
SAICA FREQUENTLY ASKED QUESTIONS

Assurance Engagements on Legal Practitioners' Trust Accounts

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- Although specific references to relevant standards and pronouncements have been included in this document, the auditor is still required to have an understanding of the entire text of those standards and pronouncements to assess whether or not any particular FAQ is relevant to an engagement, and if so, to enable the auditor to apply all the requirements of the particular standards and pronouncements properly.
- The concepts of professional scepticism and professional judgement should be applied in all the scenarios described in the FAQs. The different approaches presented are not necessarily the only acceptable approaches. The auditor must obtain sufficient appropriate evidence in the circumstances of a particular assurance engagement in accordance with the requirements of the standards and pronouncements relevant to the assurance engagement.
- The auditor is required to prepare documentation that provides a sufficient and appropriate record of the basis for the auditor's conclusions and report, and evidence that the assurance engagement was planned and performed in accordance with the relevant standards and pronouncements, and applicable legal and regulatory requirements. Auditors are alerted to pay specific attention to the documentation requirements in the circumstances of the particular assurance engagement.

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1. Alternative procedures

If the business accounts of the legal practitioner are not up to date, in that the relevant transactions have not been captured into the ledger timeously, are there alternative procedures that the auditor is able to perform, as required in ISAE 3000 (Revised).A157 or is the auditor required to decline the engagement as indicated in paragraphs 25 and 26 of ISAE 3000 (Revised), *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* (ISAE 3000 (Revised)).

The auditor requires access to the legal practitioners' business accounts for the purpose of evaluating whether the legal practitioners' trust accounts were maintained in compliance with the Legal Practice Act, No. 28 of 2014 (the Act) and the South African Legal Practice Council Rules made under the authority of Sections 95(1), 95(3) and 109(2) of the Act (the Rules). 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.

Certain procedures that the auditor is required to perform in fulfilling his/her responsibilities in terms of the engagement on a legal practitioners' trust accounts are dependent on the legal practitioners' business accounts. These include the following:

- On a test basis, agree receipts and payments reflected in the business bank account with the business client (debtor) ledger¹;
- On a test basis, select individual transfers from the trust banking account which relate to fees and expenses and test to ensure that:
 - ...;
 - The fee has been raised in the business books before the transfer is effected²;
or
 - ...

In terms of the auditor's right of access to the accounting records, a firm is required to allow the auditor access to such of the firm's records as the auditor may deem it necessary to examine for the purposes of discharging the auditor's duties and shall furnish the auditor with any authority which may be required to enable the auditor to obtain such information, certificates or other evidence as the auditor may reasonably require for purposes of this engagement³.

The auditor is required to review the legal practitioners' business accounts to ensure that they are prepared on a timely basis to the extent that this impacts on the auditor's responsibility in terms of the engagement on the legal practitioners' trust accounts.

Although there is no specific requirement contained in the Act or the Rules for the auditor to specifically review the legal practitioners' business accounts to ensure that they are prepared on a timely basis as part of the assurance engagement on the legal practitioners' trust account, additional risk is present in such an engagement when the Legal practitioners' business accounts are not up to date.

¹ Revised Guide, Illustrative procedure 6

² Revised Guide, Illustrative procedure 7

³ Rule 54.22

With the double entry system of accounting and the requirements for the auditor to, for example, inspect that fees have been raised in the legal practitioners' business accounts, the question is how can this procedure be performed without the legal practitioners' business accounts being up to date and what is an alternative procedure that could be performed in satisfying this requirement. The availability of alternative procedures that can be performed is dependent on the extent to which the legal practitioners' business accounts are not up to date.

In the event that the legal practitioner has not updated the actual accounting records (i.e. recorded the transactions in the relevant ledgers) but the physical paper trail has been maintained, an example of an alternative procedure would be to request the physical invoices that were issued to the legal practitioner's client and inspect the client's physical file to determine if work was performed and billed to the client before trust money was transferred from the trust account to the business.

