



MANEO

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NEWSLETTER FROM THE PUBLIC ACCOUNTANTS' AND AUDITORS' BOARD
NUUSBRIEF VAN DIE OPENBARE REKENMEESTERS- EN OUDITEURSRAAD

REPORT FROM THE CHIEF EXECUTIVE OFFICER

The following is an extract from the budget speech of the Minister of Finance, Trevor Manuel, which relates to corporate governance and the auditing profession.

REINFORCING CORPORATE GOVERNANCE

The issue of corporate governance and in particular the role of the auditing firms has once again dominated the headlines. The Enron debacle has brought into sharp relief a number of key issues – weak or non-existent governance structures, the fiduciary responsibility of directors, negligent and sometimes reckless management, ineffective auditing, independence of auditors and conflicts of interest arising from inadequate separation between auditing and consultancy. Closer to home a number of corporate failures – Macmed, Leisurenent, Regal Treasury, Unifer – to name but a few, have raised a similar set of issues. Many of these weaknesses were highlighted in the Nel Commission's Report.

The Minister of Finance has responsibility for the legislation governing the audit profession in South African. Last year the National Accountancy and Consultative Forum presented me with a draft Accountancy Professions Bill to replace the existing Public Accounting and Auditors Act of 1991. Having considered the draft legislation and taking account of recent developments both nationally and globally, it is my view that the Bill does not go far enough. Over the coming months we will actively engage with all the role players to

ensure that the Bill addresses our country's needs in this regard.

The PAAB welcomes the Minister's undertaking to actively engage with the role players concerning the Bill over the coming months.

As the statutory body charged with the regulation of the practising arm of the profession, the Board acknowledges its responsibility to play its part in the improvement and maintenance of standards.

The PAAB initiated the process for the transformation of the accountancy profession in 1991 and has actively participated in developments over the period. Considerable effort has also been devoted to strategic initiatives to prepare the way for the anticipated new legislation in order to ensure that this is effective and efficient. These have been communicated widely to major stakeholders, including Government. The most recent initiative is the appointment

of an independent commission to investigate the disciplinary processes of PAAB and SAICA (see Quarterly Report of the Director: Legal).

Whilst the PAAB fully accepts the need for a review of the proposed legislation, it believes that continuing delays in achieving finality are counter productive to addressing the expectation gap and achieving the objective of appropriate investor protection.

In seeking appropriate solutions, it will be important to recognise that some of the reporting about the causes of and solutions to corporate failures has been speculative and, at times, downright misleading. This will require a careful separation of the wheat from the chaff in the quest for solutions which are practical as well as cost effective. ■

– **Claude O'Flaherty**
Chief Executive Officer

WEBSITE – www.paab.co.za

The PAAB website has proven very informative and its daily visitor hit rate continues to increase. For the week leading up to the release of the PPE results, the number of hits steadily increased from the regular visitor traffic of just under 5,000 hits on Monday, 18 February to 10,000 hits on Thursday, 21 February and an astounding **230,539 hits on Result Day, Friday, 22 February**. Even on the Monday after the release we had 72,075 hits for that day. We are very pleased that so many people were able to obtain the information they required from our website and we strive to continue serving our members and the general public in this manner. On average we receive visitors to our site from 37 countries, 48% of whom are from South Africa and 47% from the USA. Our MEMBER SEARCH facility from our database has proven very successful as well as our MANEO newsletter online. If you have any other suggestions please forward them to board@paab.co.za. ■



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NEW APPOINTMENTS

Costa Qually matriculated from Hyde Park High School in 1961 and went on to work in Barclays Bank for 18 months before joining Goldby, Panchaud & Webber as an articled clerk. He studied part time at the University of the Witwatersrand and obtained his CTA in 1968. In 1969 Costa passed the qualifying examination of the Board with honours and obtained the highest marks in Accountancy in that year.

Costa has been a partner of Deloitte & Touche since 1972, where he is currently the national partner in charge of risk management. Costa served as an external examiner in Auditing II at Wits from 1981 to 1992.

Apart from serving on various other committees of SAICA, Costa was a member of the Johannesburg Regional Association of CAs

CHAIRMAN: MR CR QUALLY



for 7 years and was its chairman in 1988/9. He also served on the Council of the Transvaal (renamed Gauteng) Society of CAs from 1989 to 1997 and was its president in the 1995/6 year.

He served on the Auditing Standards Committee of SAICA for 4 years during the mid 1980's and has rejoined the committee in 1998. Presently Costa is the acting chairman of this committee which now falls under the Board directly. Costa has been an alternate member to the Board since 1993 and full member since 1999. He was appointed Vice Chairman in 2001 before being elected as Chairman for 2002. Costa also serves on the Practice Review Committee of the Board and was its Chairman until this year.

Ismail Patel matriculated from the Orient Islamic High School in 1967 whereafter he completed his B.Com degree through UNISA in 1970. Ismail obtained his CTA from the University of Durban Westville in 1974 and passed the qualifying examination of the Board in 1975.

