

**WARNING TO READERS**

Registered auditors are alerted to the fact that this guide has not been updated for the [IFRS Foundation® Trade Mark Guidelines](#).

However, any reference in it to the IFRS Foundation, the IASB, the ISSB and the work of these bodies is intended to be aligned to the [IFRS Foundation Trade Mark Guidelines](#).

Furthermore, registered auditors are encouraged to adhere to the [guidance](#) issued by the IAASB when referencing the IFRS Accounting Standards in their reports.

**Updated in November 2021 for conforming and consequential amendments to the IAASB's International Standards arising from the IAASB's Quality Management Standards.**

Effective date:

- a) Audits and reviews of financial statements for periods beginning on or after 15 December 2022; and
- b) Other assurance and related services engagements beginning on or after 15 December 2022.



*Guide for Registered Auditors*

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**Engagements on Legal Practitioners' Trust Accounts  
(Revised March 2020)**

Independent Regulatory Board for Auditors

PO Box 8237, Greenstone, 1616

Johannesburg

The *Guide for Registered Auditors: Engagements on Legal Practitioners' Trust Accounts (Revised March 2020)* (this Revised Guide) was updated by a Task Group of the Committee for Auditing Standards (CFAS) of the Independent Regulatory Board for Auditors (IRBA), that comprised technical staff representatives from auditing firms, consultants, the Legal Practice Council, the Legal Practitioners Fidelity Fund, the South African Institute of Chartered Accountants and the IRBA. This Revised Guide was approved for issue in March 2020 and replaces the previous IRBA Guide – “*Revised Guide for Registered Auditors: Engagements on Attorneys' Trust Accounts (Revised March 2017)*” that has been withdrawn.

Guidance is provided to registered auditors (auditors) in the special circumstances applicable to engagements on legal practitioners' trust accounts, as required by the Legal Practice Act, No. 28 of 2014 (the Act) and the South African Legal Practice Council Rules made under the authority of Sections 95(1), 95(3) and 109(2) of the Act (the Rules), including an auditor's responsibility to report a reportable irregularity. This Revised Guide is also relevant for legal practitioners in understanding the nature of the engagement, and the respective responsibilities of the parties.

There is an expectation by the Legal Practitioners Fidelity Fund, the Legal Practice Council, financial institutions, legal practitioners' clients and members of the public that auditors of legal practitioners' trust accounts will detect fraud and theft. However, the main purpose of an engagement on a legal practitioner's trust account is for the auditor to evaluate the compliance of a legal practitioner's trust accounts with the Act and the Rules. Accordingly, this Revised Guide contains considerations applicable to fraud and theft in the circumstances of engagements on legal practitioners' trust accounts.

The Legal Practitioner's Annual Statement on Trust Accounts contains the legal practitioner's compliance representations to the Legal Practice Council and information extracted from the trust accounting records. The Legal Practitioner's Annual Statement on Trust Accounts is to accompany the auditor's assurance report.

The *Guide for Registered Auditors: Engagements on Legal Practitioners' Trust Accounts (Revised March 2020)* may be downloaded free-of-charge in both Word and PDF formats from the IRBA website ([www.irba.co.za](http://www.irba.co.za)).

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**GUIDE FOR REGISTERED AUDITORS  
ENGAGEMENTS ON LEGAL PRACTITIONERS' TRUST ACCOUNTS  
(REVISED MARCH 2020)**

(Effective for financial periods commencing on or after 1 March 2019)

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This *Guide for Registered Auditors: Engagements on Legal Practitioners' Trust Accounts (Revised March 2020)* (this Revised Guide) provides guidance to registered auditors in implementing the requirements of the International Standards on Assurance Engagements (ISAEs) and relevant International Standards on Auditing (ISAs), and reporting on the Legal Practitioner's Annual Statement on Trust Accounts, in the special circumstances applicable to engagements on legal practitioners' trust accounts required by the Legal Practice Act, No. 28 of 2014 (the Act) and the South African Legal Practice Council Rules, made under the authority of Sections 95(1), 95(3) and 109(2) of the Act.

Guides are developed and issued by the IRBA to provide guidance to auditors in meeting specific legislative requirements imposed by a Regulator. Guides do not impose requirements on auditors beyond those included in the international or South African Standard/s or South African regulatory requirements and do not change an auditor's responsibility to comply, in all material respects, with the requirements of the international or South African Standards or with South African regulatory requirements relevant to the audit, review, other assurance services or related services engagements.

An auditor is required to have an understanding of the entire text of every Guide to enable the auditor to assess whether or not any particular Guide is relevant to an engagement, and if so, to enable the auditor to apply the requirements of the particular international or South African Standard(s) to which the Guide relates, properly.

In terms of Section 1 of the Auditing Profession Act, No. 26 of 2005 (the APA), a Guide is included in the definition of "auditing pronouncements" in the APA, and in terms of the APA, the auditor must, in the performance of an audit, comply with those standards, practice statements, guidelines and circulars developed, adopted, issued or prescribed by the Regulatory Board.

## Introduction

### Scope of this Revised Guide

1. The scope of this Revised Guide is to provide guidance to registered auditors (auditors) conducting engagements on legal practitioners' trust accounts.
2. The guidance relates to understanding the nature and characteristics of legal practitioners' trust accounts, and the nature and extent of work in the engagement. It also emphasises professional competencies and professional scepticism.
3. This Revised Guide provides illustrative auditor's assurance reports on reporting compliance with Section 86, read with Section 63(1)(g), and Sections 87(1), 87(3) and 87(4) of the Legal Practice Act, No. 28 of 2014 (the Act), and the South African Legal Practice Council Rules<sup>1</sup> (the Rules), made under the authority of Sections 95(1), 95(3) and 109(2) of the Act; and reporting on the Legal Practitioner's Annual Statement on Trust Accounts and investment practice.
4. This Revised Guide has been prepared on the basis of the Rules for the Legal Practitioners' Profession effective from 1 November 2018.
5. There is an expectation by the Legal Practitioners Fidelity Fund (the Fund), the Legal Practice Council, financial institutions, legal practitioners' clients and members of the public that the auditor of legal practitioners' trust accounts will detect fraud and theft. However, the main objective of an engagement on legal practitioners' trust accounts is for the auditor to evaluate whether a legal practitioner's trust accounts were maintained in compliance with the Act and the Rules. Accordingly, this Revised Guide addresses considerations applicable to fraud and theft in the specific circumstances of engagements on legal practitioners' trust accounts.
6. The guidance provided in this Revised Guide is relevant to the auditor conducting an engagement on a legal practitioner's trust accounts in respect of an existing practice. It also applies to the opening or closure of a practice during the course of the year.
7. This Revised Guide does not provide guidance in respect of the audit or review of a legal practitioner's financial statements (known as the business accounts), which are conducted in accordance with International Standards on Auditing (ISAs) or the International Standard on Review Engagements (ISRE) 2400 (Revised), *Engagements to Review Historical Financial Statements* (ISRE 2400 (Revised)), as applicable.

### Purpose of an Engagement on Legal Practitioners' Trust Accounts

8. The main purpose of an engagement on legal practitioners' trust accounts is for the auditor to express a reasonable assurance opinion on whether, for the relevant financial period, the legal practitioner's trust accounts were maintained in compliance with the Act and the Rules.
9. The auditor is also required to report on the following:
  - a) The Legal Practitioner's Annual Statement on Trust Accounts:

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<sup>1</sup> Rules effective 1 November 2018: 54.6-54.13, 54.14.1-54.14.6, 54.14.7.2, 54.14.7.3, 54.14.8-54.14.16, 54.15, 54.16, 54.17, 54.18, 54.19, 54.31, 54.32, 54.33, 54.34, 54.35 and 55.1-55.11.

- (i) To agree the information included in the Legal Practitioner's Annual Statement on Trust Accounts (Appendix 6) to the underlying records that were the subject of the engagement on the compliance of legal practitioners' trust accounts with the Act and the Rules; and then to report, as required;<sup>2</sup> and
  - (ii) To also read the legal practitioner's representations, the disclosures and other information contained in the Legal Practitioner's Annual Statement on Trust Accounts for the purpose of identifying any inconsistencies with the auditor's knowledge obtained in the course of the engagement on the compliance of legal practitioners' trust accounts with the Act and the Rules, and report thereon.<sup>3</sup>
- b) The Legal Practitioner's Investment Practice:
- (i) To report on whether or not, to the best of the auditor's knowledge, the legal practitioner carried on the business of an investment practice (if applicable) and complied with the related investment practice Rules<sup>4</sup>, as required.<sup>5</sup>

### **Nature of an Engagement on Legal Practitioners' Trust Accounts**

10. An engagement on legal practitioners' trust accounts to report on compliance with the Act and the Rules is a reasonable assurance engagement within the scope of the International Standard on Assurance Engagements (ISAE) 3000 (Revised), *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* (ISAE 3000 (Revised)). Although ISAs and ISREs do not apply to engagements covered by ISAEs, they may nevertheless provide guidance to an auditor<sup>6</sup> undertaking this engagement.
11. The auditor is not required to express an assurance opinion on the Legal Practitioner's Annual Statement on Trust Accounts. Although the auditor is required to report on whether or not the legal practitioner carried on the business of an investment practice, the auditor is not required to express an assurance opinion thereon.

### **Effective Date**

12. This Revised Guide is effective for financial periods commencing on or after 1 March 2019.

### **Definitions**

13. For the purposes of this Revised Guide, the following terms have the meanings attributed below:
  - a) Accounting records<sup>7</sup>: Include any record or document kept by or in the custody or under the control of any trust account practice which relates to —

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<sup>2</sup> Advisory issued by the Legal Practice Council dated 17 April 2020.

<sup>3</sup> Advisory issued by the Legal Practice Council dated 17 April 2020.

<sup>4</sup> Rules effective 1 November 2018: 55.1-55.11.

<sup>5</sup> Rule 54.24.3.

<sup>6</sup> ISAE 3000 (Revised), paragraph A22.

<sup>7</sup> Section 87(3) of the Act.

- (i) money held in trust;
  - (ii) money invested in terms of Section 86(2), (3) or (4) and interest thereon;
  - (iii) any estate of a deceased person or any insolvent estate or any estate placed under curatorship, in respect of which an attorney in the trust account practice is the executor, trustee or curator or which he or she administers on behalf of the executor, trustee or curator; or
  - (iv) the affairs of the trust account practice.
- b) Act: The Legal Practice Act, No. 28 of 2014.
- c) Assurance report: The assurance report contemplated in ISAE 3000 (Revised), which is prepared and signed by a registered auditor.
- d) Client mandate: Written instruction or engagement letter to a legal practitioner detailing the services to be rendered; or, if the instruction is received verbally, written confirmation of the terms given to the client.
- e) Engagement risk: The risk that the auditor:
- (i) Expresses an inappropriate opinion when the legal practitioner's trust accounts are not maintained, in all material respects, in compliance with the Act and the Rules;
  - (ii) Inappropriately reports when the information contained in the Legal Practitioner's Annual Statement on Trust Accounts is inconsistent with the auditor's knowledge obtained in the course of the engagement on the compliance of the legal practitioners' trust accounts with the Act and the Rules; and/or
  - (iii) Inappropriately reports when the legal practitioner's investment practice is not maintained in compliance with the Rules, as required.
- f) Firm or practice: The incorporated company, partnership or sole practitioner in which a legal practitioner practises. Other references to IRBA pronouncements use the term "firms" when referring to audit firms (including network firms, where applicable), as defined in the Auditing Profession Act, 2005 (Act No. 26 of 2005) (the APA). As such, it is important to be aware of the context in which the word "firm" is being used throughout this guide, as it could be referring to either a legal practitioner's firm or an audit firm (in auditor's assurance reports, for example).
- g) Fraud: An intentional act by one or more individuals among management, those charged with governance, employees, or third parties involving the use of deception to obtain an unjust or illegal advantage.<sup>8</sup>
- h) Fraud risk factors: Events or conditions that indicate an incentive or pressure to commit fraud or provide an opportunity to commit fraud.<sup>9</sup>
- i) Investment practice: A firm that invests funds on behalf of a client or clients and controls or manages such investments directly or indirectly.<sup>10</sup>

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<sup>8</sup> ISA 240 (Revised), *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements* (ISA 240 (Revised)), paragraph 12(a).

<sup>9</sup> ISA 240 (Revised), paragraph 12(b).

<sup>10</sup> Rule 55.1.



- j) IRBA Code: The IRBA *Code of Professional Conduct for Registered Auditors (Revised November 2018)*.
- k) Legal practitioner: An advocate or attorney admitted and enrolled as such in terms of Sections 24 and 30 of the Act respectively.<sup>11</sup> However, it should be noted that in terms of Section 34(2)(b) of the Act, only advocates who hold a Fidelity Fund Certificate are required to submit the annual statement.
- l) Management: The legal practitioner(s) and other persons responsible for the conduct of the legal practitioner's firm's operations.
- m) Misstatement: A difference between the legal practitioner's trust accounts and the appropriate measurement or evaluation thereof in accordance with the Act and the Rules. Misstatements can be intentional or unintentional, qualitative or quantitative, and can include omissions as well as instances of non-compliance, i.e. instances where an action or event or transaction in relation to the legal practitioner's trust accounts is not, or has not occurred, in compliance with those requirements from the Act and the Rules that are applicable for the purposes of the assurance engagement.
- n) Professional judgement: The application of relevant training, knowledge and experience within the context provided by assurance, financial reporting and ethical standards in making informed decisions about the courses of action that are appropriate in the circumstances of an assurance engagement on a legal practitioner's trust accounts.
- o) Professional scepticism: An attitude that includes a questioning mind, being alert to conditions, which may indicate possible misstatement due to error or fraud, and a critical assessment of evidence.
- p) Reasonable assurance engagement: An assurance engagement in which the auditor reduces engagement risk to an acceptably low level in the circumstances of the engagement as the basis for the auditor's opinion. The auditor's opinion is expressed in a form that conveys his/her opinion on the outcome of the measurement or evaluation of the underlying subject matter against criteria.
- q) Registered auditor: A registered auditor as defined in the Auditing Profession Act, 2005 (Act No. 26 of 2005) (the APA), referred to as the "auditor".
- r) Rules: The South African Legal Practice Council Rules for Legal Practitioners effective from 1 November 2018, made under the authority of Sections 95(1), 95(3) and 109(2) of the Act.
- s) Rules Regarding Improper Conduct: The IRBA *Rules Regarding Improper Conduct (Revised 2019)*.
- t) Service activities: The transactions of a legal practitioner's practice – including those relating to conveyancing, estates, commercial affairs, litigation, investments, criminal proceedings, administrations, personal accident matters, collections, matrimony, sequestration and intellectual property or any activity that falls within the scope of a legal practitioner's legal practice – that give rise to money, or other

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<sup>11</sup> Section 1 of the Act.

property, being held in the legal practitioner's trust accounts and for which the legal practitioner is responsible and accountable.

- u) Trust accounts: In relation to a legal practitioner, means an account comprising –
  - (i) The trust banking account(s) referred to in Section 86(2) of the Act, kept at a bank with which the Fund has made an arrangement, as provided for in Section 63(1)(g) of the Act; or
  - (ii) Any trust savings or other interest-bearing account referred to in Sections 86(3) and 86(4) of the Act, kept at a bank with which the Fund has made an arrangement, as provided for in Section 63(1)(g) of the Act.
- v) Trust account practice: A practice conducted by one or more attorneys who are, or an advocate referred to in Section 34(2)(b) of the Act who is, in terms of the Act, required to hold a Fidelity Fund certificate.
- w) Trust account transactions: The transactions in a legal practitioner's trust accounts, comprising receipts, payments and transfers, non-recurring and unusual transactions or adjustments, in accordance with the terms of the client mandate relating to each transaction.
- x) Trust creditor: A person on whose account money is held or received as contemplated by Section 86(2), or invested as contemplated by Section 86(3) or Section 86(4), of the Act.

## **The Act and the Rules**

14. The requirements of Sections 86 and 87 of the Act are intended to ensure that proper accounting records are kept by a legal practitioner relating to that legal practitioner's trust accounts. Proper records are intended to ensure that monies received from a legal practitioner's client are preserved and dealt with in terms of the client's mandate to the legal practitioner. The Rules impose duties on a legal practitioner to ensure that the necessary accounting records relative to the legal practitioner's trust accounts are kept properly<sup>12</sup>, and that an auditor is appointed who is required to report to the Legal Practice Council in accordance with the duties assigned to the auditor.
15. This Revised Guide has been drafted using the term legal practitioner when referring to the responsibilities of both the legal practitioner and the firm. It is therefore useful to note that the Rules refer to the firm as well.
16. The requirements of the Act/Rules, illustrative risks and illustrative procedures/responses to these risks are described in Appendix 1.

## **Characteristics of a Legal Practitioner's Trust Account and Compliance with the Act and the Rules**

17. The accounting records of a legal practitioner relate to all monies received and expended by the legal practitioner, including monies deposited into a trust account, or invested in a savings or other interest bearing account, and all transactions relating to the legal practitioner's business.

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<sup>12</sup> Rule 54.6.

18. A legal practitioner's trust accounts relate to records of deposits, withdrawals, transfers to and from the legal practitioner's business bank account and balances on hand, which could include fees paid to the legal practitioner and any adjusting journal entries, in terms of the client mandate. Transactions not in terms of a client mandate may result in balances incorrectly reflected in the trust creditors' ledger.
19. A legal practitioner's business bank accounts relate to records necessary to prepare and present the financial position, financial performance and cash flows as reflected in the financial statements of the legal practitioner, in accordance with an acceptable financial reporting framework.<sup>13</sup>
20. A legal practitioner's financial statements are prepared from the transactions that relate to the legal practitioner's business and trust accounts. However, as the trust bank accounts and the trust balances are not the respective assets and liabilities of the legal practitioner, there is no disclosure of those balances in the legal practitioner's financial statements, nor is there disclosure of transactions, including interest earned on balances in trust bank accounts, payable to the Fund. Accordingly, the auditor's engagement on a legal practitioner's financial statements covers only the legal practitioner's trust accounts to the extent that these may affect the auditor's opinion on the financial statements, while the auditor's engagement on a legal practitioner's trust accounts covers only the legal practitioner's financial statements to the extent that these may affect the auditor's opinion on whether the trust accounts were maintained in compliance with the Act and the Rules.
21. An illustrative Legal Practitioner's Annual Statement on Trust Accounts, for completion by the legal practitioner in support of the firm's application for its annual Fidelity Fund Certificate, is included in Appendix 6. It contains certain financial information extracted from the accounting records of the legal practitioner relating to the trust accounts and trust bank balances and interest, and certain declarations by the legal practitioner, as required by the Legal Practice Council and the Fund. A copy signed by the legal practitioner accompanies the auditor's assurance report.
22. The Rules require the keeping of identified accounting records relating to both a legal practitioner's business and trust accounts and the procedures applicable to maintaining those records, including adequate particulars and information, so that the trust account transactions may be understood.
23. The auditor of a legal practitioner's trust accounts performs sufficient work to obtain sufficient appropriate evidence to:
  - a) Evaluate whether the identified records were maintained in compliance with the Act and the Rules and whether trust account transactions were in accordance with the client mandate, including whether transactions were supported by adequate documentation and narratives;
  - b) Report on the Legal Practitioner's Annual Statement on Trust Accounts, as required; and
  - c) Report on the Legal Practitioner's Investment Practice business, as required.<sup>14</sup>

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<sup>13</sup> Rule 54.7.

<sup>14</sup> Rule 54.24.3.

24. The auditor's assurance report on a legal practitioner's trust accounts is also required by the Legal Practice Council so that the legal practitioner may obtain an annual Fidelity Fund Certificate.<sup>15</sup>

### **The Engagement and the Auditor**

25. The Rules require a firm of legal practitioners to appoint an auditor to discharge the duties assigned to the auditor in terms of the Rules. This "appointment" has the same meaning as the "auditor of the entity" contemplated in Section 44(1)(a) of the APA.
26. There is no requirement currently in the Act or the Rules for a legal practitioner's financial statements to be audited. Such requirement may emanate from another Act, such as the Companies Act, or an audit may be undertaken voluntarily. However, an auditor is required by the Rules to undertake an engagement on the compliance of the legal practitioners' trust accounts with the Act and the Rules, whether or not an audit is conducted on the legal practitioner's financial statements.
27. The auditor undertaking an engagement on a legal practitioner's trust accounts requires access to the business account and trust account transactions for the purpose of evaluating whether the legal practitioner's trust accounts were maintained in compliance with the Act and the Rules.
28. An auditor accepting an engagement to report on legal practitioners' trust accounts obtains an understanding of the Act, the Rules and the engagement circumstances (refer to paragraphs 50-51 for acceptance and continuance).<sup>16</sup> The auditor is reminded of the possible heightened engagement risk and work that may be involved in undertaking such an engagement when an audit has not been performed on the financial statements, and the auditor may, as a consequence, need to perform additional procedures to obtain sufficient understanding of the business transactions that impact on the trust accounts.
29. An auditor who is professionally competent to audit financial statements considers whether such an auditor has the specialised skills and knowledge necessary to undertake an engagement on legal practitioners' trust accounts.
30. An engagement on the compliance of legal practitioners' trust accounts with the Act and the Rules, undertaken by the individual registered auditor of the legal practitioner<sup>17</sup>, comprises an ISAE 3000 (Revised) reasonable assurance engagement on which an opinion (as opposed to a conclusion in the case of a limited assurance engagement) is expressed and consequently meets part (b) of the definition of "audit" contained in the APA. In such cases, the auditor undertaking an engagement on legal practitioners' trust accounts is subject to the requirements of Section 45, *Duty to Report on Irregularities*, in the APA.<sup>18</sup>

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<sup>15</sup> Sections 74, 84 and 85 of the Act.

<sup>16</sup> Paragraph 46R of ISAE 3000 (Revised).

<sup>17</sup> Section 44(1)(a) of the APA.

<sup>18</sup> The *Revised Guide for Registered Auditors: Reportable Irregularities in terms of the Auditing Profession Act* issued by the IRBA.