The auditor may, however encounter difficulty in complying with his/her responsibilities in performing all the required procedures and obtaining sufficient appropriate audit evidence without the legal practitioners' business accounts being up to date. 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. Paragraphs 24(b)(iv), 25 and 26 of ISAE 3000 (Revised) are of relevance.

2. Additional risks and work when the legal practitioners' business accounts are not audited

Paragraph 28 of the Revised Guide states that the auditor is reminded of the additional risk and work that may be involved in undertaking such an engagement when an audit has not been performed on the legal practitioners' business accounts, and the auditor may, as a consequence, need to perform additional procedures to obtain an audit level of knowledge of the business transactions that impact on the trust accounts.

What is the meaning of "audit level of knowledge of the business transactions that impact on the trust accounts"?

An engagement on a legal practitioners' trust accounts is a reasonable assurance engagement within the scope of the (ISAE 3000 (Revised))⁴.

The following requirements contained in ISAE 3000 (Revised), are applicable here:

46R. The auditor shall obtain an understanding of the underlying subject matter and other engagement circumstances sufficient to:

- (a) Enable the auditor to identify and assess the risks of material misstatement in the subject matter information; and
- (b) Thereby, provide a basis for designing and performing procedures to respond to the assessed risks and to obtain reasonable assurance to support the auditor's conclusion. (Ref: Para. A101–A103, A107)

47R. In obtaining an understanding of the underlying subject matter and other engagement circumstances under paragraph 46R, the auditor shall obtain an understanding of internal control over the preparation of the subject matter information relevant to the engagement. This includes evaluating the design of those controls relevant to the engagement and determining whether they have been implemented by performing procedures in addition to inquiry of the personnel responsible for the subject matter information. (Ref: Para. A105)

For purposes of an engagement on legal practitioners' trust accounts, the auditor is required to review the legal practitioners' business accounts to the extent that they impact the trust accounting records. Therefore, the auditor is required, in accordance with paragraph 28 of the Revised Guide to obtain the same level of understanding of the business transactions that impact 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.

⁴ Revised Guide, paragraph 10

3. Communication of deficiencies in internal controls

Paragraph 39 of the Revised Guide indicates that the auditor does not express an opinion on the legal practitioners' internal controls relevant to the application of the Rules. Paragraph 40 of the Revised Guide continues to state that the auditor draws from ISA 260 (Revised), *Communication with Those Charged with Governance* and ISA 265, *Communicating Deficiencies in Internal Control to Those Charged with Governance and Management* and communicates appropriately to the directors and management any deficiencies in internal controls that come to the auditor's attention.

ISA 265, paragraph 9 includes a requirement for **significant deficiencies** in internal controls to be communicated in writing to those charged with governance (TCWG) but the Revised Guide makes reference to the reporting of **deficiencies**.

What are the requirements of the auditor in terms of reporting deficiencies in internal controls to TCWG and/or management that are not considered to be significant?

In addition to the requirements for the auditor to communicate significant deficiencies in internal controls in writing to TCWG, ISA 265, paragraph 10 also contains requirements for the communication in writing of significant deficiencies in internal controls as communicated to TCWG, to management. Furthermore, the auditor is also required to communicate to management other deficiencies in internal control (i.e. other than significant deficiencies) identified during the engagement. The communication of the other deficiencies in internal control that merit management's attention need not be in writing and may be communicated verbally.

ISAE 3000 (Revised) is silent in terms of documenting discussions of significant matters. The auditor therefore draws on ISA 230, *Audit Documentation* (ISA 230) in appropriately documenting such discussions held. ISA 230, paragraph 10 states that the auditor shall document discussions of significant matters with management, TCWG, and others, including:

- (a) The nature of the significant matters discussed;
- (b) When the discussion took place; and
- (c) With whom the discussions took place.

Although the "other deficiencies" in internal controls may not necessarily be considered to be a significant matter, the documentation of discussions held with management in accordance with ISA 230, paragraph 10 will ensure that the auditor has documented evidence of the compliance with the requirements of ISA 265, paragraph 10.