Ismail registered with the Board on 1 January 1976 and immediately went into practice. He has been a partner of Mahomedy and Manjee Chartered Accountants (SA) in Durban since

VICE CHAIRMAN: MR ID PATEL



1984. He registered as a member of SAICA in 1975 and has been a member of ABASA since 1988.

In 1997 Ismail became an alternate member to the Board and has served as a full member of the Board and Exco since 1999. Ismail was president of the KwaZulu Natal Society of Chartered Accountants in 1997 and 1998, as well as a council member from 1991 to 2001. He was also a member of the Disciplinary Panel of SAICA in 2000 and 2001. ■

AUDITING STANDARDS

AUDITING STANDARDS COMMITTEE (SC)

WITHDRAWAL OF PRONOUNCEMENTS

The following statements have been withdrawn and have been replaced by the practice statement appearing in brackets:

- SAAS 4012 Computer Assisted Audit Techniques (SAAPS 1009 Computer Assisted Audit Techniques),
- SAAS 4013 Computer Information Systems Environment – On-line Computer Systems (SAAPS 1002 IT Environments – On-line Computer Systems),
- SAAS 4014 Computer Information Systems Environment – Microcomputers (SAAPS1001 IT Environments – Stand-alone Personal Computers), and
- SAAS 4015 Computer Information Systems Environment - Database Systems (SAAPS 1003 IT Environments – Database Systems).

INTERNATIONAL AUDITING PRACTICES COMMITTEE

The IAPC met in Madrid from 10-12 December 2001 when it noted a report back on:

- The IAPC review task force
- The work of the quality control sub-committee
- The revisions program
- The findings of the research project on moderate assurance

NATIONAL STANDARD-SETTERS MEETING

The second annual meeting of national standard-setters was held in Berlin from 24-25 January 2002. The purpose of this meeting is to enable the IAPC to understand the work programmes of national standard-setters in order to identify areas where international co-operation would be possible on projects in which IAPC has an interest.

Other matters of international interest which were discussed included:

- Aggressive earnings management
- The use of black lettering in auditing standards.
- The adoption of International Standards on Auditing by the EU by the year 2005.

CONTINUED ON PAGE 11



QUARTERLY REPORT FROM THE DIRECTOR: LEGAL

for the period 1 October 2001 to 31 December 2001

INVESTIGATION COMMITTEE

The Investigation Committee met once during this period and disposed of 6 cases as follows:

- Two cases were either withdrawn by the complainant, not prosecuted, or not proceeded with by the Committee, for various other reasons, including settlement.
- One practitioner was cautioned; the matter related to the failure to reply to correspondence or telephone calls.
- One practitioner was reprimanded; the matter related to negligence.
- Two practitioners were fined. Both had pleaded guilty, and were found guilty. One matter related to negligence. The practitioner was fined R25 000. The other arose out of practice review. The practitioner was fined R15 000 suspended for three years on conditions. This related to a first cycle review.

DISCIPLINARY COMMITTEE

The Disciplinary Committee heard one case during this period. The practitioner, through his legal advisor, has indicated that he is considering taking the matter on review and so it is accordingly not reported here in full.

TRUSTEESHIPS

Although the Code of Conduct does not prohibit a firm from auditing a trust in which one of the partners of the firm is a trustee (as long as the audit is carried out by a different partner) the Board cautions strongly against this. The historical reasons for allowing this apparent exception to the independence rule is to give effect to the wishes of testators. It is very common that a testator establishing a testamentary trust wishes to retain his tried and trusted professional advisors as trustees, and ongoing professional advisors, to the trust. Accordingly it is not uncommon to see testators requesting their attorney and their auditor to be trustees and the legal firm and the auditing firm to continue to act for the trust. The Board has had two instances in the fairly recent past where trustees, who were RAAs, misappropriated substantial sums of money from large trusts. In both instances the trusts were audited by other partners in the firm in question who were horrified to learn of the behaviour of their partners. In both cases the errant partner was reported to this Board by their firm, and criminally prosecuted, and permanently disqualified from registration with the Board. In both cases it took some time for the frauds to be uncovered, due to the propitious situation of the RAA trustee.

SET OFF

Members are cautioned that the set-off of refund money received from Inland Revenue for a client against fees owing by the client is considered unprofessional conduct unless the client has agreed to this. The Investigation Committee is hearing too many cases where this is done

even where the fee is specifically in dispute. The Board is aware that such a set-off is lawful in certain circumstances, but it is nevertheless unprofessional if done without the client's express consent.

INVESTIGATION INTO DISCIPLINARY PROCESS

As far back as April 2000 the Board decided as part of its strategic initiatives to see if and how the disciplinary process could be improved. This was part of a much larger strategic plan to "overhaul" and where possible improve all the processes at the Board. Many of the cases dealt with by the Board involve persons who are RAAs and are also members of SAICA. This has an impact on the disciplinary processes regarding people who are members of both bodies, in so far as "double sentencing" becomes an issue.

Accordingly, the respective Boards of the PAAB and SAICA agreed in principle to the appointment of a Joint Commission to review the current disciplinary processes and procedures of the two organisations independently. The purpose of this is to harmonise the processes and to recommend improvement. The brief of the Joint Commission is to include investigation of the following issues:

- The ability to obtain and subpoena evidence and witnesses, both by a statutory board and a voluntary organisation.
- How the needs of both SAICA and the PAAB can be met without double trials.
- The credibility of the process in the eyes of both the public and the members.
- The acceptability of "plea-bargaining" as a mechanism for improving the efficiency of the process.