## Respective Roles and Responsibilities

### Legal practitioner

31. The legal practitioner is responsible for ensuring that the legal practitioner's trust accounts are maintained in compliance with the Act and the Rules, and for such internal controls as the legal practitioner determines are necessary to maintain the integrity of the trust accounts in accordance with the relevant client mandates, including such controls as the legal practitioner determines are necessary to prevent and detect fraud and theft. The legal practitioner is also responsible for the preparation of the Legal Practitioner's Annual Statement on Trust Accounts and the declarations contained therein.

### Auditor

32. The auditor is responsible for:
- a) Expressing a reasonable assurance opinion on the compliance of legal practitioners' trust accounts, in all material respects, with the Act and the Rules, based on the auditor's procedures performed; and
  - b) Reporting the auditor's findings on the following:
    - (i) The Legal Practitioner's Annual Statement on Trust Accounts:
      - Agreeing the information included in the Legal Practitioner's Annual Statement on Trust Accounts (Appendix 6) to the underlying records that were the subject of the engagement on the compliance of legal practitioners' trust accounts with the Act and the Rules; and then to report, as required;<sup>19</sup> and
      - Reading the legal practitioner's representations, the disclosures and other information contained in the Legal Practitioner's Annual Statement on Trust Accounts for the purpose of identifying any inconsistencies with the auditor's knowledge obtained in the course of the engagement on the compliance of legal practitioners' trust accounts with the Act and the Rules, and report thereon.<sup>20</sup>
    - (ii) The Legal Practitioner's Investment Practice:
      - Reporting on whether or not, to the best of the auditor's knowledge, the legal practitioner carried on the business of an investment practice (if applicable) and complied with the related investment practice Rules<sup>21</sup>, as required.<sup>22</sup>

### Legal Practice Council

33. The relevant Provincial Office of the Legal Practice Council is responsible for establishing an investigation (whether forensic or otherwise) and a disciplinary process,

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<sup>19</sup> Advisory issued by the Legal Practice Council dated 17 April 2020.

<sup>20</sup> Advisory issued by the Legal Practice Council dated 17 April 2020.

<sup>21</sup> Rules effective 1 November 2018: 55.1-55.11.

<sup>22</sup> Rule 54.24.3.

and for taking appropriate action against a legal practitioner who does not comply with the Act and/or the Rules.

34. The relevant Provincial Office of the Legal Practice Council may communicate, at the request of the auditor, any complaints that come to the attention of that Provincial Office of the Legal Practice Council in respect of a legal practitioner to the auditor.<sup>23</sup>
35. It is the responsibility of the relevant Provincial Office of the Legal Practice Council to examine the auditor's assurance report on a legal practitioner's trust accounts to make a decision on whether to accept the auditor's assurance report in support of the decision to issue an annual Fidelity Fund Certificate.

### **Legal Practitioners Fidelity Fund**

36. The Fund<sup>24</sup>, inter alia, is the recipient of claims made against the Fund for compensation for losses allegedly arising from theft of money or other property entrusted to a legal practitioner.

### **Internal control**

37. Internal controls are the processes designed, implemented and maintained by a legal practitioner to provide reasonable assurance about the achievement of the entities' objectives with regard to reliable financial reporting and compliance with the Act and the Rules; while compliance is to ascertain whether or not the legal practitioner complied specifically with the requirements of the Act and the Rules.
38. There is a requirement in the Rules<sup>25</sup> for the legal practitioner to implement and design internal controls that operate effectively and are monitored regularly throughout the period.
39. The auditor does not express an opinion on the legal practitioner's internal controls relevant to the application of the Rules.<sup>26</sup> However, the auditor is still required by ISAE 3000 (Revised)<sup>27</sup> to obtain an understanding of internal control over the preparation of the legal practitioner's trust accounts relevant to the engagement. This includes evaluating the design of those controls that are relevant to the engagement and determining whether they have been implemented by performing procedures in addition to inquiry of the personnel responsible for the legal practitioner's trust accounts.
40. The auditor further draws from ISA 260 (Revised), *Communication with Those Charged with Governance*, and ISA 265, *Communicating Deficiencies in Internal Control to Those Charged with Governance and Management*, which applies to an audit of financial statements, and communicates appropriately to the directors and management (those charged with governance) any deficiencies in internal control that have come to the auditor's attention. In addition, the Rules require, inter alia, the auditor to report to the Legal Practice Council if – at any time during the discharge of the auditor's duties – any inquiries regarding its trust accounting records that the auditor has raised with the firm

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<sup>23</sup> Rule 54.22.

<sup>24</sup> Sections 55 and 57 of the Act for the purpose and application of the Fund.

<sup>25</sup> Rule 54.14.7.1.1-54.14.7.1.4.

<sup>26</sup> Rule 54.14.7.1.1-54.14.7.1.4.

<sup>27</sup> Paragraphs 46R-47R of ISAE 3000 (Revised).

have not been dealt with to the auditor's satisfaction (refer to paragraphs 67-71 for materiality). This includes inquiries regarding deficiencies in internal control.

## Nature and Extent of the Auditor's Work

41. The nature and extent of work performed is that which is required to express a reasonable assurance opinion on the compliance of the legal practitioners' trust accounts with the Act and the Rules. Any non-compliance identified by the auditor, with respect to the compliance of a legal practitioner's trust accounts with the Act and the Rules, is listed in the auditor's qualified report (Appendix 5) or an explanation is provided as to why the auditor is unable to express an opinion (refer to paragraphs 84-85).
42. In an engagement of legal practitioners' trust accounts, the auditor may design and perform tests of the controls, following the auditor's risk assessment procedures and evaluation of internal control. Notwithstanding that the auditor may choose to rely on the controls, the extent of testing for compliance through substantive procedures is likely to be greater, as the auditor is evaluating compliance with the Act, all the applicable Rules and because trust account transactions are not usually homogenous. Accordingly, control testing, where applicable, and substantive testing covers all significant trust account activities.
43. Categories of services may be high risk, either by their nature or for other reasons, such as volume or value of transactions.
44. In the engagement on information that has been extracted from the trust accounting records, the auditor agrees the financial information contained in the Legal Practitioner's Annual Statement on Trust Accounts to the underlying records that were the subject of the compliance engagement.<sup>28</sup>
45. In addition, the auditor reads the legal practitioner's representations, the disclosures and other information contained in the Legal Practitioner's Annual Statement on Trust Accounts for the purpose of identifying any inconsistencies with the auditor's knowledge obtained in the course of the compliance engagement on the legal practitioner's trust accounts.<sup>29</sup>
46. In terms of Rule 54.24.3, the auditor also reports on whether or not, to the best of the auditor's knowledge, the legal practitioner carried on the business of an investment practice and complied with the related investment practice Rules, as required.

## Ethical Requirements and Quality Management<sup>30</sup>

47. The auditor is required to comply with the requirements of the IRBA *Code of Professional Conduct for Registered Auditors (Revised November 2018)* (IRBA Code), which is consistent with the International Ethics Standards Board for Accountants' *International Code of Ethics for Professional Accountants (including International Independence Standards)* (Parts 1, 3, 4A and 4B). The auditor should be especially aware of the requirements for independence (Section 4B) and professional competence and due care (Section 113) in the context of engagements on legal practitioners' trust accounts.

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<sup>28</sup> Advisory issued by the Legal Practice Council dated 17 April 2020.

<sup>29</sup> Advisory issued by the Legal Practice Council dated 17 April 2020.

<sup>30</sup> Paragraphs 20, 31-36, A30-A34 and A60-A75 of ISAE 3000 (Revised).

48. For example, threats to independence could arise from the rendering of services by the legal practitioner to the auditor, or the rendering of non-audit services by the auditor to the legal practitioner. Threats to independence could also arise from long association and/or close relationships between the auditor and the client. The IRBA Code provides requirements in this regard.
49. The auditor is also required to implement quality management policies or procedures that are applicable to this engagement, in accordance with the International Standard on Quality Management (ISQM) 1, *Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements*. These include ensuring that:
- a) The engagement partner and the assigned engagement team have the required competence and capabilities to perform a quality engagement;
  - b) The engagement partner will be sufficiently involved so as to be able to accept responsibility for the conclusion on the legal practitioner's trust accounts;
  - c) The engagement partner takes full responsibility for quality on the engagement, considers all possible ethical breaches by members of the engagement team and considers the latest results of the audit firm's monitoring and remediation process that are possibly relevant to the engagement; and
  - d) An engagement quality review is performed in appropriate circumstances.

### **Acceptance and Continuance<sup>31</sup>**

50. In addition to complying with the audit firms' quality management policies or procedures for acceptance and continuance of the clients relationships and specific engagements,<sup>32</sup> the engagement partner also performs suitable procedures to determine whether the client relationship and assurance engagement can be accepted or continued with. A legal practitioner's trust accounts assurance engagement can only be accepted or continued with when:
- a) Relevant ethical requirements, including independence, can be met;
  - b) The engagement team collectively has the appropriate competence and capabilities; and
  - c) The terms of the engagement are agreed upon and the preconditions for the engagement have been met, including suitable roles, the responsibilities of all parties and the availability of evidence needed to support the auditor's opinion.
51. If the preconditions are not met and further discussions with the legal practitioner (potential client) do not resolve the issues, the auditor cannot accept the engagement. Likewise, if new information comes to light that would have caused the auditor to decline the engagement had that information been available earlier, the auditor will communicate this to the client and take appropriate action.

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<sup>31</sup> Paragraphs 21-25 and A35-A56 of ISAE 3000 (Revised).

<sup>32</sup> Paragraph 30 of the International Standard on Quality Management 1, *Quality Management for Firms that Perform Audits or Reviews of Financial Statements or Other Assurance or Related Services Engagements*.



52. If the legal practitioner imposes a limitation of scope of the auditor's work in the terms of the proposed engagement, such that the auditor believes the limitation will result in the auditor disclaiming an opinion, the auditor shall not accept the engagement.

### **Agreeing on the Terms of the Engagement<sup>33</sup>**

53. The auditor agrees on the terms of the engagement with the legal practitioner in an engagement letter or another suitable form of written agreement. Refer to Appendix 2 for an illustrative engagement letter. On recurring engagements, the auditor shall assess whether circumstances require the terms of engagement to be revised and whether there is a need to remind the legal practitioner of the existing terms of the engagement.

### **Emphasis on Assurance Skills and Techniques<sup>34</sup>**

54. The assurance skills and techniques of an auditor who accepts an engagement to report on legal practitioners' trust accounts, and the assurance skills and techniques of the auditor's staff assigned to the engagement, include knowledge of the Act and the Rules and understanding of the accounting system used by the legal practitioner to sufficiently enable the auditor to conduct the engagement. This includes an ability to evaluate whether there has been compliance with the Act and the Rules, and an understanding of the risks of fraud and theft, relative to a legal practitioner's trust accounts. If the auditor does not have the professional competencies, the auditor should not accept the engagement.

### **Emphasis on Professional Scepticism and Professional Judgement<sup>35</sup>**

55. The auditor exercises professional judgement in planning and performing the engagement. The auditor exercises professional judgement to determine the extent of the understanding of the entity and the nature, timing and extent of procedures to identify and assess risks of misstatement in order to provide a reasonable level of assurance.
56. The auditor uses professional judgement and applies professional scepticism in deciding when it is necessary to corroborate responses to inquiries with other information. When responses to inquiries are inconsistent, the auditor seeks to resolve the inconsistencies.
57. The auditor exercises professional scepticism throughout the engagement, with emphasis on:
- a) Assessing the risks of fraud and theft;
  - b) Determining whether there is any suspicion of misappropriation arising from fraud and theft; and
  - c) Performing relevant procedures in response to such suspicion.

### **Considerations Applicable to Fraud and Theft**

58. The auditor recognises the possibility that misappropriation due to fraud and theft may exist, notwithstanding the auditor's past experience with the firm regarding the honesty

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<sup>33</sup> Paragraphs 27-28 and A57-A58 of ISAE 3000 (Revised).

<sup>34</sup> Paragraph 39 of ISAE 3000 (Revised).

<sup>35</sup> Paragraphs 37-38 and A76-A85 of ISAE 3000 (Revised).

and integrity of the legal practitioner (as well as management and staff). Consequently, the auditor remains alert for evidence of fraud risk factors, for example, where there are changes in circumstances during the period of the engagement or where the service activities of the legal practitioner's practice may indicate the existence of fraud risk factors.

59. The guidance in ISA 240 (Revised), *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements* (ISA 240 (Revised)), may be adapted and used by the auditor in an engagement on legal practitioners' trust accounts. The auditor is advised to consider the Appendices to ISA 240 (Revised) in identifying and assessing fraud risk factors and any further examples that may be encountered in engagements on legal practitioners' trust accounts (refer to paragraph 64).
60. The auditor's inquiries include obtaining knowledge of the legal practitioner's understanding regarding the accounting and internal control systems in place to prevent, or detect, and correct fraud, theft and error; assessing how the legal practitioner is discharging those responsibilities; and whether the legal practitioner is aware of any known fraud and theft that has affected the legal practitioner's practice or suspected fraud and theft affecting the practice which is under investigation.
61. The nature, timing and extent of the legal practitioner's assessment of the risk of fraud, theft and error are relevant to the auditor's understanding of the control environment. When the legal practitioner has not assessed the risk of fraud, theft and error, it may be indicative of the lack of importance attached by that legal practitioner to internal controls.
62. When a legal practitioner places undue reliance on individuals with poor or non-existent segregation of duties, and there is an absence of independent review over the accounting records and trust accounts, it would be easy for dishonest persons (internal or external) to misappropriate funds and assets and avoid detection.
63. In addition to inquiries of the legal practitioner, the auditor makes inquiries of internal audit (if applicable) and employees within the firm to determine whether they have any knowledge of any actual, suspected or alleged fraud and theft affecting the firm. It should be noted that, although the auditor's inquiries of the legal practitioner may provide useful information concerning the risks of misappropriations from the legal practitioner's trust accounts resulting from employee fraud and theft, such inquiries are unlikely to provide useful information regarding the risks of misappropriation resulting from management fraud and theft. Making inquiries of persons within the firm other than management, in addition to the legal practitioner, may be useful in providing the auditor with a perspective that is different from that provided by the legal practitioner.
64. The fraud risk factors identified below are further examples of factors that may be encountered by auditors in engagements on legal practitioners' trust accounts. Not all are relevant in all circumstances, and some may be of greater or lesser significance in legal practitioners' practices of different sizes or those with different ownership characteristics or circumstances. Also, the order is not intended to reflect their relative importance or frequency of occurrence.
  - Firms that do not have a good reputation.
  - Firms that receive adverse media reporting.
  - Firms managed by sole directors or sole practitioners.

- Long and unexplained absences by a legal practitioner.
- Sole partners or sole practitioners lacking financial and administration skills, or not having the time to perform the control functions for which they are responsible.
- Failure to distinguish between trust monies and business monies.
- Failure to keep proper accounting records, which include a proper narrative (description) for each transaction (so that transactions and balances may be understood by persons not familiar with the transactions).
- Poor state of the firm's financial position, financial performance and cash flows, as reflected in the financial statements.
- Financial statements not completed at the time of the engagement on compliance of the trust accounts with the Act and the Rules.
- Incomplete accounting records and incomplete records relating to trust transactions and poor filing procedures.
- Unauthorised journal entries passed through a legal practitioner's trust accounts.
- Journal entries that are passed over weekends, on public holidays or in a relatively large volume at period-end.
- A high volume of unidentifiable receipts.
- Transfers in rounded amounts, especially at period end.
- Unusual transactions.
- Unusual service activities.
- Service activities carried on by legal practitioners that are identified by the Fund as those types of service activities where a high incidence of claims paid is experienced.<sup>36</sup>
- Poor segregation of duties within the firm and reliance on key persons.
- Contravention of any relevant legislation, for example:
  - Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) (FICA);
  - Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) (FAIS);
  - Prevention of Organised Crimes Act, 1998 (Act No. 121 of 1998) (POCA);
  - Tax Administration Act (Act No. 28 of 2011);
  - Income Tax Act, 1962 (Act No. 58 of 1962);
  - Value-Added Tax (VAT) Act, 1991 (Act No. 89 of 1991); and
  - Foreign exchange regulations.
- Any other unusual behaviour observed.

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<sup>36</sup> The report by the claims executive of the Fund is included in the Funds' annual report. This information can be accessed from the Fund's website at [www.fidfund.co.za](http://www.fidfund.co.za).

65. The auditor may consider inquiring from the Legal Practice Council and/or the Fund regarding any complaints that may have been received in respect of the management of trust monies by the firm.<sup>37</sup>
66. Where instances of potential or alleged fraud and theft have been identified, the auditor considers whether the circumstances indicate a possible reportable irregularity that requires an investigation.

### **Materiality<sup>38</sup>**

67. The auditor's determination of materiality is a matter of professional judgement. The auditor considers materiality during planning when determining the nature, timing and extent of the evidence gathering (sampling) procedures. Materiality, for sampling purposes in the context of a compliance engagement on legal practitioners' trust accounts, is considered as taking into account the engagement specific risks.
68. The auditor considers qualitative and quantitative materiality for sampling purposes. For example, the auditor may consider materiality depending on the nature of the transaction (qualitative materiality) or the amount of the transaction (quantitative materiality).
69. Where instances of non-compliance arise from testing a sample, the auditor considers the impact thereof on the entire population and modifies the planned procedures accordingly, including the possibility of extending the sample size.
70. The auditor also considers materiality to evaluate whether the legal practitioner's trust accounts are free from material misstatement (as defined in ISAE 3000 (Revised)). In the context of an engagement on legal practitioners' trust accounts, the Rules are drafted for compliance. The trust accounts are not audited to the same levels of materiality considerations as envisioned in an audit of financial statements, which are prepared and presented based on materiality.
71. Any instances of non-compliance of legal practitioners' trust accounts that come to the auditor's attention, whether or not appropriately accounted for or resolved by management, are considered qualitatively material and should be listed in the auditor's qualified report. Instances of non-compliance that have been reported and resolved should be indicated accordingly in the auditor's qualified report.

### **Compliance with Laws and Regulations**

72. As part of obtaining an understanding, the auditor, including the engagement team, is required to make inquiries with respect to instances of non-compliance affecting the legal practitioner's trust accounts. In order for the auditor to assess whether the identified instances of non-compliance do affect the legal practitioner's trust accounts, the auditor needs to understand the legal and regulatory framework applicable to the professional and service activities provided by the legal practitioner's firm. In the absence of such guidance in ISAE 3000 (Revised) relating to obtaining such an understanding, the auditor considers the guidance in ISA 250 (Revised), *Consideration of Laws and Regulations in an Audit of Financial Statements* (ISA 250 (Revised)).<sup>39</sup>

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<sup>37</sup> Paragraph 45 of ISAE 3000 (Revised).

<sup>38</sup> Paragraphs 44 and A92-A100 of ISAE 3000 (Revised).

<sup>39</sup> Paragraph A22 of ISAE 3000 (Revised).

73. The auditor may, for example:
- Use the auditor's existing understanding of the legal practitioners' profession and regulatory and other external factors;
  - Update the understanding of those laws and regulations that directly affect matters included in the auditor's assurance report;
  - Inquire of management as to other laws or regulations that may be expected to have a material effect on transactions in the legal practitioner's trust account; and
  - Inquire of the legal practitioner concerning the firm's policies and procedures to ensure compliance with the Act, the Rules and other relevant laws and regulations.
74. If the auditor becomes aware of information concerning an instance of non-compliance or suspected non-compliance with the Act, the Rules and other laws and regulations, the auditor obtains:
- a) An understanding of the nature of the non-compliance and the circumstances in which it has occurred; and
  - b) Further information to evaluate the possible effect on fund transactions reflected in the legal practitioner's trust account.
75. If the auditor becomes aware of the existence of, or information about, the following matters, it may be an indication of non-compliance with laws and regulations:
- Investigations of the legal practitioner or firm by the Legal Practice Council, any regulatory organisations, government departments or evidence of payment of fines or penalties;
  - Payments for unspecified services or making of loans to consultants, related parties, employees or government employees not in accordance with the relevant service activity or client mandate;
  - Payments in cash, or in the form of cash cheques payable to the bearer, or electronic fund transfers to numbered bank accounts, where the payee is not identified;
  - Unusual offshore or cross-border transactions in the legal practitioner's trust accounts with entities in other jurisdictions (including tax havens);
  - Payments for goods or services made other than to the country from which the goods or services originated;
  - Payments without proper exchange control documentation;
  - Existence of an information system which, whether by design or accident, fails to provide an adequate audit trail or sufficient appropriate evidence;
  - Unauthorised transactions or improperly recorded transactions; or
  - Adverse media comment.
76. In December 2016, the IRBA adopted ethics requirements and guidance to assist auditors in dealing with non-compliance with laws and regulations (NOCLAR). NOCLAR comprises acts of omission or commission, intentional or unintentional, committed by a client, or by those charged with governance, management or other individuals working

for or under the direction of a client which are contrary to the prevailing laws or regulations. Section 360 of the IRBA Code sets out the auditor's responsibilities in responding to NOCLAR or suspected NOCLAR. This section is effective as of 15 July 2017.

### **Written Representations by a Legal Practitioner<sup>40</sup>**

77. The auditor obtains written representations in respect of legal practitioners' trust accounts from the legal practitioner or management. It should be noted that the representations from the legal practitioner or management do not replace other evidence the auditor reasonably expects to be available. The auditor evaluates the reliability of written representations and their consistency with other evidence obtained. When the availability or reliability of written representations comes into question, the auditor should consider the impact thereof on other evidence obtained and the conclusion in the assurance report. The date of the written representations shall be as near as practical to, but not after, the date of the auditor's assurance report. Refer to Appendix 3 for an illustrative representation letter.

### **Subsequent Events<sup>41</sup>**

78. The auditor considers the effect on the legal practitioner's trust accounts and assurance report of events up to the date of the auditor's assurance report. The extent of consideration of subsequent events depends on the potential for such events to affect the legal practitioner's trust accounts and to affect the appropriateness of the auditor's conclusion. The auditor should be alert to transactions recorded after the period/year-end, but before the date of the auditor's assurance report, that may have an effect on the auditor's previous consideration of compliance. Furthermore, the auditor has no responsibility to perform any procedures regarding the legal practitioner's trust accounts after the date of the auditor's assurance report.

