



# LEGAL PRACTITIONERS FIDELITY FUND

SOUTH AFRICA

## PAYMENT OF TRUST INTEREST ACCRUED ON TRUST ACCOUNTS HELD IN TERMS OF SECTION 86 OF THE LEGAL PRACTICE ACT, No. 28 of 2014 TO THE LEGAL PRACTITIONERS' FIDELITY FUND

The purpose of this communication is to remind the Legal Practitioners, Registered Auditors, and all relevant stakeholders about the requirements of section 86 of the Legal Practice Act, No. 28 of 2014 (LPA) and The South African Legal Practice Council Rules made under the authority of sections 95(1), 95(3) and 109(2) of the LPA (LPC Rules), pertaining to payment of trust interest accrued on section 86 trust accounts.

Below are the three types of trust accounts that are operated by the Legal Practitioners, referred to in section 84(1) of the LPA:

Types of trust account	Description in terms of the LPA
Section 86(2)	<i>"Every trust account practice must keep a trust account at a bank with which the Fund has made an arrangement as provided for in section 63(1)(g) and must deposit therein, as soon as possible after receipt thereof, money held by such practice on behalf of any person".</i>
Section 86(3)	<i>"A trust account practice may, of its own accord, invest in a separate trust savings account or other interest-bearing account any money which is not immediately required for any particular purpose".</i>
Section 86(4)	<i>"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".</i>

The above-mentioned trust accounts must be held at a bank that has entered into a banking arrangement, as provided for by section 63(1)(g) and section 86(6) of the LPA. The list of banks that have entered into banking arrangements with the LPFF can be found on the LPFF's website using the following URL: <http://www.fidfund.co.za/what-is-a-trust-account/>.

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The table below explains:

- How much of the trust interest accrued on the above-mentioned trust accounts is due to the LPFF?
- When should trust interest accrued on these trust accounts be paid to the Fund?
- The available methods of payment of trust interest.

Type of trust account	How much of the trust interest is due to the LPFF?	When should trust interest accrued be paid to the Fund?	Available method of payment
86(2)	<p>100% of trust interest accrued in terms of section 86(2) trust account is due to the LPFF. This is in accordance with section 86(5)(a) of the LPA.</p> <p>Legal Practitioners are allowed to deduct recoverable bank charges, in accordance with section 57(2)(a) of the LPA, from trust interest accrued and pay net trust interest to the LPFF.</p>	<p>LPC Rule 54.14.16.1 states that: <i>“Any interest referred to in section 86(5) of the Act which relates to a trust banking account opened in terms of section 86(2) of the Act which has accrued on money deposited during the course of a calendar month, shall be paid over to the Fund or its nominee on or before the last day of the next succeeding calendar month; provided that the Fund may, in its discretion, exempt a practitioner from this obligation”.</i></p> <p>This means that trust interest accrued during the month of January 2021, should be paid to the LPFF on or before the end of February 2021.</p> <p>It should be noted that Legal Practitioners are not exempted from paying trust interest accrued on section 86(2).</p>	<p>Legal Practitioners are required to pay the trust interest to the LPFF on a monthly using either of the two processes described below:</p> <ul style="list-style-type: none"> <li>• Manual payment into the LPFF’s nominated bank account, or</li> <li>• via the banks’ Automated Monthly Transfer System (AMTS) sweeping facility.</li> </ul> <p>For manual payments, Legal Practitioners, are required to contact the LPFF to obtain the LPFF’s banking details and a reporting template that should accompany the proof of payment.</p>



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Type of trust account	How much of the trust interest is due to the LPFF?	When should trust interest accrued be paid to the Fund?	Available method of payment
Section 86(3)	<p>100% of trust interest accrued in terms of section 86(3) trust account is due to the LPFF. This is in accordance with section 86(5)(a) of the LPA.</p> <p>Legal Practitioners are allowed to deduct recoverable bank charges, in accordance with section 57(2)(a) of the LPA, from trust interest accrued and pay net trust interest to the LPFF.</p>	<p>LPC Rule 54.14.16.3 states that: <i>“Any interest referred to in section 86(5) of the Act which relates to an account opened in terms of section 86(3) of the Act accrued on money deposited in respect of any period ending on the last day of February in each year shall, on or before the last day of May in that year, be paid to the Fund or its nominee”.</i></p>	<p>Legal Practitioners are required to pay trust interest manually into the LPFF’s nominated bank account, unless their respective banks are able to transfer trust interest automatically to the LPFF<sup>1</sup>.</p>

<sup>1</sup> Please note that not all banks have AMTS or sweeping facility on their section 86(3) banking products.



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Type of trust account	How much of the trust interest is due to the LPFF?	When should trust interest accrued be paid to the Fund?	Available method of payment
Section 86(4)	<p>Effective from 1 March 2019, 5% of trust interest accrued on money invested in terms of section 86(4) is due to the LPFF, in terms of section 86(5)(b) of the LPA.</p> <p>This is applicable to all section 86(4) trust investment accounts irrespective of the date on which there were opened, and the trust accounts that are Sharia compliant.</p>	<p>LPC Rule 54.14.16.4 states that: <i>“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”.</i></p>	<p>The banks automatically pay the 5% of trust interest accrued on section 86(4) trust investments, to the nominated LPFF bank account, in accordance with the banking arrangement that these banks have signed with the LPFF.</p> <p>The Banks have been communicating with their clients (Legal Practitioners) in terms of how they will be accounting for and reporting on the 5% interest paid over to the LPFF.</p>

Stakeholders are reminded that only recoverable bank charges, approved by the LPFF during 2009, can be deducted from trust interest accrued on section 86(2) and section 86(3), and that:

- The list of recoverable bank charges can found on the LPFF website using the following URL: [http://www.fidfund.co.za/wp-content/uploads/2020/02/List-of-recoverable-and-non-recoverable-bank-charges\\_1.pdf](http://www.fidfund.co.za/wp-content/uploads/2020/02/List-of-recoverable-and-non-recoverable-bank-charges_1.pdf)
- Legal Practitioners, who are registered as VAT vendors in terms of the Value-Added Tax Act, can only deduct recoverable bank charges net of VAT from trust interest accrued on section 86(2) and section 86(3) trust accounts.
- Legal Practitioners, who are non-VAT vendors, can deduct recoverable bank charges inclusive of VAT from trust interest accrued on section 86(2) and section 86(3) trust accounts.



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Please contact the Trust Interest Portfolio Officers at the LPFF using the following email addresses, for any queries relating to section 86 of the LPA:

<b>Area</b>	<b>Contact details</b>
Northern Provinces <i>(Gauteng, Limpopo, Mpumalanga and North- West)</i>	<a href="mailto:ida.nchoe@fidfund.co.za">ida.nchoe@fidfund.co.za</a>
Western Cape	<a href="mailto:thoraiya.karriem@fidfund.co.za">thoraiya.karriem@fidfund.co.za</a>
KwaZulu Natal	<a href="mailto:cynthia.naidoo@fidfund.co.za">cynthia.naidoo@fidfund.co.za</a>
Eastern Cape, Free State and Northern Cape	<a href="mailto:herman.rothman@fidfund.co.za">herman.rothman@fidfund.co.za</a>

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