OBITUARY – MIKE WOODS

It is with the deepest regret that the Board learned of the passing of Mike Woods in December after a short illness over a few months.

Mike can truly be considered to have been a doyen of our profession. Mike retired from Ernst & Young in 2001 after a distinguished career with the firm. Not only did Mike excel within the firm, but also he gave unselfishly of his time to the broader profession. He was Chairman of the Board in 1986 and served on a number of our Committees. He was a pioneer in the formation of the Eden Trust in 1989, the objective of which is to provide bursary support for socially and economically disadvantaged students to aspire to careers as Chartered Accountants. He was also supportive of the formation of ABASA in 1986 and played a role in allaying peoples fears and suspicious at a time when it would have been unpopular to do so.

We extend our sincerest condolences to his loved ones. He will be sorely missed by all.



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- The optimum level of resources needed to be able to conduct the process effectively and the level of expenditure needed to sustain the process.
- The appropriateness of sentences imposed by both bodies in the light of current society norms.
- The composition of committees taking into account the availability of volunteers and the trend towards longer and more complex hearings.
- The increasing difficulty of proving cases and the adequacy of evidence.
- If and how the processes can be accelerated.

The Joint Commission is headed by advocate John Myburgh SC and the rest of the panel comprises Brian Abrahams, Rick Cottrell, Peter Wilmot, Peter Moyo and Sango Ntsaluba. The commission has met twice and I was able to give fairly substantial input at the second meeting. It is anticipated that once the commission has formulated recommendations these will be exposed, inter alia, to the

membership of both bodies for comment. We will probably post this on our website and so would urge you to keep an eye on the “News Items” button on the website.

NEL COMMISSION

We are still putting together a working group of interested parties to discuss the recommendations of Nel II with a view to formulating a response from the auditing profession. The annotated summary of this report is to be found on our website under

- News Items
- News release: Nel Commission Final Report

We anticipate that this document will form the basis of discussion at our working group. If you wish to join this group, please contact me. ■

Jane O’ Connor

INDIVIDUALS ADMITTED TO THE REGISTER OF THE BOARD

From 1 November 2001 to 28 February 2002

Arendse Mark David	Heiriss Roland Hans	Maharaj Junai Arunkumar	Strydom Shaun
Bezuidenhout Mark John Patrick	Janse van Rensburg Gerhard	Marriday Thegarajan	Symonds Eugene
Britz Freda	Kader Nazrien Banu	Marx Christiaan Gabriel	Toussaint Laurent Franck
Cloete Christiaan Johannes	Kemp Chantal	Mokgatla Thabo Vincent	Van Der Merwe Ockert Rudolph
De Clerk Susara Gertruida	Kempen Cornelius Phillipus	Mokoka Johannes	Van Der Schyff Jan Augustus
Emslie Cathryn Robyn	Krige Joy Lyn	Moolman Cornelius Richard	Van Der Walt Izak Hamilton Du Plessis
Fourie Daniel Jacobus	Kunz Cornelia Carolina	Munday Noel Wayne	Van Der Walt Izak Hamilton Du Plessis
Greyling Bester Ebersohn	Le Roux Eugene Frederik	Nkonyama Babalwa	Van Schalkwyk Stephanus Petrus
Griffin Robert Ashley	Le Roux Francois Wilhelmus	Purves Tiffany Ann	Venter Riana
Harrison Hugh Brian	Louwrens Gezina Johanna	Rebello Jose Luis	Wrogemann Jurgen Dieter
Harrison Wayne Graham	Mackay-Davidson Stuart Charles	Sherwood Gary Neil	Zulu Sikhumbuzo Simon

INDIVIDUALS RE-ADMITTED TO THE REGISTER OF THE BOARD

From 1 November 2001 to 28 February 2002

Atyob Nezira	MacDonald James Donaldson	Smit Jacobus Francois	Teuchert Michael John Andrew
Esterhuizen Pieter Willem	MacPherson Roy Alan	Teixeira Carlos Filipe De Franca	Walsh Brian Gerald

