
Advisory Notice

10 May 2024

UPDATE ON THE AUDIT OF LEGAL PRACTITIONER BUSINESS ACCOUNTS

Overview and background

The South African Legal Practice Council Rules (“the Rules”) and Legal Practice Act, No. 28 of 2014 (“the Act”) require an audit engagement to be undertaken on the compliance of the legal practitioner’s trust accounts with the Act and the Rules. The Rules and Act however, do not require a legal practitioner’s financial statements to be audited (i.e the business accounts of the firm).

A legal practitioner who practices as a sole proprietor is not required to have his/her annual financial statements audited however, he/she can elect to do so on a voluntary basis. Similarly, there is no requirement for legal practitioners who practice in the form of a partnership to have their annual financial statements audited unless such a requirement is contained in their partnership agreement or the partners elect to have an audit conducted.

Regulation 28(2) of the Companies Regulations provides that, in addition to public companies and state owned companies (SOC), where the audit of any other company is desirable in the public interest, as indicated by prescribed criteria in any particular financial year, the Annual Financial Statements (AFS) of that company must be audited. One of the prescribed criteria (among others), is that an audit is required if in the ordinary course of its primary activities, a profit or non-profit company holds assets in a fiduciary capacity for people who are not related to the company, and the aggregate value of such assets held at any time during the financial year exceeds R5 million.

The terms, “ordinary course of its primary activities” and “fiduciary capacity” were however, not defined which resulted in different interpretations amongst legal practitioners. In 2013 the Companies and Intellectual Property Commission (CIPC) issued a non-binding opinion which relates to trust accounts operated by legal practitioners. In this non-binding opinion CIPC stated that their view was that monies held in a trust account were held in fiduciary capacity however, the operation of a trust account by a legal practitioner was not in ordinary course of the firm’s primary activity. According to the non-binding opinion the primary activity of a legal practitioner was the rendering of legal services. The non-binding opinion meant that practitioners who practiced in the form of a **personal liability company** and held more than R5 million in the firm’s trust account **were not** subject to the audit requirements as contained in Regulations 28 (2) as pertains to the firm’s business accounts.

On 30 October 2019, CIPC withdrew the non-binding opinion and emphasized the provisions of Regulation 28 (2). The notice from CIPC further stated that all categories of companies which, in the ordinary course of their primary activities, hold assets in a fiduciary capacity for persons for persons who are not related to them, the value of which exceeded R5 million in the preceding financial year, must have their annual financial statements audited. The notice specified legal practitioners, conveyancers and notaries as examples of companies which would require an audit under the provisions of Regulation 28 (2).

The withdrawal of the non-binding opinion by CIPC then meant that practitioners who practiced in the form of a personal liability company and held more than R5 million in the firm’s trust account **were** subject to the audit requirements as contained in Regulations 28 (2) as pertains to the firm’s business accounts.

Recent developments

The Law Society of South Africa (LSSA) brought an application against CIPC which resulted in a court order being granted by Honourable Bruinders AJ in the High Court of South Africa, Gauteng Division under case no. 2023-062245 on 8 March 2024. In terms of the court order legal practitioners who practice in the form of a personal liability company (i.e an Inc.) are exempt from having their annual financial statements (i.e the firm's business accounts) audited or reviewed. A copy of the court order is enclosed.

Please note that the audit requirements pertaining to the firm' trust accounts still exist in terms of the Rules and Act.

Issued by the Legal Practice Council

X
2024-03-09

003-1

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION PRETORIA

CASE NO: 2023-062245

On this 8th day of March 2024 before the Honourable Bruinders AJ in Court 6E

Number 42 on the roll

In the matter between:

LAW SOCIETY OF SOUTH AFRICA

APPLICANT

and

COMPANIES AND INTELLECTUAL

2024 -03- 14

RESPONDENT

PROPERTY COMMISSION



DRAFT ORDER

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by email. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or her Secretary. The date of this Order is deemed to be 8 March 2024.

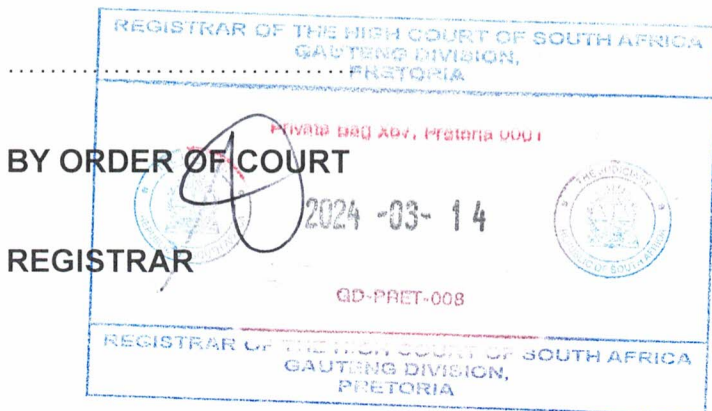
After having heard Counsel and having read the papers in the matter the following order is made:

003-1

Tm

1. That ~~Legal~~ legal practices established as commercial juristic entities under section 34(7) of the Legal Practice Act, No. 28 of 2014 ("the LPA") and incorporated as personal liability companies under section 8(2)(c) of the Companies Act, NO. 71 of 2008 as amended (the Companies Act"), are by virtue of section 30(2A) of the Companies Act, read with Regulation 28(1) of the Companies Regulation, 2011 ("the Companies Regulation"), are exempt from having their annual financial statements audited or independently reviewed^{ed}.

✗
✗
✗



Counsel for applicant:

LM Maite

079 502 2951

and
06 2245/23

Tum