LEGAL PRACTITIONERS FIDELITY FUND
SOUTH AFRICA

Registered auditors may submit an Agreed Upon Procedure Report on work conducted on the application for refund of bank charges and audit fees

1. Introduction

The purpose of this communication is to advise Legal Practitioners, Auditors, and all relevant stakeholders of the upcoming format in which registered auditors will conduct an agreed-upon procedures engagement on the completed application for refund of bank charges and audit fees form, thereby aligning the auditor's involvement in this form to the relevant standard of the International Auditing and Assurance Standards Board (IAASB).

2. Requirement to claim bank charges and audit fees as per the Legal Practice Act

In terms of section 57(2) of the Legal Practice Act No. 28 of 2014 (the Act), the Fund may be utilised for the following purposes:

a) refunding the bank charges or any portion thereof paid by any attorney, or an advocate referred to in section 34(2)*(b)* in relation to the keeping of a trust account referred to in section 86(2) and (3).

c) paying the audit and inspection costs or a portion thereof incurred by an attorney or advocate in relation to the obtaining of a Fidelity Fund certificate.

3. How to claim refundable bank charges and audit fees from the Legal Practitioners' Fidelity Fund

The application for refund of bank charges and audit fees form, issued by the Legal Practitioners' Fidelity Fund (LPFF) during May 2022, must be used for the purpose of claiming refundable bank charges and audit fees referred to in section 57(2)(a) and (c) of the Act.

This form can be downloaded from the LPFF's website and must be completed and submitted to the relevant Provincial Legal Practice Councils. This form can be completed digitally, but e*lectronic signatures* are *NOT* permitted.

4. Certification by Auditors section on the application for refund of bank charges and audit fees form

4.1. Currently, registered auditors (auditors) are required to certify that:

4.1.1. recoverable bank charges recorded in section B of the application for refund form agree to the accounting records of the firm and that such bank charges relate to the firms' sections 86(2) and (3) trust accounts only.

Cape Town Office
Tel +27 (0) 21 424 5351 **Fax** +27 (0) 86 549 2050
Email attorneys@fidfund.co.za **Website** www.fidfund.co.za
Physical 5th Floor, Waalburg Building, 28 Wale Street, Cape Town, 8001, South Africa
Postal P O Box 3062, Cape Town, 8000, South Africa, Docex 154, Cape Town

Centurion Office
Tel +27 (0) 12 622 3900 **Fax** +27 (0) 86 604 8452
Email Legal.Practitioners@fidfund.co.za
Website www.fidfund.co.za
Physical 1256 Heuwel Avenue, Centurion, 0127, South Africa.
Postal P O Box 12189 Die Hoewes, 0163 Docex 24 Centurion

B M Molefe (Chief Executive Officer), N Ngema (Fund Management Executive), J M Losper (Claims Executive), P Z Ndima (Senior Claims Manager), R Burawundi (Investment Executive), S D Maile (Board Secretary), M Tsogang (Chief Information Officer), E N Kraai (Senior Human Resources Manager)

4.1.2. The firm is or is not a registered vendor for VAT purpose.

4.1.3. The VAT amount is excluded from/included in the recoverable bank charges amount in section B(iv) of the application for refund form. (based on whether the firm is or is not a registered VAT vendor.

5. Challenges identified by auditors regarding "certification by auditors' section" on the application for refund of bank charges and audit fees form

5.1. The auditors have advised the LPFF that:

5.1.1. The "Certificate by Auditor" section in the Application for refund form is problematic for the auditor as:

- "certification", implies that absolute assurance is provided, and this is not envisioned by any of the standards of the International Auditing and Assurance Standards Board (IAASB) *(these are 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 to reach such conclusions.