### **Auditor's Documentation<sup>42</sup>**

79. The auditor documents matters that are significant in providing evidence that supports the auditor's assurance report. This includes a record of the auditor's reasoning on all significant matters that require the exercise of professional judgement and related conclusions. The existence of difficult questions of principle or professional judgement calls for the documentation to include the relevant facts that were known by the auditor at the time the conclusion was reached.
80. The auditor documents work performed on opening trust account balances (as per the trust accounting system) in both the initial<sup>43</sup> and continuing engagements.

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<sup>40</sup> Paragraphs 56-60, A54-A55 and A137-A140 of ISAE 3000 (Revised).

<sup>41</sup> Paragraphs 61 and A141-A142 of ISAE 3000 (Revised).

<sup>42</sup> Paragraphs 79-83 and A200-A207 of ISAE 3000 (Revised).

<sup>43</sup> ISA 510, *Initial Audit Engagements – Opening Balances*.

## Auditor Reporting

### Assurance report content

81. The auditor's assurance report content follows the guidance in paragraphs 69-71 of ISAE 3000 (Revised).

82. For the auditor's opinion to be understood in the context of the engagement, the auditor's responsibility paragraph states, inter alia, that:

"A reasonable assurance report in accordance with ISAE 3000 (Revised) involves performing procedures to obtain evidence about whether the legal practitioner's trust accounts were maintained in compliance with the Act and the Rules. The nature, timing and extent of procedures selected depend on the auditor's professional judgement, including the assessment of the risks of non-compliance with the Act and the Rules, whether due to fraud, theft and error. In making those risk assessments, we considered internal control relevant to the engagement in order to design procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of internal control. Our reasonable assurance engagement included the following summary of procedures performed:

- a) Considering and applying, when considered applicable in the engagement circumstances, the guidance in the *Guide for Registered Auditors: Engagements on Legal Practitioners' Trust Accounts (Revised March 2020)*.
- b) Making inquiries of the legal practitioner and persons within the practice.
- c) Testing transactions for all significant service activities with the objective of evaluating whether:
  - i) Transactions were appropriately identified as trust account transactions;
  - ii) Trust account transactions were made in accordance with mandates and supported by adequate documentation and narrative to identify from whom funds were received, and for whose credit;
  - iii) Deposits and withdrawals from the trust bank accounts were to, or for, a trust creditor; and
  - iv) Transfers to the legal practitioner's business bank account were only in respect of monies to be due to the legal practitioner.
- d) Testing and/or scrutinising bank reconciliations, as considered appropriate in the engagement circumstances, and evaluating the records made available to us against the external confirmations from financial institutions."<sup>44</sup>
- e) Obtaining written representations from management regarding matters that are relevant to this engagement.

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<sup>44</sup> South African Auditing Practice Statement (SAAPS) 6, *External Confirmations from Financial Institutions*.

### **Illustrative reasonable assurance reports**

83. Appendix 4 contains an illustrative report in respect of an unmodified opinion when the auditor has concluded that the legal practitioner's trust accounts were maintained, in all material respects, in compliance with the Act and the Rules.
84. Appendix 5 contains an illustrative report in respect of a qualified opinion when the auditor has concluded that the legal practitioner's trust accounts were not maintained in compliance with the Act and the Rules. The auditor discloses, in the Basis for Qualified Opinion paragraph of the auditor's assurance report, details of contraventions of the Act and the Rules in sufficient detail to enable the Legal Practice Council to exercise oversight should it wish to do so.
85. An illustrative report is not provided for instances when:
  - a) The auditor is required to report non-compliance, due to the significance of identified contraventions (adverse opinion); or
  - b) The auditor is unable to obtain sufficient appropriate audit evidence (qualified or disclaimer of opinion).
86. In such circumstances, the auditor adapts the guidance on the layout and wording from the appropriate illustrative reports in ISA 705 (Revised), *Modifications to the Opinion in the Independent Auditor's Report*, and considers other reporting responsibilities. The auditor also refers to paragraphs 64-66, A147-A158 and A191 of ISAE 3000 (Revised).

### **Report on Other Legal and Regulatory Requirements**

#### **Report on the Legal Practitioner's Annual Statement on Trust Accounts**

87. In terms of the Advisory issued by the Legal Practice Council dated 17 April 2020, the auditor reports separately on the information extracted from the trust accounting records to the underlying records that were the subject of the reasonable assurance engagement and reflected in the Legal Practitioner's Annual Statement on Trust Accounts in the section of the auditor's assurance report titled "*Report on Other Legal and Regulatory Requirements*".
88. In terms of the Advisory issued by the Legal Practice Council dated 17 April 2020, the auditor also reads the Legal Practitioner's Annual Statement on Trust Accounts for the purpose of identifying whether any information contained therein is inconsistent with the auditor's knowledge obtained in the course of the engagement; and then reports whether, based on the reading, any inconsistencies have been identified. As the auditor has not undertaken an assurance engagement on the Legal Practitioner's Annual Statement on Trust Accounts, the auditor does not express an opinion thereon.
89. When an auditor's assurance report on the compliance of the legal practitioners' trust accounts with the Act and the Rules contains a qualified opinion, an adverse opinion or a disclaimer of opinion, the illustrative wording of the paragraph in Appendix 5 may require an amendment. The auditor considers whether the qualified opinion, adverse opinion or disclaimer of opinion has any effect, or possible effect, on the consistency of the legal practitioner's representations and the other disclosures in the Legal Practitioner's Annual Statement on Trust Accounts, with instances of non-compliance of legal practitioners' trust accounts with the Act and the Rules identified in the auditor's



assurance report; and if so, the auditor amends the wording appropriately, with regard to the circumstances.

### **Report on the Legal Practitioner's Investment Practice**

90. The auditor reports separately on whether or not, to the best of the auditor's knowledge, the legal practitioner carried on the business of an investment practice and complied with the related investment practice Rules.<sup>45</sup> This is included in the section of the auditor's assurance report titled "*Report on Other Legal and Regulatory Requirements*".

### **Reportable Irregularities**

91. When the auditor has reported a reportable irregularity to the IRBA, the auditor includes a paragraph in the section of the auditor's assurance report titled "*Report on Other Legal and Regulatory Requirements*", that discloses the information relating to the reportable irregularity. Illustrative wording, adapted as necessary to the circumstances, may be as follows:

*In accordance with our responsibilities in terms of Sections 44(2) and 44(3) of the Auditing Profession Act, we report that we have identified a reportable irregularity in terms of the Auditing Profession Act. We have reported such matter to the Independent Regulatory Board for Auditors. The reportable irregularity/ies is/are as follows: <describe....>.*

### **Other Reporting Responsibilities**

92. The auditor considers other reporting responsibilities, including the appropriateness of communicating relevant matters of governance arising from the assurance engagement with those charged with governance. The auditor considers ISAE 3000 (Revised), paragraph 78; ISA 260 (Revised), *Communication with Those Charged with Governance*; and ISA 265, *Communicating Deficiencies in Internal Control to Those Charged with Governance and Management*. Refer to paragraph 76 for the auditor's responsibilities regarding NOCLAR.
93. "*Governance*" describes the role of persons entrusted with the supervision, control and direction of a responsible party. Those charged with governance are ordinarily accountable for ensuring that an entity achieves its objectives and for reporting to interested parties.

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<sup>45</sup> Rule 54.24.3.

## Appendix 1: Act/Rule Requirements, Illustrative Risk and Illustrative Procedures/Responses

**Note:** The control environment, risks and systems will differ from entity to entity. Therefore, auditors are advised to adapt the following procedures accordingly. The illustrative auditor's responses to illustrative risks are not exhaustive, and not necessarily the only appropriate responses. The auditor needs to adapt them as necessary in the circumstances of the engagement.

| No | Act/Rule <sup>46</sup> reference   | Act/Rule requirement  | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup>  |
|----|--|---|---------------------------------|--|
| 1  | <b>Act S86(3), S86(4), S86(5), S87(1), S87(3) and S87(4)(a) Rule 54.6 and 54.7</b> | <p><b><u>Accounting requirements – General</u></b></p> <p>A firm shall keep in an official language of the Republic<sup>49</sup> such accounting records, which record both business account transactions and trust account transactions, as are necessary to enable the firm to satisfy its obligations in terms of the Act, these Rules and any other law with respect to the preparation</p> | General                         | <p>To identify and assess risk within the assurance engagement, obtain an understanding of, and document key controls identified by the legal practitioner<sup>51</sup> that address each of the control objectives listed below in respect of the accounting records<sup>52</sup>:</p> <ul style="list-style-type: none"> <li>• Accounting records are accurate (accuracy); and</li> <li>• Loss of the accounting records is prevented (completeness).</li> </ul> |

<sup>46</sup> For the purposes of this Revised Guide, the Rules reflected in the table refer to the South African Legal Practice Council Rules (the Rules), made under the authority of Sections 95(1), 95(3) and 109(2) of the Legal Practice Act, No. 28 of 2014 (the Act), as published in Government Gazette No. 41781 on 20 July 2018.

<sup>47</sup> These are risks that have been identified as typically present in legal practitioners' trust accounts engagements in relation to the Accounting Rules.

<sup>48</sup> The auditor exercises judgement in the circumstances of the engagement at the legal practitioner's firm and adapts the illustrated procedures/responses as necessary, based on the auditor's assessment of the risks of non-compliance of the legal practitioner's trust accounts with the Act and the Rules.

<sup>49</sup> The Republic of South Africa.

<sup>51</sup> This Revised Guide has been drafted using the term "legal practitioner" when referring to the responsibilities of both the legal practitioner and the firm. It is therefore useful to note that the Rules refer to the firm as well.

<sup>52</sup> The auditor is not required to perform any procedures on records or documents relating to accounting for deceased estates, insolvent estates and trusts other than those dealt with via the legal practitioner's trust banking account(s).

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement  | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup>   |
|----|----------------------------------|---|---------------------------------|---|
|    |                                  | <p>of financial statements that present fairly and in accordance with an acceptable financial reporting framework in South Africa the state of affairs and business of the firm; and to explain the transactions and financial position of the firm, including and without derogation from the generality of this Rule:</p> <ul style="list-style-type: none"> <li>• Records showing all assets and liabilities as required in terms of Section 87 of the Act;</li> <li>• Records containing entries from day to day of all monies received and paid by it on its own account, as required by Sections 87(1) and 87(3) of the Act;</li> <li>• Records containing particulars and information of: <ul style="list-style-type: none"> <li>○ All moneys received, held and paid by it for and on account of any person;</li> </ul> </li> </ul> |                                 | <p>Through the inspection of the accounting records, confirm that the accounting records are maintained in an official language of the Republic.</p> <p>Inspect the latest available financial statements (where required by the relevant law(s) and/or regulation(s)) of the entity and ensure that they are presented in terms of either IFRS or IFRS for SMEs and include specific additional disclosure as published by the Council.</p> <p>Inspect the accounting records to ensure that they comply with the Rules and to establish whether the accounting records<sup>53</sup>:</p> <ul style="list-style-type: none"> <li>• Show all assets and liabilities, as required in terms of Section 87 of the Act;</li> <li>• Contain day to day entries of all moneys received and paid by the legal practitioner on the legal practitioner's own account, as required by Sections 87(1) and 87(3) of the Act; and</li> <li>• Contain particulars and information of: <ul style="list-style-type: none"> <li>○ All moneys received, held or paid by the legal practitioner for the account of any person;</li> <li>○ All moneys invested by the legal practitioner in terms of Section 86(3) or 86(4) of the Act;</li> <li>○ Any interest referred to in Section 86(5) of the Act that is paid over or credited to the legal practitioner; and</li> </ul> </li> </ul> |

<sup>53</sup> The auditor is not required to perform any procedures on records or documents relating to accounting for deceased estates, insolvent estates and trusts other than those dealt with via the firm's trust banking account(s).

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement   | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup>   |
|----|----------------------------------|--|---------------------------------|---|
|    |                                  | <ul style="list-style-type: none"> <li>○ All moneys invested by it in terms of Section 86(3) or Section 86(4) of the Act;</li> <li>○ Any interest referred to in Section 86(5) of the Act which is paid over or credited to it; and</li> <li>○ Any interest credited to or in respect of any separate trust savings.</li> </ul> <p><b>Acceptable financial reporting framework</b></p> <p>For purposes of these Rules:</p> <ul style="list-style-type: none"> <li>● Acceptable financial reporting frameworks which are to be recognised and applied are:                             <ul style="list-style-type: none"> <li>○ "IFRS", being International Financial Reporting Standards as issued from time to time by the International Accounting Standards Board, or its successor body;</li> <li>○ "IFRS for SMEs", being IFRS for Small and Medium Enterprises.</li> </ul> </li> </ul> |                                 | <ul style="list-style-type: none"> <li>○ Any interest credited to or in respect of any separate trust savings.</li> </ul> |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement  | Illustrative risk <sup>47</sup>  | Illustrative procedures/responses <sup>48</sup>  |
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|    |                                  | <ul style="list-style-type: none"> <li>In determining what is meant by "acceptable financial reporting frameworks" regard shall be had, <i>inter alia</i>, to any rulings of the Council<sup>50</sup> published to trust account practitioners with respect to specific additional disclosures required to be made in the financial statements or trust account Schedules.</li> </ul> |  |  |
| 2  | <b>Act S88 Rule 54.8</b>         | <p><b><u>Distinguishing between trust account and business account transactions</u></b></p> <p>The accounting records shall distinguish in readily discernible form between business account transactions and trust account transactions.</p>   | <p>The firm's accounting records may not distinguish between the business account transactions and the trust account transactions, and this could potentially lead to inaccurate and incomplete accounting for the trust account transactions.</p> | <p>Using the knowledge obtained during the understanding of the nature of the legal practitioner's trust account transactions and service activities – acquired during the planning stage – determine by the inspection of the accounting records whether a clear distinction, in readily discernible form, has been made between the trust account transactions and the business account transactions.</p> <p>Inspect the business accounting records for all bank accounts maintained by the legal practitioner. Discuss with management the nature of these bank accounts and confirm whether these were correctly recorded as business accounts or trust accounts.</p> <p>Determine through the inspection of internal and external correspondence and minutes of meetings and through discussion with management whether all bank</p> |

<sup>50</sup> The Council: The South African Legal Practice Council established in terms of Section 4 of the Act.

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|    |                                  |  |   | accounts held by the legal practitioner have been identified and accounted for (completeness).  |
| 3  | <b>Act S87(1)<br/>Rule 54.9</b>  | <p><b><u>Retention of accounting records and files</u></b></p> <p>A firm shall retain its accounting records and all files and documents relating to matters dealt with by the firm on behalf of clients:</p> <ul style="list-style-type: none"> <li>• For at least seven years from the date of the last entry recorded in each particular book or other document of record or file;</li> <li>• Save with the prior written consent of the Council, or when removed therefrom under other lawful authority, at no place other than its main office, a branch office or, in the case of electronic accounting records or files, the location at which such accounting records or files are ordinarily hosted, provided that: <ul style="list-style-type: none"> <li>○ In the case of electronic accounting records or files hosted offsite, such records or files shall always be</li> </ul> </li> </ul> | <p>The accounting records, files and documents may not be retained for the prescribed period, as per the Rule.</p> <p>The retention of the accounting records, files and documents outsourced and kept at the computer bureau/service provider may not be done as prescribed by the Rule.</p> | <p>Discuss with management and inspect the accounting records, files and documents to determine whether the accounting records are kept for a period of seven years from the date of the last entry recorded in each particular book or other document of record or file.</p> <p>Discuss with management and inspect the accounting records, files and documents to determine whether the accounting records are kept at the firm's main office or/and the branch office(s), as required.</p> <p>Inspect that written consent has been obtained from the Council in the case of accounting records, files or documents hosted at a place other than the firm's main office, a branch office (in the case of a branch office, only insofar as they relate to any part of the firm's practice conducted at that branch office) or, in the case of electronic accounting records or files, the location at which such accounting records or files are ordinarily hosted offsite.</p> <p>Obtain an understanding and document the key controls relating to the control objective listed below in respect of electronic accounting records or files hosted offsite:</p> <ul style="list-style-type: none"> <li>• Access controls are in place to ensure that only authorised persons have access to the electronic records or files hosted offsite.</li> </ul> |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement  | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup> |
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|    |                                  | <p>reasonably secured and shall remain immediately accessible to authorised persons from the office of the firm, and to the Council; and</p> <ul style="list-style-type: none"> <li>○ In the case of a branch office, only insofar as they relate to any part of its practice conducted at that branch office.</li> <li>○ Where the accounting records are required to be made available elsewhere than as provided for in this Rule to enable an auditor or inspector to comply with the provisions of Rule 54.24, the accounting records may be removed temporarily to the premises of the auditor or inspector, as the case may be, for that purpose, but shall be returned to the place referred to in Rule 54.9.2 as soon as the accounting records have served that purpose.</li> </ul> |                                 |   |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement  | Illustrative risk <sup>47</sup>   | Illustrative procedures/responses <sup>48</sup>  |
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| 4  | <b>Rule 54.10</b>                | <p><b><u>Updating of accounting records</u></b><br/>                     A firm shall update and balance its accounting records monthly and shall be deemed to comply with this Rule if, <i>inter alia</i>, its accounting records have been written up by the last day of the following month.</p>   | <p>The firm may fail to promptly update accounting records and write them up, as required by the Rule, and this may lead to delays in the engagement performance and a potential scope limitation.<br/>                     This also applies to the business accounting records.</p> | <p>Obtain an understanding of and document the key controls relating to the control objectives listed below in respect of the accounting records and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Accounting records are timeously updated (accuracy); and</li> <li>• Review the accounting records to determine whether they are written up monthly (i.e. last day of the following month).</li> </ul> <p>If reliance is not placed on the controls, select, on a test basis, a sample of the trust accounting records and confirm that they are written up monthly (i.e. last day of the following month).</p> |
| 5  | <b>Rule 54.14</b>                | <p><b><u>Accounting Requirements – Accounting Records</u></b><br/>                     A firm shall maintain its accounting records in terms of the Act and these Rules.<br/>                     A firm shall report to the Council forthwith, in writing any loss, theft or destruction of any such records.<br/>                     A firm shall, in the case of accounting records being computerised, make monthly backups which shall be kept in a safe, fireproof place remote from the firm or, in the case of</p> | <p>The firm may fail to maintain accounting records in a manner required by the Act and the Rules, and this may lead to the legal practitioner's trust accounts transactions being incomplete and inaccurate.</p>   | <p>Obtain an understanding of and document the key controls relating to the control objectives listed below in respect of the accounting records and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Accounting records are accurate (accuracy); and</li> <li>• Loss of the accounting records is prevented (completeness).</li> </ul> <p>Obtain an understanding of and document the key controls implemented by the legal practitioner regarding backups of computerised records, safekeeping of manual records and retrieval of these records, and determine whether they operated</p>                           |



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|    |                                  | <p>accounting records being in the form of manual books of account, by ensuring that, outside normal business hours, such records are kept in a safe place.</p> <p>If the firm keeps any of its accounting records in electronic form, the firm shall:</p> <ul style="list-style-type: none"> <li>• Provide adequate precautions against loss of the records as a result of damage to or failure of the media in which the records are maintained; and</li> <li>• Ensure that the records are at all times capable of being retrieved to a readable and printable form, including by converting the records from legacy to later systems or software from time to time.</li> </ul> <p>A firm shall, where the firm utilises electronic banking in respect of payments from the trust account, keep a proper audit trail, which shall include verification of the payee's banking account details.</p> <p>The firm's accounting records shall not, save with the prior written</p> |                                 | <p>effectively throughout the period under review, where reliance will be placed on the controls.</p> <p>Obtain an understanding of and document the key controls implemented by the legal practitioner regarding precautions against loss as a result of damage to or failure of the media in which the records are maintained, and determine whether they operated effectively throughout the period under review, where reliance will be placed on the controls.</p> <p>Inquire from management as to whether any loss, theft or destruction of any accounting records occurred. If so, confirm through the inspection of the correspondence that this has been reported to the Council.</p> <p>If reliance is not placed on the controls, perform substantive procedures comprising, as may be appropriate, the inspection of records, observation of procedures or processes, and inquiries of management and relevant accounting and information system staff to obtain sufficient appropriate evidence regarding backups of computerised records, safekeeping of manual records and the retrieval of these records' including conversion of records from legacy systems to later systems or software.</p> <p>On a test basis, select a sample of accounting records maintained electronically and confirm that the records are capable of being retrieved to a readable and printable form.</p> |

