

Reference # 773634

01 November 2022

Mr Robert Barawundi

Investment Executive of the Legal Practitioners Fidelity Fund

By email: robert@fidfund.co.za

Dear Robert,

AUDITORS' CERTIFICATION OF RECOVERABLE BANK CHARGES

The South African Institute of Chartered Accountants (SAICA) appreciates the opportunity to engage with the Legal Practitioners' Fidelity Fund (LPFF) on a matter that has been identified as being problematic for registered auditors.

The requirement on auditors to certify recoverable bank charges on the application form that governs the refund of bank charges and audit fees by legal practitioners from the Legal Practitioners Fidelity Fund (LPFF), has been tabled at meetings of the Legal and Property Practitioners' Trust Accountants Committee (LPPTAC) and of the Legal Practitioners and Accountants' Committee (LPAC) of SAICA. The constituency of the LPAC include representatives of the LPFF and the Legal Practice Council (LPC).

We have set out background information and a proposed submission in this letter. We would appreciate direction from the LPFF in this regard to find a solution that will benefit both the LPFF and registered auditors.

Kind regards



Thandokuhle Myoli

Executive: Audit and Assurance
The South African Institute of Chartered Accountants



BACKGROUND

1. In terms of the Legal Practice Act, No. 28 of 2014, section 57(2)(a) and (c), legal practitioners may claim a portion of recoverable bank charges incurred in relation to the keeping of section 86(2) trust account as well as section 86(3) trust account and they may also claim a portion of audit costs relating to the audit of legal practitioners' trust accounts.
2. The application of refund of bank charges and audit fees form (the Application Form) is used by legal practitioners to claim recoverable bank charges and audit fees. This form is required to be signed by the legal practitioner and should also be certified by a registered auditor who conducted the audit of the legal practitioners' trust accounts.
3. The LPFF and LPC currently only accept an application for the refund of bank charges and audit fees if the Application Form has been duly completed by the practitioner firm and the auditor as required by the Application Form. No variation from the form, which has gone through an approval process of the Board of Control of the LPFF (the Board), is currently accepted.
4. The form requires the following of the auditor:

CERTIFICATE BY AUDITOR

I hereby certify that the recoverable bank charges in (iv), (amounting to R _____) above are in accordance with the accounting records of the firm and that such bank charges relate to the firms' section 86(2) and (3) trust accounts only. The firm is / is not * a registered vendor for VAT purposes. VAT amounting to R _____ is excluded from / included in * the recoverable bank charges in (iv) above.

The firm is / is not * a registered vendor for VAT purposes. VAT amounting to R _____ is excluded from / included in * the bank charges in (iv) above.

* delete whichever is not applicable

FULL NAMES OF THE REGISTERED AUDITOR RESPONSIBLE FOR THE ENGAGEMENT

5. The "Certificate By Auditor" section in the Application Form is problematic for the auditor: A "certification", which implies absolute assurance, is not envisioned by any of the standards of the International Auditing and Assurance Standards Board (IAASB), the standards that registered auditors in South Africa apply in the conduct of their engagements. The required certification by the auditor furthermore contains conclusions of the auditor without including context/information regarding the work that was done by the auditor in order to reach those conclusions.

SUBMISSION

6. SAICA is approaching the LPFF for direction regarding possible solutions to address the challenges posed to the auditor regarding said Application Form.



7. SAICA is proposing that the auditor should conduct an agreed-upon procedures (AUP) engagement in terms of International Standard on Related Services (ISRS) 4400 (Revised) *Agreed-Upon Procedures Engagements* regarding the information completed by the practitioner firm in section B of the application form.
8. This proposal was discussed at meetings of the LPPTAC and the LPAC respectively. There was support for this proposal at both the LPPTAC and LPAC meetings.
9. We have attached an illustration of such an AUP report in Appendix A to this document. Note that this report, including the procedures therein, is presented for **illustrative purposes** only. If the LPFF is supportive of this proposal in principal, the procedures to be performed will be agreed between the LPFF, LPC and representatives of the auditing profession.
10. It is not expected that the conduct of such an AUP engagement would result in additional cost for the practitioner firm.
11. This document discusses possible mechanisms of formalising the Agreed-Upon Procedures report, either by the Independent Regulatory Board for Auditors (IRBA) or by SAICA.
12. On consideration that the application form has gone through a Board approval process, the above submission is subject to the Board accommodating such proposal. A directive from the Board which permits the "Certificate by Auditor" section to be crossed out, with the addition of a reference to be made to the agreed-upon procedures report, may be a possible interim measure, with a revision of the Application Form being a possible longer term project. The Board is however best placed to determine the way forward in this regard.

13. Conducting the engagement in terms of ISRS 4400 (Revised) would, in our view, be advantageous to the LPFF and to the registered auditor. Such advantages include:
 - The procedures to be performed will be agreed between representatives of the LPFF, the LPC and the auditing profession. This will ensure that the procedures performed will meet the requirements of the LPFF and the LPC, and that the articulation of the procedures will meet the requirements of ISRS 4400 (Revised).
 - A standardised approach will mean that all auditors will be performing the same procedures.
 - An engagement performed in terms of ISRS 4400 (Revised) falls in the scope of the International Standards of Quality Management (ISQM), whereas an engagement that is not performed in terms of the IAASB standards is not covered by ISQM. The AUP engagement will thus be covered by, and subject to, the audit firm's system of quality management.



IRBA approval of the AUP report

14. The application for refunds of bank charges and audit fees is not currently dealt with in the IRBA Guide for Registered Auditors: Engagements on Legal Practitioners' Trust Accounts (Revised March 2020) (the IRBA Guide). Ideally, this matter, including the AUP report, should be addressed in the IRBA Guide.
15. The IRBA's Committee for Auditing Standards (CFAS) recently agreed the projects that will be taken onto the CFAS agenda in the next CFAS project cycle (which has an approximate timeline of 18 months). The application for refunds of bank charges and audit fees is not one of those projects. SAICA has approached the IRBA to explore the possibility of this project to be taken onto the CFAS work plan, but preliminary indications are that the IRBA will not be addressing this matter at this point in time.

SAICA issuing the AUP report as guidance to its members

16. If there isn't an avenue for the AUP report to be taken onto the CFAS agenda, or at least not in the 2023/2024 years, the AUP report will be issued by SAICA as guidance to SAICA members.
17. A SAICA Task Group, which would include representatives from the LPFF and the LPC, will be established to develop a proposed AUP report. It is vital for the LPFF and the LPC to be part of the task group to ensure that the agreed-upon procedures will meet the needs of the LPFF and the LPC.
18. In accordance with a process that has been agreed between SAICA and IRBA, the draft AUP report will be presented to the CFAS' Regulated Industries and Reports Standing Committee (RIRSC), for editorial input. The report will then be presented to the Assurance Guidance Committee of SAICA, for approval, after which it will be issued on the SAICA website.