INDIVIDUALS REMOVED FROM THE REGISTER OF THE BOARD

From 1 November 2001 to 28 February 2002

Adlam Jan Jacob Andries (resigned)	Gampel Kenneth Maurice (resigned)	Neasham William Roy (resigned)
Adrain Michael John (resigned)	Glutz Francois Armin (resigned)	Neethling Diana Carol (resigned)
Beauclerk Peter Wyndham (resigned)	Haasbroek Christiaan Jacobus (resigned)	Norman Alan Leigh (resigned)
Bloch Barry Michael (emigrated)	Hande Barry Michael (resigned)	Petyt John Lenox (resigned)
Bolt Clifford Leslie (resigned)	Hills Andries Frederik (resigned)	Proudfoot David Alexander (resigned)
Bonamour Barrie Louis John (resigned)	Jangda Ismail Mohamed (emigrated)	Rangecroft Charles Zell (resigned)
Botha Pieter Nicolaas (resigned)	Joubert Theofilus Tobias (resigned)	Read Robin Mark (resigned)
Brown Steve Thomas (resigned)	Katzke Robert William August (deceased)	Rosenberg Alfred (resigned)
Campbell Roy Duncombe (resigned)	Kennedy Colin David (resigned)	Saayman Andre Johannes (resigned)
Chonin Seville Leonard (emigrated)	Kidson Arthur Ronald (resigned)	Shaw Martin John (resigned)
Clow Adrian Andre (resigned)	Kleynhans Jan Lourens (resigned)	Smith Chris (resigned)
Cooper Gary Simon (resigned)	Kokott Robert Henry (resigned)	Steyn Marais (resigned)
Day Gordon Raymond (resigned)	Krause Frans Albert (resigned)	Tuch Joel (resigned)
Demaine Neville Gordon (resigned)	Lea John Rowland (resigned)	Van Den Heever Daniel Izakse (resigned)
De Villiers Albertus Johannes (resigned)	Leisegang Anton Douglas Kristian (resigned)	Van Der Walt Petrus Johannes (resigned)
Donnelly John Michael (resigned)	Levitt Steven Alan (resigned)	Van Woerkom Andre (emigrated)
Dyer Graham Dudley (resigned)	Levy Alec (resigned)	Viviers Willie Rudolph (resigned)
Farley Russell John (emigrated)	Lotz Pierre (resigned)	Walker Wesley Douglas (deceased)
Ferreira Frank Elwin (resigned)	McEwen Alan James (resigned)	Ward Marisa (resigned)
Fick Lambert Metcalf (resigned)	Mitton Ronald John Toft (resigned)	Weerheim Donald Leendert (emigrated)
Fourie Catrina Martina Wilhelmina (resigned)	Moore Patrick Denis (resigned)	Wiid Siebert Christiaan (emigrated)
Frederic (nee Fan) Chia-Ling (emigrated)	Moritz Edgar James (emigrated)	Wilken Willem Johannes (resigned)
Freese Wendy Ann (resigned)	Mosololi Thabo Felix (resigned)	Wimble David George Edward (resigned)



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OFFICIAL STATEMENT ACCOMPANYING THE RELEASE OF THE RESULTS OF THE PUBLIC PRACTICE EXAMINATION (PPE) 2001

OVERALL RESULTS

A record number of 2113 (2000: 1809) candidates wrote the Public Practice Examination (PPE) set by the Public Accountants' and Auditors' Board (PAAB) in November 2001. Of these, 1258 (2000: 1144) passed, representing a pass rate of 60% (2000: 63%). The pass rate for candidates who wrote for the first time was 66% (2000: 69%).

One candidate was awarded honours for achieving a pass mark of over 75%.

THE NAMES OF THE TOP 10 CANDIDATES ARE:

- 1 - Mandy Shana Salomon
- with honours
- 2 - Gary Ryan Watt
- 3 - Marian Mentz
- 4 - Warren Muir
- 5 - Leigh Caryn Jensen
- 6 - Simon Solomon Minitzer
- 7 - Francois Wessel Swart
- 8 - Anton Jozef Przybojewski
- 9 - Susan Amelia McCready
- 10 - Lindsay Brotherton

Particularly noteworthy is the increase of 30 % in the total number of black candidates (african black, coloured and indian) who passed the PPE this year. In total 267 black candidates passed in comparison to the 205 candidates in 2000.

TRANSFORMATION OF THE PROFESSION

Increasing the number of black accountants and auditors is a national imperative and the PAAB, the South African Institute of Chartered Accountants (SAICA), the universities and the professional firms are working aggressively to address this. One such special initiative of the PAAB is the implementation of Black Advancement Programme for

black candidates who have been unsuccessful in a previous attempt to pass the PPE. In 2001, 89 candidates attended the course and wrote the PPE, 43 (48%) of whom passed. This compares favourably with the overall pass rate for repeat candidates of 46%.

THE EXAMINATION OBJECTIVE

The statutory auditor performs a very responsible function and the PAAB has a duty to ensure that only those who have demonstrated an appropriate degree of professional competence are registered as auditors. The examination, which aims to assess professional competence takes the form of a five-hour written assessment consisting of a selection of case studies depicting the public practice environment. Candidates must demonstrate an ability to solve multi-disciplinary practical problems in an integrated manner, and to do so, must analyse and interpret information and provide viable solutions to address specific client needs. The ability to demonstrate logical thought and exercise professional judgement is an integral part of the examination.

ADMISSION REQUIREMENTS

Admission requirements to the PPE are onerous, requiring completion of a recognised, academic and education programme. In addition, entrants must also have passed Part I of the Qualifying Examination of the South African Institute of Chartered Accountants (SAICA). Completion of the academic requirement under a full-time study programme ordinarily takes at least 4 years. Given the practical focus of the assessment, candidates are required to have served at least 18 months of a registered training contract in the service of a Registered Accountant and Auditor before being admitted to write the PPE.

The minimum total duration of a training contract is three years, which usually follows the four-year period of full-time study. The period of qualification for most students is therefore at least seven years. This may seem to be extremely protracted, however, the PAAB believes that this is in keeping with its duty to ensure that standards at entry point



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are maintained and that only those who are able to meet prescribed competency standards, are registered as auditors. The qualification period is certainly not out of line with those of other highly regarded professions and internationally recognised accounting bodies.