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|    |                                  | <p>consent of Council or under lawful authority, and except for electronic records in terms of accounting Rule 54.14.3 and backups of computerised records, be maintained at any place other than its main office or branch office, but in the latter instance, only insofar as they relate to any part of its practice conducted at that branch.</p>   |  | <p>Inquire from management whether any of the accounting records, except for electronic records and backups of computerised records, are maintained at any place other than the main office or branch office, but in the latter instance, only insofar as they relate to any part of the practice conducted at that branch.</p> <p>If so, confirm that the firm obtained written consent from the Council.</p> <p>For EFT payments, refer to step 15 and obtain evidence that management has established the ownership of the recipient's bank account.</p>  |
| 6  | <p><b>Rule 54.11</b></p>         | <p><b><u>Trust money to be kept separate from other money</u></b></p> <p>Trust money shall in no circumstances be deposited in or credited to a business banking account. Money other than trust money found in a trust banking account at any time shall be transferred to a business banking account without undue delay.</p> <ul style="list-style-type: none"> <li>• A firm shall be deemed to have complied sufficiently with this Rule if it makes transfers from its trust banking account to its business banking account at least once a month.</li> </ul> | <p>Trust money must be kept separate from other money.</p> <p>Not keeping trust money separate may lead to the misappropriation of the trust money, and that may go undetected.</p> <p>Money other than trust money was not transferred to the business banking account at least once a month.</p> | <p>On a test basis, agree receipts and payments reflected in the business bank account with the business client (debtor) ledger in order to ascertain whether any trust account items have been erroneously dealt with as a business transaction.</p> <ul style="list-style-type: none"> <li>• Inspect the business debtors to identify credit balances; and</li> <li>• Inquire whether they should be trust creditors.</li> </ul> <p>On a test basis, select reverse transfer journals from business to trust accounts, discuss with management and corroborate with supporting evidence.</p> <p>In circumstances where money other than the trust money was found in a trust banking account, confirm that these were transferred to the business account without undue delay and that such transfers were made at least once per month, where applicable.</p> |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement   | Illustrative risk <sup>47</sup>  | Illustrative procedures/responses <sup>48</sup>  |
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| 7  | <b>Rule 54.11</b>                | <p><b><u>Transfer from trust banking account</u></b></p> <p>When making a transfer from its trust banking account to its business banking account, a firm shall ensure that:</p> <ul style="list-style-type: none"> <li>• The amount transferred is identifiable with and does not exceed the amount due to firm;</li> <li>• The trust creditor from whose account the transfer is made is identified; and</li> <li>• The balance of any amount due to the firm remaining in its trust banking account is capable of identification with corresponding entries appearing in its trust ledger.</li> </ul> | <p>Transfers from the trust banking account may not be in compliance with the provisions of the Rules.</p> <p>This may lead to irreconcilable differences in the trust banking account and debit balances.</p> | <p>Obtain an understanding of and document the key controls relating to the control objectives listed below in respect of the transfers from the trust banking account and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Transfers from the trust banking account are properly authorised (validity);</li> <li>• The amount transferred is correct (accuracy); and</li> <li>• Transfers are recorded in the correct accounting period (cut-off).</li> </ul> <p>On a test basis, select individual transfers, other than those related to fees or expenses, from the trust banking account to the business banking account and inspect supporting documentation to verify that:</p> <ul style="list-style-type: none"> <li>• The amount transferred is identifiable with and does not exceed the amount due to the firm;</li> <li>• The trust creditor from whose account the transfer is made is identified;</li> <li>• The balance of any amount due to the firm remaining in the firm's trust banking account is capable of identification, with corresponding entries, and appears in the firm's trust ledger; and</li> <li>• The transfers from the trust banking account to the business banking account were made at least once per month, where applicable.</li> </ul> |

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|    |                                  |  |                                 | <p>On a test basis, select individual transfers from the trust banking account that relate to fees and expenses and inspect supporting documentation to verify that:</p> <ul style="list-style-type: none"> <li>• The fees or expenses are due;</li> <li>• The fee has been raised in the business books before the transfer is effected; and</li> <li>• The transfer is in respect of a valid expense relating to the specific creditor and trace the payment to the creditor's account.</li> </ul> <p>Scrutinise all rounded amounts transferred.</p> <p>Inspect the total, as per the transfer listing, and ensure that:</p> <ul style="list-style-type: none"> <li>• It agrees to the amount deposited/EFT transfer into the business bank account;</li> <li>• The deposit/EFT transfer was made without undue delay; and</li> <li>• The transfers were not made into bank accounts other than the firm's business bank account.</li> </ul> |
| 8  | <b>Rule 54.12</b>                | <p><b><u>Accounting to clients</u></b></p> <p>Every firm shall, within a reasonable time after the performance or earlier termination of any mandate, account to its client in writing and retain a copy of each such account for not less than five years. Each account shall contain details of:</p> | Non-disclosure to clients.      | <p>For the sample of matter files selected for detail testing after the performance or earlier termination of any mandate (refer to the responses of No. 30), obtain written evidence of the firm's accounting to its clients and determine whether the accounting to the firm's clients includes the following:</p> <ul style="list-style-type: none"> <li>• Details of amounts received by the firm from its respective clients (and that these amounts are appropriately explained);</li> </ul>  |

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|    |  | <ul style="list-style-type: none"> <li>• All amounts received by it in connection with the matter concerned, appropriately explained;</li> <li>• All disbursements and other payments made by it in connection with the matter;</li> <li>• All fees and other charges charged to or raised against the client and, where any fee represents an agreed fee, a statement that such fee was agreed upon and the amount so agreed;</li> <li>• The amount owing to or by the client.</li> </ul> |  | <ul style="list-style-type: none"> <li>• Disbursements made by the firm are included;</li> <li>• Fees and other charges charged to or raised against the client are included; and</li> <li>• The amount owed to or by the client is clearly shown.</li> </ul> <p>Determine, by inspection, whether the supporting documentation referred to above is properly authorised and relates to disbursements relative to the mandate of the client.</p>                   |
| 9  | <p><b>Act S63(1)(g) Rule 54.14.7.2</b></p> | <p><b><u>Prompt depositing of trust monies</u></b><br/>                     That all money received by it on account of any person is deposited intact into its trust banking account on the date of its receipt or the first banking day following its receipt on which it might reasonably be expected that it would be banked; provided that a firm which does not deposit trust money into a banking product at his registered bank in</p>   | <p>Trust money may not be promptly deposited, and this may lead to trust money going missing or being used for purposes for which it was not intended.</p> | <p>Obtain an understanding of and document the key controls relating to the control objectives listed below in respect of the deposit of trust money and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Trust money is deposited intact (any misappropriations of trust monies are identified) (accuracy);</li> <li>• Deposits are recorded in the correct accounting period (cut-off);</li> </ul> |

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|    |                                  | <p>South Africa with which the Fund has made an arrangement as contemplated in Section 63(1)(g) of the Act without the prior written consent of the Council shall be guilty of misconduct; provided further that if any arrangement made by the Fund with a bank in terms of Section 63(1)(g) is withdrawn or cancelled, the firm shall forthwith withdraw its trust funds from that bank with immediate effect, or on maturity of the investments concerned, as the case may be.</p> |                                 | <ul style="list-style-type: none"> <li>• All trust monies or EFTs<sup>54</sup> received are accounted for and allocated to the correct trust account (classification and completeness); and</li> <li>• Trust money is held at a bank with which the Fund has made an arrangement, as contemplated in Section 63(1)(g) of the Act, and the particulars of the bank are those reflected on the Fund's website (validity).</li> </ul> <p>If reliance is placed on the controls, select, on a test basis, a sample of receipts and inspect the corresponding supporting documentation to determine whether the key controls have been implemented and operated effectively throughout the period under review.</p> <p>If reliance is not placed on the controls, select, on a test basis, a sample of receipts and inspect the supporting documentation to determine whether:</p> <ul style="list-style-type: none"> <li>• Trust money was promptly deposited into the trust bank account;</li> <li>• Deposits were recorded in the correct accounting period (cut-off);</li> <li>• All trust monies/EFTs<sup>55</sup> received are accounted for and allocated to the correct trust account (classification and completeness); and</li> </ul> |

<sup>54</sup> Electronic fund transfers between banking accounts done electronically on-line.

<sup>55</sup> Electronic fund transfers between banking accounts done electronically on-line.

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|    |   |   |  | <ul style="list-style-type: none"> <li>• Trust money is held at a bank with which the Fund has made an arrangement, as contemplated in Section 63(1)(g) of the Act, and the particulars of the bank are those reflected on the Fund's website (validity).</li> </ul> <p>Inspect the receipt book and ensure that it is sequentially pre-numbered.</p> <p>Using the sample selected above, determine whether the receipts:</p> <ul style="list-style-type: none"> <li>• Are issued in duplicates; and</li> <li>• Provide the details, as required by the Rule.</li> </ul> <p>Inquire from management whether receipt books exist other than the sequentially pre-numbered receipt book.</p> <p>On a test basis, select a sample of identified cancelled receipts to ensure that they are supported by valid explanations and supporting documentation.</p> <p>Where funds have been received via EFT, inspect evidence that the details, as required by the Rule, have been recorded.</p> |
| 10 | <p><b>Act S63(1)(g) and S86(2) Rule 54.14.7.3</b></p> | <p><b><u>Transfers from trust investment account</u></b></p> <p>Unless the firm has received written authorisation for the payment of any guarantees issued by a bank on the strength of a trust investment, that any amount withdrawn by it from a trust</p> | <p>Transfers from a trust investment account to a trust banking account may not be in accordance with the Rule, resulting in some trust monies not</p> | <p>Obtain an understanding of and document the key controls relating to the control objectives listed below in respect of the transfers from the trust investment account and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Transfers from the trust investment account are properly authorised and are made to the trust banking account (unless written authorisation has</li> </ul>  |

| No | Act/Rule <sup>46</sup> reference       | Act/Rule requirement   | Illustrative risk <sup>47</sup>                                | Illustrative procedures/responses <sup>48</sup>   |
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|    |  | investment account is deposited promptly by it in its trust banking account. | being appropriately accounted for.                             | <p>been received for the payment of any guarantees issued by a bank on the strength of a trust investment) (validity);</p> <ul style="list-style-type: none"> <li>• The amount transferred is correct (accuracy);</li> <li>• Transfers are recorded in the correct accounting period (cut-off); and</li> <li>• The trust investment account is held at a bank with which the Fund has made an arrangement, as contemplated in Section 63(1)(g) of the Act, and the particulars of the bank are those reflected on the Fund's website (validity).</li> </ul> <p>On a test basis, select a sample of transfers made from the trust investment account and determine whether the amounts transferred to the trust bank account, except for written authorisation for payment of any guarantees issued by a bank, are recorded in the correct accounting period.</p> <p>For each selected transfer made to the trust bank account, inspect the client mandate to determine whether the amount is authorised and accurate.</p> <p>For each selected transfer made for a payment of any guarantees issued by a bank, inspect the written authorisation to determine whether the payment is authorised and accurate.</p> |
| 11 | <b>Act S63(1)(g)<br/>Rule 54.14.8,</b> | <b><u>Trust moneys not to be less than trust balances.</u></b>               | The total amount of money in the firm's trust banking account, | At the reporting dates (i.e. at the year-end and one other test date) obtain an independent external written (or electronic) confirmation of the balance of the trust   |



| No | Act/Rule <sup>46</sup> reference   | Act/Rule requirement  | Illustrative risk <sup>47</sup>   | Illustrative procedures/responses <sup>48</sup>  |
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|    | <p><b>54.14.9 and 54.14.12</b></p> | <p><b><u>Trust accounts not to be in debit. Transfer from trust bank account to business bank account</u></b></p> <p>A firm shall ensure that the total amount of money in its trust banking account, trust investment account and trust cash at any date shall not be less than the total amount of the credit balances of the trust creditors shown in its accounting records.</p> <p>A firm shall ensure that no account of any trust creditor is in debit.</p> <p>A firm shall employ and maintain a system to ensure that the requirements of these Rules are not infringed when amounts are transferred from its trust banking account to its business banking account.</p> | <p>trust investment account and trust cash may be less than the total amount of credit balances of the trust creditors.</p> <p>This may bring about un-reconciled differences in the trust accounting records.</p> <p>Individual trust creditors may go into debit.</p> | <p>banking account and trust investment account from the financial institutions with which these accounts are held.<sup>56</sup></p> <p>Test whether the trust banking accounts are held at a bank with which the Fund has made an arrangement, as contemplated in Section 63(1)(g) of the Act, by verifying the particulars to those reflected on the Fund's website.</p> <p>At the reporting dates (i.e. at the year-end and one other test date), agree the total of the trust ledger credit balances with the aggregate of:</p> <ul style="list-style-type: none"> <li>• Balances in trust bank accounts;</li> <li>• Balances in savings accounts, in terms of Sections 86(3) and 86(4); and</li> <li>• Trust cash on hand.</li> </ul> <p>Inspect the above reconciliations for evidence of review by a senior official.</p> <p>Obtain the bank reconciliations at both reporting dates, for the trust banking account, the trust investment account and trust cash, and test the reconciliation as follows:</p> <ul style="list-style-type: none"> <li>• Compare the balances on the reconciliation to the cashbook, bank statements and bank confirmation balances, respectively; and</li> </ul> |

<sup>56</sup> Refer to SAAPS 6, *External Confirmations from Financial Institutions*, for external confirmation requests issued on or after 1 October 2013.

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup>   |
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|    |                                  |                      |                                 | <ul style="list-style-type: none"> <li>• Re-perform all casts on the reconciliation and, at the same time, test the logic of the reconciliation, e.g. outstanding cheques have been added to, not subtracted from, the cashbook balance.</li> </ul> <p>On a test basis, select a sample of receipts and payments from the cashbook and by inspection determine whether they appear:</p> <ul style="list-style-type: none"> <li>• As entries recorded in the bank statements prior to the respective reporting dates; or</li> <li>• In the reconciliation as outstanding cheques or deposits/EFTs.</li> </ul> <p>Determine through inspection whether the outstanding cheques and deposits reflected in the reconciliation appear in:</p> <ul style="list-style-type: none"> <li>• The cash book prior to the reconciliation date; and</li> <li>• In the bank statement after the reconciliation date.</li> </ul> <p>Inquire about any long outstanding deposits and long outstanding cheques that should possibly be written back.</p> <p>Obtain an explanation from management and follow up on any unusual reconciling items by reference to supporting documentation.</p> <p>On a test basis, select a sample of receipts and payments close to the reporting dates (i.e. at the year-end and one other test date) and confirm by inspection that they appear as entries recorded in the cash book prior to the reporting dates.</p> |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup>   |
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|    |                                  |                      |                                 | <p>Examine the bank statements of the legal practitioner's firm subsequent to the reporting dates (i.e. year-end and one other test date – being not less than one week) to identify any negotiable instruments that were deposited in the trust banking account, but had not been met.</p> <p>Inspect documentary evidence showing the results of the trust cash count held at the reporting dates (i.e. year-end and one other test date) and agree the amount to the reconciliation.</p> <p>Agree the total amount on the reconciliation at the reporting dates (i.e. year-end and one other test date) to the total of the trust creditors at the reporting dates (i.e. year-end and one other test date), and determine whether the total amount on the reconciliation is not less than the total of the trust creditors.</p> <p>Determine through inspection of bank statements and other relevant supporting documentation (i.e. proof of payment received/ sent) whether the outstanding cheques/EFTs and deposits reflected in the reconciliation did not individually or in aggregate create a trust deficit.</p> <p>Scrutinise the trust creditor accounts to identify any trust creditor balance that is in debit. Obtain an explanation of the reason for the debit balance and corroborate that with supporting evidence.</p> |

| No | Act/Rule <sup>46</sup> reference  | Act/Rule requirement   | Illustrative risk <sup>47</sup>   | Illustrative procedures/responses <sup>48</sup>   |
|----|-----------------------------------|--|---|---|
| 12 | <b>Rule 54.14.10 and 54.14.11</b> | <p><b><u>Reports to Council of non-compliance</u></b></p> <p>A firm shall immediately report in writing to the Council should the total amount of money in its trust bank accounts and money held as trust cash be less than the total amount of credit balances of the trust creditors shown in its accounting records, together with a written explanation of the reason for the debit and proof of rectification.</p> <p>A firm shall immediately report in writing to the Council should an account of any trust creditor be in debit, together with a written explanation of the reason for the debit and proof of rectification.</p> | <p>Reports may not be made timeously or at all in terms of trust deficits or trust creditors being in debit.</p>            | <p>Inquire of management as to whether any reports have been made to the Council during the period under review or while conducting the assurance engagement.</p> <p>On a test basis, select a sample of instances of non-compliance identified by management to verify that a report has been made by the firm in compliance with the Rules, and document the rectification of the non-compliance by the firm.</p> <p>Where other instances of non-compliance have been identified during the course of the engagement, verify that a report has been made by the firm in compliance with the Rules, and document the rectification of the non-compliance by the firm.</p> |
| 13 | <b>Rule 54.14.13</b>              | <p><b><u>Deposits on account of charges</u></b></p> <p>Amounts received by a firm in advance to cover a prospective liability for services rendered or to be rendered or for disbursements (including counsel's fees) to be made must be deposited forthwith to the credit of its trust banking account.</p>   | <p>Amounts received in advance may be inappropriately accounted for, resulting in misappropriations of the trust funds.</p> | <p>Obtain receipt books (or electronic equivalent) and a list of EFTs. On a test basis, trace a sample of receipts to the trust banking account to determine whether any money received in advance to cover a prospective liability for services rendered/to be rendered or for disbursements (including counsel's fees) to be made has been deposited in the trust banking account.</p>  |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement   | Illustrative risk <sup>47</sup>   | Illustrative procedures/responses <sup>48</sup>   |
|----|----------------------------------|--|---|---|
| 14 | <b>Rule 54.14.14</b>             | <p><b><u>Withdrawals from trust banking account</u></b><br/>                     Withdrawals from a firm's trust banking account shall be made only:</p> <ul style="list-style-type: none"> <li>• To or for a trust creditor; or</li> <li>• As transfers to the firm's business banking account, provided that such transfers shall be made in respect of money due to the firm; and provided that no transfer from its trust banking account to its business banking account is made in respect of any disbursement (including counsel's fees) or fees of the firm unless:                             <ul style="list-style-type: none"> <li>○ The disbursements have actually been made and debited by the firm; or</li> <li>○ A contractual obligation has arisen on the part of the firm to pay the disbursement; or</li> </ul> </li> </ul> | <p>Withdrawals from the trust banking account may not be made in accordance with the Rule, which could lead to the misappropriation of the trust funds.</p> | <p>Obtain an understanding and document the key controls relating to the control objectives listed below in respect of the withdrawals from the trust banking account and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Withdrawals from the trust banking account are properly authorised (validity);</li> <li>• The amount withdrawn is correct (accuracy); and</li> <li>• Withdrawals are recorded in the correct accounting period (cut-off).</li> </ul> <p>If reliance is placed on the controls, select, on a test basis, a sample of withdrawals from the trust banking account bank statements and determine by the inspection of supporting documentation whether the key controls have been implemented and operated effectively throughout the period under review.</p> <p>If reliance is not placed on the controls, select, on a test basis, a sample of withdrawals from the trust banking account and determine by the inspection of supporting documentation whether withdrawals from a firm's trust banking account were made only:</p> <ul style="list-style-type: none"> <li>• To or for a trust creditor; or</li> <li>• As transfers to the firm's business banking account, provided that such transfers shall be made in respect of money due to the firm; and provided that no transfer from the trust banking account to the business banking account is made</li> </ul> |

| No | Act/Rule <sup>46</sup> reference            | Act/Rule requirement  | Illustrative risk <sup>47</sup>  | Illustrative procedures/responses <sup>48</sup>   |
|----|---|---|--|---|
|    |   | <ul style="list-style-type: none"> <li>○ Fees and disbursements have been correctly debited in its accounting records.</li> </ul>   |  | <p>in respect of any disbursement (including counsel's fees) or fees of the firm unless:</p> <ul style="list-style-type: none"> <li>○ The disbursements have actually been made and debited by the firm; or</li> <li>○ A contractual obligation has arisen on the part of the firm to pay the disbursement; or</li> <li>○ Fees and disbursements have been correctly debited in its accounting records.</li> </ul>  |
| 15 | <p><b>Rule 54.14.15.1 to 54.14.15.3</b></p> | <p><b><u>Payments from trust banking account</u></b><br/>                     Any cheque drawn on a firm's trust banking account shall be made payable to or to the order of a payee specifically designated. Payments from the trust banking account of a firm shall only be by cheque or electronic transfer. No withdrawals from the trust banking account of a firm may be made by way of cellular and telephone transacting.</p> | <p>In the case where cheques are issued to effect payments, trust cheques may be issued irresponsibly. Un-issued cheques may not be subject to strong stationery controls. In the case of EFT payments, there may be weak or no controls over them. All the above circumstances may lead to the misappropriation of trust funds.</p> | <p><b><u>Cheque payments and EFTs</u></b><br/>                     On a test basis, select a sample of cheque and EFT payments from the trust bank statements and perform the following:<br/> <b>Cheque payments:</b></p> <ul style="list-style-type: none"> <li>• Determine whether the paid cheques were made to or to the order of a payee specifically designated and are relevant to the client's matter;</li> <li>• Agree the paid cheques to supporting documentation;</li> <li>• Peruse the cashbook for any evidence of cash cheques; and</li> <li>• Determine by inquiry of management and the inspection of the cheque book whether cheques are issued in strict numerical sequence.</li> </ul> <p>Using the sample selected above, determine whether:</p> <ul style="list-style-type: none"> <li>• Cheques are signed in accordance with the bank mandate;</li> </ul> |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement   | Illustrative risk <sup>47</sup>    | Illustrative procedures/responses <sup>48</sup>  |
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|    |                                  |  |                                    | <ul style="list-style-type: none"> <li>• Payments to businesses are to reimburse a disbursement or fees already debited; and</li> <li>• Un-issued cheques are subject to strict stationery controls.</li> </ul> <p><b>Electronic Funds Transfer:</b></p> <ul style="list-style-type: none"> <li>• Inspect the signature of the senior accounts official (e.g. Head of Department) on the supporting documentation as evidence that the EFT payment was authorised after a scrutiny of supporting documentation (validity);</li> <li>• Inspect the EFT supporting documentation for evidence that computations were checked prior to authorising the payment (accuracy);</li> <li>• Determine by inquiry and observation whether EFT payments are made and released in accordance with the legal practitioner's bank mandate;</li> <li>• Inquire of management and inspect reports regarding security violations;</li> <li>• Inspect the EFT audit trail for evidence that it was reviewed by senior personnel; and</li> <li>• Obtain evidence that management has established the ownership of the recipient's bank account.</li> </ul> <p>Inquire from management that cellular/telephone banking for the trust bank account has not been used.</p> |
| 16 | <b>Rule 54.15.1 to 54.15.3</b>   | <p><b><u>Lists of balances</u></b><br/>                     Every firm shall extract monthly, and in a clearly legible manner, a</p> | The list of trust creditors may be | Obtain an understanding of and document the key controls relating to the control objectives listed below in respect of the extraction of lists of trust creditors and  |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement  | Illustrative risk <sup>47</sup>  | Illustrative procedures/responses <sup>48</sup>   |
|----|----------------------------------|---|----------------------------------|---|
|    |                                  | <p>list showing all persons on whose account money is held or has been received and the amount of all such moneys standing to the credit of each such person, who shall be identified therein by name, and shall total such list and compare the said total with the total of the balance standing to the credit of the firm's trust banking account, trust investment account and amounts held by it as trust cash, in the estates of deceased persons and other trust assets in order to ensure compliance with the accounting Rules.</p> <p>The balance listed in respect of each such account shall also be noted in some permanent, prominent and clear manner in the ledger account from which that balance was extracted.</p> <p>Each such list shall be part of the accounting records of the firm to be retained for the five-year period referred to in accounting Rule 54.9.</p> | <p>inaccurate or incomplete.</p> | <p>test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Information on the lists of trust creditors is correct (accuracy); and</li> <li>• Loss of extracted lists of trust creditors is prevented (completeness).</li> </ul> <p>Determine whether the key controls have been implemented and operated effectively throughout the reporting period under review, if reliance is placed on the controls.</p> <p>If reliance is not placed on the controls, select, on a test basis, a sample from the trust creditor lists and agree the details to that of the trust creditor accounts in the underlying trust accounting records (accuracy).</p> <p>Inspect whether all trust creditor lists that should have been extracted for the period under review are available (completeness).</p> <p>Obtain the extracted lists of trust creditors for the reporting period under review and perform the following procedures:</p> <ul style="list-style-type: none"> <li>• Determine whether the firm has extracted the lists of trust creditors at least monthly;</li> <li>• Cast the lists to ensure that they have been totalled correctly;</li> <li>• Inspect the list for evidence of having been agreed or reconciled to the total of trust funds;</li> </ul> |



| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup>  |
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|    |                                  |                      |                                 | <ul style="list-style-type: none"> <li>• Inspect the extracted lists and confirm that trust creditors are identified by name;</li> <li>• By inquiry of management and reference to lists from prior periods, determine whether the lists are retained for a period of five years; and</li> <li>• At the reporting dates (i.e. the closing date and at least one other date), agree, on a test basis, the individual balances from the trust ledgers with the monthly balance book or monthly schedules, ensuring that the selected balances are clearly indicated in each ledger account.</li> </ul> <p>Scrutinise the lists of trust ledger balances at the reporting dates (i.e. at year-end and one other test date); inquire into any ledger accounts in the name of the firm, suspense accounts and unidentified deposits; and consider the appropriateness of negative confirmations that could be sent to a sample of trust creditors.</p> <p>Review activity (transactions, transfers, unusual entries or balances) for unusual or abnormal items. On a sample basis, test any unusual or abnormal items identified.</p> |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement   | Illustrative risk <sup>47</sup>   | Illustrative procedures/responses <sup>48</sup>  |
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| 17 | <b>Act S87(4)</b>                | <p><b><u>Accounting – unknown / unclaimed amounts</u></b><br/>                     Any money held in the trust account of a trust account practice in respect of which the identity of the owner is unknown or which is unclaimed after one year, must, after the second annual closing of the accounting records of the trust account practice following the date upon which those funds were deposited in the trust account of the trust account practice, be paid over to the Fund by the trust account practice.</p> | <p>The firm may not pay over unknown/unclaimed amounts to the Fund timeously, and this may lead to the misappropriation of a client's monies.</p>     | <p>Inspect the age analysis of trust creditors, and:</p> <ul style="list-style-type: none"> <li>• Compare it to the previous year's age analysis for balances that have not moved; and</li> <li>• Inquire from management how long unidentified or unknown creditors have existed.</li> </ul> <p>Inspect suspense accounts and compare them to the previous year's suspense accounts for balances that have not moved.</p> <p>If the money held in the trust account of a trust account practice is in respect of an owner whose identity is unknown or is unclaimed after one year, ensure that the funds are paid over to the Fund by the trust account practice after the second annual closing of the accounting records of the trust account practice, following the date upon which those funds were deposited in the trust account of the trust account practice.</p> |
| 18 | <b>Rule 54.16</b>                | <p><b><u>Notification of trust banking account</u></b><br/>                     Every firm shall:</p> <ul style="list-style-type: none"> <li>• Immediately notify the Council in writing of the name and address of the bank or banks at which its trust banking account or accounts are kept and shall thereafter notify the Council immediately of any change in</li> </ul>  | <p>The firm may not promptly notify the Council of the firm's banking particulars; and some bank accounts may not be shown in the firm's records.</p> | <p>Using the independent external confirmations obtained from the financial institutions, as required under illustrative procedure No. 11 above:</p> <ul style="list-style-type: none"> <li>• Compare the details to the accounting records of trust bank accounts to ensure that the bank balances agree to the bank reconciliation (accuracy and existence);</li> <li>• Compare the number and types of bank accounts (Sections 86(2) and 86(3)) held during the current reporting period and at the current year-end to</li> </ul>  |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement   | Illustrative risk <sup>47</sup>   | Illustrative procedures/responses <sup>48</sup>  |
|----|----------------------------------|--|---|--|
|    |                                  | <p>the name and address of such bank or banks;</p> <ul style="list-style-type: none"> <li>Whenever so required by the Council to furnish the Council within ten days, or such longer period as the Council may stipulate, a signed statement issued by the bank or banks with which it keeps its trust banking account or accounts and a signed statement issued by the bank with which the firm keeps any trust investment account, certifying the amount of the balance of such trust banking account or accounts or trust investment account or accounts at such date or dates as may be specified by the Council.</li> </ul> |   | <p>those held during the previous reporting period and at the previous year-end, and follow up on bank accounts closed (completeness);</p> <ul style="list-style-type: none"> <li>Inspect minutes of meetings for any new bank accounts opened during the year (completeness); and</li> <li>Note the date on which each trust bank account (Sections 86(2) and 86(3)) was opened and inspect correspondence with the relevant Council to determine whether the Council was promptly notified of the opening of the firm's new trust bank account.</li> </ul> |
| 19 | <b>Act S86(4)<br/>Rule 54.17</b> | <p><b><u>Trust account investments in terms of Section 86(4)</u></b></p> <p>A firm which invests funds on behalf of any person shall, in addition to all other requirements applicable to the holding or investment of trust money:</p>  | <p>Investments may be made in contravention of the Rule, and this could lead to a client's monies being used for other purposes other than what was intended.</p> | <p>Obtain an understanding of and document the key controls relating to the control objectives listed below in respect of the investments made on behalf of clients and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>Investments are properly authorised (validity); and</li> <li>Accounting records are accurate (accuracy).</li> </ul>   |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement   | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup>   |
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|    |                                  | <ul style="list-style-type: none"> <li>• Not invest such funds other than in a trust savings or other interest-bearing account with a bank;</li> <li>• Obtain that person's written confirmation of the investment as soon as is reasonably possible, or notify that person forthwith thereof in writing; and</li> <li>• Forthwith cause the relevant trust savings or other interest-bearing account to be endorsed to the effect that it is an account opened in terms of Section 86(4) of the Act.</li> </ul> <p>A firm shall not, in connection with any mandate which the firm has accepted to invest trust funds, agree or arrange to receive from a bank any commission, fee or other reward without having disclosed, in writing, such commission, fee or reward to the person who has given the firm the mandate to invest.</p> |                                 | <p>If reliance is placed on the controls, select, on a test basis, a sample of trust investments to determine whether the key controls have been implemented and operated effectively throughout the period under review, and whether trust investments are in terms of Section 86(4).</p> <ul style="list-style-type: none"> <li>• For the sample selected above: <ul style="list-style-type: none"> <li>○ Identify whether any mandates have expired (concluded);</li> <li>○ Establish whether the funds were repaid to the trust creditor on a timely basis; and if not, identify whether a new mandate was entered into; and</li> <li>○ Ensure that a mandate was obtained at the point when the previous mandate expired (concluded). If it wasn't obtained, the funds held on investment during the interim period would be considered to form part of an investment practice.<sup>57</sup></li> </ul> </li> </ul> <p>If reliance is not placed on the controls, select, on a test basis, a sample of trust investments and ensure, through the inspection of the investment mandate, that:</p> <ul style="list-style-type: none"> <li>○ Investments are properly authorised; and</li> <li>○ Clients' trust investments are in terms of Section 86(4).</li> </ul> |

<sup>57</sup> Even though these investments (where the mandates have expired) are in general or investment bank accounts, they would need to be considered in a similar manner as the investments in shares and debentures, in accordance with procedure 24.

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup>  |
|----|----------------------------------|----------------------|---------------------------------|--|
|    |                                  |                      |                                 | <ul style="list-style-type: none"> <li>• For the sample selected above:                             <ul style="list-style-type: none"> <li>○ Identify whether any mandates have expired (concluded);</li> <li>○ Establish whether the funds were repaid to the trust creditor on a timely basis. If not, identify whether a new mandate was entered into; and</li> <li>○ Ensure that a mandate was obtained at the point when the previous mandate expired (concluded). If the new mandate was not obtained, the funds held on investment during the interim period would be considered to form part of an investment practice.<sup>58</sup></li> </ul> </li> </ul> <p>For the sample selected above, ensure that the investment balance, per the trust accounting records, agrees to the investment bank statement or external bank confirmation; and ensure that savings or other interest-bearing accounts are designated properly to comply with the Act, namely, “(the firm name) – Trust account – Section 86(3) or Section 86(4)”.</p> <p>Inquire of management whether any form of arrangement to receive from a bank any commission, fee or other reward exists.</p> <p>In cases where such bank arrangements exist, for the sample selected above, inspect the arrangement with the bank to verify the terms of the arrangement, and</p> |

<sup>58</sup> Even though these investments (where the mandates have expired) are in general or investment bank accounts, they would need to be considered in a similar manner as the investments in shares and debentures, in accordance with procedure 24.

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement  | Illustrative risk <sup>47</sup>  | Illustrative procedures/responses <sup>48</sup>  |
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|    |                                  |   |  | ensure, through the inspection of any disclosed commission, fee or reward, communication to the person who has given the firm the mandate in writing.  |
| 20 | <b>Rule 55.4</b>                 | <p><b><u>Investment practice - Mandates</u></b><br/>                     A firm carrying on an investment practice shall obtain an investment mandate from each client before or as soon as possible after investing funds for that client. The form of the investment mandate shall be substantially in the form of the Ninth Schedule to these Rules, and shall contain a statement that the client acknowledges that moneys so invested do not enjoy the protection of the Fund.</p> | An investment mandate may not exist, resulting in clients' moneys being used for other purposes than otherwise intended. | Through the inspection of the certificate issued by the Financial Sector Conduct Authority, confirm that the firm is a registered Financial Services Provider under the Financial Advisory and Intermediary Services Act. Obtain an understanding of and document the key controls relating to the control objectives listed below in respect of the investments made on clients' behalf and test the controls, where reliance will be placed on the controls: <ul style="list-style-type: none"> <li>• Investments are properly authorised (validity);</li> <li>• Inspect the list of trust creditors and identify those for which the firm is carrying on an investment practice;</li> <li>• On a test basis, select a sample of investment mandates and by inspection, determine whether the key controls have been implemented and operated effectively throughout the reporting period under review;</li> <li>• For the sample selected above, confirm that investment mandates were received before or as soon as possible after investing funds for that client; and</li> <li>• For the sample selected above, ensure through an inspection that the investment mandate includes a</li> </ul> |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement  | Illustrative risk <sup>47</sup>   | Illustrative procedures/responses <sup>48</sup>   |
|----|----------------------------------|---|---|---|
|    |                                  |   |   | <p>statement that the client acknowledges that moneys so invested do not enjoy the protection of the Fund.</p> <p>If reliance is not placed on the controls:</p> <ul style="list-style-type: none"> <li>• Inspect the list of trust creditors and identify those for which the firm is carrying on an investment practice;</li> <li>• On a test basis, select a sample of investment mandates and determine by inspection that the investments are properly authorised and that the investment mandates were received before or as soon as possible after investing funds for that client; and</li> <li>• For the sample selected above, ensure through an inspection that the investment mandate includes a statement that the client acknowledges that moneys so invested do not enjoy the protection of the Fund.</li> </ul> |
| 21 | <b>Rule 55.5</b>                 | <p><b><u>Report to clients</u></b></p> <p>Every firm carrying on an investment practice shall report to its client in writing in terms of the client's investment mandate at least once every twelve months on income earned and capital movements during the period of the report.</p> | <p>The firm may not submit an annual report to the client regarding the status of the investments held on behalf of the client, and this may lead to the misappropriation of a client's monies.</p> | <p>Obtain a list of investments and select a sample at the reporting date &lt;i.e. at year-end and the other test date&gt; to verify that the firm reported to its client at least once every 12 months on the income earned and capital movements during the period of the report. If applicable, confirm that the report also reflects all commission earned and other charges made by the firm in carrying out its mandate. Consider the appropriateness of negative confirmations that could be sent to a sample of trust creditors.</p>  |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement  | Illustrative risk <sup>47</sup>  | Illustrative procedures/responses <sup>48</sup>  |
|----|----------------------------------|---|--|--|
|    |                                  | That report shall reflect all commission earned or other charges made by the firm in carrying out the mandate.  |  |  |
| 22 | <b>Rule 55.6 to 55.8</b>         | <p><b><u>Accounting records for investment practices</u></b></p> <p>Every firm carrying on an investment practice shall, in addition to its normal accounting records, also keep a separate trust account record and supporting documents in respect of each client, which record shall reflect:</p> <ul style="list-style-type: none"> <li>• Payments of all monies entrusted to it from time to time by the client for investment pursuant to the mandate granted by the client in terms of investment practice Rule 55.4;</li> <li>• Payments of all monies invested by it on the client's behalf;</li> <li>• Payments of all amounts, both capital and income, derived from investments and received for the client's account;</li> </ul> | The accounting records may not exist or may be incomplete, and this may lead to questions about the accuracy and completeness of the client's investments. | <p>Obtain an understanding of and document the key controls relating to the control objectives listed below in respect of the accounting records and test the controls, where reliance will be placed on the controls:</p> <ul style="list-style-type: none"> <li>• Accounting records are accurate (accuracy); and</li> <li>• Accounting records are in terms of Rules 55.6 to 55.8 (complete and accurate).</li> </ul> <p>On a test basis, select a sample of investment matters in the accounting records and by inspection and observation, determine whether the key controls have been implemented and operated effectively throughout the reporting period under review, if reliance is placed on the control.</p> <p>On a test basis, select a sample of investment practice matters in the accounting records and perform the following procedures:</p> <ul style="list-style-type: none"> <li>• Ensure there is a mandate signed by the client;</li> <li>• Agree the amount of the investment to the trust records; and</li> <li>• Agree the amount of the investment to the supporting investment bank statement or bank confirmation.</li> </ul> |



| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement  | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup>   |
|----|----------------------------------|---|---------------------------------|---|
|    |                                  | <ul style="list-style-type: none"> <li>• All payments made by it to the client in respect of the client's investments; and</li> <li>• All charges paid to the firm in respect of services rendered by it to the client pursuant to the client's mandate in terms of investment practice Rule 55.4.</li> </ul> <p>The accounting records and other supporting documents referred to in investment practice Rule 55.6 shall be retained by the firm in such manner as to enable it to furnish each client upon request with all current details of the client's investments as recorded in investment practice Rule 55.6.</p> <p>Such accounting records, other supporting documents and systems shall be maintained in sufficient detail and be cross-referenced to the trust account records retained in respect of each client, in such a way as to provide an adequate and appropriate audit trail which will enable a particular transaction to be identified at any time and traced</p> |                                 | <p>Discuss with management to determine whether the investment practice accounting records and other supporting documentation are retained for at least five years.</p> |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement  | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup> |
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|    |                                  | <p>through the accounting records to the client.</p> <p>The system shall collect the information in an orderly manner and the accounting records and other supporting documents shall be properly arranged, filed and indexed so that any particular record can be promptly accessed.</p> <p>Where accounting records are maintained by means other than on paper, adequate facilities must exist for such records to be reproduced in printed form.</p> <p>All accounting records required to be retained in terms of this investment practice Rule 55.3 and copies of all reports dispatched in terms of Rule 55.3 shall be retained for at least five years, unless there is statutory provision to the contrary, from the date of the last entry recorded in each particular book or other document of record, and shall be held at the same office as the firm's other accounting records.</p> |                                 |   |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement  | Illustrative risk <sup>47</sup>  | Illustrative procedures/responses <sup>48</sup>  |
|----|----------------------------------|---|--|--|
| 23 | <b>Rule 55.9 and 55.10</b>       | <p><b><u>Pooling of investments</u></b><br/>                     No firm may mix deposits in a pooled account or make other money market investments in any manner otherwise than by accepting funds as agent for each participating client and placing such funds with a bank in a savings account or on the money market on behalf of the client. The firm shall obtain from the bank an acknowledgement of receipt of each deposit or money market investment and such written receipts shall be retained by the firm as part of its accounting records.</p> <p>All monies received by a firm for investment with a bank shall be paid to such bank as soon as reasonably possible after receipt by the firm, having regard to matters such as whether a payment by cheque has been cleared with the issuing bank.</p> | <p>Investments and money market transactions may not be in terms of the Rules.</p> | <p>Through inquiry of management and throughout the performance of the assurance engagement, determine whether all investments and money market transactions are in terms of the Rules.</p> <p>On a test basis, select a sample of investment mandates relating to the investment practice and perform the following procedures:</p> <ul style="list-style-type: none"> <li>• Inspect the investment mandate to ascertain the investment option chosen by the client;</li> <li>• Obtain and inspect the proof of deposit or investment confirmation to ascertain if the monies were deposited into a bank account or money market investment on behalf of the client and not pooled with other deposits by:                             <ul style="list-style-type: none"> <li>○ Confirming that the proof of deposit or investment confirmation is addressed to the client and not the firm; and</li> <li>○ The investment account is held in the name of the client and not the firm.</li> </ul> </li> <li>• Confirm through inspection of the proof of deposit or investment confirmation that monies received from the client were invested in terms of the investment mandate; and</li> <li>• Confirm through inspection of the proof of deposit or investment confirmation that the monies received were invested within a reasonable period.</li> </ul> |

| No | Act/Rule <sup>46</sup> reference             | Act/Rule requirement  | Illustrative risk <sup>47</sup>  | Illustrative procedures/responses <sup>48</sup>  |
|----|--|---|--|--|
| 24 | <b>Rule 55.11</b>                            | <p><b><u>Restrictions applicable to certain investments</u></b></p> <p>A firm shall not invest on behalf of a client:</p> <ul style="list-style-type: none"> <li>• In shares or debentures in any company which is not listed on a licensed securities exchange in the Republic, unless it is a subsidiary of a listed company; or</li> <li>• In loans in respect of which, in the firm's reasonable opinion at the time of making the investment, there is no adequate security, unless the client's specific written authorisation for each such investment has first been obtained.</li> </ul> | Investments may be made in contravention of the Rule and this may lead to clients' monies being used or invested for other purposes than otherwise intended. | <p>Discuss with management, and be alert throughout the performance of the assurance engagement, whether the firm invested its clients' monies:</p> <ul style="list-style-type: none"> <li>• In shares or debentures in any company that is not listed on a licensed securities exchange in the Republic, unless it is a subsidiary of a listed company; or</li> <li>• In loans in respect of which, in the firm's reasonable opinion at the time of making the investment, there is no adequate security.</li> </ul> <p>On a test basis, select a sample of investments that are made in:</p> <ul style="list-style-type: none"> <li>• Shares or debentures in any company that is not listed on a licensed securities exchange in the Republic, unless it is a subsidiary of a listed company; or</li> <li>• Loans without adequate security.</li> </ul> <p>Inspect the client's mandate (written authorisation) to determine whether specific written authorisation was obtained from the client before each investment was made and whether such investment is held in accordance with that mandate.</p> |
| 25 | <b>Act S86(2), S86(3), S86(4) and S86(5)</b> | <p><b>Interest accrued on trust banking account</b></p> <p>Any interest referred to in Section 86(5) of the Act which relates to a trust banking account opened in</p>  | Interest on money deposited and due to the Fund may not be paid over at the prescribed time or in  | Where the Fund or its nominee has exempted the legal practitioner from the requirement to pay any interest credited to the Fund or its nominee on or before the last day of the succeeding calendar month, verify the  |

| No | Act/Rule <sup>46</sup> reference            | Act/Rule requirement  | Illustrative risk <sup>47</sup>                             | Illustrative procedures/responses <sup>48</sup>  |
|----|---|---|---|--|
|    | <p><b>Rule 54.14.16.1 to 54.14.16.5</b></p> | <p>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.</p> <p>Where exemption has been granted as contemplated in Rule 54.14.16.1, 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, accrued on monies 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.</p> <p>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</p> | <p>the prescribed manner, in contravention of the Rule.</p> | <p>exemption through the inspection of the supporting documentation.</p> <p>Inspect the trust account bank statements (Sections 86(2) and 86(3)) for the whole reporting period and identify all interest credited to the account/s.</p> <p>In respect of Section 86(2) trust banking accounts, confirm by the inspection of supporting documentation that any interest credited has been paid to the Fund or its nominee on or before the last day of the succeeding calendar month.</p> <p>Test whether the bank charges claimed against the trust interest are allowable by verifying the particulars to those reflected on the Fund's website.</p> <p>In respect of Section 86(3) trust banking accounts, confirm by the inspection of supporting documentation that any interest credited for the period ending on the last day of February in each year has been paid to the Fund or its nominee on or before the last day of May in that year.</p> <p>In respect of Section 86(4) trust investment accounts:</p> <ul style="list-style-type: none"> <li>• Obtain the IT3B certificate or external confirmation from the financial institutions and compare it to the interest reconciliation to ensure completeness of the interest earned.</li> <li>• Test whether 5% is levied on interest earned.</li> </ul> |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement  | Illustrative risk <sup>47</sup>  | Illustrative procedures/responses <sup>48</sup>  |
|----|----------------------------------|---|--|--|
|    |                                  | <p>in each year shall, on or before the last day of May in that year, be paid to the Fund or its nominee.</p> <p>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.</p> <p>A legal practitioner shall be guilty of misconduct if he or she fails to pay over, in accordance with this Rule 54.14.16, any interest that vests in the Fund.</p> |  | <ul style="list-style-type: none"> <li>Recalculate the 5% payable to the Fund on the interest accrued on money deposited during the course of a calendar month or on maturity.</li> </ul> <p>On a test basis, select a sample of trust accounts and trust investment accounts and:</p> <ul style="list-style-type: none"> <li>Agree the interest to supporting documentation; and</li> <li>Verify that the interest due to the Fund has been paid to it or its nominee on or before the last day of the succeeding calendar month.</li> </ul> <p>In addition, consider the reasonableness of the interest rate, i.e. whether the rate is market related.<sup>59</sup></p> <p>(Note: If the interest rate is not considered reasonable, communicate to the legal practitioner that his/her refund of trust account bank charges and audit fees from the Fund will be affected detrimentally.)</p> |
| 26 | <b>Rule 54.13</b>                | <p><b><u>Payment to clients</u></b></p> <p>A firm shall, unless otherwise instructed, pay any amount due to a client within a reasonable time. Prior to making any such payment the firm shall take adequate steps to verify the bank account details provided to it by the client for the</p>  | <p>Payments to clients may be made in contravention of the Rule. Surplus trust funds may be misappropriated.</p> | <p>Obtain an understanding of and document the key controls relating to the control objectives listed below in respect of payments to clients (part of withdrawals from the trust banking account):</p> <ul style="list-style-type: none"> <li>Withdrawals from the trust banking account are properly authorised (validity);</li> <li>The amount withdrawn is correct (accuracy);</li> </ul>  |

<sup>59</sup> This can be compared to rates information available on the LPFF's website at [www.fidfund.co.za](http://www.fidfund.co.za).