4. Fraud inquiries

Paragraph 65 of the Revised Guide states that the auditor may consider inquiring from the Legal Practice Council (LPC) and/or the Legal Practitioners Fidelity Fund (LPFF) regarding any complaints that may have been received in respect of the management of trust monies by the firm. Is this a requirement or is the auditor permitted to apply his professional judgement in assessing whether such fraud inquiry is considered necessary or not?

In the absence of requirements and other guidance contained in ISAE 3000 (Revised), the Revised Guide advises that the auditor considers the guidance contained in ISA 240 (Revised), *The Auditor's Responsibility to Consider Fraud in an Audit of Financial Statements* (ISA 240 (Revised)) and adapts and applies these principles in an engagement on legal practitioners' trust accounts⁵.

ISA 240 (Revised), paragraphs 17-21 requires the auditor to make inquiries of:

- (a) Management;
- (b) Others within the entity, as appropriate;
- (c) Where applicable, appropriate individuals within the internal audit function; and
- (d) TCWG, unless they are involved in managing the entity.

There is no requirement contained in ISA 240 (Revised) for the auditor to make inquiries of specific bodies external to the entity. If the auditor does consider it appropriate to make inquiries of specific bodies external to the entity, it is advisable that the auditor obtain permission from the legal practitioner to make such inquiries of the third parties. The Revised Guide makes reference to the fact that the auditor **may consider** inquiring from the LPC and/or the LPFF.

The auditor is therefore permitted to exercise professional judgement in identifying other parties that are considered to be appropriate in making fraud inquiries; which may or may not include the LPC and/or the LPFF.

⁵ Revised Guide, paragraph 58

5. Compliance with laws and regulations

Paragraph 72 of the Revised Guide states that the auditor needs to understand the legal and regulatory framework applicable to the professional and service activities provided by the legal practitioner's firm.

What is the extent of the understanding required? Does this include the laws and regulations applicable to legal practitioners' trust accounts (i.e. the Act and the Rules) or does this requirement extend to other laws and regulations that are applicable to the legal profession as a whole?

The Revised Guide states that the auditor also considers the guidance contained in ISA 250, *Consideration of Laws and Regulations in an Audit of Financial Statements*⁶. The principles would have to be adapted and applied in the circumstances of an engagement on a Legal practitioners' trust accounts.

ISA 250 (Revised), paragraph 13 requires the auditor to obtain an understanding of the entity and its environment in accordance with ISA 315 (Revised), paragraph 11; to enable the auditor to have a general understanding of:

- (a) The legal and regulatory framework applicable to the entity and the industry or sector in which the entity operates; and
- (b) How the firm is complying with that framework.

ISA 315 (Revised), paragraph 11 indicates that the auditor shall obtain an understanding of the following:

- (a) **Relevant** industry, regulatory, and other external factors including the applicable financial reporting framework. (Ref: Para. A24–A29).

In accordance with ISA 315 (Revised), the nature of the applicable engagement that the auditor has undertaken and the auditor's understanding of the relevant industry, including regulatory requirements would determine the extent of understanding required. To the extent that a law or regulation is **relevant** to a Legal practitioners' trust accounts and the matters included in the auditor's assurance report relating to the legal practitioners' trust accounts, the auditor would be required to obtain an understanding thereof.

The Revised Guide provides examples of what actions the auditor could undertake in this regard, as well as the auditor's response when he/she becomes aware of information concerning instances of non-compliance with the Act, the Rules and other laws and regulations⁷.

⁶ Revised Guide, paragraph 72

⁷ Revised Guide, paragraphs 73 to 75

6. Financial statements relating to the legal practitioners' business accounts

If there is no requirement for a legal practitioners' business to prepare financial statements emanating from any other law, for example, the Legal practitioner is a sole practitioner, is there a requirement for this legal practitioner to prepare financial statements in accordance with IFRS or IFRS for SMEs or would it be possible to use another reporting framework?

In terms of Section 87 of the Act and Rule 54.6, a firm shall keep such accounting records as necessary to enable the firm to satisfy its obligations in terms of the Act, these Rules and any other law with respect to the preparation of financial statements that present fairly and in accordance with an acceptable financial reporting framework in South Africa the state of affairs and business of the firm; and to explain the transactions and financial position of the firm.