5.2. The requirement on auditors to certify recoverable bank charges on the application for refund of bank charges and audit fees form was tabled at meetings of the following committees of the South African Institute of Chartered Accountants (SAICA):

5.2.1. Legal and Property Practitioners' Trust Accountants Committee (LPPTAC)

5.2.2. Legal Practitioners and Accountants' Committee (LPAC).
The composition of the LPAC includes representatives of the LPFF and the Legal Practice Council (LPC), the Independent Regulatory Body for Auditors (IRBA), practicing attorneys and auditors engaged in the audit of legal practitioners' trust accounts

6. Solution to address challenges experienced by auditors

6.1. The proposal supported during the committee meetings was that the auditor should conduct an Agreed-Upon Procedures (AUP) engagement in terms of the International Standard on Related Services (ISRS) 4400 (Revised) *Agreed-Upon Procedures Engagements* regarding the information completed by the legal practitioner firm in the application form.

6.2. Subsequent to tabling this matter to the meetings referred to under 5.2 above, it was resolved that SAICA approach the LPFF for direction regarding possible solutions to address challenges experienced by auditors regarding this application for refund form.

6.3. SAICA submitted a memorandum to the LPFF, on behalf of the profession, detailing the above challenges as well as the proposed solution. SAICA explained in the memorandum, amongst others, that:

6.3.1. Conducting the engagement in terms of ISRS 4400 (Revised) would, in their 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 International Standards of Quality Management (ISQM) 1, *Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services*, whereas an engagement that is not performed in terms of the IAASB standards is not covered by ISQM 1. The AUP engagement will thus be covered by, and subject to, the audit firm's system of quality management.

6.4. SAICA's memorandum was tabled at the LPFF's Treasury Committee, and the committee supported the proposal made by the auditors based on the memorandum submitted by SAICA.

6.5. SAICA indicated that it was not expected that an AUP engagement would result in additional cost to the practitioner firm, provided that the scope of work to be included in the AUP engagement was consistent with the current requirements.

7. Way Forward - Certification by Auditors section on the application for refund of bank charges and audit fees

7.1. A SAICA Task Group to develop an AUP report was nominated by the LPAC. This task group consists of representatives from the LPFF, LPC, SAICA, and at least two (2) registered auditor conducting audit of legal practitioners' trust accounts.

7.2. The SAICA Task Group is currently developing the AUP report, and after further discussion it was agreed that the scope of AUP engagement should cover sections A, B, C and D of the application for refund of bank charges and audit fees form.

7.3. The "certification by auditor section on the application for refund form" will be updated to refer the LPC and the LPFF to the AUP report issued by the auditor, which will be attached to the actual application for refund form.

7.4. Approval of the AUP Report:

7.4.1. In accordance with a process that has been agreed between SAICA and IRBA, the draft AUP report will be noted at the IRBA's Committee for Auditing Standards' (CFAS) Regulated Industries and Reports Standing Committee (RIRSC). The report will then be presented to the Assurance Guidance Committee of SAICA, for approval, after which it will be issued.

7.5. Communication will be issued to all stakeholders when the AUP report has been approved in 2023.

8. Interim solution until SAICA issues the AUP report as guidance to its members:

8.1. **The LPC will accept the following submissions as resolved by the LPFF (**This means that both documents as indicated below will be accepted until the final approved AUP report is issued by SAICA in 2023)**:**

8.1.1. Application for refund of bank charges and audit fees signed by the auditor (signed under "the certification by auditor section"); or

AUP report accompanying the application for refund of bank charges and audit fees. This is an AUP report developed by each audit firm following the ISRS 4400 (Revised) requirements. The procedures, which the auditor needs to agree with the legal practitioner firm, should, in principle, address sections A, B, C and D of the application for refund of bank charges and audit fees form, referred to under paragraph 7.2.

8.2. **All stakeholders are advised that each audit firm will develop their own AUP report in terms of ISRS 4400 (Revised), as an interim measure pending the approval of the final AUP report.**

Robert Burawundi
Investment Executive: Legal Practitioners Fidelity Fund
2 May 2023