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement  | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup>  |
|----|----------------------------------|---|---------------------------------|--|
|    |                                  | <p>payment of amounts due. Any subsequent changes to the bank account details must be similarly verified.</p> |                                 | <ul style="list-style-type: none"> <li>• Withdrawals are recorded in the correct accounting period (cut-off);</li> <li>• Bank account details provided by clients are valid (validity); and</li> <li>• Subsequent changes to the bank details are valid (validity).</li> </ul> <p>If reliance is placed on the controls, select, on a test basis, a sample of payments to clients from the matter files and determine by the inspection of supporting documentation whether the key controls have been implemented and operated effectively throughout the period under review.</p> <p>If reliance is not placed on the controls, select, on a test basis, a sample of payments to clients and determine by the inspection of supporting documentation whether:</p> <ul style="list-style-type: none"> <li>• Withdrawals from the trust banking account are properly authorised;</li> <li>• The amount withdrawn is correct;</li> <li>• Withdrawals are recorded in the correct accounting period;</li> <li>• Bank account details provided by clients are valid (validity); and</li> <li>• Subsequent changes to the bank details are valid (validity).</li> </ul> <p>(Note: The above test can be combined with the test performed in relation to No. 14 above. However,</p> |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement   | Illustrative risk <sup>47</sup>   | Illustrative procedures/responses <sup>48</sup>  |
|----|----------------------------------|--|---|--|
|    |                                  |  |   | <p>ensure that payments to clients receive sufficient coverage, for the purposes of testing compliance with Rule 54.13.)</p> <p>For the selected matter files, ensure through the inspection of supporting documentation that the payment due to the client took place within a reasonable time.</p>   |
| 27 | <b>Rule 54.31 to 54.33</b>       | <p><b><u>Closure of a firm</u></b></p> <p>A trust account practitioner who practices for his or her own account and who intends to cease practising shall, before he or she so ceases to practice, provide the Council, in writing, with the following information:</p> <ul style="list-style-type: none"> <li>• Notice of the trust account practitioner's intention to cease practising for his or her own account;</li> <li>• his or her future contact particulars, being his or her residential and business address, fax, e-mail and telephone details;</li> <li>• The steps to be taken to satisfy the Council that provision has been made for the effective winding up of his or her</li> </ul> | <p>Closure of a practice by a member may not be performed correctly by the member and can result in trust creditors' records and monies being misappropriated or incorrectly accounted for.</p> | <p>Inspect the notice by the member to the Council of the intention to cease practising and ensure that the details, as required by the Rule, are contained in the notice.</p> <p>In preparing the final auditor's assurance report to the Council:</p> <ul style="list-style-type: none"> <li>• Obtain a bank confirmation showing the trust account to be nil, and confirm the date of closure of the account;</li> <li>• Confirm that all trust creditors have been paid, if not being transferred to another firm, by the inspection of the supporting documentation; and</li> <li>• If the trust creditors are to be transferred to another firm, obtain confirmation that the other firm has accepted liability for any claims of the trust creditors and that the firm has received the funds for these creditors.</li> </ul> |



| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement  | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup> |
|----|----------------------------------|---|---------------------------------|---|
|    |                                  | <p>practice, both in respect of current files and archived files and in respect of accounting records;</p> <ul style="list-style-type: none"> <li>• The name, address and telephone number of his or her bookkeeper;</li> <li>• The status of the writing up of his or her accounting records by providing the Council with a copy of the latest trust reconciliation;</li> <li>• The name of the auditor or inspector who will be submitting the final audit report; and</li> <li>• Updated contact particulars if the trust account practitioner remains on the roll.</li> </ul> <p>A trust account practitioner shall be required to submit, within three months of the date that such practitioner ceases to practise:</p> <ul style="list-style-type: none"> <li>• An audit or inspector's report for any period for which an audit or review is outstanding, up to the date of closure of the trust banking account;</li> </ul> |                                 |   |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement  | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup> |
|----|----------------------------------|---|---------------------------------|---|
|    |                                  | <ul style="list-style-type: none"> <li>• A final list of trust creditors as at the date on which the trust account practitioner ceased to practise;</li> <li>• Confirmation from the auditor or inspector that all trust creditors have been paid;</li> <li>• In the event of trust creditors being taken over by another firm, a list of trust creditors, signed by the trust account practitioner, after the auditor or inspector confirms that that list is correct, and signed by or on behalf of the partners of the firm taking over the trust creditors, confirming that they accept liability for claims of the trust creditors listed and that they have received the funds;</li> <li>• A certificate of nil balance from the trust account practitioner's bank confirming that the trust banking account was closed.<br/>In the event of non-compliance with accounting Rule 54.31 or 54.32, or if at any time the Council has reason to believe</li> </ul> |                                 |   |

| No | Act/Rule <sup>46</sup> reference   | Act/Rule requirement  | Illustrative risk <sup>47</sup>  | Illustrative procedures/responses <sup>48</sup>   |
|----|------------------------------------|---|--|---|
|    |                                    | <p>that adequate provision has not been made for the winding up of the practice or for the protection of the interests of clients' affairs, the Council may take such steps as it deems necessary to wind up the practice subject to the Council being entitled to recover the reasonable expenses incurred and reasonable compensation for work done in connection therewith from the trust account practitioner concerned.</p>  |  |   |
| 28 | <p><b>Rule 54.34 and 54.35</b></p> | <p><b><u>Opening of practice</u></b><br/>                     An office opened by a firm, which for the first time opens a practice within the jurisdiction of a Provincial Council, shall be designated as a main office of the firm in that jurisdiction, and the firm shall ensure that:</p> <ul style="list-style-type: none"> <li>• Banking accounts for the firm are opened in that jurisdiction;</li> <li>• A separate set of accounting records is kept for each office.</li> </ul> <p>The Council may at any time inspect or cause to be inspected the</p> | <p>Opening of a practice by a member may not be performed correctly.</p> | <p>Inspect the notice by the member to the Council of the intention to open a practice and ensure that the details, as required by the Rule, are contained in the notice.</p> |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement   | Illustrative risk <sup>47</sup>   | Illustrative procedures/responses <sup>48</sup>  |
|----|----------------------------------|--|---|--|
|    |                                  | <p>accounting records of any firm to satisfy itself that the provisions of Section 86 and 87 of the Act, read with these Rules, have been or are being complied with. Such inspection may be conducted by the Council, or by an auditor or suitably qualified inspector appointed by the Council, or by the Board at the request of the Council.</p> |   |  |
| 29 | <b>Accounting records</b>        | <b><u>Journals</u></b>   | <p>General: To be identified by the auditor, based on the understanding of the legal practitioner's practice, service activities and internal controls.</p> | <p>Document the key controls identified by the legal practitioner(s) that address each of the control objectives listed below in respect of the journals:</p> <ul style="list-style-type: none"> <li>• Journals are accurate (accuracy);</li> <li>• Journals are authorised (validity);</li> <li>• Journals are allocated to the correct trust creditor (classification, rights and obligations);</li> <li>• Journals are recorded in the correct period (cut-off);</li> <li>• All journals are accounted for (completeness); and</li> <li>• Journals are supported by valid supporting documents (occurrence).</li> </ul> <p>If reliance is placed on the controls, select, on a test basis, a sample of journals and inspect evidence to determine whether the key controls operated effectively throughout the reporting period under review.</p> |

| No    | Act/Rule <sup>46</sup> reference | Act/Rule requirement         | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup>  |
|-------|----------------------------------|------------------------------|---------------------------------|--|
|       |                                  |                              |                                 | <p>If reliance is not placed on the controls, select, on a test basis, a sample of journals and through the inspection of supporting documentation, verify that:</p> <ul style="list-style-type: none"> <li>• The amount is accurate;</li> <li>• Journals were authorised;</li> <li>• Journals are correctly recorded and allocated to the correct trust creditor; and</li> <li>• Journals were recorded in the correct accounting period.</li> </ul> <p>Irrespective of reliance on the controls or not, select on a test basis, a sample of trust general journals, trace to supporting evidence and corroborate with management's explanation.</p> <p>From the supporting documentation, select on a test basis, a sample of journals and confirm that these were accounted for.</p> <p>Review accounting records for unusual transactions, e.g. cash cheques journalised and transfers between two different trust creditors' accounts.</p> <p>Trace to supporting evidence and corroborate with management's explanation.</p> |
| 30(a) | <b>Accounting records</b>        | <b><u>Client's files</u></b> | General                         | <p><b>On a test basis, select a sample of motor vehicle accident (MVA)/third party claims at the reporting dates (i.e. at year-end and one other test date):</b></p> <ul style="list-style-type: none"> <li>• Ensure that the accounting statement to the client indicates capital proceeds of claims received and</li> </ul>  |

| No    | Act/Rule <sup>46</sup> reference | Act/Rule requirement                     | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup>  |
|-------|----------------------------------|--|---------------------------------|--|
|       |                                  |  |                                 | <p>cost contributions from the Road Accident Fund (RAF).</p> <ul style="list-style-type: none"> <li>• Agree the documentation, referred to above, with documentation from the RAF respondent, e.g. the discharge document from the RAF.</li> <li>• Inspect relevant vouchers in support of disbursements, e.g. police report, ambulance report, payments to the doctor.</li> <li>• Inspect documentation supporting the legal practitioner's fees.</li> <li>• If a contingency fee arrangement exists in respect of the legal practitioner's fees, the contingency agreement should be inspected to verify that fees were calculated in accordance with the Contingency Fees Act 66 of 1997. Inspect documentation to support the payment to the client, e.g. paid cheques, ensuring that cheques were not paid to bearer or cash.</li> <li>• In the case of electronic fund transfers, inspect payment instructions from the client and compare with the details of the account to which the funds were transferred.</li> </ul> |
| 30(b) | <b>Accounting records</b>        | <b><u>Client's files (Continued)</u></b> | General                         | <p><b>On a test basis, select a sample of conveyancing matter files at the reporting dates (i.e. at year-end and one other test date):</b></p> <ul style="list-style-type: none"> <li>• Inspect the original deed of sale to understand the terms and conditions of the transactions, and</li> </ul>   |

| No    | Act/Rule <sup>46</sup> reference | Act/Rule requirement                     | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup>  |
|-------|----------------------------------|--|---------------------------------|--|
|       |                                  |  |                                 | <p>check compliance with the terms and conditions of the transaction.</p> <ul style="list-style-type: none"> <li>• Inspect that the pro forma costs, e.g. VAT, transfer duty and the legal practitioner's fee, have been deposited in the trust account.</li> <li>• Inspect that the legal practitioner's fees are only raised in the accounting records on the date of registration.</li> <li>• Inspect that disbursements have been made in accordance with statutory requirements.</li> <li>• Confirm that, where applicable, transfer duty was paid to SARS.</li> <li>• Inspect that proper accounting to both buyer and seller took place, including any interest on trust investments.</li> <li>• Inspect paid cheques to buyer and/or seller or, in case of an EFT, inspect EFT supporting transfer documentation.</li> </ul> |
| 30(c) | <b>Accounting records</b>        | <b><u>Client's files (Continued)</u></b> | General                         | <p><b>On a test basis, select a sample from the remaining trust creditors' balances at year-end and one other test date:</b></p> <ul style="list-style-type: none"> <li>• Inspect clients' files for supporting documentation and compare evidence of the transactions filed with those transactions recorded in the trust creditors' ledger.</li> <li>• Inspect postings to or transactions recorded in the trust ledger from all sources, scrutinise the ledger</li> </ul>   |

| No | Act/Rule <sup>46</sup> reference | Act/Rule requirement | Illustrative risk <sup>47</sup> | Illustrative procedures/responses <sup>48</sup>   |
|----|----------------------------------|----------------------|---------------------------------|---|
|    |                                  |                      |                                 | <p>account tested and ensure that entries therein appear to be relevant.</p> <ul style="list-style-type: none"> <li>• For suspense, sundry and miscellaneous accounts or accounts in the name of the firm, select material entries and trace to supporting documentation to ensure that there are valid reasons for these entries.</li> <li>• For all matter files selected above, cast the accounts in the trust ledgers to ensure they have been totalled correctly.</li> </ul> |



## Appendix 2: Illustrative Engagement Letter

### (Auditor's letterhead)

(To legal practitioner/partner(s)/director(s))

(Address)

(Date)

Dear Legal Practitioner/Partner(s)/Director(s)

### **Independent Auditor's Reasonable Assurance Engagement on Legal Practitioners' Trust Accounts<sup>60</sup>**

You have requested that we undertake:

- A reasonable assurance engagement on whether the legal practitioners<sup>61</sup> trust accounts of *(insert the name of the legal practitioner's firm)* were maintained, in all material respects, in compliance with Section 86, read with Section 63(1)(g), and Sections 87(1), 87(3) and 87(4) of the Legal Practice Act, No. 28 of 2014 (the Act), and Rules 54.6-54.13, 54.14.1-54.14.6, 54.14.7.2, 54.14.7.3, 54.14.8-54.14.16, 54.15, 54.16, 54.17, 54.18, 54.19, 54.31, 54.32, 54.33, 54.34, 54.35 and 55.1-55.11 of the South African Legal Practice Council Rules<sup>62</sup> (the Rules), made under the authority of Sections 95(1), 95(3) and 109(2) of the Act, for the <period from *(insert date)* to *(insert date)*>>/<year ended *<insert date>*>>.
- We clarify that we are not required to perform any procedures on records or documents relating to accounting for deceased estates, insolvent estates and trusts other than those dealt with via the legal practitioner's trust banking account(s).
- In terms of the Advisory issued by the Legal Practice Council dated 17 April 2020, to agree the information extracted from the accounting records and included in the Legal Practitioner's Annual Statement on Trust Accounts for the <period from *(insert date)* to *(insert date)*>>/<year ended *<insert date>*>> to the underlying records that were the subject of our engagement on whether the legal practitioners' trust accounts were maintained in compliance with the Act and the Rules that will accompany our assurance report to be submitted to the Legal Practice Council and report thereon.
- In terms of the Advisory issued by the Legal Practice Council dated 17 April 2020, to also read your representations, the disclosures and other information in your Legal Practitioner's Annual Statement on Trust Accounts for the purpose of identifying any information that is inconsistent, based on our knowledge obtained in our engagement on the compliance of your legal practitioners' trust accounts with the Act and the Rules and report thereon.
- Further, in terms of Rule 54.24.3, to report on whether or not, to the best of our knowledge, you have for the <period from *<insert date>* to *<insert date>*>>/<year ended *<insert date>*>>.

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<sup>60</sup> This illustrative engagement letter is based on the guidance in ISA 210 (Revised), *Agreeing the Terms of Audit Engagements*, applied to an engagement of this nature. It should be adapted as necessary to accommodate individual firm's terms and conditions for such assurance engagements.

<sup>61</sup> The term legal practitioner refers to the responsibilities of both the legal practitioner and the firm. It is therefore useful to note that the Rules refer to the firm as well.

<sup>62</sup> Rules effective 1 November 2018.

carried on the business of an investment practice and complied with the related investment practice Rules<sup>63</sup>, as required.

*<Legal Practitioner/Partner(s)/Director(s)> responsibility for the trust accounts*

You are responsible for ensuring that your legal practitioners' trust accounts are maintained in compliance with the Act and the Rules; and for such internal control as you determine is necessary to maintain the integrity of those trust accounts in accordance with the relevant client mandates, including such controls as you determine are necessary to prevent and detect fraud and theft. You are also responsible for preparing the Legal Practitioner's Annual Statement on Trust Accounts and for the financial information and declarations contained therein and to provide us with:

- Access to all information that the *<legal practitioner/partner(s)/director(s)>* is/are aware of that is relevant to our engagement, including such business account records as we consider necessary;
- Additional information that we may request from the *<legal practitioner/partner(s)/director(s)>* for the purpose of our engagement; and
- Unrestricted access to persons within the practice from whom we determine it necessary to obtain audit evidence.

You are responsible for ensuring that the practice complies with relevant legislation.

As part of our engagement, we will request from you written confirmation concerning representations made to us in connection with our engagement. We will also ask you to confirm in that letter that all important and relevant information has been brought to our attention.

*Auditor's independence and quality management*

We are required to comply with the independence and other ethical requirements of the *Code of Professional Conduct for Registered Auditors* issued by the Independent Regulatory Board for Auditors (IRBA Code), which is founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour. The IRBA Code is consistent with the corresponding sections of the International Ethics Standards Board for Accountants' *International Code of Ethics for Professional Accountants (including International Independence Standards)*.

*(Name of firm)/(The firm)* applies the International Standard on Quality Management 1, *Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements*, which requires the firm to design, implement and operate a system of quality management including policies or procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

*Auditor's responsibility*

Our responsibility is to express a reasonable assurance opinion on whether your legal practitioners' trust accounts were maintained in compliance with the Act and the Rules, based

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<sup>63</sup> Rules effective 1 November 2018: 55.1-55.11.

on our assurance procedures performed; and to report, as required, on the Legal Practitioner's Annual Statement on Trust Accounts and investment practice.

We will conduct our engagement in accordance with the International Standard on Assurance Engagements 3000 (Revised), *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* (ISAE 3000 (Revised)), issued by the International Auditing and Assurance Standards Board. That standard requires that we plan and perform the engagement to obtain reasonable assurance about whether your legal practitioners' trust accounts were maintained, in all material respects, in compliance with the Act and the Rules, based on our assurance procedures to be performed; and to report, as required, on your Legal Practitioner's Annual Statement on Trust Accounts and investment practice.

A reasonable assurance engagement in accordance with ISAE 3000 (Revised) involves performing procedures to obtain evidence about whether the legal practitioners' trust accounts were maintained in compliance with the Act and the Rules. The nature, timing and extent of the procedures selected depend on our professional judgement, including the assessment of the risks of non-compliance with the Act and Rules, whether due to fraud, theft and error. In making those risk assessments, we will consider internal control that is relevant to the engagement in order to design procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of internal control. Our engagement will include the following procedures:

- Considering, and applying when applicable in the engagement circumstances, the guidance in the *Guide for Registered Auditors: Engagements on Legal Practitioners' Trust Accounts (Revised March 2020)* issued by the IRBA.
- Making inquiries of the legal practitioner and persons within the practice.
- Testing of transactions for all significant service activities, with the objective of evaluating whether:
  - Transactions were appropriately identified as trust account transactions;
  - Trust account transactions were made in accordance with mandates and supported by adequate documentation and narrative to identify from whom funds were received, and for whose credit;
  - Deposits and withdrawals from the trust bank accounts were to, or for, a trust creditor; and
  - Transfers to the legal practitioner's business bank accounts were only in respect of monies to be due to the legal practitioner.
- Testing and/or scrutinising bank reconciliations, as we consider appropriate in the engagement circumstances, and evaluating the records made available to us against the external confirmations requested from financial institutions.

Reasonable assurance is a high level of assurance, but is not a guarantee that an assurance engagement conducted in accordance with ISAE 3000 (Revised) will always detect a material misstatement when it exists. Misstatements can arise from actions or omissions to act due to fraud, theft or error and are considered material if they, individually or in aggregate, could reasonably be expected to influence relevant decisions of users taken on the basis of the subject matter information.

Due to the inherent limitations of an assurance engagement together with the inherent limitations of internal control, there is an unavoidable risk that some material misstatements may not be detected, even though the engagement is properly planned and performed in accordance with ISAE 3000 (Revised).

We shall not be responsible for reporting on any relevant events or transactions beyond the period covered by our reasonable assurance engagement. As part of an assurance engagement in accordance with ISAE 3000 (Revised), we exercise professional judgement and maintain professional scepticism throughout the engagement.

#### *Other matters*

*<Insert other information, such as fee arrangements, invoicing and other firm specific terms and conditions, as appropriate>*

#### *Our Report on the Compliance of the Legal Practitioner's Trust Accounts with the Act and the Rules*

We expect to issue a report containing an opinion that the legal practitioners' trust accounts of *(insert the name of the legal practitioner's firm)* for the *<period from (insert date) to (insert date)> <or year ended <insert date>>* were maintained, in all material respects, in compliance with the Act and the Rules. However, should our evidence obtained not support that opinion, we are required by ISAE 3000 (Revised) to modify our opinion, listing exceptions and instances of non-compliance identified, or giving an explanation for reporting non-compliance.

#### *Report on Other Legal and Regulatory Requirements*

##### *Our Report on the Legal Practitioner's Annual Statement on Trust Accounts*

In terms of the Advisory issued by the Legal Practice Council dated 17 April 2020, we expect to report that we have agreed the information included in the attached Legal Practitioner's Annual Statement on Trust Accounts for the *<period from <insert date> to <insert date>>/<year ended <insert date>>* to the underlying records that were the subject of our engagement on whether the legal practitioner's trust accounts were maintained in compliance with the Act and the Rules.