Rule 54.7 continues to state that for the purposes of these Rules, acceptable financial reporting frameworks which are to be recognised and applied are:

- "IFRS", being International Financial Reporting Standards as issued from time to time by the International Reporting Standards Board, or its successor body;
- "IFRS for SMEs", being IFRS for Small and Medium Enterprises.

The Rules define a "firm" as a partnership of practitioners; a sole practitioner for his or her own account; or a personal liability company, who or which in each case conducts the practice of a practitioner, and where "practitioner" means an attorney, notary or conveyancer duly admitted to practice and practising in the area of jurisdiction of the Council.

The Act does not contain a specific requirement for a firm to prepare financial statements. The requirement for the preparation of financial statements that present fairly and in accordance with an acceptable financial reporting framework in South Africa emanates from other law, for example, the Companies Act, No. 71 of 2008 (Companies Act). Entities within the ambit of the Companies Act are governed by the reporting obligations contained in Sections 28, 29 and 30 thereof and Regulations 25, 26 and 27 of the Companies Regulations.

A firm other than those within the ambit of the Companies Act are therefore precluded from the requirement contained in Rule 54.6 and 54.7 to prepare financial statements that present fairly and in accordance with an acceptable financial reporting framework the state of affairs and business of the firm; and to explain the transactions and financial position of the firm.

The fact that there may be no requirement for a firm to prepare financial statements does, however, not preclude the firm from complying with the requirements of Rule 54.10, which requires every firm to update and balance its accounting records monthly.

7. Responsibility to report Reportable Irregularities

The following scenario is assumed in this FAQ:

A legal practitioner, practising in the form of a company, is required to prepare financial statements for the Legal practitioner's business and appoint an auditor to audit the financial statements so prepared, based on the requirements contained on the Companies Act. There are two separate auditors appointed to perform the audit of the Legal practitioners' business accounts and the legal practitioners' trust account.

If the auditor of the trust accounts becomes aware of a reportable irregularity that relates to the legal practitioner's business, what is that auditor's responsibility, if any, in terms of Section 45 of the Auditing Professions Act (APA)?

In considering the auditor's responsibility in terms of Section 45 of the APA, the requirements of Section 45.1(a) are relevant:

An individual registered auditor referred to in Section 44(1)(a) of an entity that is satisfied or has reason to believe that a reportable irregularity has taken place or is taking place in respect of that entity must, without delay, send a written report to the Regulatory Board.

Paragraph 6.1.2 of the IRBA *Revised Guide for Registered Auditors: Reportable Irregularities in terms of the Auditing Professions Act* (the RI Guide) states that the obligation to report arises when an auditor is appointed by an entity to perform an audit.

Paragraph 6.1.5 of the RI Guide states that paragraph (b) of the definition of "audit" addresses any other examination of financial and other information...with the objective of expressing an opinion on such financial and other information. The reference to opinion includes reasonable assurance engagements but excludes limited assurance engagements.

Paragraph 6.2.1 of the RI Guide states that if more than one auditor is responsible and accountable for an audit engagement, the duty to consider whether an unlawful act or omission is a reportable irregularity lies with each individual auditor.

The APA therefore places the responsibility to consider and, where necessary, report a reportable irregularity on the auditor appointed by an entity, i.e. the incorporated legal practitioner's practice to perform an audit. Even though the audit of the legal practitioners' business accounts and the audit of the legal practitioners' trust accounts are separate assurance engagements, in both instances, the auditor is considered to be the auditor appointed by the entity and since the audit of the trust accounts is a reasonable assurance engagement, there is a requirement for the appointed auditor of the Legal practitioners' trust accounts to consider and, where necessary, report a reportable irregularity as defined, whether the matter relates to the legal practitioners' business or the Legal practitioners' trust accounts.

8. Legal practitioner's Annual Statement on Trust Accounts when bank charges exceed interest earned

If the annual interest earned is less than the annual bank charges and the excess is transferred from the business account, when completing the legal practitioner's Annual Statement on Trust Accounts, the annual interest earned (after the bank charges are offset) will not agree to the annual interest received per the certificate obtained from the bank. How do legal practitioners overcome this?