RECOGNITION OF PROGRAMMES

In 1999, the PAAB adopted a Recognition Model whereby it recognised the programmes of professional institutes, currently SAICA, for enabling admission to the examination. The PAAB monitors the quality of the Institute's programmes against its own recognition standards.

This recognition structure, which differentiates the responsibility between the provision of the programme and assessment of quality, has proved successful. It recognises the autonomy of professional bodies, which are in the best position to interact with providers of the programme. This in turn provides the leverage necessary for

the PAAB to continually monitor standards on an objective basis.

CONCLUSION

The PAAB is confident that successful candidates have demonstrated a degree of professional competence that will enable them to make a positive contribution to the profession and the economy of South Africa.

The PAAB's examination continues to be afforded both local and international recognition and we wish to congratulate our successful candidates on their achievement.

The PPE is the culmination of a long academic, education, training and assessment process aimed at developing professional competence. We wish to acknowledge the significant contribution made by various education institutions, training officers and SAICA towards the success of the candidates. ■

Angela Vest Louw

TOM WIXLEY RETIREMENT LUNCHEON

The Education and Training Department of the PAAB held a Retirement Luncheon in honour of Mr Tom Wixley.

Tom Wixley was an outstanding student and qualified in 1962 with honours and first place in the country. For some years he was an external examiner at his alma mater University of Cape Town and a marker at the University of the Witwatersrand. He also served on the Board of Faculty for both University of Cape Town and the University of the Witwatersrand and has also been actively involved in The South African Journal of Accountancy Research since its inception.

He was Chairman of the PAAB's Education Committee from 1975 to 1984, and returned for a second term from 1998 until 2002.

Tom retired from Ernst and Young last year after a distinguished career with the firm. Claude O' Flaherty (Chief Executive Officer) said: "I had the privilege of working with Tom over a number of years. Tom's ability to think through a problem and then to dispense pearls of wisdom was always exceptional".

Tom Wixley has played a remarkable role in the account-

ing profession and into the 20th Century. It has been a privilege to work with Tom Wixley. His commitment to exceptionally high standards has inspired us all.

We trust that he will be rewarded with many new and exciting challenges in his retirement and we will always be humbled by the pleasure of knowing him.



Tom Wixley is presented a certificate by Herman Wessels (Chairman of the Education Committee) in recognition of his dedicated service.



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The Education and Training Department of the PAAB, held the PPE 2001 Results Release Function on Friday, 22 February 2002 at our premises. A substantial number of candidates came to the PAAB in anticipation of receiving their results, which was released at exactly 4pm that Friday afternoon. The relief on the faces of the successful candidates was heartwarming and to share in the overwhelming joy, after the immense tension, was an absolute thrill. The PAAB congratulate all the successful candidates and wish them continued success in their chosen careers.





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PRACTICE REVIEW

SECOND CYCLE RESULTS

A practice review cycle is five years. We are currently busy with our second cycle. The report issued on the findings of a review notes all areas of non-documentation identified by the reviewer. All findings reported require the practitioner's undertaking to implement corrective action. However, all findings do not necessarily lead to a re-review. The Practice Review Committee has established a list of re-review criteria. If any one of the review findings is considered to be a significant risk in terms of the re-review criteria checklist, a re-review will result.

A satisfactory result means that the files reviewed complied with the re-review criteria and the practitioner will be subject to a review in the next review cycle. A re-review result means that the practitioner should address the identified risk areas and will be reviewed in a year's time in order to determine if corrective action, with respect to documentation of auditing procedures in accordance with auditing standards, has taken place.

It is important to understand that the re-review net is very wide. Non-documentation in any one of the significant risk areas may result in a re-review. So, for example, one practitioner may be a re-review for non-documentation of going concern considerations only,

while another practitioner may be a re-review for non-documentation of verification of certain balance sheet items as well as non-documentation of going concern and subsequent event procedures, etc.

The results of the second cycle of Practice Review, up until 29 November 2001, are as follows:

Found satisfactory on initial review	51%
Found satisfactory on re-review	13%
Re-reviews outstanding	32%
Voluntarily changed to non-attest status	4%
	<u>100%</u>

These results pertain to 22.5% of the practitioners performing the attest function. The second cycle got off to a slow start due to a shortage of reviewers. However, since June 2001, the Practice Review Department is once again fully staffed. The remaining practitioners are due for their second cycle initial reviews during 2002, 2003 and 2004.

When comparing the results of the first cycle to the second cycle there is a drop in initial reviews found satisfactory. The major reason for this is that the re-review criteria have been raised in recognition of the fact that the standards have been in place for a longer period and should generally be complied with by all practitioners.

In the first review cycle, the re-review criteria related mainly to the documentation of balance sheet verification. The Practice Review Committee determined that in the second cycle the re-review criteria should be more strictly applied. This includes specifically risk identification and responses, validity of expenses, completeness of income, balance sheet verification, and going concern and subsequent event considerations.