We also expect to report that based on our reading of the legal practitioner's representations, the disclosures and other information contained in the Legal Practitioner's Annual Statement on Trust Accounts, we have not identified any information that is inconsistent with our knowledge obtained in the course of our engagement. We will state in our report that our opinion on the legal practitioner's trust accounts does not cover the Legal Practitioner's Annual Statement on Trust Accounts and we do not express an opinion thereon.

However, should our evidence obtained not support a positive report, our report will be amended accordingly.

Should we not be able to report as expected, we will discuss matters with you before finalising our report.

##### *Our report on the Legal Practitioner's Investment Practice*

In terms of Rule 54.24.3, we expect to report on whether or not, to the best of our knowledge, you have for the *<period from <insert date> to <insert date>>/<year ended <insert date>>*,

carried on a business of an investment practice and complied with the related investment practice Rules.<sup>64</sup>

*Reportable irregularities*

Please note that this assurance engagement meets the definition of audit, as contained in the Auditing Profession Act, 2005 (APA). We are subject to the requirements of Section 45 of the APA, and have a duty to report to the IRBA on reportable irregularities, as defined in the APA, that may be identified in the course of our engagement.

Where a reportable irregularity has been reported to the IRBA, we are required to include a paragraph on "Report on Other Legal and Regulatory Requirements" in our report, disclosing information relating to the reportable irregularity.

*Non-compliance with Laws and Regulations*

We wish to draw your attention to the professional obligation of the partners and employees of the audit firm to respond to identified or suspected Non-compliance with Laws and Regulations, as required in terms of Section 360 of the IRBA Code; and this may include the reporting of the non-compliance or suspected non-compliance to an appropriate authority under the appropriate circumstances.

*Restriction on the use and distribution of our report*

Our report will state that it is provided for the purpose indicated in the report; and it is not suitable for any other purpose; and that it is intended solely for your use, that of the Legal Practice Council and the Legal Practitioners Fidelity Fund; and should not be distributed to other parties.

Please sign and return the attached copy of this letter to indicate your acknowledgement of, and agreement with, the arrangements for our reasonable assurance engagement on whether your legal practitioners' trust accounts were maintained in compliance with the Act and the Rules; and to report, as required, on the Legal Practitioner's Annual Statement on Trust Accounts and investment practice, including our respective responsibilities.

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<sup>64</sup> Rules effective 1 November 2018: 55.1-55.11.

*Registered Auditor's Signature*

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<Name of the individual registered auditor responsible for the engagement>

<IRBA registration number of firm and/or auditor>

<Registered audit firm>

<Auditor's address (if not on a firm letterhead)>

Acknowledged and agreed on behalf of the (legal practitioner/partner(s)/director(s))

Yours faithfully,

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<Legal Practitioner/Partner(s)/Director(s)>

Date: \_\_\_\_\_

## Appendix 3: Illustrative Representation Letter

### (Legal practitioner's letterhead)

(To the Registered Auditor)

(Address)

(Date)

Dear [XX]

### Engagement on Legal Practitioners' Trust Accounts

This representation letter is provided in connection with your engagement on the legal practitioners<sup>65</sup> trust accounts of <insert the name of the legal practitioner's firm> ("the firm") for the purpose of evaluating whether the trust accounts were maintained, in all material respects, in compliance with Section 86, read with Section 63(1)(g), and Sections 87(1), 87(3) and 87(4) of the Legal Practice Act, No. 28 of 2014 (the Act), and Rules 54.6-54.13, 54.14.1-54.14.6, 54.14.7.2, 54.14.7.3, 54.14.8-54.14.16, 54.15, 54.16, 54.17, 54.18, 54.19, 54.31, 54.32, 54.33, 54.34, 54.35 and 55.1-55.11 of the South African Legal Practice Council Rules<sup>66</sup> (the Rules), made under the authority of Sections 95(1), 95(3) and 109(2) of the Act, for the period <insert date> to <insert date> for reporting thereon to the Legal Practice Council, and for agreeing the extracted information contained in the Legal Practitioner's Annual Statement on Trust Accounts to the underlying records that were the subject of your engagement on the compliance of the legal practitioner's trust accounts with the Act and the Rules; and also for reporting thereon.

We confirm that we have performed such internal assessment as we considered necessary to enable us to conclude that the relevant sections of the Act and the Rules have been complied with.

We also confirm, to the best of our knowledge and belief, the following representations made to you during the performance of your engagement for the purposes of reporting to the Legal Practice Council in terms of the Rules and the Legal Practitioners Fidelity Fund (the Fund):

- We have provided you with:
  - Access to all information of which we are aware is relevant, such as: business accounting records, clients' files, trust accounting records and underlying data;
  - Additional information that you have requested from us for the purpose of the engagement; and
  - Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.
- Accounting records have been kept as required by the Act and the Rules.
- All transactions have been recorded and are reflected in the trust accounts.

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<sup>65</sup> The term legal practitioner refers to the responsibilities of both the legal practitioner and the firm. It is therefore useful to note that the Rules refer to the firm as well.

<sup>66</sup> Rules effective 1 November 2018.

- All trust money received has been promptly banked in properly designated separate trust bank accounts that are kept at a bank with which the Fund has made an arrangement.
- Money has only been transferred from the trust banking account to the business banking account in respect of fees and disbursements due and only when permitted, in terms of the Rules.
- At no stage during the year under review did the total amount of money in trust bank accounts, trust investment accounts and trust cash not equal the total amount of trust creditors, other than fees that were transferable, but have not yet been transferred.
- The firm complied with all the Rules relating to investment practices.<sup>67</sup>
- All interest received has been properly accounted for and paid over to the Fund or the trust creditor, in terms of Sections 86(5) of the Act.
- All unknown and/or unclaimed monies have been paid over to the Fund, as required in terms of Section 87(4) of the Act.
- A separate system of accounting for deceased and insolvent estates was maintained.
- There has been a disclosure of facts relating to any fraud and theft or possible fraud and theft known to us that may have affected the firm and involved:
  - Management.
  - Employees who have significant roles in internal control.
  - Others where the fraud and theft could have a material effect on the trust accounts.
- We acknowledge that it is our responsibility to design, implement and maintain internal controls to prevent and detect fraud and theft.
- We have disclosed to you the results of management's assessment of the risk that the trust accounts may be materially misstated as a result of fraud and theft or may have been misappropriated.
- We have disclosed to you our knowledge of any allegations of fraud and theft, or suspected fraud and theft, affecting the entity's trust accounts communicated by employees, former employees, regulators or others.
- All known instances of non-compliance or suspected non-compliance with laws and regulations, the effects of which should be considered when preparing the trust account records, have been disclosed to you.
- All events occurring subsequent to the date of the report that may affect the trust accounts and the appropriateness of your conclusion have been disclosed to you.
- The following changes occurred in the composition of the firm during the year under review:

*<Insert a list indicating names of partners/directors that joined the firm and names of partners/directors that resigned from the firm>*

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<sup>67</sup> If relevant to the legal practitioner's practice.



Yours faithfully,

\_\_\_\_\_  
<Legal Practitioner/Senior Partner/Director>

\_\_\_\_\_  
Date

\_\_\_\_\_  
<Senior Financial Officer>

\_\_\_\_\_  
Date

## Appendix 4: Illustrative Auditor's Assurance Report (Unmodified Opinion)

### Circumstances

- International Standard on Assurance Engagements (ISAE) 3000 (Revised) reasonable assurance engagement.
- The legal practitioners' trust accounts were maintained in compliance with the Legal Practice Act, No. 28 of 2014, and the South African Legal Practice Council Rules.
- Unmodified auditor's opinion.
- The information in the Legal Practitioner's Annual Statement on Trust Accounts agrees with the underlying records that were the subject of the engagement on the legal practitioner's trust accounts.

### Independent Auditor's Reasonable Assurance Report on Legal Practitioners' Trust Accounts

To the <Legal Practitioner/Partner(s)/Director(s)<sup>68</sup>> (insert the name of the legal practitioner's firm)

#### **Report on Compliance of the Legal Practitioners<sup>69</sup> Trust Accounts with the Act and the Rules**

We have undertaken a reasonable assurance engagement on whether the legal practitioners' trust accounts of <insert the name of the legal practitioner's firm> were maintained, in all material respects, in compliance with Section 86, read with Section 63(1)(g), and Sections 87(1), 87(3) and 87(4) of the Legal Practice Act, No. 28 of 2014 (the Act), and Rules 54.6-54.13, 54.14.1-54.14.6, 54.14.7.2, 54.14.7.3, 54.14.8-54.14.16, 54.15, 54.16, 54.17, 54.18, 54.19, 54.31, 54.32, 54.33, 54.34, 54.35 and 55.1-55.11 of the South African Legal Practice Council Rules<sup>70</sup> (the Rules), made under the authority of Sections 95(1), 95(3) and 109(2) of the Act, for the <period from <insert date> to <insert date>>/<year ended <insert date>>.

We clarify that we are not required to perform any procedures on records or documents relating to accounting for deceased estates, insolvent estates and trusts other than those dealt with via the legal practitioner's trust banking account(s).

<Legal Practitioner/Partner(s)/Director(s)> responsibility for the trust accounts

The <legal practitioner/partner(s)/director(s)> is/are responsible for ensuring that legal practitioners' trust accounts are maintained in compliance with the Act and the Rules, and for such internal control as the <legal practitioner/partner(s)/director(s)> determine(s) is necessary to maintain the integrity of the trust accounts in accordance with the relevant client mandates, including such controls as the <legal practitioner/partner(s)/director(s)> determine(s) are also necessary to prevent and detect fraud and theft. The <legal

<sup>68</sup> Throughout the report, delete whichever "is not applicable" from the following: "legal practitioner/partner(s)/director(s)".

<sup>69</sup> The term legal practitioner refers to the responsibilities of both the legal practitioner and the firm. It is therefore useful to note that the Rules refer to the firm as well.

<sup>70</sup> Rules effective 1 November 2018.

*practitioner/partner(s)/director(s)*> is/are also responsible for preparing the attached Legal Practitioner's Annual Statement on Trust Accounts and for the financial information and declarations contained therein.

#### *Auditor's Independence and Quality Management*

We have complied with the independence and other ethical requirements of the *Code of Professional Conduct for Registered Auditors* issued by the Independent Regulatory Board for Auditors (IRBA Code), which is founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour. The IRBA Code is consistent with the corresponding sections of the International Ethics Standards Board for Accountants' *International Code of Ethics for Professional Accountants (including International Independence Standards)*.

*(Name of firm)/(The firm)* applies the International Standard on Quality Management 1, *Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements*, which requires the firm to design, implement and operate a system of quality management including policies or procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

#### *Auditor's responsibility*

Our responsibility is to express a reasonable assurance opinion on whether the legal practitioners' trust accounts were maintained in compliance with the Act and the Rules, based on our assurance procedures performed; and to report, as required, on the accompanying Legal Practitioner's Annual Statement on Trust Accounts and investment practice.

We conducted our reasonable assurance engagement in accordance with the International Standard on Assurance Engagements 3000 (Revised), *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* (ISAE 3000 (Revised)), issued by the International Auditing and Assurance Standards Board. That standard requires that we plan and perform the engagement to obtain reasonable assurance about whether the legal practitioners' trust accounts were maintained, in all material respects, in compliance with the Act and the Rules.

A reasonable assurance engagement in accordance with ISAE 3000 (Revised) involves performing procedures to obtain evidence about whether the legal practitioners' trust accounts were maintained in compliance with the Act and the Rules. The nature, timing and extent of procedures selected depend on the auditor's professional judgement, including the assessment of the risks of non-compliance with the Act and the Rules, whether due to fraud, theft and error. In making those risk assessments, we considered internal control that is relevant to the engagement in order to design procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of internal control.

Our reasonable assurance engagement included the following summary of procedures performed:

- Considering, and applying when considered applicable in the engagement circumstances, the guidance in the *Guide for Registered Auditors: Engagements on Legal Practitioners' Trust Accounts (Revised March 2020)* issued by the IRBA.

- Making inquiries of the legal practitioner and persons within the practice.
- Testing transactions for all significant service activities, with the objective of evaluating whether:
  - Transactions were appropriately identified as trust account transactions;
  - Trust account transactions were made in accordance with mandates and supported by adequate documentation and narrative to identify from whom funds were received, and for whose credit;
  - Deposits and withdrawals from the trust bank accounts were to, or for, a trust creditor; and
  - Transfers to the legal practitioner's business bank accounts were only in respect of monies to be due to the legal practitioner.
- Testing and/or scrutinising bank reconciliations, as considered appropriate in the engagement circumstances, and evaluating the records made available to us against the external confirmations from financial institutions.
- Obtaining written representations from management regarding matters that are relevant to this engagement.

We believe that the evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

### *Opinion*

In our opinion, the legal practitioners' trust accounts of *(insert the name of the legal practitioner's firm)* for the <period from <insert date> to <insert date>>/<year ended <insert date>> were maintained, in all material respects, in compliance with the Act and the Rules.

### **Report on Other Legal and Regulatory Requirements**

#### *Report on the Legal Practitioner's Annual Statement on Trust Accounts*<sup>71</sup>

In accordance with our responsibilities in terms of the Advisory issued by the Legal Practice Council dated 17 April 2020, we report that we have agreed the information extracted from the trust accounting records included in the accompanying Legal Practitioner's Annual Statement on Trust Accounts for the <period from *(insert date)* to *(insert date)*>/<year ended <insert date>> to the underlying records that were the subject of our engagement. We have also read the Legal Practitioner's Annual Statement on Trust Accounts for the purpose of identifying whether the information contained therein is inconsistent with our knowledge obtained in the course of our engagement. The Legal Practitioner's Annual Statement on Trust Accounts is the responsibility of the legal practitioner.

Based on our reading of the legal practitioner's representations, the disclosures and other information contained in the Legal Practitioner's Annual Statement on Trust Accounts, we

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<sup>71</sup> Refer to paragraphs 87-89 of the *Guide for Registered Auditors: Engagements on Legal Practitioners Trust Accounts (Revised March 2020)* (the Revised Guide) for guidance regarding the auditor's reporting responsibilities.

have not identified any information that is inconsistent with our knowledge obtained in the course of our engagement. Our opinion on the legal practitioner's trust accounts does not cover the Legal Practitioner's Annual Statement on Trust Accounts and, accordingly, we do not express an opinion thereon.

#### *Report on the Legal Practitioner's Investment Practice*

In accordance with our responsibilities in terms of Rule 54.24.3, we report that to the best of our knowledge, the legal practitioner [has for the <period from <insert date> to <insert date>>/<year ended <insert date>> carried on the business of an investment practice and has complied with the relevant Rules<sup>72</sup>]/[has not for the <period from <insert date> to <insert date>>/<year ended <insert date>> carried on the business of an investment practice].

#### *Other Reporting Responsibilities*

<The form and content of this section of the auditor's assurance report will vary depending on the nature of the auditor's other reporting responsibilities.><sup>73, 74</sup>

#### **Restriction on distribution and use**

This report is for the purpose of meeting the auditor reporting requirements of the Act and the Rules and, regarding the accompanying Legal Practitioner's Annual Statement on Trust Accounts, the additional auditor reporting requirements of the Legal Practice Council and the Legal Practitioners Fidelity Fund. Consequently, it is not suitable for any other purpose. It is intended solely for the use of the <legal practitioner/partner(s)/director(s)> of the firm, the Legal Practice Council and the Legal Practitioners Fidelity Fund, and should not be distributed to other parties.

#### *Auditor's Signature*

Name of the individual registered auditor

IRBA registration number of the firm and/or auditor

Registered audit firm

Date of the auditor's assurance report

Auditor's address (if not on a firm letterhead)

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<sup>72</sup> Rules effective 1 November 2018: 55.1-55.11.

<sup>73</sup> Refer to paragraph 91 of the Revised Guide for illustrative wording to insert where a reportable irregularity has been reported.

<sup>74</sup> Refer to paragraphs 92-93 of the Revised Guide for guidance with regard to the auditor's other reporting responsibilities.

## Appendix 5: Illustrative Auditor's Assurance Report (Qualified Opinion)

### Circumstances

- International Standard on Assurance Engagements (ISAE) 3000 (Revised) reasonable assurance engagement.
- The legal practitioners' trust accounts were not maintained in compliance with the Legal Practice Act, No. 28 of 2014, and the South African Legal Practice Council Rules.
- Qualified auditor's opinion.
- The information in the Legal Practitioner's Annual Statement on Trust Accounts agrees with the underlying records that were the subject of the engagement on the legal practitioner's trust accounts.

### Independent Auditor's Reasonable Assurance Report on Legal Practitioners' Trust Accounts

To the <Legal Practitioner/Partner(s)/Director(s)<sup>75</sup>> (insert the name of the legal practitioner's firm)

#### **Report on Compliance of the Legal Practitioners'<sup>76</sup> Trust Accounts with the Act and the Rules**

We have undertaken a reasonable assurance engagement on whether the legal practitioners' trust accounts of <insert the name of the legal practitioner's firm> were maintained, in all material respects, in compliance with Section 86, read with Section 63(1)(g), and Sections 87(1), 87(3) and 87(4) of the Legal Practice Act, No. 28 of 2014 (the Act), and Rules 54.6-54.13, 54.14.1-54.14.6, 54.14.7.2, 54.14.7.3, 54.14.8-54.14.16, 54.15, 54.16, 54.17, 54.18, 54.19, 54.31, 54.32, 54.33, 54.34, 54.35 and 55.1-55.11 of the South African Legal Practice Council Rules<sup>77</sup> (the Rules), made under the authority of Sections 95(1), 95(3) and 109(2) of the Act, for the <period from <insert date> to <insert date>>/<year ended <insert date>>.

We clarify that we are not required to perform any procedures on records or documents relating to accounting for deceased estates, insolvent estates and trusts other than those dealt with via the legal practitioner's trust banking account(s).

<Legal Practitioner's/Partner(s)/Director(s)> responsibility for the trust accounts

The <legal practitioner/partner(s)/director(s)> is/are responsible for ensuring that legal practitioners' trust accounts are maintained in compliance with the Act and the Rules, and for such internal control as the <practitioner/partner(s)/director(s)> determine(s) is necessary to maintain the integrity of the trust accounts in accordance with the relevant client mandates, including such controls as the <legal practitioner/partner(s)/director(s)> determine(s) are also

<sup>75</sup> Throughout the report - delete whichever "is not applicable" from the following: "legal practitioner/partner(s)/director(s)".

<sup>76</sup> The term legal practitioner refers to the responsibilities of both the legal practitioner and the firm. It is therefore useful to note that the Rules refer to the firm as well.

<sup>77</sup> Rules effective 1 November 2018.

necessary to prevent and detect fraud and theft. The <legal practitioner/partner(s)/director(s)> is/are responsible for preparing the Legal Practitioner's Annual Statement on Trust Accounts and for the financial information and declarations contained therein.

#### *Auditor's independence and quality management*

We have complied with the independence and other ethical requirements of the *Code of Professional Conduct for Registered Auditors* issued by the Independent Regulatory Board for Auditors (IRBA Code), which is founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour. The IRBA Code is consistent with the corresponding sections of the International Ethics Standards Board for Accountants' *International Code of Ethics for Professional Accountants (including International Independence Standards)*.

(Name of firm)/(The firm) applies the International Standard on Quality Management 1, *Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements*, which requires the firm to design, implement and operate a system of quality management including policies or procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

#### *Auditor's responsibility*

Our responsibility is to express a reasonable assurance opinion on whether legal practitioners' trust accounts were maintained in compliance with the Act and the Rules, based on our assurance procedures performed; and to report, as required, on the accompanying Legal Practitioner's Annual Statement on Trust Accounts and investment practice.

We conducted our reasonable assurance engagement in accordance with the International Standard on Assurance Engagements 3000 (Revised), *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* (ISAE 3000 (Revised)), issued by the International Auditing and Assurance Standards Board. That standard requires that we plan and perform the engagement to obtain reasonable assurance about whether the legal practitioners' trust accounts were maintained, in all material respects, in compliance with the Act and the Rules.

A reasonable assurance engagement in accordance with ISAE 3000 (Revised) involves performing procedures to obtain evidence about whether the legal practitioners' trust accounts were maintained in compliance with the Act and the Rules. The nature, timing and extent of procedures selected depend on the auditor's professional judgement, including the assessment of the risks of non-compliance with the Act and the Rules, whether due to fraud, theft and error. In making those risk assessments, we considered internal control that is relevant to the engagement in order to design procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of internal control.

Our reasonable assurance engagement included the following summary of procedures performed:

- Considering, and applying when considered applicable in the engagement circumstances, the guidance in the *Guide for Registered Auditors: Engagements on Legal Practitioners' Trust Accounts (Revised March 2020)* issued by the IRBA.

- Making inquiries of the legal practitioner and persons within the practice.
- Testing transactions for all significant service activities, with the objective of evaluating whether:
  - Transactions were appropriately identified as trust account transactions;
  - Trust account transactions were made in accordance with mandates and supported by adequate documentation and narrative to identify from whom funds were received, and for whose credit;
  - Deposits and withdrawals from the trust bank accounts were to, or for, a trust creditor; and
  - Transfers to the legal practitioner's business bank accounts were only in respect of monies to be due to the legal practitioner.
- Testing and/or scrutinising bank reconciliations, as considered appropriate in the engagement circumstances, and evaluating the records made available to us against the external confirmations from financial institutions.
- Obtaining written representations from management regarding matters that are relevant to this engagement.

We believe that the evidence we have obtained is sufficient and appropriate to provide a basis for our qualified opinion.

*Basis for qualified opinion*

The legal practitioner's trust accounts were not maintained in compliance with the Act and the Rules, as follows<sup>78</sup>:

List ...<insert instances of non-compliance identified, including those subsequently resolved>

*Qualified opinion*

In our opinion, except for the instances of non-compliance listed in the preceding paragraph, the legal practitioner's trust accounts of <insert the name of the legal practitioner's firm> for the <period from <insert date> to <insert date>>/<year ended <insert date>> were maintained, in all material respects, in compliance with the Act and the Rules.