All trust transactions must be accounted for, including interest received and bank charges paid. As required in terms of the Rules, the accounting records must be updated monthly⁸. This applies, even if the legal practitioner subscribed to the automated monthly transfer system in respect of interest and bank charges. This would then allow for the interest and bank charge transactions to be reconciled to the bank confirmations and certificates obtained.

⁸ Rule 54.10

9. Interest income

Does the legal practitioner have a reporting obligation to SARS in terms of the interest earned by clients on money held in trust?

Section 26 of the Tax Administration Act states:

Third party returns.

The Commissioner (of SARS) may by public notice, at the time and place and by the due date specified, require a person who employs, pays amounts to, receives amounts on behalf of or otherwise transacts with another person, or has control over assets of another person, to submit a return by the date specified in the notice.

The above-mentioned public notice is available [here](#).

This public notice makes mention of legal practitioners in Section 2.11. This notice contains a requirement for any person, who for their own account practises as a legal practitioner as defined in Section 1 of the Act and who pays to or receives on behalf of a third party any amount in respect of:

- An investment;
- Interest; or
- The rental of property.

to submit IT3(b) tax certificates to SARS on interest earned on behalf of third parties.

To the extent that the interest income will be distributed by the legal practitioner to a third party (i.e. clients), as is required in terms of Section 86(4) of the Act, then the legal practitioner must disclose the interest to SARS by submitting the IT3(b) tax certificates. If the legal practitioner is not obliged to give that interest to the client on whose behalf he/she holds the monies in the trust accounts, as is the case for all other trust money held, then there is no reporting obligation to SARS.

With respect to investment practices, Rule 55.1 provides that a firm shall for the purpose of this rule be deemed to be carrying on the business of an investment practice if it invests funds on behalf of a client or clients and it controls or manages, whether directly or indirectly, such investments. Rule 1 in turn defines a firm to mean:

- (i) a partnership of practitioners;
- (ii) a sole practitioner for his or her own account; or
- (iii) a personal liability company, who or which in each case conducts the practice of a practitioner.

Furthermore, Rule 1 defines a practitioner as an attorney, notary or conveyancer duly admitted to practice and practising in the area of jurisdiction of the Council.

Although it may be a firm that is carrying on an investment practice the actions can still be drawn back to a legal practitioner who invests on behalf of a client/s. The reporting obligations for the IT3(b) tax certificates are therefore also applicable to a legal practitioner carrying on an investment practice.

10. Legal practitioners carrying on an investment practice

Can Legal practitioners hold client's monies for investment purposes when there is no underlying matter where monies are designated for a particular purpose?

From 1 November 2018, legal practices and legal practitioners are regulated by the Act and the Rules. Investing monies on behalf of clients is permitted in terms of either the Act or the Rules.

When the legal practitioner holds monies on behalf of a client where there is an underlying matter and the monies have been designated for a particular purpose, Section 86(4) of the Act applies. Here, the Act allows the legal practitioner to invest, in a separate trust savings account or other interest-bearing account any money which is not immediately required for any particular purpose. Such monies held form part of the general trust monies of the legal practitioner and therefore fall within the ambit of trust monies covered by the LPFF.

When a legal practitioner holds client's, employee's or the legal practitioners' own monies for investment purpose when there is no underlying matter designating such monies for a particular purpose, Rule 55 applies. It is important to note that monies invested in terms of the Rules do not form part of the general trust monies and therefore do not enjoy the protection provided by the LPFF.

Where client's monies are invested in accordance with the Rules, the legal practitioner is deemed to be carrying on the business of an investment practice⁹. Where the legal practitioner is carrying on the business of an investment practice, Rule 55 must be complied with. For the purposes of the investment practice, a client includes any person on whose behalf a firm invests funds or manages or controls investments, whether or not such person is otherwise a client of the firm concerned¹⁰. The Rules require every legal practice carrying on an investment practice to keep a separate trust account record and supporting documents in respect of each client¹¹.