Although the drop in initial satisfactory review results is of concern, it should be viewed in the context of the stricter re-review criteria being applied. A poorly documented file does not necessarily imply that a poor audit was performed. The major reason for non-documentation of auditing procedures in accordance with auditing standards is that practitioners do not always link their theoretical knowledge with their practical implementation. Once the documentation requirements have been explained and understood, practitioners with a positive attitude are easily able to make the required changes and consistently report back that they benefit greatly from this change to improved documentation. ■

Jillian Bailey

PRACTICE REVIEW – 3 HOUR INTERACTIVE DISCUSSION GROUPS

SUBJECT MATTER

- Risk based auditing with particular emphasis on the owner-managed business.
- Quality control procedures to reduce risk in your practice.
- Understanding the practice review process and criteria.

PARTICIPANTS

12 – 20 persons.
Individual firms/groups of firms/small practitioner forums.

TARGET AUDIENCE

Partners and audit staff.

COST

R300 plus VAT per participant.

CONTACT

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AUDITING ATTORNEYS' TRUST ACCOUNTS

SECTION 78(2)(A) TRUST INVESTMENTS

Written by Dirk Verkuil and extracted with thanks from the DeRebus, October 2001 issue

The investment of trust moneys is regulated by subss 78(2), 78(2A) and 78(3) of the Attorneys Act 53 of 1979 (the Act), ss 1 and 2 of the Attorneys and Matters relating to Rules of Court Amendment Act 115 of 1998 (see 1999 (Jan) *DR* 32) as well as the rules of the provincial law societies.

Vincent Faris dealt with trust investments and investment practices in three articles in 1996 (see 1996 (April) *DR* 218, 1996 (May) *DR* 296 and 1996 (June) *DR* 367).

The investment of trust moneys can be classified into three broad categories, namely

- the investment of any money deposited in a practitioner's trust banking account which is not immediately required for any particular purpose for the benefit of the Attorneys Fidelity Fund (the AFF) in terms of s 78 (2)(a) of the Act;
- the investment of any money deposited in a practitioner's trust banking account on the instructions of any person (on a temporary or interim basis only) for the benefit of such person in terms of s 78 (2A) of the Act; and
- the investment, management and control of clients' funds as specified by clients or chosen by practitioners contemplated in ss 1 and 2 of the Attorneys and Matters relating to Rules of Court Amendment Act.

Only the former two categories are covered for theft as contemplated by s 47(1)(g) of the Act.

I will discuss all three categories in this and two future articles.

HISTORY OF SECTION 78(2)(A) INVESTMENTS

The AFF was established by s 8 of the Attorneys' Admission Amendment and Legal Practitioners' Fidelity Fund Act 19 of 1941. Since its establishment it relied only on contributions by practitioners. Substantial thefts in 1950 and 1951 necessitated loans by its Board of Control to maintain its solvency (see 1992 (December) *DR* 864).

The Attorneys, Notaries and Conveyancers Admission Amendment Act 63 of 1964 made it possible for practitioners to invest 'surplus' trust moneys for the benefit of the AFF. In view of this additional income no annual contributions have been payable by practitioners since 1969.

The Legal Practitioners' Fidelity Fund Amendment Act 71 of 1971 made it possible for the AFF to apply its resources beyond claims expenditure for the theft of trust moneys, namely

- contributions towards trust account costs of practitioners (bank charges and audit fees);
- professional indemnity cover for practitioners;
- practical legal training;
- continuing legal education;
- publication of *De Rebus*;
- subvention of university law faculties and clinics; and
- bursaries for law students.

Banks commenced paying interest on trust current accounts in 1983.

Interest on s 78(1) trust banking accounts (see 2001 (Sep) *DR* 40) and s 78(2)(a) investment accounts represented 81% of the AFF's income in 2000.

CHARACTERISTICS OF SECTION 78(2)(A) INVESTMENTS

There is no obligation on a practitioner to make such investment. I recommend that such investment be made if a higher rate of interest would apply to the investment than to the s 78(1) trust banking account.

In making such investment the practitioner will need to consider

- the amount to be invested (which should be between 60% and 80% of the lowest s 78(1) trust banking account balance for the previous twelve months as per the bank statements);
- the type of investment (which could only be a trust savings or other interest-bearing account); see 2000 (November) *AFF Newsletter* vol 1 no. 1 'Money market investments – investment of trust monies in terms of section 78 of the attorney's Act' published as an insert in 2000 (Nov) *DR*; and
- the investment period (it is recommended that the investment be placed on a call or short-term notice deposit).

BOOKKEEPING PROCEDURES

The investment will be recorded with a credit entry in the trust cash book and a corresponding debit entry to a trust ledger account to be opened with a reference to the Act (eg 'Trust investment in terms of s 78(2)(a)').

An accounting rule requires that the investment be paid back into the trust banking account once withdrawn. The investment ledger account will be credited with a corresponding debit to the trust cash book of the capital amount and a corresponding credit to the AFF trust ledger account of the interest amount.

Credit interest is payable to the AFF or its nominee by 31 May every year.

BANK FAILURES

The AFF cannot provide financial assistance to practitioners who have invested trust moneys in banking institutions placed under curatorship. The AFF shares practitioners' concerns regarding the plight of depositors, but the provisions of the Act do not empower the AFF to assist.