**Report on Other Legal and Regulatory Requirements**

*Report on the Legal Practitioner's Annual Statement on Trust Accounts*<sup>79</sup>

In accordance with our responsibilities in terms of the Advisory issued by the Legal Practice Council dated 17 April 2020, we report that we have agreed the information extracted from the trust accounting records included in the accompanying Legal Practitioner's Annual Statement on Trust Accounts for the <period from <insert date> to <insert date>>/<year ended <insert date>> to the underlying records that were the subject of our assurance engagement. We

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<sup>78</sup> Any contravention of Section 86, read with Section 63(1)(g), and Sections 87(1), 87(3) and 87(4) of the Act, and any instance of contravention of the Rules listed in the Report on Compliance of the Legal Practitioners' Trust Accounts with the Act and the Rules section of the auditor's assurance report, identified in the course of the engagement relating to trust accounts in terms of the Rules is regarded as material and should be reported.

<sup>79</sup> Refer to paragraphs 87-89 of the *Guide for Registered Auditors: Engagements on Legal Practitioners Trust Accounts (Revised March 2020)* (the Revised Guide) for guidance regarding the auditor's reporting responsibilities.



have also read the Legal Practitioner's Annual Statement on Trust Accounts for the purpose of identifying whether the information contained therein is inconsistent with our knowledge obtained in the course of our engagement. The Legal Practitioner's Annual Statement on Trust Accounts is the responsibility of the legal practitioner.

Based on our reading of the legal practitioner's representations, the disclosures and other information contained in the Legal Practitioner's Annual Statement on Trust Accounts, we have not identified any information that is inconsistent with our knowledge obtained in the course of our engagement. Our opinion on the legal practitioner's trust accounts does not cover the Legal Practitioner's Annual Statement on Trust Accounts and, accordingly, we do not express an opinion thereon.<sup>80</sup>

#### *Report on the Legal Practitioner's Investment Practice*

In accordance with our responsibilities in terms of Rule 54.24.3, we report that to the best of our knowledge, the legal practitioner [has for the <period from <insert date> to <insert date>>/<year ended <insert date>> carried on the business of an investment practice and has complied with the relevant Rules<sup>81</sup>]/[has not for the <period from <insert date> to <insert date>>/<year ended <insert date>> carried on the business of an investment practice].

#### *Other Reporting Responsibilities*

<The form and content of this section of the auditor's assurance report will vary depending on the nature of the auditor's other reporting responsibilities.><sup>82, 83</sup>

#### **Restriction on distribution and use**

This report is for the purpose of meeting the auditor reporting requirements of the Act and the Rules and, regarding the accompanying Legal Practitioner's Annual Statement on Trust Accounts, the additional auditor reporting requirements of the Legal Practice Council and the Legal Practitioners Fidelity Fund. Consequently, it is not suitable for any other purpose. It is intended solely for the use of the <legal practitioner/partner(s)/director(s)> of the firm, the Legal Practice Council and the Legal Practitioners Fidelity Fund, and should not be distributed to other parties.

#### *Auditor's Signature*

Name of the individual registered auditor

IRBA registration number of the firm and/or auditor

Registered audit firm

Date of the auditor's assurance report

Auditor's address (if not on a firm letterhead)

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<sup>80</sup> Refer to paragraph 89 of the Revised Guide for matters to be considered when inconsistencies are identified.

<sup>81</sup> Rules effective 1 November 2018: 55.1-55.11.

<sup>82</sup> Refer to paragraph 91 of the Revised Guide for illustrative wording to insert where a reportable irregularity has been reported.

<sup>83</sup> Refer to paragraphs 92-93 of the Revised Guide for guidance with regard to the auditor's other reporting responsibilities.



## Appendix 6: Legal Practitioner's Annual Statement on Trust Accounts

(On a legal practitioner's letterhead)

The Secretary

*Legal Practice Council*

Address

Date

### Legal Practitioner's Annual Statement on Trust Accounts<sup>84</sup>

This statement is in support of the below listed member/s" application for a Fidelity Fund Certificate for the <year/period> commencing <insert date> and ending <insert date>.

#### 1. List of legal practitioners in firm/practice applying for an annual Fidelity Fund Certificate<sup>85</sup>

- a)
- b)

#### 2. Legal practitioner's compliance representations

I/we confirm that I/we have maintained the necessary accounting records<sup>86</sup> as required in terms of Sections 86 of the Legal Practice Act, No. 28 of 2014 and the Rules for the accounting rules applicable to trust account legal practitioners for the year/period ended <insert date>, inter alia:

- a) The firm's trust accounts have been updated and balanced monthly.
- b) The firm complied/has not complied with the service fee structure (including the cash deposit fee structure where applicable) and the credit interest rates, as amended from time to time, as nationally/provincially agreed upon between the Legal Practitioners' Fidelity Fund and the firm's bank(s).
- c) The ratio as a percentage of total bank charges (excluding VAT) incurred during the year/period to the total of interest earned during the year was <insert percentage>.
- d) The firm's trust accounts for the period subsequent to <insert year/period end date> have been written up to <insert date> and the trial balance was last balanced at <insert date> and in compliance with the provisions of <insert rule X> read with <insert rule X>.
- e) The following changes in the composition of the firm occurred during the year or period from <insert date> to <insert date>:

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<sup>84</sup> To be attached to the auditor's assurance report on the Legal Practitioner's Trust Accounts to be submitted to the Legal Practice Council.

<sup>85</sup> Attach a separate list, if there are numerous partners/directors in the firm.

<sup>86</sup> Accounting records include those for trust liabilities in respect of which the legal practitioner is the executor, trustee or curator, or which he administers on behalf of the executor, trustee or curator.

<Insert changes>:

- f) The firm was issued with a valid Fidelity Fund Certificate for the calendar year ended <insert financial period end> (i.e. the calendar year preceding the financial period/year of this report in the name of <insert the name of the firm>).
- g) The firm <has/has not> ensured that the trust funds were safeguarded through the design and implementation of adequate internal controls in compliance with rule 54.14.7.1.1 - 54.14.7.1.4.
- h) The firm <has/has not> reported to the Council any dishonesty or irregular conduct on the part of another legal practitioner in relation to the handling or accounting for trust money on the part of that other legal practitioner, as required in terms of rule 54.36.
- i) The firm is registered as an Accountable Institution, in accordance with Section 43B of the Financial Intelligence Centre Act, Act No. 38 of 2001 (FICA) with accountable institution registration reference number <insert number> that was issued by the Financial Intelligence Centre.
- j) The firm <has/has not> complied with the requirements of Section 21 of FICA "Identification of clients and other persons when establishing a business relationship or conducting a single transaction with a client".
- k) The firm <has/has not> reported <insert number> cash transactions (received or paid) above the prescribed limit of the Financial Intelligence Centre for the period reported on in accordance with the requirements of Section 28 of FICA "Cash transactions above prescribed limit".
- l) The firm <has/has not> reported <insert number> property associated with terrorist and related property reports to the Financial Intelligence Centre for the period in accordance with the requirements of Section 28A of FICA "Property associated with terrorist and related activities".
- m) The firm <has/has not> reported <insert number> suspicious and unusual transactions to the Financial Intelligence Centre for the period in accordance with the requirements of Section 29 of FICA "Suspicious and unusual transactions".
- n) The firm <has/has not> formulated and implemented internal rules in terms of Section 42 of FICA which includes the requirement to report cash threshold transactions (Section 28) and suspicious and unusual transactions (Section 29) to the Financial Intelligence Centre.

### 3. Places of practice

At the date of this report, the firm's principal place of practice is that given in the letterhead and the firm's South African offices are situated at <insert full physical addresses<sup>87</sup>>:

<Insert office addresses>:

<sup>87</sup> Attach as a separate list, if the firm has multiple offices in South Africa.

**4. Trust account interest**

Reconciliation of interest earned on the firm's Section 86(2) and Section 86(3) trust accounts and 5% on interest accrued on Section 86(4) trust accounts from <insert commencement date> to <insert year/period end date>:

|  | <b>Interest earned on Section 86(2) trust accounts</b> | <b>Interest earned on Section 86(3) trust accounts</b> | <b>5% on interest accrued on Section 86(4) trust accounts</b> |
|--|--|--|---|
| (i) Amount brought forward from the previous financial year in respect of interest earned on monies deposited in terms of Section 86(2) and monies invested in terms of Section 86(3) of the Legal Practice Act, No. 28 of 2014.                   |  |  |   |
| (ii) Amount brought forward from the previous financial year in respect of the 5% on interest accrued on monies invested in terms of Section 86(4) of the Legal Practice Act, No. 28 of 2014.  |  |  |   |
| (iii) Interest earned during the current year/period on monies deposited in trust banking accounts in terms of Section 86(2) and monies invested in trust investment accounts in terms of Section 86(3) of the Legal Practice Act, No. 28 of 2014. |  |  |   |
| (iv) 5% earned during the current year/period on interest accrued on monies invested in trust banking accounts in terms of Section 86(4) of the Legal Practice Act, No. 28 of 2014.  |  |  |   |
| (v) Amount incurred during the current year/period in respect of refundable bank charges (excluding VAT – firms not liable for VAT as vendors may include VAT)   |  |  |   |
| (vi) Amount already paid over to the Fund during the period under review in terms of Section 86(5) of the Legal Practice Act, No. 28 of 2014 is: (a schedule of the payments made is to be attached).  |  |  |   |

|   |  |  |  |
|---|--|--|--|
| (vii) Amount carried over to the next financial period in respect of interest earned on monies deposited in terms of Section 86(2) and monies invested in terms of Section 86(3) of the Legal Practice Act, No. 28 of 2014. |  |  |  |
| (viii) Amount carried over to the next financial period in respect of the 5% on interest earned on monies invested in terms of Section 86(4) of the Legal Practice Act, No. 28 of 2014.                                     |  |  |  |

(ix) The amounts referred to in paragraph 4(vii) and 4(viii) agrees/does not agree<sup>88</sup> with the balance as recorded in the books of account, which amount, less the amount of R\_\_\_\_\_ paid over to the Fund since period end, <is/ is not> held in the firm's trust account.

If not held in the trust account, a written explanation detailing how the trust account interest has been dealt with is to be annexed to the report.

#### 5. Trust account balances

(l) The following information was extracted from our trust accounting records that were the subject of our auditor's assurance engagement in respect of trust creditors/liabilities and trust funds available at the period/year-end <insert date> and on one other date, selected by our auditor <insert date>, were as follows:

|   | Local<br>R<br>(A) | Foreign <sup>89</sup><br>R<br>(B) | At year end <sup>90</sup><br>R<br>(A+B) | At period end<br>R |
|---|-------------------|-----------------------------------|---|--------------------|
| <b>Trust creditors/liabilities</b>        |                   |                                   |   |                    |
| Trust creditors in terms of:              |                   |                                   |   |                    |
| - Section 86(2)                           |                   |                                   |   |                    |
| - Section 86(3)                           |                   |                                   |   |                    |
| - Section 86(4)                           |                   |                                   |   |                    |
| - Section 86(5)(a) interest               |                   |                                   |   |                    |
| - Section 86(5)(b) 5% on interest accrued |                   |                                   |   |                    |

<sup>88</sup> If the answer to paragraph 4(ix) is "does not agree", list all instances in which the accounting rules may not have been complied with. (If space is insufficient, this may be continued on a separate sheet and attached to this annual statement.)

<sup>89</sup> Attach a detailed schedule of liabilities per foreign currency per category in the same format, and convert to Rand at the reporting date.

<sup>90</sup> The date selected by the auditor must be a date, other than the financial year-end, that occurs during the financial year/period to which this assurance engagement relates.

|  |  |  |  |  |
|--|--|--|--|--|
| Trust creditors in terms of estates <sup>91</sup>                |  |  |  |  |
| Trust creditors in terms of other entrusted assets <sup>92</sup> |  |  |  |  |
| <b>TOTAL TRUST CREDITORS/LIABILITIES</b>                         |  |  |  |  |
|  |  |  |  |  |
| <b>Trust funds available:</b>                                    |  |  |  |  |
| - Section 86(2)  |  |  |  |  |
| - Section 86(3)  |  |  |  |  |
| - Section 86(4)  |  |  |  |  |
| - Trust cash on hand   |  |  |  |  |
| - Section 86(5)(a) Interest                                      |  |  |  |  |
| - Section 86(5)(b) 5% on interest accrued                        |  |  |  |  |
| Trust funds and assets relating to estates                       |  |  |  |  |
| Other entrusted assets <sup>93</sup>                             |  |  |  |  |
| Debit balances in trust ledger <sup>94</sup>                     |  |  |  |  |
| <b>TOTAL TRUST FUNDS</b>   |  |  |  |  |
| <b>TRUST SURPLUS / (DEFICIT)<sup>95</sup></b>                    |  |  |  |  |

(ii) The value of executor bond securities provided against the trust funds and assets relating to estate matters as reported in paragraph 5(l), at the end of the period amount to:

Provided by the Legal Practitioners Indemnity Insurance Fund NPC - R\_\_\_\_\_.

Provided by other security providers - R\_\_\_\_\_.

<sup>91</sup> This is trust liabilities in respect of which the legal practitioner is the executor, trustee or curator, or which he administers on behalf of the executor, trustee or curator and for which consent has been obtained from the Master of the High Court to deal with through the firm's trust account.

<sup>92</sup> This relates to the liability originating from any asset entrusted to the legal practitioner other than the items listed, and supported by a detailed schedule of the nature of such liability.

<sup>93</sup> Assets entrusted to the legal practitioner other than the trust fund items listed.

<sup>94</sup> Details of debit balances in the trust ledger must be provided as an attachment to the report, providing reasons for the occurrence and how it was resolved.

<sup>95</sup> A detailed explanation is required on how the surplus/deficit originated and how it was subsequently cleared and resolved. Indicate when the deficit was reported to the Legal Practice Council.

## 6. Investment practice

The firm:

- (i) <has/has not> carried on the business of an investment practice during the year under review;
- (ii) <has/has not> complied<sup>96</sup> in all respects with the provisions of investment practices contained in the rules; and
- (iii) <is/is not> registered as a Financial Services Provider (FSP) with the FAIS Department of the Financial Sector Conduct Authority.

## 7. Unknown and/or unclaimed money held in trust

Reconciliation of any money held in the trust account of a trust account practice in respect of which the identity of the owner is unknown or which is unclaimed after one year, which must be paid over to the Fund after the second closing of the accounting records of the trust account practice following the date upon which those funds were deposited in the trust account of the trust account practice from <insert commencement date> to <insert year/period end date>:

|  | <b>Monies held in terms of Section 86(2)</b> | <b>Monies held in terms of Section 86(3)</b> | <b>Monies held in terms of Section 86(4)</b> | <b>Total</b> |
|--|--|--|--|--------------|
|  | <b>R</b>                                     | <b>R</b>                                     | <b>R</b>                                     | <b>R</b>     |
| Balance at the beginning of the period/year              |  |  |  |              |
| Unidentified and/or unclaimed monies received into trust |  |  |  |              |
| Monies identified and/or claimed and accounted for       |  |  |  |              |
| Monies paid to the Fund in terms of Section 87(4)(a)     |  |  |  |              |

<sup>96</sup> If the answer to paragraph 6(ii) is "*has not complied*", list all instances in which the rules may not have been complied with. (If space is insufficient, this may be continued on a separate sheet and attached to this annual statement.)



GUIDE FOR REGISTERED AUDITORS: ENGAGEMENTS ON LEGAL PRACTITIONERS' TRUST ACCOUNTS  
(REVISED MARCH 2020)

|                                       |  |  |  |  |
|---------------------------------------|--|--|--|--|
| Balance at the end of the period/year |  |  |  |  |
|---------------------------------------|--|--|--|--|

.....

**<Name of Trust Account Practice>**

**<Sole Legal Practitioner/Partner/s/Director/s><sup>97</sup>**

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<sup>97</sup> Delete whichever is not applicable. For practices with a large number of partners/directors, this "Legal Practitioner's Annual Statement on Trust Accounts" should be signed by the partner/director authorised by the Partnership/Board of the Inc.

**SUPPLEMENTARY INFORMATION REQUESTED BY THE LEGAL PRACTICE COUNCIL**  
**FIRM <INSERT FIRM NAME>**

**Schedule of payments on interest earned on monies deposited in terms of Section 86(2) of the Legal Practice Act, No. 28 of 2014.**

For the financial period from \_\_\_\_\_ to \_\_\_\_\_

| Trust Banking Account at <Insert Name of Bank>, Branch Code No. <Insert Code> and Account No. <Insert Account No.> |      |                  |                                   |                   |
|--|------|------------------|-----------------------------------|-------------------|
|  | Date | Financial Period | Method of Payment<br>(EFT/Cheque) | Amount & Currency |
| 1.   |      |                  |                                   |                   |
| 2.   |      |                  |                                   |                   |
| 3.   |      |                  |                                   |                   |
| 4.   |      |                  |                                   |                   |
| 5.   |      |                  |                                   |                   |
| 6.   |      |                  |                                   |                   |
| 7.   |      |                  |                                   |                   |
| 8.   |      |                  |                                   |                   |
| 9.   |      |                  |                                   |                   |
| 10.  |      |                  |                                   |                   |
| 11.  |      |                  |                                   |                   |
| 12.  |      |                  |                                   |                   |
| 13.  |      |                  |                                   |                   |
| <b>Total</b>   |      |                  |                                   |                   |

**Notes:**

1. The total indicated above should agree with paragraph 4(vi) of the Legal Practitioner's Annual Statement on Trust Accounts.
2. A separate schedule should be submitted for each trust bank account operated by the firm.

**SUPPLEMENTARY INFORMATION REQUESTED BY THE LEGAL PRACTICE COUNCIL**  
**FIRM <INSERT FIRM NAME>**

**Schedule of payments on interest earned on monies invested in terms of Section 86(3) of the Legal Practice Act, No. 28 of 2014.**

For the financial period from \_\_\_\_\_ to \_\_\_\_\_

| Trust Banking Account at <Insert Name of Bank>, Branch Code No. <Insert Code> and Account No. <Insert Account No.> |      |                  |                                   |                   |
|--|------|------------------|-----------------------------------|-------------------|
|  | Date | Financial Period | Method of Payment<br>(EFT/Cheque) | Amount & Currency |
| 1.   |      |                  |                                   |                   |
| 2.   |      |                  |                                   |                   |
| 3.   |      |                  |                                   |                   |
| 4.   |      |                  |                                   |                   |
| 5.   |      |                  |                                   |                   |
| 6.   |      |                  |                                   |                   |
| 7.   |      |                  |                                   |                   |
| 8.   |      |                  |                                   |                   |
| 9.   |      |                  |                                   |                   |
| 10.  |      |                  |                                   |                   |
| 11.  |      |                  |                                   |                   |
| 12.  |      |                  |                                   |                   |
| 13.  |      |                  |                                   |                   |
| <b>Total</b>   |      |                  |                                   |                   |

**Notes:**

1. The total indicated above should agree with paragraph 4(vi) of the Legal Practitioner's Annual Statement on Trust Accounts.
2. A separate schedule should be submitted for each trust bank account operated by the firm.

**SUPPLEMENTARY INFORMATION REQUESTED BY THE LEGAL PRACTICE COUNCIL**  
**FIRM <INSERT FIRM NAME>**

**Schedule of payments of 5% on interest accrued on monies invested in terms of Section 86(4) of the Legal Practice Act, No. 28 of 2014.**

For the financial period from \_\_\_\_\_ to \_\_\_\_\_

| Trust Banking Account at <Insert Name of Bank> |      |                  |                                   |                   |
|--|------|------------------|-----------------------------------|-------------------|
|  | Date | Financial Period | Method of Payment<br>(EFT/Cheque) | Amount & Currency |
| 1.   |      |                  |                                   |                   |
| 2.   |      |                  |                                   |                   |
| 3.   |      |                  |                                   |                   |
| 4.   |      |                  |                                   |                   |
| 5.   |      |                  |                                   |                   |
| 6.   |      |                  |                                   |                   |
| 7.   |      |                  |                                   |                   |
| 8.   |      |                  |                                   |                   |
| 9.   |      |                  |                                   |                   |
| 10.  |      |                  |                                   |                   |
| 11.  |      |                  |                                   |                   |
| 12.  |      |                  |                                   |                   |
| 13.  |      |                  |                                   |                   |
| <b>Total</b>                                   |      |                  |                                   |                   |

**Note:**

1. The total indicated above should agree with paragraph 4(vi) of the Legal Practitioner's Annual Statement on Trust Accounts.
2. A separate schedule should be submitted for each trust bank account operated by the firm.

**SUPPLEMENTARY INFORMATION REQUESTED BY THE LEGAL PRACTICE COUNCIL  
FIRM <INSERT FIRM NAME>**

**Schedule of Executor Bond securities obtained from the Legal Practitioners Indemnity Insurance Fund NPC.**

For the financial period from \_\_\_\_\_ to \_\_\_\_\_

| <b>Executor Bond Securities provided for &lt;Insert Legal Practitioner Name&gt;</b> |                      |                                      |                             |                              |
|---|----------------------|--------------------------------------|-----------------------------|------------------------------|
|   | <b>Estate Matter</b> | <b>LPIIF Executor Bond Reference</b> | <b>Status (Open/Closed)</b> | <b>Amount &amp; Currency</b> |
| 1.  |                      |                                      |                             |                              |
| 2.  |                      |                                      |                             |                              |
| 3.  |                      |                                      |                             |                              |
| 4.  |                      |                                      |                             |                              |
| 5.  |                      |                                      |                             |                              |
| 6.  |                      |                                      |                             |                              |
| 7.  |                      |                                      |                             |                              |
| 8.  |                      |                                      |                             |                              |
| 9.  |                      |                                      |                             |                              |
| 10.   |                      |                                      |                             |                              |
| 11.   |                      |                                      |                             |                              |
| 12.   |                      |                                      |                             |                              |
| 13.   |                      |                                      |                             |                              |
| <b>Total</b>  |                      |                                      |                             |                              |

**Notes:**

1. The total amount indicated above should agree with paragraph 5(ii) of the Legal Practitioner's Annual Statement on Trust Accounts, representing the value of all open Executor Bond Securities at the end of the reporting period.
2. A schedule is required for every legal practitioner in the firm to whom an executor bond of security was issued by the Legal Practitioners Indemnity Insurance Fund NPC.

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