertaining to matters that have changed, as well as certain matters that have remained unchanged, but which in our view require consideration as part of this public consultation.
5. SAICA also consulted with the members of its Attorneys' Trust Accountants Committee (ATAC) in obtaining their views and comments in finalising the SAICA comment letter.

SCOPE OF THE SAICA'S COMMENT LETTER

6. Our comments are limited to the Draft Rules, Part XII: Accounting Rules, Rule 50 to 53 and Schedule 8, as this would be the primary areas of concern to our members.

RESPONSE TO REQUEST FOR COMMENTS

Definitions

7. Changes have been made to Part 1: Definitions, in that certain definitions have been removed, with new ones added and also some changes made to the definitions carried over from the extant Rules. Except as discussed in paragraph 8 below, we have no specific comments on the definitions as reflected in Part 1: Definitions of the Draft Rules.
8. The National Forum should consider whether it is appropriate that the definition of "business account transactions" (rule 1.9) and "trust account transactions" (rule 1.35) are the same, namely "means transactions in regard to which records are required to be kept in terms of rule 50.6". It is unusual for two distinct terms to have exactly the same definition and the fact that rule 50.8 requires that the accounting records "shall distinguish in readily discernible form between business account transactions and trust account transactions" suggests that these transactions are distinct from each other. Suggested definitions, taking into account various related definitions in rule 1, as well as section 87 of the Act, are:
 - "business account transactions" means transactions in regard to which records are required to be kept in terms of rule 50.6, other than trust account transactions, and where such transactions involve or are related to the business affairs of the firm.
 - "trust account transactions" means transactions in regard to which records are required to be kept in terms of rule 50.6 where such transactions involve or are related to a trust account practice's trust

bank account/(s), trust cash, trust creditors, trust investment accounts and trust money, as may be appropriate in the circumstances.

Summary of changes compared to the extant Rules

9. Although the following rules have changes (including rules that have been added), we do not at present have any specific comments related to these Draft Rules. SAICA's interpretation is that the changes that have been made are mainly to align the Draft Rules concerned to the Act, without affecting the nature and effect of the requirements.

50.1; 50.14.16; 50.18; 50.19; 50.24; 50.24.2.3; 50.25.1; 50.25.2; 50.27; 50.29; 50.34; 51.1; 52.3

10. The table that follows includes specific comments in relation to certain identified rules that have changed.

Subject	Extant Rule reference	Draft Rule reference	Description of change	SAICA comments
Reporting requirements	n/a	50.21	In terms of the Draft Rules, a firm which commences practice for the first time shall, within six months of so commencing practice, furnish the Council with a report substantially in the form of the First Schedule to these rules (or in such other form as the Council may determine after consultation with the Independent Regulatory Board for auditors) covering the first four months of that firm's practice.	The "First Schedule" being referred to here, contains a number of individual schedules, from 1A through to 8. The particular individual schedule concerned is Schedule 8. The rule should be clear in terms of the specific schedule involved.
Reporting requirements	n/a	50.24 and 50.24.1	In terms of the Draft Rules, a firm shall ensure that every auditor or inspector who has accepted an appointment in terms of accounting rule 50.20 shall within six months of the annual closing of the accounting records of the firm concerned or at such other times as the Council may require and subject to any conditions that the Council may impose, furnish the Council with a report which shall be in the form of the First Schedule to these rules or in such other form as the Council may determine after consultation with the Independent	The "First Schedule" being referred to here, contains a number of individual schedules, from 1A through to 8. The particular individual schedule concerned is Schedule 8. The rule should be clear in terms of the specific schedule involved.