The AFF strongly supports the establishment of a deposit insurance scheme to cover investors against loss upon the failure of a bank. The AFF made representations to the Department of Justice to amend the Act to provide an indemnity to practitioners against claims by their trust creditors consequent on the failure of banks at which they may have deposited trust monies.

Practitioners were previously alerted to the careful consideration of the risk involved when selecting a banking institution at which funds would be invested. See 1996 (Sep) *DR* 546, 1997 (July) *DR* 449, 1999 (April) *DR* 43, 1999 (July) *DR* 8, 1999 (Aug) *DR* 37 and 1999 (Sep) *DR* 9. An article also appeared in 2000 (November) *AFF Newsletter* vol 1 no 1 as an insert in 2000 (Nov) *DR*. Credit ratings for banking institutions can be found on the AFF web site at http://www.fidfund.law.za/professional/banking_rating_text.htm ■



AUDITING ATTORNEYS' TRUST ACCOUNTS

SECTION 78 (2A) : TRUST INVESTMENTS

Written by Dirk Vercuyl and extracted with thanks from the DeRebus, November 2001 issue

LEGISLATION

The Attorneys Amendment Act 87 of 1989 (the Amendment Act) introduced s 78(2A) into the Attorneys Act 53 of 1979 (the Act) on 1 March 1990. Section 78 (2A) reads as follows:

'(2A) Any separate trust savings or other interest-bearing account –

- (a) which is opened by a practitioner for the purpose of investing therein, on the instructions of any person, any money deposited in his trust banking account; and*
- (b) over which the practitioner exercises exclusive control as trustee, agent or stakeholder or in any other fiduciary capacity, shall contain a reference to this subsection'.*

The Amendment Act simultaneously inserted the following definition of trust account into the Act:

“trust account” in relation to a practising practitioner, means an account comprising –

- (a) that practitioner's trust banking account referred to in section 78(1); and*
- (b) any trust savings or other interest-bearing account referred to in section 78(2) or (2A) opened by that practitioner.'*

The investment of trust funds in terms of s 78(2A) does not reduce a practitioner's total obligation to trust creditors, but merely splits the holding of trust funds into the defined three components (s 78(1), (2) and (2A)).

The formalities and procedures regulating these investments are set out in rr 69.2 and 69.9 of the Law Society of the Northern Provinces; rr 13.13.2 and 13.16 of the Law Society of the Cape of Good Hope; rr 21(2) and 21(9) of the KwaZulu-Natal Law Society; and rr 16A.2 and 16A.9 of the Law Society of the Free State.

APPLICATION

Practitioners frequently receive large sums of trust money

'on a temporary or interim basis only pending the conclusion or implementation of any particular matter or transaction, which is already in existence or about to come into existence'.

See s 47(1)(g) of the Act, amended by the Attorneys and

Matters Relating to Rules of Court Amendment Act 115 of 1998 with effect from 15 January 1999, and 1999 (Jan) DR 32.

If such funds remain in the s 78(1) trust banking account no interest will be earned for the owners or beneficiaries of the funds. The funds may now be invested on the instructions of any person in terms of s 78(2A) in a separate trust savings or other interest-bearing account, which interest will accrue to such person.

The funds will be identifiable to the specific client's account on whose behalf the investment has been made and will be invested until required for the benefit of such client.

ADMINISTRATIVE FORMALITIES AND PROCEDURES

The obvious legal requirements are that

- the funds must first be deposited into the trust banking account;
- the client must give instructions for the investment to be made;
- the practitioner must exercise exclusive control over the funds; and
- the funds must be invested in a separate trust savings or other interest-bearing account.

The concealed legal requirement is that the investment must be made at a registered banking institution.

Section 78(2A) does not repeat the reference to a 'banking institution' as in s 78(1) and 78(2) of the Act. The view of the Attorneys Fidelity Fund (the Fund) is that s 78(2A) cannot mean anything other than an account with a banking institution that is a separate trust savings or other interest-bearing account. The Fund believes that the words 'with any banking institution' must be read into s 78(2A).

The Fund does not currently approve of s 78(2A) money market investments. Money market investments are typically unitised schemes registered in terms of the Unit Trusts Control Act 54 of 1981. When the investor makes an investment he acquires a unit in a unitised scheme. It is thus an investment in a unit trust. Such investment is not a 'separate trust savings or other interest-bearing account' and there is a risk (albeit very small) of capital loss. Capital values are unlikely to fluctuate (the repurchase price does not differ from the purchase price), although an initial fee expressed as a percentage will reduce the capital invested.

Money market type investments consequently fall outside the ambit of s 78(2A). Should a practitioner be requested to invest funds on behalf of a client in a permissible form of investment, other than in terms of s 78(2A), the practition-



AUDITING ATTORNEYS' TRUST ACCOUNTS

er should obtain a mandate from his client in which, ideally, it is stated that the client assumes the risk (of theft) attached to the investment. See s 47(9) of the Act, 1999 (Jan) DR 32 and the article in the AFF Newsletter 'Money market investments – investment of trust monies in terms of section 78 of the Attorney's Act' inserted into the November 2000 issue of *De Rebus*.

The law societies' rules require that any amount withdrawn by a firm from a trust investment account shall promptly be deposited in its trust banking account. 'Trust investment account' in such rules 'means and includes all accounts kept by a firm in terms of s 78(2) or 78 (2A) of the Act'.