A firm carrying on an investment practice must obtain an investment mandate from each client. The form of the investment mandate must be substantially in the form of the Ninth Schedule of the Rules, and must contain a statement that the client acknowledges that monies so invested do not enjoy the protection of the LPFF¹².

Rule 55 does not apply to investments made in accordance with Section 86(4) of the Act, where there is an underlying matter with an explicit mandate.

In terms of legal practitioners carrying on investment practices, the Financial Sector Conduct Authority (FSCA) has clarified that investments made in terms of the Act do not fall within the ambit of the Financial Advisory and Intermediary Services Act, No. 37 of 2002 (FAIS Act), but investments made in accordance with the Rules are within the ambit and therefore require compliance with the FAIS Act.

Therefore, legal practitioners carrying on the business of an investment practice in investing monies when there is no underlying matter designating such monies for a particular purpose are required to comply with the FAIS Act, including being licensed

⁹ Rule 55.1

¹⁰ Rule 55.2

¹¹ Rule 55.6

¹² Rule 55.4

with the FSCA as financial service providers.

In terms of the reporting obligations, the auditor is required 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 required¹³.

¹³ Revised Guide, paragraph 9(b)

11. Payment of interest accruing to the LPFF

When must the 5% of interest earned on Section 86(4) investments be paid over to the LPFF in terms of Section 86(5)(b) of the Legal Practice Act?

Section 86(5)(b) of the Act states that interest accrued on money deposited in terms of this section (referring to Section 86 of the Act) must, in the case of money deposited in terms of—

(b) subsection (4) (i.e. S86(4)), be paid over to the person referred to in that subsection: Provided that 5% of the interest accrued on money in terms of this paragraph must be paid over to the Fund and vests in the Fund.

Section 86(4) states that a trust account practice may, on the instructions of any person, open a separate trust savings account or other interest-bearing account for the purpose of investing therein any money deposited in the trust account of that practice, on behalf of such person over which the practice exercises exclusive control as trustee, agent or stakeholder or in any other fiduciary capacity.

Rule 54.14.16.4 states that any interest referred to in Section 86(5) of the Act which relates to an account opened in terms of Section 86(4) of the Act, accrued on money deposited during the course of a calendar month or on maturity shall be paid over to the Fund or its nominee on or before the last day of the next succeeding calendar month.

With reference to Section 1 of the Act, the Fund as referred to in the Rules means the LPFF.

The requirements of Rule 54.14.16.4 and when interest should be paid over to LPFF are best explained by way of the following examples:

- Interest accrued on money deposited in terms of a Section 86(4) trust investment account during the month of February 2020, should be paid over to the LPFF on or before the last day of the month of March 2020.
- If interest on money deposited in terms of a Section 86(4) trust investment account only accrues to the investor on maturity, then such interest is due to the LPFF on maturity.

In both examples presented above, the interest is automatically swept by the banks in terms of banking arrangements entered into by the banks and the LPFF.

From 1 March 2019, when this section of the Act became effective, the banks that entered into a banking arrangement with the LPFF automatically sweep and pay the 5% of trust interest accrued on Section 86(4) trust investments, which vests in the LPFF in terms of Section 86(5), to the nominated LPFF bank account. It is important to note that the monthly sweeping of the 5% interest earned on all interest credited to the client's Section 86(4) trust investment account commenced when this section of the Act became effective, regardless of the date on which the trust investment account was opened.

Section 86(6) further requires that a legal practitioner referred to in Section 84(1) may not deposit money in terms of section 86(2) nor invest money in terms of Section 86(3) and (4) in accounts held at a bank which is not party to an arrangement as provided for in Section 63(1)(g), unless prior written consent of the LPFF has been obtained. The [list of banks](#) that have entered into a banking arrangement with the LPFF is maintained by

the LPFF.

SARS requires the banks to issue an IT3(b) tax certificate to the legal practitioner or the legal practitioner's client. With effect from 1 March 2019, the legal practitioner or the legal practitioner's client will receive an IT3(b) tax certificate of 95% interest earned on any separate Section 86(4) trust savings or other interest-bearing account and the bank will issue an IT3(b) tax certificate to the LPFF for 5% of the interest earned on the Section 86(4) account.