Subject	Extant Rule reference	Draft Rule reference	Description of change	SAICA comments
			Regulatory Board for Auditors.	
Compliance with requirements of Financial Advisory and Intermediary Services Act	n/a	51.12	In terms of the Draft Rules, every firm carrying on an investment practice must comply with all the applicable requirements of the Financial Advisory and Intermediary Services Act, 37 of 2002 (FAIS Act) and the regulations thereunder.	If the firm is providing the applicable services, they would need to comply with the FAIS Act regardless of whether the Draft Rules specifically require it or not. It is our view that it is not necessary to include this.
Inspections	n/a	54.2.1 (read together with 50.24.1)	In terms of the Draft Rules, the Board may appoint any person in the service of the Board, or any other suitably qualified person, as an inspector to carry out inspections in terms of these rules.	We would like to highlight that any inspector appointed by the Board would only be able to issue the auditor's report as illustrated in Schedule 8 if he/she is a Registered Auditor with the Independent Regulatory Board for Auditors (IRBA), as defined in the Auditing Profession Act, 26 of 2005.
Auditor's report	Fourth Schedule	Schedule 8	Illustrative Auditor's Report	<p>The National Forum should engage with the IRBA before finalising the Draft Rules in order to ensure that the auditor's report included in Schedule 8 is consistent with the relevant assurance standard, namely ISAE 3000 (Revised). The IRBA should then be requested to update its Revised Guide for Registered Auditors: Engagements on Attorneys' Trust Accounts, to be in line with the requirements of the Draft Rules.</p> <p>Furthermore, the National Forum should ensure that a rule-by-rule comparison is performed between the illustrative auditor's reports in terms of the extant Rules and the Draft Rules to ensure that the appropriate rules are included and excluded from</p>

Subject	Extant Rule reference	Draft Rule reference	Description of change	SAICA comments
				the scope of the auditor's engagement.

Comments on rules that have remained unchanged but may require attention

11. The table that follows includes specific comments in relation to certain identified rules that have not changes, but which in our view require further consideration.

Subject	Extant Rule reference	Draft Rule reference	Requirement of the Rule	SAICA comments
Acceptable financial reporting framework	35.6	50.7.1.1	For purposes of the Draft Rules, acceptable financial reporting frameworks include "IFRS" being International Financial Reporting Standards as issued from time to time by the International Reporting Standards Board, or its successor body.	Section 50.7 makes reference to the International Reporting Standards Board as the body that issues International Financial Reporting Standards (IFRS), where the body that is in fact responsible for the issue of IFRS is the International Accounting Standards Board (IASB).
Updating accounting records	35.9	50.10	In terms of the Draft Rule, a firm shall update and balance its accounting records monthly and shall be deemed to comply with this rule if, inter alia, its accounting records have been written up by the last day of the following month.	<p>The scope of this Draft Rule is not clear in that there is uncertainty around which accounting records this Rule applies to. There are currently conflicting views as to whether the records of the business account transactions of the firm are included in the ambit of this requirement.</p> <p>It is recommended that the Draft Rule be clarified in terms of the intended requirements. Whether this intends to encapsulate all accounting records relating to both the business account transactions and trust account transactions, or only applies to trust account transactions should be explicitly stated.</p>
Reporting requirements	35.19 and 35.19.1	50.20 and 50.20.1	A firm shall at its expense once in each calendar year or at such other times as the Council may	In line with the Draft Rule that provides the Council with discretion to refuse to recognise

Subject	Extant Rule reference	Draft Rule reference	Requirement of the Rule	SAICA comments
			<p>require, appoint an auditor to discharge the duties assigned to the auditor in terms of these rules; provided that:</p> <p>50.20.1 the Council may refuse to recognise the appointment by a firm of an auditor of whom the Council on good cause does not approve;</p>	<p>the appointment of an auditor of whom the Council on good cause does not approve, it is recommended that a requirement be included for the firm to notify the Council without delay if it has come to the attention of the firm that an auditor has been disqualified or no longer registered with the IRBA.</p> <p>This will further address the risk that the Council does not inadvertently recognise the appointment of an auditor that does not qualify for such appointment.</p>
Reporting requirements	35.23 and 35.23.1	50.24 and 50.24.1	<p>In terms of the Draft Rules, 50.24 A firm shall ensure that every auditor or inspector who has accepted an appointment in terms of accounting rule 50.20 shall:</p> <p>50.24.1 within six months of the annual closing of the accounting records of the firm concerned or at such other times as the Council may require and subject to any conditions that the Council may impose, furnish the Council with a report which shall be in the form of the First Schedule to these rules or in such other form as the Council may determine after consultation with the Independent Regulatory Board for Auditors.</p>	<p>By referring to Schedule 8 in the First Schedule, the type of engagement that the external auditor is required to undertake is implied to be a reasonable assurance engagement on the attorneys' trust accounts.</p> <p>It is recommended that the Draft Rule be clearer in terms of requiring "an assurance engagement or other related services engagement in terms of the attorneys trust accounts" as may be prescribed by Council and after consultation with the IRBA. This will also make it clear that the financial statements are not required to be audited in terms of the Draft Rules.</p>