If there is an obligation to invest, a failure to do so could result in a claim for negligence and damages.

IMPORTANT GUIDELINES

The joint committee of attorneys and accountants of the SA Institute of Chartered Accountants and the then Association of Law Societies (now the Law Society of South Africa) issued a set of 19 guidelines in 1995 to assist practitioners with the interpretation and practical implementation of s 78(2A). I will deal with some of these guidelines.

- All accounting records and entries made in relation to a s 78(2A) investment must form part of the attorney's bookkeeping records, and must therefore be part of the audit carried out by the auditor on whose report a Fidelity Fund certificate is issued.' (See the July 1996 booklet 'Audit of attorney's trust accounts and investment practices' developed by the South African Institute of Chartered Accountants regarding such audit.)
- It is not permissible to open one s 78(2A) account at a banking institution for more than one client's trust investments.
- The introduction of an investment register is desirable as being an additional subsidiary record which will certainly facilitate reference procedures where volumes of investments justify such a register. The register will also assist in the completion of the annual application forms for fidelity fund certificates.
- Accounts opened and administered by members in their capacities as agents for executors or as trustees in the names of the estate or trust are not subject to the provisions of s 78.
- Practitioners may charge a reasonable fee for the administering of a s 78(2A) investment.
- Interest on trust investments should be brought to account on a regular basis, preferably every quarter.

- Where an attorney issues an undertaking or guarantee in his own name then the investment remains a s 78(2A) investment.
- Should a financial institution be required to issue a guarantee on the strength of a s 78(2A) investment, the investment must be transferred to the member's trust account and then transferred to the financial institution as a disbursement.

Depending on the extent of the s 78(2A) accounts, it may be necessary and advisable to keep supplementary accounting records to facilitate administrative (and accounting) procedures.

BOOKKEEPING ENTRIES

Separate trust investment ledger accounts should be opened for each investment, appropriately referenced in terms of s 78(2A)(b).

Once an investment is made the trust cash book will be credited with such payment into the investment account. The corresponding debit will be to the client's trust investment ledger account.

On redemption of the investment the capital portion thereof will be credited to the trust investment ledger account of the client. The interest portion will be credited to the client's trust ledger account. The full amount will be debited to the trust cashbook. Appropriate IT 3(B) income tax certificates should be issued for interest which accrued to clients which should be disclosed by clients as taxable income. ■

CONTINUED FROM PAGE 2

KING COMMITTEE ON CORPORATE GOVERNANCE

In my December 2001 article it was stated that the changed effective date for the King Report, from 1 January 2002 to 1 March 2002, coincided with the JSE Listings Requirement for the disclosure of individual directors remuneration which became applicable for affected companies with financial years commencing on and after 1 March 2002. The effective date for disclosure of individual directors remuneration was in fact for financial years commencing on and after 1 March 2001. My apologies for any inconvenience this might have caused.

Corporate governance in South Africa, the definitive conference, coinciding with the release of the King Report on Corporate Governance For South Africa – 2002 is scheduled to take place on Tuesday, 26 March 2002 at the Sandton Convention Centre, contact Sally Keeling or Sue Constance at Focus Conferences on (011) 480-4800. ■

– **Karen Lauf**



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PUBLIC ACCOUNTANTS' AND AUDITORS' BOARD VACANCY

RESEARCHER

EDUCATION AND TRAINING DEPARTMENT

A vacancy currently exists in the Public Accountants' and Auditors' Board for a full time/part-time or contractual appointment in the position of research assistant.

IDEAL CANDIDATE

1. QUALIFIED CHARTERED ACCOUNTANT.
2. RESEARCH EXPERIENCE.
3. EXCELLENT COMMUNICATION SKILLS (VERBAL AND WRITTEN).
4. ABILITY TO APPLY A BROAD RANGE OF CREATIVE SKILLS TO COMPLEX ISSUES.
5. ABILITY TO INTERACT ON A PROFESSIONAL LEVEL WITH A RANGE OF STAKEHOLDERS.

Applicants not meeting all of these requirements will also be considered and this should not preclude persons with other appropriate experience from applying. In particular persons with an accounting/auditing background and with an interest in moving towards the research field, are encouraged to apply.

NATURE OF RESPONSIBILITIES

1. Conduct exploratory research into a broad range of issues that affect the auditing profession in South Africa with particular emphasis on international trends in education, training and examination requirements.
2. Provide insights into local and global issues that will have an impact on current education, training and examination requirements, and syllabus/curriculum content.
3. Participate in activities designed to facilitate implementation of a new regulatory mechanism for auditors in South Africa, as it relates to education and training.
4. Assist with the implementation of monitoring mechanisms carried out by the PAAB to ensure that recognised academic, education, training and assessment programmes continue to meet the standards prescribed by the PAAB.

WORKING ENVIRONMENT

The PAAB is a statutory body that regulates the registered auditing profession in South Africa. Its offices reside in Bruma, Johannesburg.

The person appointed to this position will report directly to the Director: Education and Training. Remuneration will be determined based on qualification and experience.

FOR FURTHER INFORMATION, PLEASE CONTACT

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